

ALASKA LEGISLATURE

2243

HOUSE and SENATE FINANCE COMMITTEE FILES,

2001 - 2002

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 182(L&C)
(H) Publish Date: 3/22/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to motor vehicles; and BRU Civil Division
providing for an effective date." Component Fair Business Practices
Sponsor Rep. Murkowski
Requester House Labor and Commerce Committee Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	58.3	58.3	58.3	58.3	58.3	58.3
Travel	0.1	0.1	0.1	0.1	0.1	0.1
Contractual	11.1	11.1	11.1	11.1	11.1	11.1
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.5	6.5	6.5	6.5	6.5	6.5
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	77.0	77.0	77.0	77.0	77.0	77.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	77.0	77.0	77.0	77.0	77.0	77.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	77.0	77.0	77.0	77.0	77.0	77.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

HB 182 provides for regulation of conduct between automobile dealers and manufacturers by the Department of Administration.

The fiscal impact on the Department of Law will arise primarily from participation on the Motor Vehicle Dealers Advisory Board, and assisting the commissioner of the Department of Administration with any actions that result from charges of unfair methods of competition, unfair and deceptive acts or practices, or other violations of the act. In addition, the department will advise the commissioner on any license disputes. We anticipate the services of one-half of a full-time equivalent attorney position will be needed to handle this new workload. The position will be located in the Fair Business Practices section of the Civil Division.

Cost estimates are based on the department's FY 2003 standard attorney schedule, which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. Estimates also include an additional \$6,500 for one-time equipment purchases, costs that cannot be included in the state as overhead.

Prepared by: Joan M. Kasson Phone (907) 465-5370
Division: Attorney General's Office Date/Time 3/18/02 1:43 PM
Approved by: Kathryn Daughherten for Bruce M. Botelho, Attorney General Date 3/18/2002
Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB 182 (L&C)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act relating to motor vehicles BRU Motor Vehicles
and providing for an effective date Component _____
Sponsor Representative Murkowski, Represent
Requester H (FIN) Component No. 2348

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will delete from dealer registration businesses that sell only trailers or semi-trailers and do not also sell motor vehicles. There are 3 of these businesses that currently must register as dealers. The loss of revenue from these businesses will be \$150 annually.

Prepared by: Mary Marshburn, Director Phone 269-5559
Division: Motor Vehicles Date/Time 4/1/02 9:55 AM
Approved by: Jim Duncan, Commissioner Date 4/1/2002
Agency: Department of Administration

Amended
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Adopted

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Bannister
4/9/02

CS FOR HOUSE BILL NO. 182()

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

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MURKOWSKI, Halcro, Hayes

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to certain vehicles, including motorcycles and trailers; relating to the
2 registration, bonding, and other regulation of motor vehicle dealers; relating to the
3 registration and other regulation of certain motor vehicle buyers' agents; relating to acts
4 and transactions involving vehicles, including trailers, and to the acts and practices of
5 certain persons and entities involved in vehicle transactions, including trailer
6 transactions; amending Rule 3, Alaska Rules of Civil Procedure; and providing for an
7 effective date."

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

9 * Section 1. AS 08.66.010 is amended to read:

10 Sec. 08.66.010. Dealers to register. A dealer in motor vehicles [,
11 TRAILERS, OR SEMI-TRAILERS] shall, as a condition to engaging in business in
12 the state, register biennially with the department [DEPARTMENT OF
13 ADMINISTRATION].

1 * Sec. 2. AS 08.66.030 is amended to read:

2 **Sec. 08.66.030. Form of application.** The department [DEPARTMENT OF
3 ADMINISTRATION] shall prescribe and furnish the form of application for dealer
4 registration under AS 08.66.010. The application must contain

5 (1) the name under which the business is conducted;

6 (2) the location of the business;

7 (3) the name and address of all persons having an interest in the
8 business and, in the case of a corporation, the application shall contain the name and
9 address of the two principal officers;

10 (4) the name and make of all vehicles handled;

11 (5) a statement of whether or not used vehicles are handled;

12 (6) a statement that the applicant is a bona fide dealer in motor
13 vehicles [, TRAILERS, OR SEMI-TRAILERS] with an established business at the
14 location given;

15 (7) if the applicant sells a motor vehicle as a new or current model
16 motor vehicle having a manufacturer's warranty, the name of the manufacturer of the
17 motor vehicle and the date and duration of the applicant's sales and service agreement
18 with the manufacturer: and

19 (8) other information the department [DEPARTMENT OF
20 ADMINISTRATION] requires to administer this chapter [AS 08.66.010 -
21 08.66.090].

22 * Sec. 3. AS 08.66.040 is amended to read:

23 **Sec. 08.66.040. Filing application for registration.** The application shall be
24 filed with the department [DEPARTMENT OF ADMINISTRATION]. Upon receipt
25 of the application, the department shall examine it and may make an investigation of
26 the information in it. If the department is satisfied that the dealer is entitled to
27 registration, and the fees have been paid and a bond filed, the department shall assign
28 a distinctive registration number to the dealer and file the dealer's application and
29 index it alphabetically and numerically. A dealer is registered when the department
30 assigns a registration number.

31 * Sec. 4. AS 08.66.050 is amended to read:

1 **Sec. 08.66.050. Renewal of registration.** A dealer shall renew the
2 registration required by this chapter [AS 08.66.010 - 08.66.090] before January 1
3 every two years.

4 * **Sec. 5.** AS 08.66.060 is repealed and reenacted to read:

5 **Sec. 08.66.060. Bond.** (a) An applicant for a dealer registration under
6 AS 08.66.010 shall file with the application and shall maintain in force while
7 registered a bond in favor of the state that is executed by a surety approved by the
8 commissioner. The amount of the bond shall be \$50,000, except that the amount of a
9 bond for a dealer who sells only motorcycles shall be \$25,000. The bond must be
10 conditioned on the dealer's

11 (1) doing business in compliance with this chapter and the other laws
12 of this state; and

13 (2) not committing fraud or making fraudulent representations in the
14 course of doing business as a dealer.

15 (b) A surety may cancel the bond required by (a) of this section by giving
16 notice in writing to the commissioner or the commissioner's designee. However,
17 cancellation does not relieve a surety of liability arising before cancellation or a
18 liability that has accrued on the bond before cancellation. The commissioner or the
19 commissioner's designee shall retain the canceled bond on file and may not relieve a
20 surety of a liability arising before cancellation or accruing on the bond before
21 cancellation.

22 (c) A bond filed under (a) of this section is valid for renewal of a dealer
23 registration unless the surety has provided a written notice of cancellation to the
24 commissioner.

25 (d) In this section, "commissioner" means the commissioner of administration.

26 * **Sec. 6.** AS 08.66.070 is amended to read:

27 **Sec. 08.66.070. Action on bond.** If a person suffers loss or damage by reason
28 of fraud, fraudulent representations, or a violation of a [ANY] provision of this
29 chapter or another law of this state [AS 08.66.010 - 08.66.090] by a dealer, the
30 person has a right of action against the dealer and a personal right of action against the
31 surety upon the bond. The aggregate liability of the surety may [DOES] not exceed

1 the amount of the bond.

2 * **Sec. 7.** AS 08.66.080 is amended to read:

3 **Sec. 08.66.080. Penalties.** A dealer who fails to register and file a bond as
4 required by this chapter [AS 08.66.010 - 08.66.090] is guilty of a violation. A dealer
5 who knowingly violates a provision of this chapter [AS 08.66.010 - 08.66.090] is
6 guilty of a class A misdemeanor.

7 * **Sec. 8.** AS 08.66.350 is repealed and reenacted to read:

8 **Sec. 08.66.350. Definitions.** In this chapter,

9 (1) "buyer's agent" means a person who does business in the state by
10 negotiating on behalf of a buyer the purchase of a motor vehicle from a motor vehicle
11 dealer;

12 (2) "department" means the Department of Administration;

13 (3) "motor vehicle" means a motor vehicle that is required to be
14 registered under AS 28.10;

15 (4) "motor vehicle dealer" or "dealer"

16 (A) means

17 (i) a buyer's agent; or

18 (ii) a person, other than a manufacturer, who sells,
19 leases, solicits, or arranges for the sale or lease of five or more new or
20 used motor vehicles in any 12 consecutive months, regardless of who
21 owns the vehicles;

22 (B) does not include

23 (i) a receiver, a trustee, an administrator, an executor, a
24 guardian, or another person appointed by a court or a person
25 performing duties as a public officer;

26 (ii) a person disposing of a motor vehicle acquired and
27 actually used for the person's own use or for the use of a family
28 member of the person, or acquiring a motor vehicle for the person's
29 own use or for the use of a family member of the person if the vehicle
30 is acquired and used in good faith and not for the purpose of avoiding
31 the provisions of this chapter;

1 (iii) a person who sells motor vehicles as an incident of
2 the person's principal business but who is not engaged primarily in the
3 selling of motor vehicles;

4 (iv) an employee of an organization arranging for the
5 purchase or lease by the organization of a vehicle for use in the
6 organization's business;

7 (v) a publication, broadcast, or other communications
8 media when engaged in the business of advertising, but not otherwise
9 arranging for the sale of a motor vehicle owned by another person.

10 * **Sec. 9.** AS 45 is amended by adding a new chapter to read:

11 **Chapter 25. Motor Vehicle Transactions.**

12 **Article 1. Applicability; Venue; Corporate Affiliates.**

13 **Sec. 45.25.010. Applicability.** AS 45.25.020 - 45.25.320 apply to franchise
14 contracts between a manufacturer and its new motor vehicle dealers in this state.

15 **Sec. 45.25.020. Jurisdiction; choice of law.** (a) The courts of this state have
16 jurisdiction over a legal dispute between a manufacturer located in or outside this state
17 and a new motor vehicle dealer located in this state, and the dispute is governed by
18 and interpreted and adjudicated under the law of this state.

19 (b) Venue for a dispute under (a) of this section is in the judicial district of this
20 state where the new motor vehicle dealer's principal place of business is located.

21 **Sec. 45.25.030. Corporate affiliates.** (a) A manufacturer may not use a
22 subsidiary corporation, affiliated corporation, partnership, association, or other person
23 to accomplish what would be prohibited for the manufacturer under this chapter.

24 (b) This section does not limit the right of a person included within the scope
25 of this section to engage in reasonable and appropriate business practices consistent
26 with an existing trade practice that is not prohibited by this chapter.

27 **Article 2. Franchise Agreements.**

28 **Sec. 45.25.100. Consistency with state law.** The terms and conditions in an
29 agreement between a manufacturer and a new motor vehicle dealer in this state,
30 including a motor vehicle franchise agreement, that are inconsistent with the law of
31 this state do not have any force or effect in this state.

1 **Sec. 45.25.110. Termination of franchise agreements.** (a) A manufacturer
2 may not terminate a franchise with a new motor vehicle dealer unless

3 (1) the manufacturer has

4 (A) satisfied the notice requirements of this chapter;

5 (B) shown that there is good cause for the termination of the
6 franchise, and, if the reasons underlying the good cause can be corrected by the
7 new motor vehicle dealer, the new motor vehicle dealer has failed for 60 days
8 after delivery of the notice required by AS 45.25.120 to make the corrections;
9 the circumstances identified under AS 45.25.120(a)(2) for which a 15-day
10 notice of termination is required do not qualify as reasons for which correction
11 is allowed under this paragraph; or

12 (2) the new motor vehicle dealer has systematically engaged in fraud
13 against consumers or the manufacturer or in the operation of the new motor vehicle
14 dealership.

15 (b) Notwithstanding (a)(1) of this section, a manufacturer may not terminate a
16 franchise agreement with a new motor vehicle dealer because of the death or
17 incapacity of an owner if the owner is not listed in the franchise as one on whose
18 expertise and abilities the manufacturer relied in the granting of the franchise.

19 (c) In this section, "good cause" includes when the new motor vehicle dealer
20 fails to comply with or observe a material provision of the franchise agreement. For
21 the purposes of determining good cause under this subsection, reasonable sales and
22 service performance criteria and capital and facility requirements may be considered
23 material provisions only if the criteria or requirements were communicated in writing
24 to the new motor vehicle dealer within a reasonable period before the effective date of
25 the termination or nonrenewal so that a reasonable opportunity was afforded over a
26 period of not less than six months to comply with the criteria or requirements.

27 **Sec. 45.25.120. Notice of termination.** (a) A manufacturer shall furnish a
28 notice of termination of a franchise agreement to a new motor vehicle dealer at least

29 (1) 90 days before the effective date of a termination, except as
30 required under (2) or (3) of this subsection;

31 (2) 15 days before the effective date of a termination when the new

1 motor vehicle dealer

2 (A) is insolvent or is the subject of a bankruptcy or receivership
3 proceeding;

4 (B) has failed to conduct its customary sales and service
5 operations during its customary business hours for seven consecutive business
6 days; this subparagraph does not apply to closures due to acts of God or
7 circumstances beyond the direct control of the new motor vehicle dealer; or

8 (C) is convicted of a felony involving moral turpitude or fraud
9 under the law of this state, another state, the federal government, a territory of
10 the United States, or the District of Columbia;

11 (3) 180 days before the effective date of the termination if the
12 manufacturer or distributor is discontinuing the sale of the product line.

13 (b) Notice required under (a) of this section must be in writing, shall be sent
14 by certified mail or personally delivered to the new motor vehicle dealer, and must
15 contain

16 (1) a statement of intention to terminate the franchise;

17 (2) a statement of the reasons for the termination; and

18 (3) the date on which the termination takes effect.

19 **Sec. 45.25.130. Threat of termination.** (a) A manufacturer or manufacturer
20 representative may not coerce or attempt to coerce a new motor vehicle dealer to enter
21 into an agreement with the manufacturer or a subsidiary of the manufacturer, or to do
22 any other act unfair to the new motor vehicle dealer, by threatening to terminate a
23 franchise agreement between the manufacturer or subsidiary of the manufacturer and
24 the new motor vehicle dealer.

25 (b) This section does not prohibit a voluntary agreement between a
26 manufacturer and a new motor vehicle dealer or between a distributor and a new
27 motor vehicle dealer to settle legitimate disputes.

28 **Sec. 45.25.140. Repurchase obligations on termination.** (a) Upon the
29 termination of a new motor vehicle dealer's franchise agreement by the manufacturer
30 or distributor, the manufacturer or distributor shall repurchase from the new motor
31 vehicle dealer at

1 (1) the new motor vehicle dealer's net acquisition cost, if the motor
2 vehicles have not been materially altered or damaged, all inventory consisting of
3 unsold new motor vehicles that are current models and models that have been acquired
4 from the manufacturer within the past two model years before receipt of the notice of
5 termination;

6 (2) the new motor vehicle dealer price listed in the current parts
7 catalog, less applicable allowances, new unused undamaged parts in their original,
8 unbroken packaging, listed in the current price catalog and acquired from the
9 manufacturer or distributor;

10 (3) fair market value, signs, equipment, and furnishings that bear a
11 trademark or trade name, that have not been altered or damaged, and that were
12 required by the manufacturer or distributor within five years preceding the notice of
13 termination; and

14 (4) the new motor vehicle dealer's net acquisition cost, special tools
15 that have not been altered or materially damaged that were purchased from the
16 manufacturer or distributor within three years preceding the date of the termination.

17 (b) Within 90 days after the effective date of the termination, the new motor
18 vehicle dealer shall return the property required by (a) of this section to be
19 repurchased to the manufacturer or distributor at the manufacturer's or distributor's
20 expense. The manufacturer or distributor shall pay the compensation for the property
21 within 60 days after the tender of inventory and other items if the new motor vehicle
22 dealer has clear title to the property and is in a position to convey that title to the
23 manufacturer or distributor. If the property is subject to a security interest, the
24 manufacturer or distributor may make payment jointly to the new motor vehicle dealer
25 and the holder of the security interest, and the manufacturer or distributor may offset
26 these payments.

27 **Sec. 45.25.150. Required compensation for new motor vehicle dealer**
28 **facilities.** (a) Upon termination by the manufacturer or distributor, the manufacturer
29 or distributor shall compensate the new motor vehicle dealer for new motor vehicle
30 dealer facilities a sum equivalent to the

31 (1) rent for the unexpired term of the lease or 18 months, whichever

1 period is shorter, if the new motor vehicle dealer is leasing the new motor vehicle
2 dealership facilities from a lessor other than the manufacturer or distributor; or

3 (2) reasonable rental value of the new motor vehicle dealership
4 facilities for 18 months or until the facilities are leased or sold, whichever period is
5 shorter, if the new motor vehicle dealer owns the new motor vehicle dealership
6 facilities; the sum may be paid in monthly installments at the election of the
7 manufacturer or distributor.

8 (b) This section does not relieve a new motor vehicle dealer of the obligation
9 to mitigate damages under a lease, prevent a manufacturer from occupying and using
10 the new motor vehicle dealer's facilities while paying rent, or preclude a manufacturer
11 from negotiating a lease termination, sublease, or new lease.

12 (c) This section does not apply to a termination for

13 (1) insolvency of the new motor vehicle dealer or the filing of any
14 petition by or against the new motor vehicle dealer under a bankruptcy or receivership
15 law;

16 (2) failure of the new motor vehicle dealer to conduct its customary
17 sales and service operations during its customary business hours for seven consecutive
18 business days;

19 (3) conviction of the new motor vehicle dealer or its principal owners
20 of a felony or a misdemeanor regardless of the punishment if the crime involves theft,
21 dishonesty, or false statement;

22 (4) revocation of a license required for the new motor vehicle dealer to
23 operate; or

24 (5) a fraudulent misrepresentation by the new motor vehicle dealer to
25 the manufacturer or distributor that is material to the new motor vehicle dealer's
26 agreement.

27 (d) The payment required under (a) of this section is only required to the
28 extent that the facilities were used for activities under the franchise agreement and
29 only to the extent the facilities were not leased for unrelated purposes.

30 (e) If payment under (a) of this section is made, the manufacturer or
31 distributor is entitled to possession and use of the new motor vehicle dealership

1 facilities for the period for which the payment is paid.

2 **Sec. 45.25.160. Prevention or refusal to honor transfer of new motor**
3 **vehicle dealership ownership.** A manufacturer may not unreasonably prevent or
4 refuse to honor a transfer of ownership of a new motor vehicle dealership.

5 **Sec. 45.25.170. Succession.** (a) A manufacturer or distributor may not
6 prevent or refuse to honor the succession to a new motor vehicle franchise of an heir
7 or devisee under a will of a franchisee, under a written instrument filed with the
8 manufacturer or distributor designating any person as the successor franchisee, or
9 under AS 13.06 - AS 13.36 (Uniform Probate Code), except that

10 (1) a designated successor must, within 60 days after the owner's death
11 or incapacity, give the manufacturer or distributor written notice of the intent to
12 succeed, and the designee must agree to be bound by all the terms and conditions of
13 the current franchise agreement;

14 (2) the manufacturer or distributor may request from the designated
15 successor personal and financial data that are reasonably necessary to determine the
16 qualifications of the designated successor; the designated successor shall provide the
17 information within 60 days after receiving the request;

18 (3) the manufacturer or distributor may not unreasonably withhold
19 approval of the succession; if the manufacturer or distributor refuses to honor the
20 succession, the manufacturer or distributor shall send written notice to the proposed
21 successor within 60 days after receiving the information requested in (2) of this
22 subsection or within 60 days after receiving the notice of the proposed successor's
23 intent to succeed, whichever is later.

24 (b) The notice required by (a)(3) of this section must state the specific grounds
25 for not approving the proposed successor. Within 30 days after the proposed
26 successor's receipt of the notice, the proposed successor may file a protest with the
27 superior court to determine whether the manufacturer or distributor has unreasonably
28 withheld approval.

29 (c) This section does not preclude the owner of a new motor vehicle
30 dealership from filing with the manufacturer or distributor a written instrument
31 designating any person as a successor. If there are competing successors, the written

1 instrument governs who may submit a proposal as a successor.

2 **Sec. 45.25.180. New dealerships.** (a) Before a manufacturer or distributor
3 enters into a franchise establishing or relocating a new motor vehicle dealer within a
4 relevant market area where the same line make is represented, the manufacturer or
5 distributor shall give 90 days' written notice to each new motor vehicle dealer of the
6 same line make in the relevant market area of the intention to establish an additional
7 new motor vehicle dealer or to relocate an existing new motor vehicle dealer within
8 that relevant market area.

9 (b) Within 30 days after receiving the notice required under (a) of this section
10 or within 30 days after the end of any appeal procedure provided by the manufacturer
11 or distributor, a new motor vehicle dealer may bring a declaratory judgment action in
12 the superior court of this state to determine whether good cause exists for the
13 establishment or relocation of a proposed new motor vehicle dealer. If an action is
14 filed, the manufacturer or distributor may not establish or relocate the proposed new
15 motor vehicle dealer until the court has rendered a decision on the matter.

16 (c) This section does not prohibit

17 (1) the relocation of an existing new motor vehicle dealer to a new
18 location not within four miles of an existing new motor vehicle dealer;

19 (2) the appointment of a successor new motor vehicle dealer at the
20 same location as its predecessor or within a two-mile radius from any boundary of the
21 predecessor's former location within two years from the date when the predecessor
22 ceased operations or was terminated, whichever occurred later; or

23 (3) the entering into of a renewal of, replacement of, or succeeding
24 franchise agreement with an existing new motor vehicle dealer whose operations will
25 continue at the existing new motor vehicle dealer's current location.

26 (d) When determining whether good cause exists for establishing or relocating
27 an additional new motor vehicle dealer for the same line make, the superior court shall
28 consider the existing circumstances, including

29 (1) whether the establishment of an additional franchise or relocation
30 of the existing new motor vehicle dealer appears to be warranted by economic and
31 marketing conditions, including anticipated future changes;

1 (2) the retail sales and service business transacted by the protesting
2 new motor vehicle dealer and other new motor vehicle dealers of the same line make
3 with a place of business in the relevant market area to be served by the additional
4 franchise or proposed new location of an existing new motor vehicle dealer during the
5 three-year period immediately preceding the notice;

6 (3) the investment necessarily made and obligations incurred by the
7 protesting new motor vehicle dealer to perform the protesting new motor vehicle
8 dealer's obligations under existing franchise agreements;

9 (4) the permanency of the investment of the protesting new motor
10 vehicle dealer; and

11 (5) whether it is beneficial or injurious to the public welfare for an
12 additional franchise to be established or for the existing new motor vehicle dealer to
13 be relocated.

14 (e) In this section,

15 (1) "relevant market area" means the greater of the area

16 (A) within a radius of 14 miles around an existing new motor
17 vehicle dealer; or

18 (B) of responsibility defined in a governing franchise
19 agreement;

20 (2) "relocate" and "relocation" do not include the relocation of a new
21 motor vehicle dealer within two miles of the new motor vehicle dealer's established
22 place of business.

23 **Sec. 45.25.190. Arbitration.** In a controversy between a manufacturer and a
24 new motor vehicle dealer under AS 45.25.010 - 45.25.320, neither the manufacturer
25 nor the new motor vehicle dealer is required to submit the controversy to arbitration.
26 If both the manufacturer and the new motor vehicle dealer agree to submit a
27 controversy under AS 45.25.010 - 45.25.320 to arbitration, the arbitration shall be
28 conducted under AS 09.43.020 - 09.43.180 (Uniform Arbitration Act), the
29 manufacturer and the new motor vehicle dealer shall each select one arbitrator, and
30 both the manufacturer and the new motor vehicle dealer shall select the third
31 arbitrator.

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Article 3. Manufacturer and Distributor Practices.

Sec. 45.25.300. New motor vehicle dealership location and facilities. A manufacturer may not require, coerce, or attempt to coerce a new motor vehicle dealer to change the location of the new motor vehicle dealership, or to make any substantial alterations to the new motor vehicle dealership premises or facilities if the change or alteration would be unreasonable or if there is not a sufficient supply of new motor vehicles to justify the expansion in light of the current market and economic conditions.

Sec. 45.25.310. Discrimination. A manufacturer may not unfairly discriminate among new motor vehicle dealers with respect to warranty reimbursements or authority granted new motor vehicle dealers to make warranty adjustments with retail customers.

Sec. 45.25.320. Claim audits and charge backs. (a) A manufacturer or distributor may not audit a claim, deny a claim, reduce the amount of a claim to be reimbursed to a new motor vehicle dealer, or charge back a portion of the claim to a new motor vehicle dealer if 18 or more months have passed since the new motor vehicle dealer submitted the claim, or, if 18 or more months have passed from the end of a manufacturer sponsored incentive program related to the claim, whichever 18-month period ends later.

(b) The time restriction in (a) of this section does not apply if the manufacturer reasonably suspects that fraud is involved in the claim.

(c) In this section, "claim" means a claim made by a new motor vehicle dealer for compensation by the manufacturer or distributor for sales incentives, warranty repairs, and service incentives.

Article 4. Dealer Practices.

Sec. 45.25.400. Prohibited use of advertising terms. (a) A motor vehicle dealer may not use the term "invoice," "factory invoice," "dealer invoice," "dealer cost," "wholesale price," or any other term of similar meaning in an advertisement for the sale of a motor vehicle.

(b) A motor vehicle dealer may use the term "manufacturer's suggested retail price," "MSRP," or "list price" in an advertisement for the sale of a motor vehicle,

1 subject to the restriction on price comparisons in AS 45.25.450 and the following:

2 (1) the advertised price must reference the final price listed by the
3 manufacturer on the monroney sticker, including accessories and options physically
4 attached to the vehicle at the time of delivery to the dealer, plus any transportation
5 charges, and minus all manufacturer discounts and savings;

6 (2) the manufacturer's suggested retail price or the list price does not
7 include charges added by the dealer or options added to the vehicle by the dealer; and

8 (3) whenever using the term "manufacturer's suggested retail price,"
9 "MSRP," or "list price," the dealer shall provide in the advertisement a clear and
10 conspicuous disclosure that states that a sale may not have occurred at that price.

11 **Sec. 45.25.410 Availability of advertised items.** A motor vehicle dealer
12 may not advertise vehicles and related goods or services at a specified dealer price
13 with the intent not to supply reasonably expected demand, unless the advertisement
14 discloses the number of vehicles in stock at the advertised price.

15 **Sec. 45.25.420. Display of motor vehicles.** A motor vehicle dealer shall
16 display all vehicles advertised for sale for the duration of the sale period in a
17 conspicuous and clearly visible location on the dealer's premises. The advertised sale
18 price for each vehicle must be clearly marked on the vehicle so the consumer can
19 readily identify the advertised price for the vehicle.

20 **Sec. 45.25.430. Refusal to sell on advertised terms and conditions.** A
21 motor vehicle dealer may not refuse to sell a motor vehicle on the terms and
22 conditions that the dealer has advertised. This section does not apply if

23 (1) the dealer can document that the advertised term or condition was
24 the result of an error on the part of the advertising medium or an outside advertising
25 agent; or

26 (2) the refusal is based on an error that was made in good faith by the
27 dealer and was clearly and conspicuously a mistake, and the dealer corrected the error
28 as soon as the dealer knew or reasonably should have known of the error.

29 **Sec. 45.25.440. Advertised price.** (a) When selling a motor vehicle, a motor
30 vehicle dealer may not charge dealer fees or costs, except for fees actually paid to a
31 state agency for licensing, registration, or title transfers, unless the fees or costs are

1 included in the advertised price.

2 (b) In this section, "dealer fees or costs" includes dealer preparation fees,
3 document preparation fees, surcharges, and other dealer imposed fees and costs.

4 **Sec. 45.25.450. Advertised price comparisons, reductions, and discounts.**

5 (a) A motor vehicle dealer may not make a price comparison, price reduction, or price
6 discount in an advertisement unless the comparison, reduction, or discount complies
7 with this section.

8 (b) A motor vehicle dealer may advertise a price comparison for a new motor
9 vehicle with the manufacturer's suggested retail price only if

10 (1) the dealer only uses the term "manufacturer's suggested retail
11 price," "MSRP," or "list price";

12 (2) the advertised price references the final price listed by the
13 manufacturer on the monroney sticker;

14 (3) the manufacturer's suggested retail price, MSRP, or list price does
15 not include charges added by the dealer or options added to the vehicle by the dealer;

16 (4) the dealer clearly discloses that the manufacturer's suggested retail
17 price, MSRP, or list price may not reflect the actual selling price for the vehicle in the
18 dealer's trade area; and

19 (5) the dealer does not make a representation in the advertisement,
20 including a reference to a "sale," "reduction," or "discount," that the comparison
21 represents a saving to the consumer.

22 (c) A motor vehicle dealer may not use a competitor's price as a reference
23 price unless

24 (1) the reference price is the competitor's current, bona fide price in the
25 trade area of the dealer making the comparison;

26 (2) the comparison is to an identical or nearly identical vehicle that
27 does not materially differ in model, style, design, name, brand, kind, or quality from
28 the advertised product; and

29 (3) the dealer includes in the advertised price all charges that the
30 competitor includes in the competitor's price.

31 (d) A motor vehicle dealer shall be in possession of documents and all other

1 information necessary to substantiate all reference price claims when the claims are
2 made and shall maintain this information in a readily accessible place for two years
3 after the time the reference price claims are made.

4 **Sec. 45.25.460. Advertising and selling practices generally.** (a) In addition
5 to the provisions of AS 45.50.471 and regulations adopted under AS 45.50.471, a
6 motor vehicle dealer may not

7 (1) exclude from an advertisement of a motor vehicle for sale that
8 taxes, if applicable, vehicle registration fees, finance charges, charges for the issuance
9 of any certificate of compliance or noncompliance required by statute, or other fees or
10 charges to be paid to a third party that are not otherwise included in the advertised
11 price will be added to the advertised price at the time of the sale;

12 (2) represent the dealer document preparation fee as a government fee;

13 (3) advertise a specific motor vehicle for sale without identifying the
14 vehicle by either its vehicle identification number, vehicle stocking number, or license
15 number;

16 (4) advertise that free merchandise, gifts, or services will be provided
17 by the dealer if a vehicle is purchased; in this paragraph, "free" includes merchandise
18 or services offered for sale at a price less than the dealer's cost for the merchandise or
19 services;

20 (5) use the term "rebate," "cash back," or a similar term in advertising
21 the sale of a motor vehicle unless the rebate is expressed in a specific dollar amount
22 and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the
23 retail buyer of the vehicle;

24 (6) require a person, in order to receive the advertised credit terms, to
25 pay a higher price for a motor vehicle and any related goods or services than the cash
26 price the same person would have to pay to purchase the same vehicle and related
27 goods or services;

28 (7) advertise a guaranteed trade in allowance or range of allowances
29 unless the guarantee is provided by the manufacturer or distributor;

30 (8) affix to a new motor vehicle a supplemental price sticker
31 containing a price that represents the dealer's asking price, if the supplemental price

1 sticker exceeds the manufacturer's suggested retail price, unless the supplemental
2 sticker

3 (A) clearly and conspicuously, in the largest print appearing on
4 the sticker other than the print size used for the dealer's name, discloses that
5 the supplemental sticker price is the dealer's asking price, or words of similar
6 meaning, and is not the manufacturer's suggested retail price;

7 (B) clearly and conspicuously discloses the manufacturer's
8 suggested retail price; and

9 (C) states, if the supplemental sticker price is greater than the
10 sum of the manufacturer's suggested retail price and the price of the items
11 added by the dealer, the difference and describes it as additional dealer mark-
12 up;

13 (9) advertise or otherwise represent, or knowingly allow to be
14 advertised or represented on behalf of the dealer, that a down payment is not required
15 in connection with the sale of a motor vehicle when a down payment is in fact
16 required;

17 (10) advertise an offer for the sale, lease, or purchase of a motor
18 vehicle that creates the false impression that the vehicle is being offered by a private
19 party or a motor vehicle agent or that does not contain the name of the dealer;

20 (11) use an advertisement for a motor vehicle that contains language
21 that falsely, implicitly, or explicitly suggests that, to take advantage of an offer, a
22 consumer must act within a certain period of time when, in fact, the vehicles will
23 continue to be available at the advertised price beyond that time period;

24 (12) require a buyer of a new motor vehicle, as a condition of sale and
25 delivery, to also purchase special features, appliances, accessories, or equipment not
26 desired or requested by the buyer unless the special features, appliances, equipment, or
27 accessories are already installed on the vehicle when received by the dealer;

28 (13) represent and sell as a new motor vehicle a demonstrator vehicle
29 or a motor vehicle that is a used motor vehicle; in this paragraph, "demonstrator
30 vehicle"

31 (^) means a motor vehicle

1 (i) that has been assigned by a dealer for use by the
2 dealership as an executive vehicle for promotional purposes, including
3 being driven in the community;

4 (ii) that has not been licensed by a retail buyer; and

5 (iii) the title of which has not been transferred to a retail
6 buyer;

7 (B) does not include a motor vehicle that has only been driven
8 to demonstrate the motor vehicle to a prospective buyer;

9 (14) advertise that the dealer finances any person, or does not reject
10 any person's credit, or make similar claims;

11 (15) advertise or make a statement, declaration, or representation in an
12 advertisement that cannot be substantiated in fact; the burden of proof of the factual
13 basis for the statement, declaration, or representation is on the dealer.

14 (b) A motor vehicle dealer shall disclose a beginning and ending date in all
15 motor vehicle sale advertisements.

16 ~~Sec. 45.25.470. Sales of used motor vehicles. (a) Before the sale of a used
17 motor vehicle, a motor vehicle dealer shall~~

18 ~~(1) when obtaining a used motor vehicle that the dealer intends to
19 resell, make a reasonable inquiry of the seller into the condition of the vehicle,
20 including the vehicle's accident and repair history;~~

21 ~~(2) if the dealer has information that reasonably should lead the dealer
22 to know of the potential for a material defect in a used motor vehicle, conduct an
23 inspection of the vehicle, including, at a minimum, placing the vehicle on a rack and
24 inspecting under the hood.~~

25 ~~(b) A motor vehicle dealer shall make available to all sales staff and provide in
26 writing to a prospective buyer of the vehicle before sale all information obtained by a
27 motor vehicle dealer under this section, along with all information relating to repairs
28 made to the vehicle by the dealer.~~

29 ~~(c) In (a) of this section, "material defect" means a condition that impairs the
30 safe operation of a motor vehicle by a reasonable person.~~

31 ~~Sec. 45.25.480. Sales of vehicles manufactured for sale in a foreign~~

1 country. Before sale, a motor vehicle dealer shall disclose in writing whether a motor
2 vehicle was originally manufactured for sale in Canada or another foreign country.

3 **Sec. 45.25.490. Identification number plates.** A motor vehicle dealer may
4 not knowingly purchase or sell a vehicle that has an altered or removed vehicle
5 identification number plate, or alter or remove a vehicle identification number plate.

6 **Sec. 45.25.500. Required documentation.** A motor vehicle dealer may not
7 sell or offer to sell a motor vehicle unless the motor vehicle dealer holds a
8 manufacturer's statement of origin, a title, or another properly executed document
9 reasonably necessary to obtain the statement of origin or title for transfer of the
10 vehicle to the buyer.

11 **Sec. 45.25.510. Trade-ins.** A motor vehicle dealer may not transfer title to a
12 trade-in vehicle or perform any repairs or reconditioning on a trade-in vehicle before
13 the completion of the sales transaction for which the vehicle is a trade-in.

14 **Sec. 45.25.520. Disclosure of damages.** (a) Before entering into a new
15 motor vehicle sales contract, a new motor vehicle dealer shall disclose in writing to a
16 buyer of the new motor vehicle any known damage and repair to the new motor
17 vehicle if the damage exceeds five percent of the manufacturer's suggested retail price
18 as calculated at the dealer's authorized warranty rate for labor and parts. A new motor
19 vehicle dealer is not required to disclose to a buyer that glass, tires, bumpers, or
20 cosmetic parts of a new motor vehicle were damaged at any time if the damaged item
21 has been replaced with original or comparable equipment. A replaced part is not part
22 of the cumulative damage required to be disclosed under this subsection.

23 (b) If disclosure is not required under this section, a buyer may not revoke or
24 rescind a sales contract due to the fact that the new motor vehicle was damaged and
25 repaired before completion of the sale.

26 (c) In this section,

27 (1) "cosmetic parts" means parts that are attached by and can be
28 replaced in total through the use of screws, bolts, or other fasteners without the use of
29 welding or thermal cutting and includes windshields, bumpers, hoods, or trim panels;

30 (2) "manufacturer's suggested retail price" means the retail price of the
31 new motor vehicle suggested by the manufacturer and includes the retail delivered

1 price suggested by the manufacturer for each accessory or item of optional equipment
2 physically attached to the new motor vehicle at the time of delivery to the new motor
3 vehicle dealer that is not included within the retail price suggested by the manufacturer
4 for the new motor vehicle.

5 **Sec. 45.25.530. Form of disclosures.** Except as provided in
6 AS 45.25.460(a)(8)(A), if a disclosure is required by this chapter with respect to a
7 motor vehicle advertisement, the disclosure must be made in a clear and conspicuous
8 manner.

9 **Sec. 45.25.590. Definitions.** In AS 45.25.400 - 45.25.590,

10 (1) "advertise," "advertised," "advertising," and "advertisement"
11 include representations, whether made on or off store premises, made to persons in the
12 print media, in the broadcast media, on the computer, in a brochure, in a flyer, by
13 direct mail, by sign, or on a tag;

14 (2) "monroney sticker" means the window sticker required by 15
15 U.S.C. 1231 - 1233 (Automobile Information Disclosure Act);

16 (3) "motor vehicle," notwithstanding the definition of "motor vehicle"
17 in AS 45.25.990, means a vehicle, including a trailer, that is required to be registered
18 under AS 28.10, but does not include a motorcycle;

19 (4) "new motor vehicle," notwithstanding the definition of "new motor
20 vehicle" in AS 45.25.990, means a motor vehicle that has not been titled to anyone and
21 still retains the original manufacturer's certificate of origin.

22 **Article 5. Sales and Service Contracts.**

23 **Sec. 45.25.600. Title transfer.** A motor vehicle dealer may not transfer the
24 title for a motor vehicle to a buyer before all of the sale documents, including any
25 finance contract arranged by the seller, are complete and executed in final form by all
26 parties to the sale.

27 **Sec. 45.25.610. Sales contracts.** (a) A motor vehicle sales contract must be
28 in writing, signed by both the seller and buyer, and completed as to all essential
29 provisions before the signing of the contract by the buyer and before delivery of the
30 vehicle to the buyer.

31 (b) A motor vehicle dealer may not obtain a signed motor vehicle sales

1 contract from the buyer until any financing terms reflected on the motor vehicle
2 installment contract are final and complete.

3 (c) Notwithstanding the requirements of this section, if a motor vehicle dealer
4 arranges financing for a buyer, the motor vehicle dealer may deliver the motor vehicle
5 to the buyer before final approval by the financing entity if

6 (1) the buyer and seller sign an agreement separate from the motor
7 vehicle installment contract on an 8 1/2 x 11 inch sheet of paper that clearly and
8 conspicuously informs the buyer that final financing arrangements have not yet been
9 approved and that clearly sets out the amount that will be financed, the annual
10 percentage rate of the finance charge, the amount of the finance charge, the number
11 and frequency of payments, and the amount of each payment;

12 (2) the separate agreement clearly and conspicuously informs the
13 buyer that accepting delivery of the vehicle before final financing approval obligates
14 the buyer to terms of the motor vehicle sales contract if the terms on the separate
15 agreement are identical to the terms finally approved by the financing entity; and

16 (3) the separate agreement provides that the separate agreement, the
17 motor vehicle sales contract, and any and all other conditions of the purchase will be
18 void if any of the terms contained in the separate agreement are changed by either the
19 motor vehicle dealer or the financing institution as a condition of sale or final
20 financing approval.

21 (d) If a buyer's final financing is not approved within seven business days
22 from the date of the separate agreement and, as a result, the transaction is not
23 completed, the motor vehicle dealer shall return the buyer's entire down payment, and
24 the buyer's trade-in, if any, shall be returned to the buyer in the same condition and
25 with not more than 10 miles accumulated on the odometer from when the motor
26 vehicle was delivered to the motor vehicle dealer.

27 (e) In this section, "sales contract" includes an installment sales contract, a
28 short-term sales contract, and a single-payment contract.

29 **Sec. 45.25.620. Service contracts.** (a) A motor vehicle service contract must
30 be in writing and contain all essential provisions regarding the administration of the
31 contract. If a motor vehicle dealer presents a service contract to the customer as an

1 "application" for a contract, it must be clearly and conspicuously marked as an
2 application and must disclose the applicable rules for obtaining a final service
3 contract.

4 (b) If a service contract is included in a motor vehicle sale, the seller shall,
5 before delivery of the motor vehicle, give to the buyer a written statement with all
6 pertinent blank spaces filled in that shall be signed by both the buyer and seller and
7 that clearly and conspicuously

8 (1) explains the difference between a service contract and a warranty;

9 (2) discloses the maker of or obligor on the service contract;

10 (3) describes the relationship between the maker and the seller of the
11 service contract;

12 (4) for a vehicle that is a used vehicle, notifies the buyer that the seller
13 may not disclaim implied warranties if the seller is the maker or obligor of the service
14 contract; and

15 (5) includes all other disclosures required by law.

16 (c) A motor vehicle dealer may not disclaim or limit implied warranties for a
17 motor vehicle for which the motor vehicle dealer is a maker of a service contract sold
18 for that motor vehicle. However, a motor vehicle dealer may disclaim or limit implied
19 warranties as otherwise allowed by law, regardless of the make or model of the motor
20 vehicle if the motor vehicle dealer is merely the seller, not the maker, of the service
21 contract and does not otherwise extend any written warranties on the motor vehicle
22 that is purchased.

23 (d) In this section, "maker" means the person that makes, frames, and executes
24 a service contract and assumes any obligation due to the buyer, but does not include a
25 motor vehicle dealer who merely sells the service contract as the agent of a service
26 contract company doing business in this state.

27 **Article 6. General Provisions.**

28 **Sec. 45.25.900. Applicability.** If a provision of this chapter conflicts with
29 another provision of this title, this chapter controls.

30 **Sec. 45.25.910. Remedial purpose.** The provisions of this chapter are
31 remedial.

1 **Sec. 45.25.990. Definitions.** In this chapter,

2 (1) "dealer" means a new motor vehicle dealer or used motor vehicle
3 dealer;

4 (2) "dealership" means the business entity that is operated by a motor
5 vehicle dealer;

6 (3) "distributor" means a person or entity who sells or distributes new
7 or used motor vehicles to motor vehicle dealers or who maintains or sends distributor
8 representatives within or to this state to sell or distribute new or used motor vehicles to
9 motor vehicle dealers in this state; in this paragraph, "distributor representative"
10 means a representative employed by a distributor branch, distributor, or wholesaler
11 who sells or distributes new or used motor vehicles to franchised motor vehicle dealers
12 in this state;

13 (4) "distributor branch" means a branch office maintained by a
14 distributor or wholesaler who sells or distributes new or used motor vehicles to
15 franchised motor vehicle dealers in this state;

16 (5) "franchise" means a written arrangement for a definite or indefinite
17 period in which a manufacturer, distributor, or motor vehicle wholesaler grants to a
18 motor vehicle dealer a license, sales and service agreement, or contract of any kind to
19 use a trade name, service mark, or related characteristic, and in which there is a
20 community of interest in the wholesale or retail marketing of related motor vehicles or
21 services;

22 (6) "franchised" means having a franchise;

23 (7) "fraud" includes a promise or representation not made honestly or
24 in good faith, and an intentional failure to disclose a material fact;

25 (8) "good faith" means honesty in fact and the observation of
26 reasonable commercial standards of fair dealing in the trade;

27 (9) "lease," except in AS 45.25.150, means a contract by which a
28 person owning a motor vehicle grants to another person the right to possess, use, and
29 enjoy the motor vehicle for a specified period of time in exchange for periodic
30 payment of a stipulated price, and in which the use of the vehicle is granted for a
31 period of 12 or more months;

1 (10) "manufacturer" means a person or the person's subsidiary who
2 manufacturers, imports, distributes, or assembles new motor vehicles and includes an
3 administrator, a distributor, a distributor branch, and a factory branch; in this
4 paragraph, "factory branch" means a branch office maintained by a manufacturer for
5 directing and supervising the representatives of the manufacturer;

6 (11) "manufacturer representative" means any employee or agent of a
7 manufacturer who engages in the business of contacting a manufacturer's respective
8 franchised dealers for the purpose of making or promoting the sale of the
9 manufacturer's vehicles, parts, accessories, or services;

10 (12) "motor vehicle" means a motor vehicle that is required to be
11 registered under AS 28.10, but does not include a motor home, a recreational vehicle,
12 or a motorcycle;

13 (13) "motor vehicle dealer" has the meaning given in AS 08.66.350,
14 except that, in this paragraph, notwithstanding the definition of "motor vehicle" given
15 in AS 08.66.350, "motor vehicle" has the meaning given in this section;

16 (14) "motor vehicle salesperson" means a person who is employed by
17 a motor vehicle dealer as a salesperson or sales representative to solicit, sell, lease, or
18 exchange motor vehicles under the direction of a motor vehicle dealer;

19 (15) "new motor vehicle" means a motor vehicle that has not been
20 previously sold to and registered to a person except a distributor, wholesaler, or motor
21 vehicle dealer for resale;

22 (16) "new motor vehicle dealer" means a motor vehicle dealer for new
23 motor vehicles or for new and used motor vehicles;

24 (17) "sale" means the issuance, transfer, agreement for transfer,
25 exchange, gift, pledge, hypothecation, or mortgage in any form, whether by transfer in
26 trust or otherwise, of a motor vehicle, an interest in a motor vehicle, or a related
27 franchise;

28 (18) "service contract" means an optional agreement that is separate
29 from a contract for the sale of a motor vehicle, and that covers certain repair or
30 maintenance functions beyond coverage provided by a warranty;

31 (19) "terminate" includes nonrenewal or cancellation;

1 (20) "used motor vehicle" means a motor vehicle that has been
2 previously sold to and registered to a person other than a distributor, wholesaler, or
3 motor vehicle dealer;

4 (21) "used motor vehicle dealer" means a motor vehicle dealer for used
5 motor vehicles.

6 * **Sec. 10.** AS 45.50.471(b)(33) is amended to read:

7 (33) violating AS 08.66 [AS 08.66.010 - 08.66.090] (motor vehicle
8 dealers);

9 * **Sec. 11.** AS 45.50.471(b) is amended by adding a new paragraph to read:

10 (43) violating AS 45.25.400 - 45.25.590 (motor vehicle dealer
11 practices).

12 * **Sec. 12.** AS 45.50.572 is amended by adding a new subsection to read:

13 (k) AS 45.50.562 - 45.50.596 do not apply to action taken by a person to
14 comply with AS 45.25 or to action refrained from by a person in order to comply with
15 AS 45.25 (motor vehicle transactions).

16 * **Sec. 13.** AS 08.66.090, 08.66.200, 08.66.210, 08.66.220, 08.66.230, 08.66.240,
17 08.66.250, and 08.66.330 are repealed.

18 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 **INDIRECT COURT RULE AMENDMENT.** AS 45.25.020(b), enacted by sec. 9 of
21 this Act, amends Rule 3, Alaska Rules of Civil Procedure, by establishing a different rule for
22 determining where a legal dispute described in AS 45.25.020(a), enacted by sec. 9 of this Act,
23 may be brought.

24 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 **APPLICABILITY.** Sections 9, 11, and 12 of this Act apply to a franchise, as that term
27 is defined in AS 45.25.990, added by sec. 9 of this Act that is entered into on or after the
28 effective date of this Act.

29 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 **CONDITIONAL EFFECT.** AS 45.25.020(b), enacted by sec. 9 of this Act, takes

- 1 effect only if sec. 14 of this Act receives the two-thirds majority vote of each house required
- 2 by art. IV, sec. 15, Constitution of the State of Alaska.
- 3 * Sec. 17. This Act takes effect July 1, 2002.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 182 (L&C)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to certain vehicles, . . . to BRU Civil Division
registration and bonding of motor vehicle dealers; . . ." Component Fair Business Practices
 Sponsor Rep. Murkowski Component No. 2206
 Requester House Labor and Commerce Committee

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 182 (L&C) establishes a framework that will govern the relationship between automobile manufacturers and their franchised dealers. The bill deals with issues surrounding the issuance and termination of new motor vehicle franchise agreements, such as procedures for selling assets and equipment in the event a franchise is sold or transferred, the processing and payment of warranty claims, and establishing boundaries for the establishment of new franchises, among other things. In addition, CSHB 182 (L&C) contains provisions that regulate automobile dealer trade practices in the sale and advertisement of new and used motor vehicles.

Passage of this legislation is not anticipated to have a fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 3/26/02 4:44 PM
 Approved by: Kathryn Daughmolee for Bruce M. Borelho, Attorney General Date 3/26/2002
 Agency: Department of Law

HB

182

SFIN

FILE

HB 182

was referred to the
Senate Finance
Committee

No hearing was held
on this bill

Bill was WAIVED from Committee



OFFICIAL BUSINESS

Alaska State Legislature
Senate
Office of the Secretary

STATE CAPITOL, ROOM 213
JUNEAU, ALASKA 99001-1182
(907) 465-3701
FAX: 465-2832
EMAIL: senate_secretary@legis.state.ak.us

FOR YOUR IMMEDIATE ATTENTION

DATE: May 14, 2002
TO: Finance Committee
(Mindy - Room 520)
FROM: Office of the Senate Secretary
SUBJ: Waived Bill(s)

The Chair of the Committee noted above has waived referral on the following bill(s):



CS FOR HOUSE BILL NO. 182(FIN) am

"An Act relating to certain vehicles, including motorcycles and trailers; relating to the registration, bonding, and other regulation of motor vehicle dealers; relating to the registration and other regulation of certain motor vehicle buyers' agents; relating to acts and transactions involving vehicles, including trailers, and to the acts and practices of certain persons and entities involved in vehicle transactions, including trailer transactions; relating to consumer protection for used vehicle buyers; amending Rule 3, Alaska Rules of Civil Procedure; and providing for an effective date."

CS FOR HOUSE BILL NO. 203(FIN)

"An Act making an appropriation to the Legislative Council for a study of school district cost factors; and providing for an effective date."

HOUSE BILL NO. 451 am

"An Act relating to municipal bond reimbursement for school construction; and providing for an effective date."

Please give the bill file(s) to the page for forwarding to the next Committee of referral. Thank you.

HB

185

HFIN

FILE

LEGAL SERVICES

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

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


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

MEMORANDUM

May 5, 2001

SUBJECT: CSHB 185(FIN)(Work Order No.22-GH1087\S)

TO: Representative Bill Williams
Attn: Mike Tibbles

FROM: Gerald P. Luckhaupt 
Legislative Counsel

I am concerned with the amendment adopted by the House Finance Committee that appears to tie the assessment of a water conservation fee under AS 46.15.035 to maintenance of the water management program. If the fee is being assessed for this purpose I believe that the fee may be subject to challenge under the commerce clause of the United States Constitution. I believe this problem may be addressed by placing the language added by the amendment at the end of the sentence on page 4, line 12. Per Mike Tibbles direction I am enclosing a draft that accomplishes this.

GPL:lmb
01-154.lmb

Enclosure

22-GH1087AS
Luckhaupt
5/5/01

CS FOR HOUSE BILL NO. 185(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to fees for certain uses of state water, other than fees for traveling upon
2 state water, and to the accounting and appropriation of those fees; relating to
3 authorizations for the temporary use of state water; making other amendments to the
4 Alaska Water Use Act; and providing for an effective date."

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- 3 - 37.10.058 if those charges had been incurred or invoiced by the agency providing the
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27 require an authorization for the temporary use of the state's water without the need to acquire

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15 provided under the following regulatory programs:

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18 (B) certification of federal permits or authorizations under 33
19 U.S.C. 1341 (sec. 401, Clean Water Act); [AND]

20 (C) a coastal management consistency determination relating to
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27 (b) The commissioner shall

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1 (2) keep a public record of all applications for permits and certificates
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3 and certificates and amendments and orders affecting them and shall index them in
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7 districts, in matters relating to the appropriation, use, conservation, quality, disposal,
8 or control of waters and activities related thereto;

9 (4) prescribe fees or service charges for any public service rendered
10 consistent with AS 37.10.050 - 37.10.058, except that the department may charge
11 under regulations adopted by the department an annual \$50 administrative
12 service fee to maintain the water management program and a water conservation
13 fee under AS 46.15.035;

14 (5) before February 1 of each year, prepare a report describing the
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17 (A) information on the number of applications and
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20 involved;

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22 conducted by the commissioner and on the volume of water sold;

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24 water law; and

25 (D) a description of state revenue and expenses related to
26 activities under AS 46.15.035 and 46.15.037.

27 * Sec. 5. AS 46.15.035(e)(2) is amended to read:

28 (2) "hydrologic unit" means a hydrologic subregion established by the
29 United States Department of the Interior, Geological Survey, on the "Hydrologic Unit
30 Map-1987, State of Alaska"; "hydrologic unit" includes the water of an ocean that
31 is adjacent to a hydrologic subregion of the state. [""]

1 * Sec. 6. AS 46.15 is amended by adding a new section to read:

2 **Sec. 46.15.155. Authorization for temporary use of water. (a)**

3 Notwithstanding any contrary provision of this chapter, the commissioner may
4 authorize the temporary use of a significant amount of water, as determined by the
5 department by regulation, for a period of time not to exceed five consecutive years, if
6 the water applied for has not been appropriated in accordance with this chapter.

7 (b) Notwithstanding any contrary provision of this chapter, an authorization
8 for a temporary use of less than a significant amount of water is not required under
9 this section unless the commissioner has determined by regulation that the use may
10 have an adverse effect on other water uses and that an authorization must be obtained
11 from the department.

12 (c) The issuance of an authorization for temporary use of water under this
13 section does not establish a right to appropriate water. The temporary use of water
14 under an authorization remains subject to appropriation under this chapter.

15 (d) Notwithstanding any contrary provision of this chapter, the commissioner
16 is not required to provide public notice under AS 46.15.133 of a proposed
17 authorization for temporary use of water; however, the commissioner shall request
18 comment on an application for temporary use of water from the Department of Fish
19 and Game and the Department of Environmental Conservation.

20 (e) The provisions of AS 46.15.080 do not apply to the issuance under this
21 section of an authorization for temporary use of water.

22 (f) The commissioner may impose reasonable conditions or limitations on an
23 authorization for temporary use of water to protect the water rights of other persons or
24 to protect fish and wildlife habitat, human health, or other public interests.

25 (g) Upon approval by the department, an authorization under this section may
26 be transferred to another person under the same conditions and limitations under
27 which the authorization was issued.

28 (h) A person to whom an authorization for temporary use of water was issued
29 under this section may allow another person to use the authorization, consistent with
30 the conditions and limitations of the authorization.

31 (i) The commissioner may modify, suspend, or revoke an authorization issued

1 under this section if the commissioner determines it necessary to protect the water
2 rights of other persons or the public interest.

3 * Sec. 7. AS 46.15.180(a) is amended to read:

4 (a) A person may not

5 (1) construct works for an appropriation, or divert, impound, withdraw,
6 or use a significant amount of water from any source without a permit, [OR] certificate
7 of appropriation, or authorization issued under this chapter;

8 (2) violate an order of the commissioner to cease and desist from
9 preventing any water from moving to a person having a prior right to use it;

10 (3) disobey an order of the commissioner requiring the person to take
11 steps to cause the water to move to a person having a prior right to use it;

12 (4) fail or refuse to install meters, gauges, or other measuring devices
13 or control works;

14 (5) violate an order establishing corrective controls for an area or for a
15 source of water;

16 (6) knowingly make a false or misleading statement in a declaration of
17 existing right.

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29 (5) violate an order establishing corrective controls for an area or for a
30 source of water;

31 (6) knowingly make a false or misleading statement in a declaration of

1 existing right.

2 * Sec. 9. AS 46.15.155 is repealed.

3 * Sec. 10. Section 2 of this Act is repealed.

4 * Sec. 11. The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 VALIDITY OF EXISTING TEMPORARY PERMITS ISSUED BEFORE THE
7 EFFECTIVE DATE OF THIS ACT. (a) A temporary permit issued before the effective date
8 of this Act by the Department of Natural Resources under AS 46.15 authorizing the temporary
9 use of water is valid and remains in effect, notwithstanding that public notice was not
10 provided under AS 46.15.133 or the criteria set out in AS 46.15.080 were not applied before
11 the temporary permit was issued.

12 (b) A temporary permit described in (a) of this section shall be considered to be an
13 authorization for temporary use of water under AS 46.15.155, enacted by sec. 6 of this Act, as
14 if AS 46.15.155 had been in effect at the time the temporary permit was issued. A temporary
15 permit described in this subsection is subject to the terms and conditions set out in the
16 temporary permit and is subject to the requirements of AS 46.15.155, enacted by sec. 6 of this
17 Act.

18 * Sec. 12. The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 TRANSITION: REGULATIONS. (a) Under AS 44.62.125(b)(6), the regulations
21 attorney may change the term "temporary water use permit" in regulations of the Department
22 of Natural Resources concerning water use to "authorization for temporary use of water" as
23 consistent with this Act.

24 (b) To the extent that the regulations are not inconsistent with this Act, regulations
25 related to water management adopted by the Department of Natural Resources under
26 AS 46.15 and in effect on the effective date of this Act remain in effect until amended or
27 repealed and may be administered and enforced by the Department of Natural Resources.

28 * Sec. 13. Sections 1 - 3, 5 - 7, 11, and 12 of this Act take effect immediately under
29 AS 01.10.070(c).

30 * Sec. 14. Sections 4 and 8 - 10 of this Act take effect July 1, 2002.

LEGAL SERVICES

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

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


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

MEMORANDUM

May 5, 2001

SUBJECT: CSHB 185(FIN)(Work Order No.22-GH1087\S)

TO: Representative Bill Williams
Attn: Mike Tibbles

FROM: Gerald P. Luckhaupt 
Legislative Counsel

I am concerned with the amendment adopted by the House Finance Committee that appears to tie the assessment of a water conservation fee under AS 46.15.035 to maintenance of the water management program. If the fee is being assessed for this purpose I believe that the fee may be subject to challenge under the commerce clause of the United States Constitution. I believe this problem may be addressed by placing the language added by the amendment at the end of the sentence on page 4, line 12. Per Mike Tibbles direction I am enclosing a draft that accomplishes this.

GPL:lmb
01-154.lmb

Enclosure

HOUSE COMMITTEE REPORT

(11)
Date Referred to Committee: May 2, 2001

FURTHER REFERRALS:

Date of Committee Action: 5/5/01

The FINANCE Committee considered:

HB 185

HOUSE BILL NO. 185

STATE WATER USE

"An Act relating to fees for certain uses of state water and the accounting and appropriation of those fees; relating to authorizations for the temporary use of state water; making other amendments to the Alaska Water Use Act; and providing for an effective date."

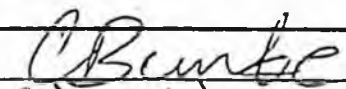
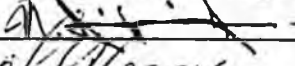

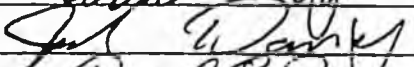
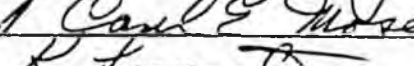
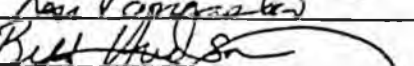




Recommends it be replaced with CS HB 185 (FIN) | Same Title New Title
For Senate Bills with new title: Technical Title New Title: HCR _____

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

- List of Abbrev. For Depts.:
- ADM
 - CED
 - COR
 - CRT
 - EED
 - DEC
 - DFG
 - GOV
 - HSS
 - LAA
 - LAW
 - LWF
 - MVA
 - DNR
 - DPS
 - REV
 - DOT
 - UA

<u>NEW FISCAL NOTES</u>				
*For Chief Clerk's Office Use Only				
FN#	List by Dept(s):	Fiscal	Indet.	Zero
	DNR	✓		

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN #	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Burde	✓			
	Whitaker	✓			
	Harris	✓			
	CROFT	✓			
	Davie	✓			
	MOSES	✓			
	Lancaster	✓			
	Hudson	✓			
	Foster			X	
Chair: 	Williams	✓			

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB185(RES)

) Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title: State Water Use BRU: Minerals, Land & Water
Component: Water Development

Sponsor: (H) RLS by Request of Governor
Requester: (H) FIN Component Number: 916

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services		275.0	275.0	275.0	275.0	170.2
Travel		7.0	7.0	7.0	7.0	5.0
Contractual		15.0	15.0	15.0	15.0	7.0
Supplies		3.0	3.0	3.0	3.0	2.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	300.0	300.0	300.0	300.0	184.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (Fees)	0.0	84.2	184.2	184.2	184.2	184.2
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		215.8	115.8	115.8	115.8	
1005 GF/Program Receipts	(135.8)	(135.8)	(135.8)	(135.8)	(135.8)	(135.8)
1037 GF/Mental Health						
1156 Receipt-Supported Services	135.8	220.0	320.0	320.0	320.0	320.0
TOTAL	0.0	300.0	300.0	300.0	300.0	184.2

Estimate of any current year (FY2001) cost: none
Check this box (X) if funding for this bill is included in the Governor's FY2002 budget proposal:

POSITIONS

Full-time		5	5	5	5	2.5
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The fundamental issue facing the Water Development component is the fact that there is no longer enough staff to conduct the program required by statute. The problem is exacerbated by a court ruling that requires procedures for temporary water use permits that have historically not been conducted and that significantly increase staff time required to process these permits. The consequence of this problem is that the Department of Natural Resources has a backlog of over 600 applications for water rights and over 3,000 total actions (including permit extensions, transfers, etc.). Thus, many industries and citizens are frustrated by their inability to receive authorization to proceed with their projects, or to gain the security of a water right. [cont.]

Prepared by: Bob Loeffler, Director Phone (907) 269-8625
Division: Mining, Land and Water Date/Time 01-May-01
Approved by: Pat Pourchot Date 01-May-01
Agency: Natural Resources

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

Fee-Supported Services.

This bill would provide for a method of funding the water management program. It would require the water management program to use the application-fee methodology provided in AS 37.10.050 - 37.10.058. This methodology was pioneered by the legislature last year in HB 361, commonly known as the "DEC fees bill."

The fees methodology would allow DNR to set application fees for a temporary water use authorization or a water right at a price up to the estimated average reasonable direct cost incurred. These application fees, in addition to the existing general fund amount, would provide a secure funding source for program. That is, applicants would pay for the reasonable direct cost, and remaining indirect costs would remain the responsibility of the general fund. If applications increased, fees and therefore funds to the program would increase. If applications decreased, the opposite would occur.

The Department estimates that the new fees would be approximately double the existing fees for most water right applications. For some of the more complex types of applications, fees would increase further.

The additional funds would allow DNR to adjudicate a typical, new temporary water use authorization within 15 days, and a typical water right application within 60 days. It would also allow DNR to eliminate the backlog of over 600 water right applications and over 3,000 total actions within 5 years. The Department estimates that it will require \$300K in additional funds to accomplish these performance measures. Of this amount, approximately \$125K would be dedicated to eliminating the backlog of applications and other actions within 5 years. After five years, the funds used to eliminate the backlog would no longer be needed.

The effect of the fees would not be immediate. The establishment of a application-fee system that reflects the reasonable direct cost of providing the service will require up to two years to promulgate regulations, set up a revenue and billing system, and update the water right files. For this reason, this fiscal note includes the additional \$300K in general funds for the first year, FY 02 while regulations are being developed and implemented (it also transfers existing general fund program receipts to receipt-supported services). In the second year, \$215.8 included general funds with the balance in receipt supported services. In the years three through five, the fee program is fully operational. In that year, the department estimates that it will need only \$115.8 in new general funds, all of which would be used to eliminate the backlog. After year five, we project the water rights backlog to be eliminated, the fee program to remain fully operational, and no additional general funds would be required.

This program is consistent with the philosophy that, "Those who benefit from the service should pay for it."

To compliment the water use fee, DNR is currently writing regulations that will allow it to more efficiently process water right applications.

22-GH1087/P
Luckhaupt
5/4/01

Williams

CS FOR HOUSE BILL NO. 185(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to fees for certain uses of state water, other than fees for traveling upon
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2 Notwithstanding any contrary provision of this chapter, the commissioner may
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6 (b) Notwithstanding any contrary provision of this chapter, an authorization
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8 this section unless the commissioner has determined by regulation that the use may
9 have an adverse effect on other water uses and that an authorization must be obtained
10 from the department.

11 (c) The issuance of an authorization for temporary use of water under this
12 section does not establish a right to appropriate water. The temporary use of water
13 under an authorization remains subject to appropriation under this chapter.

14 (d) Notwithstanding any contrary provision of this chapter, the commissioner
15 is not required to provide public notice under AS 46.15.133 of a proposed
16 authorization for temporary use of water; however, the commissioner shall request
17 comment on an application for temporary use of water from the Department of Fish
18 and Game and the Department of Environmental Conservation.

19 (e) The provisions of AS 46.15.080 do not apply to the issuance under this
20 section of an authorization for temporary use of water.

21 (f) The commissioner may impose reasonable conditions or limitations on an
22 authorization for temporary use of water to protect the water rights of other persons or
23 to protect fish and wildlife habitat, human health, or other public interests.

24 (g) Upon approval by the department, an authorization under this section may
25 be transferred to another person under the same conditions and limitations under
26 which the authorization was issued.

27 (h) A person to whom an authorization for temporary use of water was issued
28 under this section may allow another person to use the authorization, consistent with
29 the conditions and limitations of the authorization.

30 (i) The commissioner may modify, suspend, or revoke an authorization issued
31 under this section if the commissioner determines it necessary to protect the water

1 rights of other persons or the public interest.

2 * Sec. 7. AS 46.15.180(a) is amended to read:

3 (a) A person may not

4 (1) construct works for an appropriation, or divert, impound, withdraw,
5 or use a significant amount of water from any source without a permit, [OR] certificate
6 of appropriation, or authorization issued under this chapter;

7 (2) violate an order of the commissioner to cease and desist from
8 preventing any water from moving to a person having a prior right to use it;

9 (3) disobey an order of the commissioner requiring the person to take
10 steps to cause the water to move to a person having a prior right to use it;

11 (4) fail or refuse to install meters, gauges, or other measuring devices
12 or control works;

13 (5) violate an order establishing corrective controls for an area or for a
14 source of water;

15 (6) knowingly make a false or misleading statement in a declaration of
16 existing right.

17 * Sec. 8. AS 46.15.180(a) is amended to read:

18 (a) A person may not

19 (1) construct works for an appropriation, or divert, impound, withdraw,
20 or use a significant amount of water from any source without a permit or [,] certificate
21 of appropriation [, OR AUTHORIZATION ISSUED UNDER THIS CHAPTER];

22 (2) violate an order of the commissioner to cease and desist from
23 preventing any water from moving to a person having a prior right to use it;

24 (3) disobey an order of the commissioner requiring the person to take
25 steps to cause the water to move to a person having a prior right to use it;

26 (4) fail or refuse to install meters, gauges, or other measuring devices
27 or control works;

28 (5) violate an order establishing corrective controls for an area or for a
29 source of water;

30 (6) knowingly make a false or misleading statement in a declaration of
31 existing right.

WORK DRAFT

WORK DRAFT

22-GH1087P

1 * **Sec. 9.** AS 46.15.155 is repealed.

2 * **Sec. 10.** Section 2 of this Act is repealed.

3 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 **VALIDITY OF EXISTING TEMPORARY PERMITS ISSUED BEFORE THE**
6 **EFFECTIVE DATE OF THIS ACT.** (a) A temporary permit issued before the effective date
7 of this Act by the Department of Natural Resources under AS 46.15 authorizing the temporary
8 use of water is valid and remains in effect, notwithstanding that public notice was not
9 provided under AS 46.15.133 or the criteria set out in AS 46.15.080 were not applied before
10 the temporary permit was issued.

11 (b) A temporary permit described in (a) of this section shall be considered to be an
12 authorization for temporary use of water under AS 46.15.155, enacted by sec. 6 of this Act, as
13 if AS 46.15.155 had been in effect at the time the temporary permit was issued. A temporary
14 permit described in this subsection is subject to the terms and conditions set out in the
15 temporary permit and is subject to the requirements of AS 46.15.155, enacted by sec. 6 of this
16 Act.

17 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 **TRANSITION: REGULATIONS.** (a) Under AS 44.62.125(b)(6), the regulations
20 attorney may change the term "temporary water use permit" in regulations of the Department
21 of Natural Resources concerning water use to "authorization for temporary use of water" as
22 consistent with this Act.

23 (b) To the extent that the regulations are not inconsistent with this Act, regulations
24 related to water management adopted by the Department of Natural Resources under
25 AS 46.15 and in effect on the effective date of this Act remain in effect until amended or
26 repealed and may be administered and enforced by the Department of Natural Resources.

27 * **Sec. 13.** Sections 1 - 3, 5 - 7, 11, and 12 of this Act take effect immediately under
28 AS 01.10.070(c).

29 * **Sec. 14.** Sections 4 and 8 - 10 of this Act take effect July 1, 2002.

Department of Natural Resources

Briefing Paper on CSHB 185

Water Use Bill

04/20/2001

The Problem

Not Enough Money to Run the System

- Funding has decreased from a staff of 39 in the early 1980s to 4 people today.
- There has been a 53% reduction in general funds a 67% reduction in staff in the past 10 years.

A Backlog:

- Between 600 and 700 applications
- 3,000 total actions including transfers, amendments, and permit extensions.

Consequences of the Backlog:

- DNR processes state interest applications right away, but...
- Most public and industries have 2-3 year delay before getting permit to withdraw water!
- Some people will *never* receive a water right they applied for.
- Industries and people who operate without up-to-date permits are vulnerable to lawsuits.
- Environment not protected.

The Solution

Part 1: Streamline the System. We cannot pretend that we will have the funds to operate the system, as it existed in the early 1980s. DNR is proposing regulations to streamline 65% of the caseload and concentrate staff on larger water flows and where there is potential for a problem.

Part 2: \$300,000 in House and Senate Operating Budgets. Even a streamlined system cannot be run, statewide, with four people. An increment of \$300,000 has passed the House and Senate Operating Budgets

Part 3: Long-term Income Source (This Bill). This bill provides that DNR may charge the reasonable direct cost of providing a service, plus maintain the current \$50 annual fee to fund the program. It places strict limitations on what DNR can charge to assure the public that DNR will not raise fees unreasonably.

Summary of the Two Purposes of the Bill

Fee Limitations. The bill places water use authorizations as one of the fees to which last year's "fee bill" applies. This limits DNR ability to charge for water use applications to the reasonable direct cost of providing the service. The "fee law" pioneered by the legislature last year provides that the agency may not charge for administrative support, overhead, other work not required by law, costs of an appeal, etc.

However, the fiscal note assumes that DNR will make up future cost by raising fees to the limit allowed by that law. DNR expects to approximately double most fees.

Temporary Water Use Authorizations. Procedures for issuing temporary water use authorizations were called into question by the judge's ruling in Greenpeace v. DNR this winter. Because the temporary water use program is created in regulation with implied rather than explicit statutory authorization, there is significant room for judicial re-interpretation of the program. The second part of the bill explicitly authorizes the temporary water use program.

INUPIAT COMMUNITY of the ARCTIC SLOPE
an IRA Regional Tribal Government

P.O. Box 934 • Barrow, Alaska 99723
Ph: (907)852-4227 1-888-788-4227 Fax: (907) 852-4246



May 04, 2001

TO: STATE OF ALASKA
House Finance Committee Members

FR: Bill Tegoseak, Interim Executive Director *BT*

RE: Comments on Committee Substitute for House Bill No 185 (RES).

MY NAME IS BILL TEGOSEAK. I AM THE INTERIM EXECUTIVE DIRECTOR FOR THE INUPIAT COMMUNITY OF THE ARCTIC SLOPE, A FEDERALLY RECOGNIZED REGIONAL TRIBAL GOVERNMENT INCLUSIVE OF ALL EIGHT VILLAGE TRIBAL GOVERNMENTS IN THE NORTH SLOPE. I AM A 57 YEAR RESIDENT OF THE NORTH SLOPE AND A VIETNAM WAR VETERAN.

LAST WEEK I TELEFAXED MY COMMENTS TO THE HOUSE RESOURCE COMMITTEE AND THE SENATE FINANCE COMMITTEE EXPRESSING OPPOSITION TO THIS PROPOSED BILL. ALL MEMBERS OF THIS COMMITTEE WILL BE RECEIVING A COPY OF THOSE COMMENTS IN ITS ENTIRETY THIS EVENING.

TWO DAYS AGO, DURING A SENATE FINANCE COMMITTEE HEARING ON THE COMPANION BILL TO THE HOUSE VERSION, BOB LOEFFLER FROM DNR CALLED MY CALCULATION THAT DNR HAD AUTHORIZED WATER USE IN THE NORTH SLOPE FOR INDUSTRIAL DEVELOPMENT IN THE BILLIONS OF GALLONS. HE MADE IT VERY PLAIN TO THE SENATE FINANCE COMMITTEE THAT MY CALCULATIONS AND PROJECTIONS OF BILLIONS OF GALLONS OF TEMPORARY WATER USE AUTHORIZED BY DNR WERE INCORRECT AND OVER-EXAGGERATED. IN REBUTTAL TO THAT, ALL COMMITTEE MEMBERS ARE PROVIDED A COPY OF TEMPORARY WATER USE PERMIT (TWUP A2001-11), SIGNED BY BOB LOEFFLER. ON JANUARY 04, 2001, AUTHORIZING OIL INDUSTRY THE USE OF AN EQUIVALENT OF 27,701,500,000 GALLONS OF WATER IN THE NORTH SLOPE WITHOUT A PUBLIC COMMENT PROCESS. IF THE PUBLIC COMMENT PROCESS IN LOCATIONS SUCH AS ANCHORAGE AND FAIRBANKS WERE CIRCUMVENTED, SOME, OR ALL OF YOU, PLUS YOUR COLLEAGUES IN JUNEAU WOULD PROBABLY BE LOOKING FOR A DIFFERENT LINE OF WORK.

BOB LOEFFLER STATED TWO DAYS AGO, AS WELL, THAT THERE IS NO NEED FOR TRIBAL CONSULTATION ON THIS BILL. THIS IS AN EXAMPLE OF EXTREME CULTURAL INCOMPETENCE ON HIS PART AND COMPLETELY ATTEMPTS TO, AGAIN, CIRCUMVENT RHW MOST RECENTLY SIGNED

MILLENNIUM AGREEMENT BETWEEN THE GREAT STATE OF ALASKA AND THE PROUD INDIGENOUS TRIBES OF THIS GREAT LAND.

LASTLY, BOB LOEFFLER STATED THAT THE NORTH SLOPE WATER POLICY SIGNED BY COMMISSIONER ROBERT E. LERESCHE ON MAY 23, 1979 HAD BEEN REVOKED. IN A LETTER ADDRESSED TO ME BY DNR CHIEF OF WATER RESOURCES, GARY PROKOSCH, DATED DECEMBER 22, 2000 HE STATES THAT THE POLICY IS VERY MUCH OUTDATED AND UNDER REVIEW BY DNR FOR REVISION. THERE IS NO EVIDENCE OF REVOCATION...REVOCATION SHOULD HAVE INCLUDED A PUBLIC COMMENT PROCESS. I URGE THIS COMMITTEE TO HOLD THIS BILL INDEFINITELY UNTIL SUCH TIME AS A PROPER REVIEW IS CONDUCTED TO ENSURE THAT A DEMOCRATIC PROCESS IS ALIVE AND WELL IN OUR GREAT STATE. THANK YOU.

Encl: Copy, State of Alaska (DNR) TWUP a2001-11
Copy Tegoseak comments to Senate Finance Committee (same sent to House Resource Committee)

Alaska Department of Natural Resources
Division of Mining, Land and Water

(NPRA BP
Trailblazer)

AS 46.15.080 Finding and Determination

Temporary Water Use Authorizations
TWUP A2001-11

143,420,000 gallons of water per year (440 acre feet per year) from 90 Lakes
for ice road and ice pad construction

Water Rights of Record: There are no water rights of record to any of the 90 lakes covered by this application for temporary water use.

AS 46.15.080. Criteria for issuance of permit.

(a) The Commissioner shall issue a permit if the commissioner finds that

(1) rights of a prior appropriator will not be unduly affected;

There are no prior appropriators of record. We find that the rights of a prior appropriator will not be unduly affected.

(2) the proposed means of diversion or construction are adequate;

The applicant proposes to withdraw water from ninety-two lake. The water intake structure is an approved design by ADF&G. Water has been taken from lakes such as these for over 20 years by similar methods and design and has proven to be adequate.

We find the proposed means of diversion and construction to be adequate.

(3) the proposed use of water is beneficial;

The proposed use of water is for oil field related activities, including ice road/pad construction/maintenance, camp supply, and drilling. This type of water use is consistent with the definition of a beneficial use as defined in the Water Use Act under AS 46.15.260(3). Water use for these purposes has been authorized since the 1870s.

We find the proposed use of water beneficial.

(4) the proposed appropriation is in the public interest. The water used under a temporary water use authorization is not considered to be appropriated.

(b) In determining : e public interest, the commissioner shall consider

(1) the benefit to the applicant resulting from the proposed appropriation;

We find the temporary water withdrawal will be a positive benefit to the applicant.

(2) the effect of the economic activity resulting from the proposed appropriation;

The Trailblazer project contributes to the regional economy through taxes and jobs, to the overall state economy as a primary revenue source, and to the United States by reducing the nation's dependency on imported oil. The ACMP coastal Consistency Determination AK 0010-02OG also addresses this issue.

We find there will be a positive economic benefit resulting from the proposed temporary water withdrawal, and will not hinder other economic activity that may be proposed.

(3) the effect on fish and game resources and on public recreational opportunities;

The following materials were considered as supporting evidence:

- ADF&G Memo dated December 15, 2000 in casefile
- ADF&G habitat permits for the 92 lakes
- ADF&G report on Fish Utilization of Lakes in Eastern NPR-A - 1999 Final Data Report January 2000
- ADF&G report Lake Sampled for Fish In and Near the Colville River Delta, Alaska 1979-1998, Final Report December 1998
- ACMP Final consistency determination AK 0010-02OG
- Hydrologist report dated December 15, 2000 in casefile.

The project area does not provide significant recreation opportunities. The taking of water from the lakes in no way hinders the hunting, fishing or recreation opportunities of those areas. The water is mainly taken during the winter month when little or no recreation activity takes place, and water in the lakes is replenished during spring breakup. The ACMP coastal Consistency Determination AK 0010-02OG also addresses this issue.

We find that there will be no significant effect on fish and game resources and on public recreational opportunities.

(4) the effect on public health;

After public and agency notice there has been no evidence presented or concerns expressed regarding the removal of water from the proposed sources on the public health.

The following materials were also considered:

- ADF&G Memo dated December 15, 2000 in casefile
- ADF&G reports
- ADF&G comments
- ADEC 401 Certification
- ACMP Final Consistency Determination AK 0010-02OG

We find there will be no effects on public health.

(5) the effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation;

After public and agency notice there has been no evidence presented or concerns expressed regarding the removal of water from the proposed sources and its effect of loss for alternate uses. The file contains no evidence of a direct predicted, planned or projected use of water in this area that would be precluded by this proposed temporary withdrawal of water. Water issued under a temporary water use authorization is not appropriated and does not preclude the use of water by others for their use. The file demonstrates that the proposed lake sources of water can supply water for these proposed uses, and more if the need arises.

We find that there will be no effect on or loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.

(6) harm to other persons resulting from the proposed appropriation;

After public and agency notice there has been no evidence of a likelihood of harm to other persons resulting from the proposed temporary water withdrawals.

We find there will be no undue harm to other persons resulting from the proposed temporary water withdrawal.

(7) the intent and ability of the applicant to complete the appropriation;

The applicant has the intent and ability to complete the temporary water withdrawal as demonstrated in the time and effort in their design and construction of the project to date. The ability of the applicant is not a question; BP has shown the ability to bring projects on-line in the development of its oil and gas projects.

We find the applicant has the intent and ability to complete the temporary water withdrawal.

(8) the effect upon access to navigable or public water.

After public and agency notice, the file contains no evidence of adverse effect on access to public or navigable water. The withdrawal of water from the proposed sources will not hinder access to navigable or public water. The ACMP coastal Consistency Determination AK 0010-02OG also addresses this issue.

We find there will be no effect on access to navigable or public water.

Conclusion and Decision

ADNR and ADF&G personnel (along with EPA, DEC, JPCO, etc.) are constantly in the field monitoring, inspecting, and enforcing industry activities. They are present before, during, and after ice road construction.

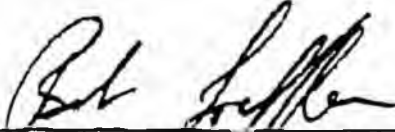
Ice road and ice pad construction has been a standard practice on the North Slope and in other areas of the state for more than 20 years. In this time period no evidence has been presented that ice road and ice pad construction and the withdrawal of water for ice road and ice pad construction has had an undue effect on the public interest. No evidence has been presented to show the rights of a prior appropriator or the public interest will be harmed by the withdrawal of water from the 82 lakes.

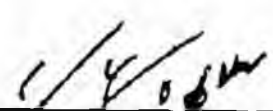
The total water use proposed for North Slope oil exploration and development from all authorized or proposed water sources (actual water use is less) is approximately 85,000 AF/Y. This represents 0.27% of the total water available on the North Slope in any given year. This leaves 99.73% of the water on the North Slope untouched. Also noteworthy is the fact that the majority of the water (0.27%) is used for ice road and ice pad construction, which eventually distributes the water on the tundra near the water sources and is once again available to the hydrologic unit during spring breakup. Accordingly, the most significant impact on the water resources is the effect on the water levels within the lakes, where only 15% of the water under the ice can be used. We conclude that this impact is at most, de minimis as the water is replenished each spring during break-up. The total quantity of water in these lakes, not counting the 30 lakes to be used for ice aggregate, is about 3.12 billion gallons of water. The available water, 15% of the water under 7 feet of ice, in these lakes proposed for use is 488,550,000 gallons. The total quantity authorized to be withdrawn under the temporary water use permit is 143,420,000 gallons per year or .046% of the total water and only 31% of the available water.

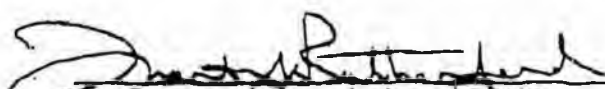
The subject files have been reviewed. A final ACMP Consistency Determination has been issued. We find that the rights of prior appropriators will not be unduly affected by the proposed temporary water withdrawal, the proposed means of diversion and construction are adequate, the proposed use of water is beneficial, and the proposed temporary water withdrawal is in the public interest. It is our decision that Temporary Water Use Permits TWUP A2001-11 shall be issued, effective the date of this decision to allow for the immediate use of water for the purposes intended.

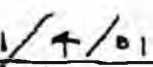
This is a final administrative order and decision of the department for purposes of an appeal to Superior Court. A person adversely affected by this final order and decision may (1) appeal to Superior Court within 30 days in accordance with the rules of the court, and to the extent permitted by applicable law, or (2) first request reconsideration of this decision, in accordance with AS 44.37.011 and 11 AAC 02.020, to Pat Pourchot, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501-3501. Any such request for reconsideration must be received at that address, or received by being faxed to 1-907-289-8918, within 20 calendar days after the date of "delivery" of this decision, as defined by 11 AAC

02.040(c) and (d). Failure of the commissioner to act on a request for reconsideration within 30 days after delivery of this decision is a denial of reconsideration and is also a final administrative order and decision for purposes of an appeal to Superior Court. It may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.


Bob Loeffler, Director, DMLW


Date 1/4/01


Pat Pourchot, Commissioner, ADNR


Date 1/4/01

note
conversion
acre feet to
gallons

— acre feet x
325900 =
gallons

85,000 acre feet/
year =
27,701,500,000
gallons

INUPIAT COMMUNITY of the ARCTIC SLOPE

an IRA Regional Tribal Government



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Senator Dave Donley, Co-chair of Senate Finance
 Fax: (907) 465-6595

Senator Pete Kelley, Co-chair of Senate Finance
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Senator Lyman Hoffman, District T
 Fax: (907) 465-4523

Senator Donald Olson, District S
 Fax: (907) 465-4821

Senator Gary Wilkin, District O
 Fax: (907) 465-4714

Senator Jerry Ward, District E
 Fax: (907) 465-3766

Senator Alan Austerman, District C
 Fax: (907) 465-4956

Senator Lyda Green, District N
 Fax: (907) 465-3805

Senator Loren Leman, District G
 Fax (907) 465-3810

Honorable Senators:

The Inupiat community of the Arctic Slope (ICAS) is a federally recognized Indian Tribe of the Inupiat established under the Indian Reorganization Act of 1934, as amended in 1936. ICAS has significant concerns about SB 139 (and its companion HB 185), particularly as it relates to the issuance of "temporary water use permits." This bill represents the continuation of the current Department of Natural Resources (DNR) illegal practice of giving billions of gallons of North Slope water resources away, with no public notice, not tribal consultation, no scientific analysis and no access to traditional knowledge about the water bodies from which the water is being taken.

A major concern about this bill is that the criteria in AS 46.15.080 (for assessing water use impacts to fish, wildlife, public health and other values) are specifically not applied to temporary water use permits. In addition, we are concerned that SB 139 will exempt all such permits from public notice.

DNR's current practice, and this bill, are contrary to the Water Management Policy for State Lands Between the Colville and Canning Rivers, ("North Slope Water Management Policy") initially drafted by DNR in 1976 (revised 1979) and agreed upon by the North Slope Borough representatives. This policy was the result of extensive work by DNR, the oil industry, the North Slope Borough, DEC and ADF&G.

In the North Slope Water Management Policy DNR committed to "extend to the North Slope Borough an opportunity to review all permit applications for water use within the North Slope Borough." DNR also committed that the temporary water use permits would be limited to "less than a three-year duration." Finally, DNR committed that "The State will discourage the taking of water between the period of November 1 to spring breakup from areas known to overwinter fish.

Over the years, DNR has unilaterally abrogated these commitments, and now seeks to ratify its breach of those commitments, through SB 139. This legislation would continue DNR's current practice of issuing temporary water use permits for periods which are frequently extended to ten years, and beyond. Contrary to the North Slope Water Management Policy, DNR currently allows water withdrawal in winter from anadromous streams and lakes. Most of the 27 billion gallons of North Slope fresh water permitted by DNR to be used each year for ice road construction and offshore oil development is withdrawn in winter without adequate information regarding in-stream flow needs for subsistence species. DNR does not consult the North Slope Borough or tribal governments to its issuance of these permits. The result of this practice is the non-public, unregulated use of our limited natural resources that threatens tribal sovereignty and the subsistence rights of the Inupiat people.

In an effort to gain support for this legislation, DNR has stated that the Department of Fish and Game and Environmental Conservation will be allowed to comment on temporary water permits. However, neither DNR, ADF&G nor DEC have staff or resources on the North Slope to evaluate the impacts to water quality, to fish and to other subsistence resources on the North Slope to evaluate the impacts to water quality, to fish and to other subsistence resources for the significant number of "temporary" permits that DNR currently issues. Given the recent changes in climate, affecting all parts of the North Slope, reliance on outdated data is not sufficient to protect our subsistence resources. We need an assessment by the state of the water body from which water is to be withdrawn, each year, prior to the allowance of these "temporary permits." Nor is the DNR assurance that such permits are "revocable" sufficient to protect the subsistence resources. In order to revoke the permit, there will have to be analysis of the adverse impacts to the stream or lake after-the-fact, when the damage to subsistence resources is already done. No State agency has any ongoing monitoring program to assess the impacts of the temporary permits on these water sources or subsistence resources.

We urge you to defeat SB 139, and to encourage DNR to keep its commitments in the North Slope Water Management Policy. If there are to be changes to that policy, they are best accomplished by having the stakeholders who are impacted by the policy at the table. Thank you for your consideration of these views.

Sincerely,



BILL TEGOSEAK
Interim Executive Director

Cc: North Slope borough

HB

185

SFIN

FILE

HB 185

was referred to the
Senate Finance
Committee

No hearing was held
on this bill

Bill was WAIVED from Committee



OFFICIAL BUSINESS

Alaska State Legislature
Senate
Office of the Secretary

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

EMAIL: senate_secretary@legis.state.ak.us

FOR YOUR IMMEDIATE ATTENTION

DATE: May 7, 2001
TO: Finance Committee
(Mindy/Cadie - Room 520)
FROM: Office of the Senate Secretary
SUB: Waived Bill(s)

The Chair of the Committee noted above has waived referral on the following bill(s):

RETRIEVE

CS FOR HOUSE BILL NO. 185(FIN)

"An Act relating to fees for certain uses of state water, other than fees for traveling upon state water, and to the accounting and appropriation of those fees; relating to authorizations for the temporary use of state water; making other amendments to the Alaska Water Use Act; and providing for an effective date."

Please give the bill file(s) to the page for forwarding to the next Committee of referral.

Thank you.

HB

187

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 187(JUD)
 (H) Publish Date: 4/10/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to the destruction, desecration, BRU Criminal Division
and vandalism of cemeteries and graves." Component 1st-4th Judicial Districts
 Sponsor Representative Whitaker
 Requester House Judiciary Committee Component No. 2198-99;2201;61;79

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 187 raises to a class C felony the crimes of defacing, damaging, or desecrating a cemetery or its contents, a tomb, grave, or memorial, or for removing human remains or associated burial artifacts, whether or not the cemetery, tomb, grave, or memorial appears to be abandoned, lost, or neglected. Under current law, these actions are a class A misdemeanor.

The Department of Law does not anticipate a fiscal impact from passage of this legislation. While the prosecution of felonies is much more time and resource intensive than the prosecution of misdemeanors, this crime is relatively uncommon and the department believes it can handle the volume of new felony prosecutions this bill might generate with existing staff.

Prepared by: Joan M. Kasson Phone 465-5370
 Division: Attorney General's Office Date/Time 4/6/01 4:36 PM
 Approved by: Bob Melners for Bruce M. Botelho, Attorney General Date 4/6/01
 Agency: Department of Law

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 187(JUD)
 (H) Publish Date: 4/10/01

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Vandalism of Cemeteries and Graves BRU Alaska Court System
 Component: Trial Courts
 Sponsor Representative Whitakar
 Requester House Judiciary Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 The court system does not anticipate any fiscal impact from the passage of HB 187.

Prepared by: Douglas Wooliver Phone 463-4750
 Division: Alaska Court System Date/Time 4/06/01 2:30 p.m.
 Approved by: Stephanie Cole Date _____
 Agency: Alaska Court System

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 187(JUD)
 (H) Publish Date: 4/10/01

Revision Date/Time (Note if correction):
 Title: "An Act relating to vandalism of cemeteries and graves..."

Dept. Affected: Administration
 BRU: Legal & Advocacy Svc.
 Component: Public Defender Agency

Sponsor: Representative Whitaker
 Requester: (H) Judiciary

Component Number: 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

FUND SOURCE (Thousands of Dollars)

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 (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See Page 2 for analysis.

Prepared by: Barbara Brink, Director Phone (907) 334-4414
 Division: Public Defender Agency Date/Time April 6, 2001
 Approved by: Jim Duncan, Commissioner Date 4/6/01
 Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

HB 187 Vandalism of Cemeteries and Graves – Fiscal Note Analysis

This bill would make it a felony-level offense to deface, damage, or desecrate a cemetery, tomb, grave, or memorial. The offense would apply even if the cemetery appears to be abandoned. Removing human remains or artifacts would also be illegal.

This bill would have some fiscal impact on the Public Defender Agency. Because this bill covers a broad range of activity and is a felony-level offense, the impact may be substantial. However, there is no way to know how many cases would be brought. Therefore, the Public Defender Agency's is submitting an indeterminate fiscal note.

Summary: HB 187

Vandalism of Cemeteries and Graves

Under current Alaska Statutes, there are no provisions relating specifically to the vandalism or desecration of modern cemeteries and memorials. One legal opinion is that they are protected under the "Historic Preservation Act", however, persons charged with the maintenance and care of cemeteries are unconvinced that AS 41.35.200 provides for the penalties necessary to protect the safety and dignity of Alaska's cemeteries and memorials from theft, vandalism, or other forms of desecration.

Acts of vandalism are currently punishable under statutes that relate to criminal mischief, however the degree of crime centers around monetary value of the damage and do not recognize the personal insult and emotional injury to a family, community or tribe that is suffered when cemeteries, burial sites or memorials are vandalized.

House Bill 187 clearly states that it is a crime of criminal mischief in the second degree if a person "defaces, damages, or desecrates a cemetery or the contents of a cemetery or a tomb, grave, or memorial regardless of whether the tomb, grave, or memorial is in a cemetery or.....appears to be abandoned, lost or neglected.

The bill also inserts language into statute making it a crime of criminal mischief in the second degree if a person, "removes human remains or associated burial artifacts from a cemetery, tomb, grave or memorial".

Recognizing that there may be circumstances where memorials, tombs or gravesites must be altered, moved or removed, HB 187 places into statute an affirmative defense if the defendant is an employee of the cemetery acting on behalf of the cemetery or; is otherwise authorized by law to engage in the conduct.

Finally, HB 187 defines "contents of a cemetery", "memorial", and "tomb".

Currently, a violation of AS 41.35.200 is a "class A misdemeanor", and if convicted, the person faces a penalty of up to \$5,000.00 fine and one year in prison. With the passage of HB 187, these crimes may be prosecuted as a "class C felony" punishable by a fine of \$50,000.00 and up to 5 years in prison.

Municipality of Anchorage



P.O. Box 196650
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Telephone: (907) 343-6814

George P. Wuerch, Mayor

MEMORIAL PARK CEMETERY
(535 East 9th Avenue)
<http://www.ci.anchorage.ak.us/cemetery>

April 2, 2001

Representative Jim Whitaker
State Capitol, Room 411
Juneau, AK 99801-1182

The Honorable Jim Whitaker,

Subject: Letter of Support, House Bill No. 187

The Municipality of Anchorage and more specifically the staff of the Anchorage Memorial Park Cemetery offer our support to House Bill Number 187, "An Act relating to the destruction, desecration, and vandalism of cemeteries and graves".

Many of the major acts of destruction, desecration, and vandalism that permeated our cemetery in the past have been mitigated by the 1992 installation of our fence. Still today, the families and friends of our loved ones occasionally suffer the indignity of stolen statues and pushed over headstones. Also, minor acts of vandalism and desecration of graves continue at an alarming rate. Since this is a public cemetery and access is uncontrolled during the day, these acts generally take the form of stealing decorations or moving decorations from one grave to another. Additionally, in the summer we are continually persuading the inebriates who traverse our cemetery not to drink alcoholic beverages or perform "personal" acts on and around the graves.

Purposeful cemetery damage in any form is a disgraceful, cowardly act. We support any action to increase the penalty for these despicable acts perpetrated against the loved ones of our community and hold those responsible at bay.

If I can be of any further assistance in this matter, please don't hesitate to call me at 907-343-6814.

Respectfully,

Donald B. Warden
Cemetery Director

cc: Tim Rogers, MOA Legislative Team