

ALASKA LEGISLATURE

2594

HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

160

HB

439

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 439
(H) Publish Date: 2/5/04

Revision Date/Time (Note if correction): _____ Dept. Affected: GOV
Title An Act relating to oaths, affirmations RDU _____
and acknowledgments _____ Component Office of the Lt. Governor
Sponsor Governor _____
Requester Rules _____ Component No. 1

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 ()	8.7	8.7	8.7	8.7	8.7	8.7
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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 (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
The proposed fee changes for certificates from \$2 to \$5, as set out in Section 5 of the bill, will generate anticipated \$8.7 in additional unrestricted revenues.

Prepared by: Linda J. Perez, Director Phone 465-3876
Division: Administrative Services Date/Time 1/29/04 2:40 PM
Approved by: Lt. Governor Loren Leman Date 1/29/2004
Agency: Office of the Lt. Governor

SECTIONAL ANALYSIS
CS HB 439 (JUD)

An Act relating to the authority to take oaths, affirmations, and acknowledgments in the state; to notarizations, to verifications, to acknowledgments, to fees for issuing certificates with the seal of the state affixed and to notaries public; and providing for an effective date. (H)STA

Section 1. Adds presiding officers of each house of the Legislature and the Lieutenant Governor to the list of persons permitted to administer oaths. This permission is limited to the administration of the oath of office to new legislators (AS 24.05.160) and to the presiding officers for the same purpose during second and special sessions (AS 24.05.170).

Sections 2 and 3. Conforms sections of Alaska Civil Procedure concerning notarial acts to the updated language in Sec. 44.50.061 (5). These sections apply to court system employees, U.S. Postmasters, U.S. military personnel and municipal clerks.

Sections 4 and 5. Update 09.63 to include reference to limited liability companies limited partnerships, and limited liability partnerships. (H)STA

Section 6. Increases fee per notarial certificate from \$2/three folios to \$5/certificate. "Folio" is an outdated term not used in current practice. The increase reflects the State's cost to process the certificates. Deletes territorial language re: accounting for fees. (H)STA

Section 7. Two categories of notaries:

- a) notary public without limitation
 - terms are for 4 years
 - can charge fees for service
- b) limited governmental notary public (state, municipal and federal employees)
 - conduct only official government business
 - terms are for the length of government employment
 - cannot charge fees for service (new Sec. 44.50.039)

Can have concurrent commissions as a notary public without limitation and as a limited governmental notary public, as long as the activities are separated.

Section 8. Changes Qualifications to be commissioned notary public:

- lowers the age from 19 to 18.
- Must have established Alaska residency. The definition of "residency" is updated to a more widely used and more current definition (AS 01.10.055) than current statute (AS 44.50.020).
- notary public must reside legally in the U.S.
- 10 years between felony conviction/incarceration and ability to apply as notary (H)STA

Section 9. Sets out the application requirements for notary public commission whether notary public without limitation or limited governmental notary public.

Restates the current \$40 fee per application along with the current requirement that State limited governmental notaries public are exempt from the fee.

Restates current bonding requirement of \$1,000 with term of four years for notaries public without limitation.

Requires Lieutenant Governor to keep the bond for 10 years (was for two years) ~~HD STA~~

Provides opportunities for Lieutenant Governor to deny applications if:

- a) application is incomplete
- b) applicant has been convicted of and incarcerated for a felony less than 10 years previous to application ~~HD STA~~
- c) applicant's commission has been revoked

Clarifies current law as to when a new commission begins.

Section 10. Much of AS 44.50.060 is antiquated language. The changes here acknowledge that the duties of a notary public can be encompassed in the broader language of administering oaths and affirmations, taking acknowledgment of or proof of instruments of writing and giving notarial certificates.

Section 11. Defines scope of practice and makes clear that a notary public who is not an attorney may not perform functions that require the practice of law. (H) JUD,
following sections are renumbered and conforming amendments made to referenced sections throughout the bill.

Also sets out what a notary public cannot do (Sec. 44.50.062), the specifications of the official seal, and its care and keeping, what constitutes a "seal impression", changes in notary status and disciplinary actions. It also specifies at (5) (A) – (C) the elements that must be present for a notary public to notarize a document:

- Person must appear and sign the document before the notary public
- Person must produce identification unless personally known to the notary public
- The notary must sign in his/her own handwriting the name on his/her commission certificate.
- Notary cannot notarize documents which benefit the notary (see Page 12, Lines 19-25) ~~HD STA~~

This section reorders and clarifies current law defining the notary's seal, and defining the seal impression. The \$5 name change fee is not in addition to the cost of a new certificate under Sec. 44.19.024. ~~HD STA~~

New sections (Secs. 44.50.068-.069) give the Lieutenant Governor the latitude to suspend or revoke a notary public's commission or to reprimand a notary public for good cause. The Lieutenant Governor may delegate his authority. With regard to a complaint, the Lieutenant Governor may find no merit to the complaint or may elevate the complaint to a formal disciplinary hearing which could end with revocation of the notary public's commission.

New Section 44.50.069 codifies the Lieutenant Governor's move to a web-based notary assistance program as the revised handbook will be provided on the Notary website and provided in print format on request to commissioned notaries without access to the Internet.

Section 12. This section outlines the disciplinary procedure if SB 203 or a similar bill is passed by the Legislature establishing an office of administrative hearings. (H) JUD, following sections renumbered.

Section 13. Adds a Section codifying the lieutenant governor's practice with respect to handbooks. (H) STA Describes the information gathered from notaries public on the application which will be public information.

Section 14. Defines terms used in this Chapter. (H) STA

Section 15. Repealers:

- AS 44.50.030 (Term of office, now covered in new 44.50.010)
- AS 44.50.040 (Fees, now covered in new 44.50.033)
- AS 44.50.070 (Presence and ID, now covered in new 44.50.061)
- AS 44.50.080 (Seal, now covered in new 44.50.063)
- AS 44.50.090 (Protest of bill or note. Notaries don't do this, antiquated language, repealed and not replaced)
- AS 44.50.100 (Return of papers. There are no papers to return. Repealed and not replaced)
- AS 44.50.110 (APA procedure for disciplinary actions, replaced by more comprehensive 44.50.067)
- AS 44.50.120 (Bond requirements, now covered in new 44.50.034)
- AS 44.50.130 (Filing oath and bond, now covered in new 44.50.035)
- AS 44.50.140 (Disposition of bond, now covered in new 44.50.034)
- AS 44.50.170 (State employees as notaries, now covered in 44.50.010, 44.50.131 (c) and 44.50.039)
- AS 44.50.180(c) (Federal law prohibits postmasters from charging fees. Alaska law is inconsistent and this subsection must be repealed) (H) STA
- AS 44.50.190 (Savings clause, a transitional measure from 1961 that is no longer necessary and can be repealed).

Section 16. Applicability

- Current commissions continue in effect until term of office expires, except if the commissioned is a felon and 10 years have not elapsed since incarceration. ~~CSA~~
- Bonds, seals, liabilities in effect continue through the notary public's term of office.
- All notaries with current commissions or who are commissioned following the effective date of the legislation must follow the notarial procedures encompassed in the legislation.
- When commissions expire, notaries public will apply for new commissions under the new AS 44.50.031 (Section 9).

Section 17. Transition

Allows the Lieutenant Governor to immediately proceed to adopt regulations with an effective date following the effective date of the legislation.

Sections 18 & 19. Conditional Effect

Section 12 does not take effect if SB 203 or a similar bill does not pass this Legislature, nor is enacted into law.

Sections 20 & 21. Effective Date

Effective date is July 1, 2004 to allow time for revision of website, online handbook and forms. Immediate effective date to proceed to adopt regulations.

FRANK H. MURKOWSKI
GOVERNOR

GOVERNOR@GOV.STATE.AK.US



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February 4, 2004

The Honorable Pete Kott
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill relating to the authority to take oaths, affirmations, and acknowledgements in the state to notaries public, and to fees for issuing certificates with the seal of the state affixed.

The primary purpose of the bill is to comprehensively update AS 44.50, the chapter that governs notaries public, which includes among its provisions qualifications to become a notary public, duties of notaries public, and liability in the event of misconduct or neglect. AS 44.50 has not been comprehensively revised since it was enacted in 1961. Sections 6-13 of the bill would repeal obsolete provisions, update antiquated language, and add new provisions where needed. Similarly, sections 2-4 of the bill would update statutes in AS 09, the Alaska civil code, relating to notaries' responsibilities when notarizing, verifying, and acknowledging signed instruments.

In addition, section 1 of the bill would conform the oath, affirmation, and acknowledgement statute at AS 09.63.010 to existing law. Section 5 of the bill would update a statute authorizing the Lieutenant Governor to collect fees for the issuance of certificates with the seal of the state affixed, increasing the fee to \$5 per certificate. Section 14 of the bill provides applicability provisions.

A more detailed description of the bill is found in a sectional analysis of the bill available from the office of the Lieutenant Governor.

I urge your prompt and favorable action on this measure.

Sincerely yours,

A handwritten signature in cursive script that reads "Frank H. Murkowski".

Frank H. Murkowski
Governor

Enclosure

Notary Statute Comparison -- CS HB 439 (JUD)

	Current	Proposed
Qualifications		
	<p>Applicants must be a resident of the state at least 19 years of age.</p> <p>Resident defined to mean a person who maintains a permanent place of abode in the state, and is in fact living in the state.</p>	<p>Minimum age lowered to 18 years.</p> <p>Residency requirements made consistent with general residency statute AS 01.10.055, rather than separate definition.</p> <p>Applicant must reside legally in the United States.</p> <p>Applicants may not be convicted/incarcerated felons within 10 years of application.</p>
Term	Current	Proposed
	<p>Four years.</p> <p>Automatic revocation of commissions of State employee notaries who terminate employment prior to the commission expiration date.</p>	<p>Notaries Public will continue to serve a term of four years.</p> <p>Limited Governmental Notaries Public commissions will be open-ended with automatic revocation upon termination of government employment.</p>
Fees	Current	Proposed
	<p>\$40 application fee for non-state employee notaries.</p> <p>\$2 per Lieutenant Governor certificate.</p>	<p>\$40 application fee for non-state employee notaries (No change).</p> <p>\$5 per Lieutenant Governor certificate (\$3 increase).</p>
Bond	Current	Proposed
	<p>\$1,000 Notary Bond is required of all applicants.</p>	<p>\$1,000 Notary Bond required of all applicants except Limited Governmental Notaries. Lt. Gov. required to keep for 10 years.</p>

Commission Types	Current	Proposed
	<p>Notaries Public who serve four-year commissions.</p> <p>Limited Governmental Notaries Public commissions available for State employees only.</p>	<p>Notaries Public who serve four-year commissions.</p> <p>Limited Governmental Notaries Public commissions – Expanded to include Municipal and Federal employees in addition to State employees.</p>
Commission Revocation	Current	Proposed
	<p>Via Administrative Procedure Act. Act must be invoked to review all complaints against notaries, no matter how trivial.</p>	<p>By Lieutenant Governor for good cause via a formal disciplinary procedure. Appeals via the Administrative Procedure Act. Through July 1, 2005 when SB 203:Administrative hearing officer legislation takes effect (if passed by Legislature)</p>
Notary Data	Current	Proposed
	<p>Each notary's name, mailing address, surety information and commission dates are available to the public.</p>	<p>The notary information currently available remains unchanged. The notary's name, mailing address, surety information and commission dates continue to be publicly available.</p> <p>To facilitate training and communication the Lieutenant Governor may collect additional information from applicants and notaries that will not be available to the public.</p>
Non-Commissioned Notaries	Current	Proposed
	<p>Justices, Judges, Magistrates, Clerks or Deputy Clerks of Court, United States Postmasters, and Commissioned Military Officers are authorized to take oaths, affirmations or acknowledgments.</p>	<p>No change.</p>

Frequently Asked Questions – CS HB 439 (JUD)

Q: Why is this bill necessary?

A: There has not been a comprehensive update to the notary statutes since 1961.

Q: What changes are being proposed?

A: The bill:

- Lowers the minimum age requirement from 19 to 18 years of age.
- Prohibits felons from applying as notaries public until 10 years post incarceration.
- Establishes disciplinary procedures for commission suspensions and revocations.
- Separates publicly available notary information from private notary information.
- Updates and expands the current State Employee notary commission system to include Municipal and Federal government employees.

Q: I'm a notary now, how does this bill affect me?

A: This bill will not impact current notaries unless they are felons.

Q: What is not changing?

A:

- The notary information that is currently publicly available remains publicly available.
- Notary testing remains voluntary.
- The notary bond amount remains unchanged.
- The application fee remains unchanged.

Q: What about fees?

A: The \$40.00 application fee for notary commissions will remain unchanged. The fee for certificates is being raised from \$2.00 to \$5.00.

Card for Smith, Kevin

Display Name: Kevin Smith
kevins@amljia.org

Phone
Work: 586-3222

Work
AML JIA

Card for Barios, April

Display Name: April Barios

Phone
Work: 800-337-3682

Work
AML
JIA

Other
Spoke with April on 2-12-04. Confirmed that AML JIA sells bonds for \$50 each. Went over impact figures with her. (AML JIA stands to lose about \$1675.00 per year due to lost bond sales.)

Card for Shaub, Thyes

Display Name: Thyes Shaub
thyes@aol.com

Phone
Work: 463-5118

Work
Lobbyist
Alaska
Bankers
Association

Other
Contacted by phone 2-17-04. She had participated in the AK Bankers Assoc. meeting with Lisa Corrigan the prior week and had already gone over the bill as part of that meeting. She reiterated that the association supported the bill.

Card for Bitney, John

Display Name: John Bitney
bitney@mtaonline.net

Phone

Work: 745-7560

Other

Spoke with John on 2-17-04, emailed him the bill information.

Work

Lobbyist
Alaska Land and Title
Association

Card for Ritchie, Kevin

Display Name: Kevin Ritchie
kevin@akml.org

Phone

Work: 586-1325

Other

Spoke with Kevin on 2-17-04, emailed him bill information.

Work

Lobbyist
Alaska Municipal
League

Card for Miller, Charlie

Display Name: Charlie Miller
cmiller@alaskanational.com

Phone

Work: 563-2698

Other

Emailed bill information on 2-17-04.

Work

Lobbyist
Alaska National Insurance

Card for Reinwand, Jerry

Display Name: Jerry Reinwand
reinwand@ptialaska.net

Phone

Work: 586-8966

Other

spoke with on 2-18-04, emailed bill info same day.

Work

Lobbyist
Allstate Insurance

Card for Hutchinson, Kim

Display Name: Kim Hutchinson
trust@ptialaska.net

Phone

Work: 586-1776

Work

Lobbyist
American Insurance Association

Other

Emailed bill info 2-17-04.

Card for Winters, Sheldon

Display Name: Sheldon Winters
l-w@qci.net

Phone

Work: 796-4999

Work

Lobbyist
State Farm Insurance

Other

Spoke with Sheldon on 2-17-04, emailed bill info same date.

Card for ak-notary

Display Name: Notary Listserv
ak-notary@list.state.ak.us

Other

Alaska Notary Public listserv. Emailed bill info 2-17-04.

Card for Faerber, Chuck

Display Name: Chuck Faerber
cfaerber@nationalnotary.org

Phone

Work: 800.876.6827

Work

Vice President of Notary Affairs
National Notary Association

Other

Emailed bill info 2-18-04

Card for Verbocy, Don

Display Name: Don Verbocy
don@notaries.org

Other

Emailed bill information 4-11-04.

Work

American Society of Notaries

Card for Corrigan, Lisa

Display Name: Lisa Corrigan

Phone

Work: 790-5104

Mobile: 723-8174

Work

President
Alaska Bankers
Association

Other

President of AK Bankers Assoc. Received 2-17-04 letter of support from Lisa/AK Bankers Assoc.

Card for Teachworth, Bob

Display Name: Bob Teachworth
bobt1@denalifcu.com

Phone

Work: 257-7200 x408

Work

Chairman
Alaska Credit
Union League

Other

Chairman of Board of AK Credit Union Assoc. 800-764-1123 Will distribute bill to member credit unions and solicit comment.

Card for Wooliver, Douglas

Display Name: Douglas Wooliver
dwooliver@courts.state.ak.us

Phone

Work: 264-8265

Work

Administrative
Attorney
Alaska Court System

Other

Doug reviewed the bill on behalf of the Court system and supports it.

Card for Aronson, Marc

Display Name: Marc Aronson
usna@enotary.org

Phone

Work: 412-281-7871

Other

Received 3-5-04 letter of support for legislation from Mr. Aronson.

Work

President
United States Notary
Association

HB

443

SFIN

FILE

HB 443

was referred to the
Senate Finance
Committee

No hearing was held
on this bill

HB

444

HFIN

FILE

HB 444 Direct marketing Fisheries Business

Sponsor Peggy Wilson

CS HB 444(FSH)

FN #1 \$ 2476 DOR 2.17.04

there was
no motion
to adopt
on 3.24.04

23-LS1649\H

§ FOR HOUSE BILL NO. 444(FSH)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES

Offered: 2/26/04

Referred: Resources, Finance

Sponsor(s): REPRESENTATIVE WILSON

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to direct marketing fisheries businesses, to the fisheries business tax,
2 and to liability for payment of taxes and assessments on the sale or transfer of fishery
3 resources; and providing for an effective date."

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

5 * Section 1. AS 43.75.015(c) is amended to read:

6 (c) A person engaging or attempting to engage in a fisheries business who first
7 actually and physically processes the fishery resource, or a person who purchases a
8 fishery resource that is processed [FROZEN] from a person excluded by
9 AS 43.75.017 from liability for the tax, is liable for and shall pay to the department the
10 entire tax imposed by this section. In determining this tax liability, the person may
11 deduct from the value of the fishery resources processed the value of fishery resources
12 that are canned or processed for other fisheries businesses. A person taking the
13 deduction authorized by this subsection shall report all information relating to the
14 deduction in accordance with regulations adopted by the department.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 444(FSH)
(H) Publish Date: 2/26/04

Revision Date/Time (Note if correction):	Dept. Affected: <u>Revenue</u>
Title: <u>Direct Marketing Fisheries</u>	RDU: <u>Revenue Programs & Services</u>
<u>Business</u>	Component: <u>Tax Division</u>
Sponsor: <u>Representative Wilson</u>	
Requester: <u>House Fisheries</u>	Component No.: <u>2476</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services		24.6	49.2	49.2	49.2	49.2
Travel						
Contractual						
Supplies		0.5	1.0	1.0	1.0	1.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING		25.1	50.2	50.2	50.2	50.2

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

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts						
1003 GF Match						
1004 GF		25.1	50.2	50.2	50.2	50.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL		25.1	50.2	50.2	50.2	50.2

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

POSITIONS	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Full-time		1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

** See page 2

Prepared by: <u>Chuck Harlamert</u>	Phone <u>465-2320</u>
Division: <u>Tax Division</u>	Date/Time <u>2/17/04 8 48 AM</u>
Approved by: <u>Steve Porter, Deputy Commissioner</u>	Date <u>2/17/2004</u>
Agency: <u>Department of Revenue</u>	

FISCAL NOTE #1

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 444(FSH)

ANALYSIS CONTINUATION

Revenue Analysis

Fisheries Business Tax

We estimate that during the calendar year 2002 there were 120 fisheries business taxpayers who would have operated under the direct marketing fisheries business license authorized by the bill. Together this group reported taxable value of just over \$2.4 million with a combined tax liability of just over \$120,000 at current rates. Existing rates for floating processors are 5% for established species and 3% for developing species. Based on their 2002 activity, the tax liability of this group would be approximately \$70,000 at the 3% and 1% rates established by this bill. The impact of the lower tax rates, standing alone, would have been to decrease revenue to the state and local governments by approximately \$50,000. Nevertheless we expect the overall revenue impact of the bill to be neutral or positive.

We believe that the impact of the rate reductions will be offset by the effect of other provisions within the bill. The "exclusion" under AS 43.75.017 is not in fact an exclusion from taxation. The "exclusion" merely transfers the responsibility for the tax to the licensed fisheries business who purchase processed fish from the fisherman. By making the exclusion mandatory the bill will reduce confusion over who is the taxpayer under the law. We expect that the definition of taxable value will be perceived by the affected taxpayers as more fair than existing law. The bill also simplifies enforcement of the complex issue of taxable value. These factors strongly influence tax compliance, accordingly we expect revenue from improved compliance to offset the reduced fisheries business tax rates.

Salmon Enhancement & Marketing Taxes

Current law places the burden for collection of salmon enhancement and marketing taxes solely on the buyer. Buyers in casual sales are often unaware of the requirement which is impractical to enforce. The bill addresses this issue by requiring fishermen who sell salmon to unlicensed buyers to pay their salmon enhancement and marketing taxes directly on a single annual return. We expect between 300 and 400 new taxpayers as a result of this change but are confident that the bill will generate additional revenues.

Cost Analysis

For 2003 we issued 310 fisheries business licenses to fishermen who we believe will qualify for the direct marketing fisheries business license under this bill. Many of these fishermen did not engage in taxable activity, but obtained the license in the event that an opportunity or need to process or export their catch arose during the year. Of these 310 licensees, 194 provided security for estimated tax totaling just over \$129,000. This data implies that direct marketing activity in 2003 was higher than in 2002. We expect that the bill will further increase the number of fishermen who participate in processing and direct marketing activity. The number of license applications and fisheries business tax returns will increase proportionately.

The bill authorizes direct marketers to report taxable value at the prevailing price in the region or market area instead of their actual receipts for the finished product. The prevailing price is used to prevent the taxation of value added by the direct marketer and thus to measure their tax base consistent with the rest of the industry. The bill provides the department with authority to restate their value consistent with market transactions in the area if the reported value is inconsistent with those arms length transactions.

The overall number of fishermen who are responsible for filing salmon enhancement and marketing tax returns will increase by three to four hundred based on 2003 Catcher Seller permits issued by ADF&G. Existing direct marketers will file fewer salmon enhancement and marketing tax returns. We estimate that the net increase in salmon enhancement and marketing tax returns will be between 150 to 250 annually based on current activity.

We request funding of a Tax Technician II position beginning the second half of FY06 representing the combined efforts for licensing, compliance, and return processing under the bill.

ALASKA STATE LEGISLATURE



REPRESENTATIVE PEGGY WILSON

SECTIONAL ANALYSIS

CSHB 444 (FSH)

"An Act relating to direct marketing fisheries businesses"

- Sec. 1 Extends Fisheries Business Tax Exclusion. In existing law, FBT must be paid by a person who first processes the fish. An exemption exists for fishermen who freeze fish onboard but who then sell the product to a processor. This exemption was tailored to trollers whose fishing operations often demand that they freeze at-sea even though they are not direct marketing their product. Sec. 1 of this bill extends this exemption to all vessels that process at-sea then sell to a processor. The Department of Revenue asked for this clarification of tax responsibility. Nothing in this section will affect state revenue.
- Sec. 2 Reduces the Fisheries Business Tax rate for direct marketers from 5% to 3%. Also allows Department of Revenue to establish the market value of fish products for taxation of direct marketers based on average prices paid by processors in the region.
- Sec. 3 Related to Sec. 1. Would allow fishermen who do some processing on board their vessel, but who then sell it to a processing company rather than direct marketing it, to be exempt from the Fisheries Business Tax. The "licensed fisheries business," meaning the processor, will pay the tax. As in Section 1, the department asked that tax liability in this production scenario be clarified and state revenue is unaffected.
- Sec. 4 Provides for a new Direct Marketing Fisheries Business License to be issued by the Department of Revenue. This will allow fishermen who own or lease a vessel of 65 ft. or less to catch, process and sell both processed or unprocessed fish products in Alaska or out-of-state.

Direct Market businesses would be prohibited from buying and processing fish from other fishermen under this license. A fisherman who wishes to participate in these types of activities still has the ability to become a buyer or processor under the current regulations.

Identifies tax liabilities and establishes an annual application fee of \$25 and reporting requirements.

- Sec. 5 Defines "value" for taxation purposes as the prevailing price paid by processors for a given product in the same region or market area. This is a key section of the bill in that it means direct marketers will be taxed at the "grounds price" rather than having to base their taxes on wholesale and retail prices. Section 5 corrects the existing problem whereby direct marketers are paying higher taxes for adding value to fisheries resources.
- Sec. 6-15 Provides for a more user-friendly payment system by collecting all fisheries taxes for direct marketing fisheries businesses by April 1 each year. In addition to the fisheries business tax, these may include the salmon enhancement tax, salmon marketing tax, dive fishery assessment, salmon fishery assessment, and permit buy-back assessment. Currently, monthly payments that inconvenience fishermen during the harvesting season are required for the hatchery and marketing taxes.
- Sec. 16-18 Establishes effective dates for January 1, 2005.

ALASKA STATE LEGISLATURE



REPRESENTATIVE PEGGY WILSON

SPONSOR STATEMENT CSHB 444 (FSH)

“An Act relating to direct marketing fisheries businesses”

House Bill 444, recommended by the Joint Legislative Salmon Industry Task Force, will provide fairness in the taxation of small-business commercial fishermen. CSHB 444 (FSH) is a companion to SB 286.

In today's marketplace of lower salmon prices and a demand for high-quality product, many fishermen are choosing to sell their catch directly to restaurants, grocery stores and consumers. In doing so, these entrepreneurial fishermen often freeze or otherwise process their fish, thus adding value to Alaska's fishery resources. Unfortunately, Alaska's current tax structure actually penalizes this market-driven business decision. The Fisheries Business Tax, or FBT (AS 43.75.015), requires small boat fishermen who process only their own catch to pay a 5% tax, the same tax rate as large industrial-scale floating processors that process a much higher volume of fish.

Furthermore, the current structure taxes small boat fishermen at an improperly high point of sale. Shore-based processors pay their FBT at 3% of the "grounds price" which is the price paid to fishermen for raw fish delivered to the processor. However, a small direct marketer must now pay their 5% FBT based on the price at their first point of sale which is usually much higher because it is a wholesale or retail price. In effect, this means that Alaska currently penalizes "value adding" to our fishery resources when done by small catcher/processors and direct marketers.

HB 444 was amended in the House Special Committee on Fisheries by inserting the word "unprocessed" on page 4 line 5. This was a friendly amendment added for clarity.

By creating a "Direct Marketing Fisheries Business License," CSHB 444 (FSH) recognizes the important distinction between large and small floating processors and will end the disincentive Alaska currently places on direct marketers. The bill is unanimously supported by the Joint Legislative Salmon Industry Task Force and will provide fair tax relief to these Alaskan small businessmen.

SHORT DEFINITIONS OF TERMS

SB 286 / HB 444

Direct Marketer - In the fishing industry, direct marketers are fishermen who catch and sell their own products. The products may be frozen, filleted or processed in other ways, or may simply be fresh seafood. Direct marketing entails selling to the public, to distributors, restaurants or grocery stores.

Catcher/Seller – This is a type of direct marketing operation. Catcher/sellers get a license at no cost from ADF&G that allows them to sell unprocessed product directly off their vessel at the dock to the general public. SB 286 / HB 444 will close a loophole in existing law that allows catcher/sellers to avoid taxation.

Catcher/Processor – There are many kinds of catcher/processors in the Alaska commercial fishing industry. A simple definition is a vessel that is capable of both catching fish and processing on board. This bill will affect catcher/processors of 65 feet and less such as some trollers and shrimpers who freeze product on board.

Floating processor – Also known as “floaters,” these are large ships, essentially mobile fish plants, with on board processing lines. While the sponsor in no way means to disparage this type of business, the intent of SB 286/HB 444 is to reform state taxation to recognize the differences between floaters and small direct marketing vessels. There is no distinction in current tax law.

Exporter - A direct marketer who exports unprocessed fishery resources from Alaska. An example might be a Dungeness crab fisherman who ships his crab live by airfreight to markets on the west coast. Such an exporter is currently already paying 3% fisheries business tax but will benefit from SB 286/HB 444 through the clarification of the value he pays that 3% on.

Fisheries Business Tax (FBT) – The oldest tax in the state, imposed in 1913, when the Territorial Legislature decided to tax salmon canneries. Currently, the tax rate is 3% on shore-side processors and 5% on “floating fisheries businesses,” including small direct marketers. This bill will clarify the FBT tax picture for direct marketers.



UNITED FISHERMEN OF ALASKA

February 16, 2004

211 Fourth Street, Suite 110
Juneau, Alaska 99801-1172
(907) 586-2820
(907) 463-2545 Fax
E-Mail: ufa@ufa-fish.org
www.ufa-fish.org

Representative Paul Seaton
Chair, House Special Committee on Fisheries
Alaska State Legislature
State Capitol (Mail stop 3100)
Juneau, AK 99801-1182

Dear Representative Seaton,

United Fishermen of Alaska supports HB444 relating to the Direct Marketing Fishery Business Tax. Direct marketing is a progressive approach to revitalizing the seafood industry, and HB 444 provides a much needed clarification of the tax situation for direct marketers and parity with shore-based processors. Fishermen all over the state are discovering new and innovative ways of promoting their product directly at a higher market value, thus providing local economic growth and increased state revenue. Direct marketing also creates new marketing channels as more people are given the opportunity to sample and purchase the highest quality seafood in the world. If we are going to turn this industry around, it's vital that we pave the way for independent innovative fishermen that seek change and are willing take risks for the greater good of Alaska.

HB 444 and its companion bill SB 286 are the result of many years of effort by innovative fishermen dedicated to the opportunity to increase the value of their catch. The proposed changes required the input and coordination with the Alaska Department of Fish and Game, Department of Revenue, Department of Environmental Conservation, and consideration of the requirements of the U.S. Environmental Protection Agency. We feel that HB 444 and SB 286 represent a finely tuned balance within these agencies' requirements to best benefit fishermen and the State of Alaska.

United Fishermen of Alaska represents 33 Alaska Commercial fishing organizations and hundreds of individual fishermen and fishing related businesses, altogether representing over 10,000 Alaska fishermen. We support HB 444 and thank you for your attention to this matter.

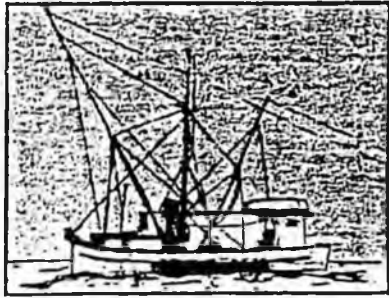
Sincerely,

Bob Thorstenson, Jr.
President

CC: Representative Peggy Wilson

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Dragger's Association • Alaska Longline Fishermen's Association • Alaska Trollers Association • Armstrong Keta • At-sea Processors Association
Bristol Bay Reserve • Chignik Regional Aquaculture Association • Chignik Seiners Association • Concerned Area "M" Fishermen • Cordova District Fishermen United
Crab Rationalization and Buyback Group • Douglas Island Pink and Chum • Groundfish Forum • Kena Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
Kodiak Seiners Association • North Pacific Fisheries Association • Northern Pacific Scallop Cooperative • Northern Southeast Regional Aquaculture Association
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association
Seafood Producers Cooperative • Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Catcher Boats • United Salmon Association • United Southeast Alaska Fisheries Association • United Southeast Alaska Fisheries Association



Alaska Trollers Association

130 Seward St., No. 211
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

February 16, 2004

Representative Paul Seaton, Chairman
House Special Committee on Fisheries
Alaska State Legislature
Juneau, AK 99801

Dear Representative Seaton:

The Alaska Trollers Association supports HB 444, which seeks to provide tax equity and clarity for commercial fishermen who direct market seafood products.

In these challenging price times, more commercial fishermen are choosing to market all or part of their catch directly to the consumer, as a means to add value to their businesses. Direct marketing is an increasingly important option for small boat fishermen, many of whom have lost markets in recent years. However, the current tax structure discourages efforts to add value to seafood products sold by individuals. Furthermore, the regulatory and administrative processes for direct marketing are cumbersome and do not quite fit the nature of these small operations.

By supporting cooperative efforts to correct problem areas, and adopting some relatively simple changes, the state of Alaska can take positive action to support small business; reduce agency staff time and state spending; promote market diversification of Alaskan seafood; and, bolster Alaska's economy, particularly in rural communities.

As you know, the Salmon Legislative Task Force has been working to encourage small business development and create new seafood marketing opportunities. To that end, the Salmon Task Force Marketing Committee appointed a subcommittee to develop ideas and legislation to better accommodate the specific needs and circumstances of individual permit holders who direct market seafood.

The subcommittee met via statewide teleconference and in working groups for nearly two years. Advice was sought from direct marketers, the processing sector, DOR, ADFG, and DEC. Many administrative and legislative tasks have been identified. HB 444 is a direct result of this work. If passed, it will go a long way towards resolving imbalances that exist in our tax program. For instance, a small operator who freezes salmon at sea pays 5% fisheries business tax, just like the big, offshore fish processors. The product is not only taxed at a rate 2% higher than what shorebased processors pay, but the tax is calculated on the processed value of the product. In

contrast, a shorebased processor pays 3% fisheries business tax based on the exvessel (raw fish) value of the product they purchased. ATA believes this tax inequity must be resolved.

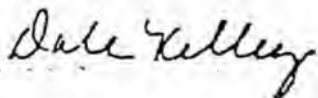
In addition to the rate of tax paid, the bill also clarifies who pays taxes and under what circumstances. This has been a confusing matter for all involved.

The bill establishes an annual timeframe for taxation, which will be extremely convenient for both fishermen and DOR. A primary goal of the Marketing Subcommittee is to streamline process for everyone involved, which should mean reduced cost and workload for fishermen and agency staff. Committee members have expressed an interest in continuing the project until all legislative and administrative tasks are complete.

There are many tasks ahead to develop a well-articulated direct marketing program and passage of HB 444 will be a critical component. Hopefully you agree with us and will lend your support to this bill, as well as future actions to improve the direct marketing program and the relationship between industry and the state.

If I can provide information or perspective on this and other matters of importance to the seafood industry, please don't hesitate to call.

Best regards,

A handwritten signature in cursive script that reads "Dale Kelley".

Dale Kelley
Executive Director

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COPIES



FEB 13 2004

United Southeast Alaska Gillnetters

P.O. Box 23378, Ketchikan, AK 99901

Phone & Fax (907) 247 2471

Email: usa_gillnetters@ak.net

February 13, 2004

The Honorable Paul Seaton, Chair
House Special Committee on Fisheries
Alaska State Capitol, Room 428
Juneau, AK 99801

Send Via Fax: 465-3472

Dear Representative Seaton,

The United Southeast Alaska Gillnetters Association (USA^G) represents about 150 small business owners who catch salmon by drift gillnetting in Southeast Alaska and market salmon throughout the United States. Many of our members participate in other fisheries such as crab, shrimp, longline, and dive fisheries. We strongly support House Bill 444 that will create a "direct marketing fisheries business license." In this era of low salmon prices, fishermen must be permitted to increase the value of their catch by dressing, processing and marketing it to create added value to the product resulting in increased income for the fishermen. This legislation is important as it puts the direct marketing fisherman on a level field with other businesses processing and marketing salmon and seafood products. It does this by defining the basis of the "value" of their catch in section .290(7)(A). The practical result of this value definition will be that the direct marketing fisherman will be taxed on the grounds price of the fish he has caught, not on the elevated value his/her fish are sold for which includes the extra effort and risk the fisherman has undertaken in processing and marketing his product. The direct market fisherman will still pay a three percent processing tax on the value of his/her catch, as defined in section .015(d)(2) of this proposed legislation, as well as any applicable enhancement or marketing taxes.

In summation, this bill is very important for individual fishermen who market their own catch and USAG supports its passage and urges the House Special Committee on Fisheries to approve it. We also want to express our appreciation to Representative Wilson for introducing this legislation in the House.

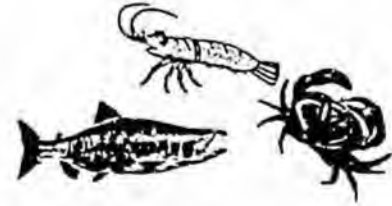
Yours truly,

Kenneth Duckett
Executive Director

cc: Representative Wilson Via Fax: 465-3175

Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway
Juneau, AK 99801



Phone 907-586-6652

Fax 907-586-5648

E-mail: seafa@gci.net

February 18, 2004

Honorable Paul Seaton, Chair
House Special Committee on Fisheries
Alaska State Legislature
State Capitol, Mail Stop 3100
Juneau, AK 99801

RE: HB 444- Direct Marketing Fisheries Businesses

Dear Representative Seaton,

The Southeast Alaska Fishermen's (SEAFSA) Alliance fully supports HB 444. The Southeast Alaska Fishermen's Alliance (SEAFSA) is a non-profit fishing organization formed in 2000 to represent our members involved in the salmon, crab, shrimp and longline fisheries of Southeast Alaska. We have been actively working on direct marketing issues since SEAFSA was formed and our Executive Director and many members have been working on direct marketing issues for 8+ years. We believe that this legislation will have the most direct economic benefit to fishermen that comes out of the salmon industry task force.

This legislation was worked on two years in a sub-committee of the salmon task force marketing committee with industry, agencies and any public who wished to be involved. To get legislation that was workable and made sense, compromises were made on all sides of the issues and we came out with legislation that the majority approves of. Dept of Revenue especially worked hard on this legislation to come up with a workable solution and deserves recognition for their work on this and the other administrative changes they have made that improves the business climate for direct marketers.

HB 444 clarifies tax issues and provides equity to fishermen marketing their own products. This legislation corrects a large disadvantage that direct marketers were faced with under the current tax structure. These fishermen have paid their fisheries business tax (FBT) after value was added at 5% vs. a shore side processor who paid a 3% tax on the resource on an ex-vessel (grounds price) value. The small catcher/processor or direct marketer paid 5% because they were considered a floating processor. A higher tax rate was devised for floating processors because the large floating processor would anchor off shore, pay no property taxes, or use support services by State businesses. This is not true of the direct marketer. As we are a small boat fleet predominantly Alaskan based, we purchase our fuel, groceries, fishing gear and boat work etc. from the communities that we work out of and live in and should not be considered the same as a large floating processor that is like a small self-contained community.

HB 444 identifies value as the equivalent of grounds price (ex-vessel for your gear type, region and for like product) unless you sell to a licensed fishery business (processor) and then the value is what you received for the product even if value is added such as a frozen product.

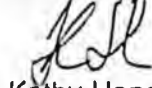
As this legislation was being worked on, industry leaders felt that as we fought for a fair tax basis that we also needed to work on being sure that all taxes are collected from fishermen. Under current tax law, salmon fishermen acting as catcher sellers (fishermen selling unprocessed fish from their vessel) did not pay the harvesters ASMI 1% marketing tax (SMT) and hatchery enhancement tax (SET) in those regions where it is collected because the buyer was responsible for the collection and remittance of these taxes and not the fisherman being ultimately responsible. This legislation will correct this loophole and make the fisherman responsible for the taxes if they are not selling salmon to a licensed fishery business and correct this issue on other possible taxes or assessments that may be implemented in sections 6 – 15 of the bill.

This legislation addressed processors concerns on who would qualify for a direct marketer license by very tightly defining who would qualify for this license. A direct marketer can not buy or purchase fishery resource, can not custom process fishery resources for another fisherman, must own or lease a vessel 65 feet or less. The 65-foot vessel length matches Dept of Environmental Conservation's regulation for a direct marketer. If a commercial fisherman wishes to pursue any of the activities listed above such as buying additional product they can set themselves up by meeting the requirements currently in statute that will continue to be available for someone wishing to become a fish buyer or processor. This legislation was designed to specifically deal with the commercial fisherman and their own catch.

Another aspect of this legislation allows the direct marketer to pay all their taxes (FBT, SET, & SMT) once a year rather than trying to pay the SET & SMT taxes monthly as you are trying to fish.

We understand that this legislation can be very confusing and we would be available to meet with you at anytime to discuss the issues individually or in committee. We hope that you understand that this legislation simply deals with correcting an un-equitable tax situation.

Sincerely,



Kathy Hansen
Executive Director



Southeast Conference



P.O. Box 21989 Juneau Alaska 99802-1989 Tel. (907) 463-3445 Fax (907) 463-5670

February 16, 2004

Representative Paul Seaton
Alaska State Legislature
State Capitol
Juneau, AK 99801

RE: Support HB 444 – Direct Marketers Legislation

Dear Representative Seaton,

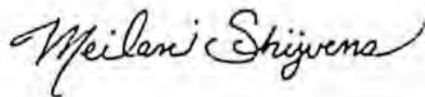
Southeast Conference supports HB 444 that corrects the inequities in the current tax structure for the individual fisherman working to market their own catch. Southeast Conference is the State-designated Alaska Regional Development Organization (ARDOR), the federally-designated Economic Development District (EDD), and the federally-designated Resource Conservation and Development Council (RC&D) for Southeast Alaska. The mission of Southeast Conference is to undertake and support activities that promote strong economies, healthy communities, and a quality environment in Southeast Alaska. Our over 130 Southeast Alaska members include nearly every community in the region, every chamber of commerce, every major economic development organization, 20 transportation organizations, 10 Alaska Native organizations, and more than 50 other organizations.

Direct marketing is very important to a segment of the commercial fishing industry in Southeast Alaska. Individual fishermen direct marketing their products are producing high quality products that enhance the value of Alaska's seafood in the market. A lot of the direct market products from Southeast Alaska enter the fresh market or the frozen at sea marketplace.

This legislation will provide a fair tax basis for the direct marketer, which is strictly defined as a fisherman marketing their own catch – they cannot buy, or custom process for another fisherman and must be on a vessel 65 feet or less in length. This legislation does not prevent a fisherman from pursuing these activities under current regulations and statutes they just would not qualify as a direct marketer.

The Southeast Conference recognizes that this legislation is legislation that was worked on by a committee representing various interests and agencies and that they all support HB 444 as a good and fair piece of legislation for all involved. We encourage you to pass this legislation out of committee. Thank you for your interest and support of the commercial fishing industry.

Sincerely,



Meilani Schijvens
Southeast Conference Executive Director

Cc: Senator Stedman; Representative Wilson

HB

451

HFIN

FILE

IOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 3, 2004

FURTHER REFERRALS:

Date of Committee Action: 3/9/04

The FINANCE Committee considered:

HB 451

HOUSE BILL NO. 451

THERAPEUTIC COURTS

"An Act relating to therapeutic courts; and providing for an effective date."

Recommends it be replaced with HCS or CS for _____ (_____)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

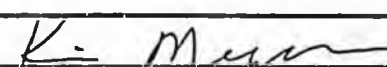
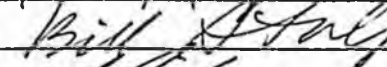

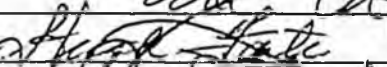

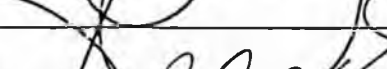

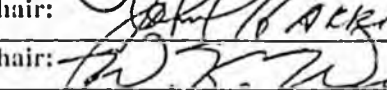
- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts:

- ADM
- CEID
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LEG
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
AK COURT		✓		

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
DOA	#1			✓
DDC	#2			✓
DHSS	#3			✓
LAW	#4			✓

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Meyer	✓			
	STOFFER			✓	
	Joule	✓			
	CRIST	✓			
	Fred	✓			
	FOSTER	X			
	HARRIS	✓			
Chair: 	WILLIAMS	X			

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 451
(H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act relating to therapeutic courts BRU Legal and Advocacy Services
Component Public Defender Agency
Sponsor House Rules
Requester (H) Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
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 (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would continue the two pilot therapeutic courts in Bethel and Anchorage, and continue the Anchorage judge position. This bill should not have any further fiscal impact on the operations of the Public Defender Agency.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
Division Public Defender Agency Date/Time 3/1/04 12:00 AM
Approved by: Mike Miller, Commissioner Date _____
Agency Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 451
(H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
Title "An Act relating to therapeutic courts..." RDU Probation & Parole
Component: _____
Sponsor Rules by Request
Requester House Judiciary Finance Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0				
Travel	0.0	0.0				
Contractual	0.0	0.0				
Supplies	0.0	0.0				
Equipment	0.0	0.0				
Land & Structures	0.0	0.0				
Grants & Claims	0.0	0.0				
Miscellaneous	0.0	0.0				
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	0	0				
Part-time	0	0				
Temporary	0	0				

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation would extend the pilot project for therapeutic courts that was originally established through HB172 in FY2002. Passage of this legislation would have no fiscal impact to the Department of Corrections. Positions and funding were received in FY2002 which would be maintained within the Department's FY2006 Operating Base.

The pilot project established therapeutic courts in Anchorage and Bethel to handle alcohol and drug addicted offenders. The stated purpose of therapeutic courts are lasting sobriety of offenders, protection of society from alcohol related and drug related crimes, prompt payment of restitution to victims of crimes,

(continued)

Prepared by: Jerry D. Burnett, Director Phone (907) 465-3339
Division: Administrative Services Date/Time 2/27/04 4:03 PM
Approved by: Portia C.K. Parker, Deputy Commissioner Date 2/27/2004
Agency: Department of Corrections

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB 451

ANALYSIS CONTINUATION

(continued)

effective interactions and use of resources among criminal justice and community agencies, and hopefully, a long-term reduction in costs relating to arrest, trial and incarceration.

House Bill 451 will extend the program through FY2006. This bill proposes to allow for the pilot program to continue in FY2006 at the current funding level while the legislature reviews the evaluation of services and determines an appropriate course of action.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: HB 451
 (H) Publish Date: 3/3/04
 Dept. Affected: Health & Social Services
 RDU Behavioral Health
 Component Behavioral Health Grants

Revision Date/Time (Note if correction):
 Title RELATING TO THERAPEUTIC COURTS

Sponsor {RL} BY REQUEST

Requester HOUSE (JUD) Component No. 2669

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 (0)						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: _____
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill extends the pilot project for therapeutic courts that was originally established in through HB 172 for FY2002. The pilot project established therapeutic courts in Anchorage and Bethel to handle alcohol and drug-addicted offenders. The purposes of the courts are lasting sobriety of offenders, protection of society from alcohol-related and drug related crime, prompt payment of restitution to victims of crimes, effective interaction and use of resources among criminal justice and community agencies, and long-term reduction of costs relating to arrest, trial, and incarceration.

Continued on next page --

Prepared by: Shawnda Brooks Phone 907-465-3167
 Division: Behavioral Health Date/Time _____
 Approved by: Joel S. Gilbertson, Commissioner Date 02/26/2004
 Agency: Department of Health and Social Services

FISCAL NOTE
FN 3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB 451

ANALYSIS CONTINUATION

House Bill 451 will extend the program through FY2006. A break in the service being provided as a result of the programs' scheduled conclusion in FY04 and FY05 would result in a delay in services and inefficiencies. This bill proposes to allow for the pilot program to continue in FY06 at the current funding level while the legislature reviews the evaluation of services and determines an appropriate course of action.

Funding for this program is in the Governor's FY2005 budget.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: HB 451
(H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act relating to therapeutic courts; and providing RDU CRIMINAL
for an effective date." Component Third Judicial District
Sponsor House Rules Committee
Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
This bill extends the pilot programs for therapeutic courts established in Anchorage and Bethel for alcohol- and drug-addicted offenders out to June 30, 2006. The criminal division was appropriated \$198.9 beginning in FY 2002 for the therapeutic court pilot. Additional funds will not be needed as a result of the date extension.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
Division Administrative Services Date/Time 2/29/04 2:25 PM
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/29/2004
Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB451-ACS-TC-3-9-04
() Publish Date: _____

Revision Date/Time: Revised 3/9/04

Title Therapeutic Courts BRU Alaska Court System
Component Trial Courts
Sponsor House Rules
Requester Alaska Court System Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	257.2	308.6	308.6	308.6	308.6	308.6
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	257.2	308.6	308.6	308.6	308.6	308.6

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	257.2	308.6	308.6	308.6	308.6	308.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	257.2	308.6	308.6	308.6	308.6	308.6

Estimate of any current year (FY2004) cost: 308.6

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

The amount requested in this fiscal note is the same amount proposed to be reduced from the court's base budget. This is not new money, it represents funds that has been in the court's base budget since FY02. The FY 05 savings is less than later years because the first judge currently scheduled to retire will end his service effective 8/31/04, which leaves be only 10 months savings for FY 05.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
Division Alaska Court System Date/Time 3/9/04 7:29 AM
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 3/9/2004
Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: HB 451
(H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Therapeutic Courts BRU Alaska Court System
Sponsor House Rules Component Trial Courts
Requester Alaska Court System Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	308.6	308.6	308.6	308.6	308.6	308.6
Tra. '1						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	308.6	308.6	308.6	308.6	308.6	308.6

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	308.6	308.6	308.6	308.6	308.6	303.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	308.6	308.6	308.6	308.6	308.6	308.6

Estimate of any current year (FY2004) cost: 308.6
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal: X

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

The amount requested in this fiscal note is the same amount proposed to be reduced from the court's base budget. This is not new money, it represents funds that has been in the court's base budget since FY02.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
Division: Alaska Court System Date/Time 2/20/04 9:04 AM
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/20/2004
Agency: Alaska Court System

Sponsor Statement
HB 451
Alaska Court System
2/19/04

HB 451 extends the termination dates for two pilot therapeutic court programs until after a planned study of those courts has been completed and reviewed by the legislature. The bill also removes a sunset clause on the Anchorage superior court judge position that was added, in part, to administer one of those therapeutic courts.

In 2001 the legislature passed HB 172, which established felony-level therapeutic courts in Anchorage and Bethel. Each court was set up as a pilot program scheduled to run for three years. The Anchorage court admits those with a felony conviction for driving under the influence of an alcoholic beverage, inhalant, or controlled substance (DUI). The Bethel court admits those convicted of either felony DUI or certain felony drug offenses. The findings section of HB 172 explained the purposes of these courts:

The purposes of therapeutic courts are lasting sobriety of offenders, protection of society from alcohol-related and drug-related crime, prompt payment of restitution to victims of crimes, effective interaction and use of resources among criminal justice and community agencies, and long-term reduction of costs relating to arrest, trial, and incarceration.

In order to determine the effectiveness of these courts the Judicial Council was charged with evaluating them and publishing a study for legislative review. Unfortunately, both the Anchorage and Bethel programs sunset long before the evaluation is scheduled to be completed and, because the report is to be published in July, many months more before the legislature has an opportunity to review that evaluation. If the legislature looks at the evaluation study and decides that the programs should continue, it will be too late; both programs would have ended more than a year earlier.

In order to fix this problem, HB 451 extends the termination date of the pilot programs until after the legislature has had an opportunity to review their effectiveness.

House Bill 451 also removes a sunset clause in HB 172 that will terminate the Anchorage superior court judge position that was added by that bill. The new judge was necessary not only to do the work of the therapeutic court but also to help absorb the growing felony caseload in Anchorage. The sunset clause will take effect this summer at the same time the therapeutic court program is scheduled to end. Not only will that mean the end of the felony therapeutic court, it will also mean that Anchorage will have one less judge for other superior court work. The therapeutic court judge in Anchorage spends most of her time on general superior court work unrelated to therapeutic court cases. If we lose the judicial position it will impact all superior court cases in Anchorage.

The loss of a superior court judge in Anchorage will return us to the number of judges initially established in 1984. Since that time the felony caseload in Anchorage has increased approximately 100%. We simply cannot afford to lose a superior court position in Anchorage and to return to a level of judicial coverage that was appropriate 20 years ago.

Thank you for your consideration of this bill.

HB

451

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 04/16/04

FURTHER:

REPORTED OUT
MAY 13 2004
SENATE FINANCE
COMMITTEE

DATE TURNED IN TO OFFICE: 3 May 2004

Finance Committee considered

HOUSE BILL NO. 451

HB 451 THERAPEUTIC COURTS

"An Act relating to therapeutic courts; and providing for an effective date."

and recommends:

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

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Admin	3/1/04			✓	#1
Corrections	2/1/04			✓	#2
DHSS	2/1/04			✓	#3
Law	2/1/04			✓	#4
Court	3/1/04	257.2			#6

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Frank Dixon</i>	✓			
<i>Ben Steinhilber</i>	✗			
<i>(U) Bland</i>	✓			
COCHAIR: <i>Lyle Green</i>	✓			
COCHAIR: <i>Sam Hill</i>	✓			

MAY 03 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 451
(H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act relating to therapeutic courts BRU Legal and Advocacy Services
Component Public Defender Agency
Sponsor House Rules
Requester (H) Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
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 (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
This bill would continue the two pilot therapeutic courts in Bethel and Anchorage, and continue the Anchorage judge position. This bill should not have any further fiscal impact on the operations of the Public Defender Agency.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
Division Public Defender Agency Date/Time 3/1/04 12:00 AM
Approved by: Mike Miller, Commissioner Date _____
Agency Administration

MAY 03 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 451
(H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
Title "An Act relating to therapeutic courts..." RDU Probation & Parole
Component: _____
Sponsor Rules by Request Component No. _____
Requester House Judiciary Finance

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0				
Travel	0.0	0.0				
Contractual	0.0	0.0				
Supplies	0.0	0.0				
Equipment	0.0	0.0				
Land & Structures	0.0	0.0				
Grants & Claims	0.0	0.0				
Miscellaneous	0.0	0.0				
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	0	0				
Part-time	0	0				
Temporary	0	0				

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation would extend the pilot project for therapeutic courts that was originally established through HB172 in FY2002. Passage of this legislation would have no fiscal impact to the Department of Corrections. Positions and funding were received in FY2002 which would be maintained within the Department's FY2006 Operating Base.

The pilot project established therapeutic courts in Anchorage and Bethel to handle alcohol and drug addicted offenders. The stated purpose of therapeutic courts are lasting sobriety of offenders, protection of society from alcohol related and drug related crimes, prompt payment of restitution to victims of crimes,

(continued)

Prepared by: Jerry D. Burnett, Director Phone (907) 465-3339
Division: Administrative Services Date/Time 2/27/04 4:03 PM
Approved by: Portia C.K. Parker, Deputy Commissioner Date 2/27/2004
Agency: Department of Corrections

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB 451

ANALYSIS CONTINUATION

(continued)

effective interactions and use of resources among criminal justice and community agencies, and hopefully, a long-term reduction in costs relating to arrest, trial and incarceration.

House Bill 451 will extend the program through FY2006. This bill proposes to allow for the pilot program to continue in FY2006 at the current funding level while the legislature reviews the evaluation of services and determines an appropriate course of action.

MAY 03 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: HB 451
(H) Publish Date: 3/3/04

Revision Date/Time (Note if correction):
Title RELATING TO THERAPEUTIC COURTS

Dept. Affected: Health & Social Services
RDU Behavioral Health
Component Behavioral Health Grants

Sponsor (RL) BY REQUEST

Requester HOUSE (JUD)

Component No. 2669

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill extends the pilot project for therapeutic courts that was originally established in through HB 172 for FY2002. The pilot project established therapeutic courts in Anchorage and Bethel to handle alcohol and drug-addicted offenders. The purposes of the courts are lasting sobriety of offenders, protection of society from alcohol-related and drug related crime, prompt payment of restitution to victims of crimes, effective interaction and use of resources among criminal justice and community agencies, and long-term reduction of costs relating to arrest, trial, and incarceration.

Continued on next page -

Prepared by: Shawnda Brooks

Phone 907-465-3167

Division: Behavioral Health

Date/Time _____

Approved by: Joel S. Gilbertson, Commissioner

Date 02/26/2004

Agency: Department of Health and Social Services

FISCAL NOTE
FN 3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB 451

ANALYSIS CONTINUATION

House Bill 451 will extend the program through FY2006. A break in the service being provided as a result of the programs' scheduled conclusion in FY04 and FY05 would result in a delay in services and inefficiencies. This bill proposes to allow for the pilot program to continue in FY06 at the current funding level while the legislature reviews the evaluation of services and determines an appropriate course of action.

Funding for this program is in the Governor's FY2005 budget.

FISCAL NOTE

REPORTED OUT
MAY 03 2004
SENATE FINANCE
COMMITTEE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: HB 451
 (H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to therapeutic courts; and providing RDU CRIMINAL
for an effective date." Component Third Judicial District
 Sponsor House Rules Committee
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill extends the pilot programs for therapeutic courts established in Anchorage and Bethel for alcohol- and drug-addicted offenders out to June 30, 2006. The criminal division was appropriated \$198.9 beginning in FY 2002 for the therapeutic court pilot. Additional funds will not be needed as a result of the date extension.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division: Administrative Services Date/Time 2/29/04 2:25 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/29/2004
 Agency: Department of Law

FISCAL NOTE

REPORTED OUT
MAY 03 2004
SENATE FINANCE
COMMITTEE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 6
Bill Version: HB 451
(H) Publish Date: 3/12/04

Revision Date/Time: Revised 3/9/04
Title: Therapeutic Courts BRU: Alaska Court System
Component: Trial Courts
Sponsor: House Rules
Requester: Alaska Court System Component No.: 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	257.2	308.6	308.6	308.6	308.6	308.6
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	257.2	308.6	308.6	308.6	308.6	308.6

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts						
1003 GF Match						
1004 GF	257.2	308.6	308.6	308.6	308.6	308.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	257.2	308.6	308.6	308.6	308.6	308.6

Estimate of any current year (FY2004) cost: 308.6
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)
The amount requested in this fiscal note is the same amount proposed to be reduced from the court's base budget. This is not new money, it represents funds that has been in the court's base budget since FY02. The FY 05 savings is less than later years because the first judge currently scheduled to retire will end his service effective 8/31/04, which leaves be only 10 months savings for FY 05.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
Division: Alaska Court System Date/Time 3/9/04 7:29 AM
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 3/9/2004
Agency: Alaska Court System

Sponsor Statement
HB 451
Alaska Court System
2/19/04

HB 451 extends the termination dates for two pilot therapeutic court programs until after a planned study of those courts has been completed and reviewed by the legislature. The bill also removes a sunset clause on the Anchorage superior court judge position that was added, in part, to administer one of those therapeutic courts.

In 2001 the legislature passed HB 172, which established felony-level therapeutic courts in Anchorage and Bethel. Each court was set up as a pilot program scheduled to run for three years. The Anchorage court admits those with a felony conviction for driving under the influence of an alcoholic beverage, inhalant, or controlled substance (DUI). The Bethel court admits those convicted of either felony DUI or certain felony drug offenses. The findings section of HB 172 explained the purposes of these courts:

The purposes of therapeutic courts are lasting sobriety of offenders, protection of society from alcohol-related and drug-related crime, prompt payment of restitution to victims of crimes, effective interaction and use of resources among criminal justice and community agencies, and long-term reduction of costs relating to arrest, trial, and incarceration.

In order to determine the effectiveness of these courts the Judicial Council was charged with evaluating them and publishing a study for legislative review. Unfortunately, both the Anchorage and Bethel programs sunset long before the evaluation is scheduled to be completed and, because the report is to be published in July, many months more before the legislature has an opportunity to review that evaluation. If the legislature looks at the evaluation study and decides that the programs should continue, it will be too late; both programs would have ended more than a year earlier.

In order to fix this problem, HB 451 extends the termination date of the pilot programs until after the legislature has had an opportunity to review their effectiveness.

House Bill 451 also removes a sunset clause in HB 172 that will terminate the Anchorage superior court judge position that was added by that bill. The new judge was necessary not only to do the work of the therapeutic court but also to help absorb the growing felony caseload in Anchorage. The sunset clause will take effect this summer at the same time the therapeutic court program is scheduled to end. Not only will that mean the end of the felony therapeutic court, it will also mean that Anchorage will have one less judge for other superior court work. The therapeutic court judge in Anchorage spends most of her time on general superior court work unrelated to therapeutic court cases. If we lose the judicial position it will impact all superior court cases in Anchorage.

The loss of a superior court judge in Anchorage will return us to the number of judges initially established in 1984. Since that time the felony caseload in Anchorage has increased approximately 100%. We simply cannot afford to lose a superior court position in Anchorage and to return to a level of judicial coverage that was appropriate 20 years ago.

Thank you for your consideration of this bill.

MEMORANDUM

ALASKA COURT SYSTEM

Telephone: (907) 264-8265
Facsimile: (907) 264-8291

TO: Senator Gary Wilken
Co-Chair Senate Finance Committee

FROM: Doug Wooliver
Administrative Attorney
Alaska Court System

DATE: May 2, 2004

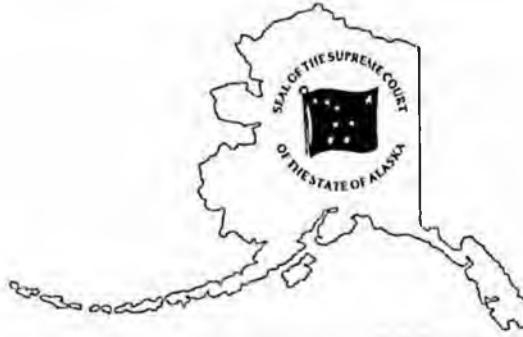
RE: Fiscal Note for HB 451

Section 2 of HB 451 deletes the sunset clause on a superior court judge position that was added to the Anchorage bench in 2001. The deletion of that sunset clause means that the costs associated with that position will remain in the court's budget.

Although passage of HB 451 will not require any new funds (the costs have been in our budget since 2001), the House Finance Committee asked that the court system submit a fiscal note that reflects the ongoing costs of the judicial position. The committee then removed the same amount from our budget. If HB 451 fails to pass the legislature then the house budget already reflects the decrement associated with the loss of a superior court judge. If HB 451 passes then the costs of that position will be funded through the fiscal note.

In contrast, the Senate's budget for the court system already contains the ongoing costs for this judge so no fiscal note is needed.

What this means will depend on whether HB 451 passes and whether the conference committee on the operating budget adopts the house or the senate numbers for the court system. However, should HB 451 pass and should the conference committee adopt the senate numbers then the fiscal note for HB 451 will be zero.



ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

Doug Wooliver
Administrative Attorney

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8265
FAX (907) 264-8291

April 19, 2004

The Honorable Gary Wilken
Co-Chair, Senate Finance Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Wilken:

The Alaska Court System respectfully requests that you schedule HB 451 for a hearing before the Senate Finance Committee at your earliest convenience.

House Bill 451 was introduced at the request of the court system to delay the termination dates of two pilot therapeutic court programs in Anchorage and Bethel. Those felony-level courts were established in 2001 through the passage of HB 172. They are each scheduled to run for three years, after which the Judicial Council is to evaluate the programs and publish a study for the court and the legislature to review. Unfortunately, because of the timing of the report, both programs will end more than a year before the legislature has an opportunity to decide whether they should continue. In order to fix this problem, HB 451 extends the termination date of the HB 172-courts until after the legislature has had the opportunity to evaluate their effectiveness.

Additionally, HB 451 deletes a sunset clause that was placed on the Anchorage superior court judge position that was added by HB 172. The new judge was necessary not only to do the work of the therapeutic court but also to help absorb the growing felony caseload in Anchorage. The sunset clause will take effect this summer at the same time the therapeutic court program is scheduled to end. Not only will that mean the end of the felony therapeutic court, it will also mean that Anchorage will have one less judge for other superior court work. The therapeutic court judge in Anchorage spends most of her time on general superior court work unrelated to therapeutic court cases. If we lose the judicial position it will impact all superior court cases in Anchorage.

Thank you for your consideration of this bill.

Sincerely,



Doug Wooliver

SENATE COMMITTEE REPORT

DATE: 3/24/04

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 4/16/04

Judiciary Committee considered

HOUSE BILL NO. 451

HB 451 THERAPEUTIC COURTS

"An Act relating to therapeutic courts; and providing for an effective date."

and recommends:

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

Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
ADM	3/1			✓	1
COR	2/27			✓	2
HSS	2/26			✓	3
LAW	2/29			✓	4
CRT	3/9	✓			6

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
French <i>[Signature]</i>	✓			
Ogan <i>[Signature]</i>	✓			
Therriault <i>[Signature]</i>	✓			
CHAIR: <i>[Signature]</i>	✓			

French
Ogan
Therriault

Seckens

HB

452

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 452(L&C)
(H) Publish Date: 3/22/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish & Game
Title: Guided Sport Fishing RDU: Sport Fisheries
Component: Sport Fisheries
Sponsor: Representative Heinze
Requester: House Labor and Commerce Component No. 464

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	246.8	246.8	246.8	246.8	246.8	246.8
Travel	10.0	10.0	10.0	10.0	10.0	10.0
Contractual	65.0	65.0	65.0	65.0	65.0	65.0
Supplies	6.5	6.5	6.5	6.5	6.5	6.5
Equipment	17.3	5.0	5.0	5.0	5.0	5.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	345.6	333.3	333.3	333.3	333.3	333.3

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (1024)	355.6	359.1	362.7	366.4	370.0	373.7
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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 (Fish and Game Fund)	345.6	333.3	333.3	333.3	333.3	333.3
TOTAL	345.6	333.3	333.3	333.3	333.3	333.3

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	4	4	4	4	4	4
Part-time	1	1	1	1	1	1
Temporary						

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

The operating expenditures reflect the hiring of four new full-time employees and one new part-time employee necessary to collect and process the data generated annually from licenses sold and reporting requirements. Other expenses associated with the issuing of licenses and collection of data include office supplies, computers, and postage. We assume higher costs in the first year of implementation due to the a-time purchase of equipment such as computers.

We have assumed that the revenues generated by passage of this legislation will increase roughly 1% each year as the number of guides and operators increases from year to year.

(Continued on Page 2)

Prepared by: Kelly Hepler, Director
Division: Sport Fish
Approved by: Commissioner Kevin Duffy
Agency: Alaska Department of Fish & Game

Phone: 267-2195
Date/Time: 3/16/04 2:31 PM
Date: 3/16/2004

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 452(L&C)

ANALYSIS CONTINUATION

Revenues generated by the sale of licenses will be deposited into the Fish and Game Fund and will be used to issue licenses and collect information per the reporting requirements stipulated by the proposed law.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 452(JUD)
(H) Publish Date: 4/5/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title Act relating to lic. and reg. of sport fishing operators RDU Alaska State Troopers
Component Alaska Bureau of Wildlife Enforcement
Sponsor Rep. Heinze
Requester (H) Judiciary Component No. 2746

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 ()						
------------------------	--	--	--	--	--	--

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 (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 452(JUD) relates to licensing and regulation of sport fishing services operators and fishing guides. Certain provisions of the bill will allow Wildlife Enforcement Troopers to check additional documents during the course of contact with fishing guides, but such activity will occur in the normal course of business.

Section 2 of this proposal would allow the Department of Public Safety access for law enforcement purposes to records maintained by the Alaska Department of Fish & Game to facilitate more timely and complete investigations.

No fiscal impact is anticipated to the Alaska State Troopers as a result of passage of this bill.

Prepared by: Lt. Al Storey Phone 907-269-4532
Division Alaska State Troopers Date/Time 4/1/04 8:42 AM
Approved by: Commissioner William Tandeske Date 4/1/2004
Agency Department of Public Safety

THE
FOLLOWING
DOCUMENT(S)
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ORIGINAL
COPIES

Adopted
4.14.04

23-LS1619S.1
Utermohle
4/1/04

AMENDMENT |

OFFERED IN THE HOUSE
TO: CSHB 452(JUD)

BY REPRESENTATIVE HEINZE

1 Page 6, line 16, following "board.":

2 Insert "The department and the board may adopt by regulation requirements for timely
3 submission of reports required under this section or under regulations adopted by the
4 department or board."

5

6 Page 6, line 31, following "AS 16.40.270(e)":

7 Insert "or who knowingly fails to comply with a requirement for timely submission of
8 reports required by a regulation adopted under AS 16.40.280(b)"

Alaska State Legislature



Representative Cheryll Heinze Sponsor Statement HB 452

“An Act relating to licensing and regulation of sport fishing operators and sport fishing guides; authorizing the Department of Fish and Game and the Alaska Commercial Fisheries Entry Commission to release records and reports to the Department of Natural Resources; and providing for an effective date.”

Currently Alaska lacks a unified set of standards for sport fish guiding. This makes it difficult to protect fish habitats and ensure the maximum utilization of Alaska's resources. HB 452 is intended to legitimize and protect the sport fishing industry by establishing professional standards and ensuring accurate reporting of guiding activity throughout the state. This legislation will enhance public confidence in the guided sport fishery and the data upon which management decisions are made. HB 452 will establish licensing and reporting requirements for businesses and guides providing sport fishing guide services in fresh and salt waters of Alaska.

The bill establishes two types of licenses: a sport fishing services operator license and a fishing guide license, and establishes minimum requirements and fees for obtaining each license. Under the provisions of the bill, sport fishing service operators must meet licensing, insurance, and other requirements established by the Board of Fisheries. It requires that fishing guides operate under the authority of a sport fishing service operator license, either by holding that license themselves or by being employed by, or under contract with, a holder of a fishing service operator license. The bill also requires that the licensed guide be certified in first aid, have applicable U.S. Coast Guard vessel licenses, and meet other requirements adopted by the Board of Fisheries.

HB 452 establishes reporting requirements, including where guided sport fishing activities are conducted and the quantity of fish harvested. The bill ensures that sensitive information will be kept confidential. I urge you to support this bill.



Alaska State Legislature

Please enter into the record my testimony to the ___House Finance

Committee on _____HB452_____, dated 041404_____

House Finance - HB 452
Representative Williams

I agreed to send you a copy of my comments on HB 452 during the House Finance Hearings from April 14, 2004, 1:30pm so here they are. I was very disappointed at the way Chairman Williams handled the hearing.

I do not believe that I was the only person prevented from speaking on HB 452.

I was also very disappointed by Representative Heinze's performance at this hearing.
Representative_Cheryl_Heinze@legis.state.ak.us

Representative Heinze did not tell the truth about her "not hearing any opposition to her HB 452 Bill". I have been talking to her in opposition to her Bill for months.

She appears to desire to forge the fact that there is opposition out there.

She was very lucky the Chair cancelled HB 452 public testimony because we would have disputed most of what she attempted to convince the committee of.

I do not know why the Alaska Outdoor Council has opposition to HB 452 but my reasons are listed below.

Regardless, Representative Heinze did not tell the committee the truth, I have sent her many letters of opposition and she has also responded so I know she received my letters. I guess she believes she can prevent the opposition from speaking on her Bill. Representative Williams did help her out greatly when he cancelled the HB 452 public testimony.

I was told by the teleconference people at [1 800 395 5073] that there were many persons waiting to testify but apparently the Chair decided to pass the Bill out of committee without hearing from them. I believe HB 452 is a bad idea and that many persons would have told her that if the Chair would have allowed it.

I would like a new HB 452 House Finance Hearing, one which allows the public to speak and Representatives Heinze to tell the truth.

GUIDED SPORT FISH ANGLERS ARE NOT "management tools".

Guided sport fish anglers are not "management tools" to be manipulated at will by the government. The trust fisheries rights which were conferred on resident Alaskans were given so that similarly situated residents could fish together without neighbor vs neighbor discrimination. Creating similarly situated (sub classes) within the general sport fish class creates illegal exclusive fishing rights. I claim that Sec. 16.05.251(e). attempts to grant nonguided anglers these illegal exclusive fishing rights over guided anglers.

HB 452 seeks to build additional violations on top of the 251(e). violation.

It is unconstitutional to create regulations designed to establish exclusive fishing rights between similarly situated residents. Guided and nonguided anglers do everything the same and they do it at the same time and in the same place therefore they are similarly situated and fully protected by the Alaskan Constitution.

For this reason I believe that Sec. 16.05.251(e). is unconstitutional.

I believe 251(e). attempts to circumvent Article 8, Sec. 3, Common Use and Sec.17. Uniform Application. I therefore believe it to be very unwise to draft any legislation (including HB 452) which is based on 251(e).

I have formed these conclusions from my personal legal research and also the research of my attorney Charles E. Tulin.

I have been asking people for sometime now if they believe that the Alaskan Constitution requires common use within its trust fisheries? Many will say yes but very few will say that it does UNLESS someone figures out a way to increase "professionalism".

Some people do believe HB 452 would create "professionalism" within the guide industry and I have to admit that sounds pretty good attached to just about any subject except when violating the Alaska Constitution.

I believe that Alaska law designed only for the sake of reducing professional User access to Alaska trust fisheries, while private access is allowed, is completely unconstitutional.

I see HB 452 and Sec. 16.05.251(e). are backdoor attempts to prevent resident Alaskans from being able to professionally access Alaska's trust fishery resources while allowing private access.

You may be able to place many totally legal regulations on the general sport fish Use but when you attempt to break the sport fish Use into two separate Uses, (guided & nonguided) you have activated Alaska Fisheries Trust Law.

Alaska trust law brings Constitution Common Use & Uniform Application Clauses into play.

This all comes down to the state attempting to prove that a guided angler somehow does something different from a nonguided angler. I claim that this cannot be legally proved and eventually the Alaska Courts will rule that it cannot be justified and is therefore not Constitutional.

Many people are not aware that most of HB 452 proposed restrictions came from the Kenai River. We never really had safety or business licenses problems but we still got these requirements anyway.

The Kenai River did spawned most of HB 452 and if it becomes law, Kenai River guides would basically have very little to do to comply with it because they basically already have.

Kenai guides would only need to file a couple forms and pay the additional fees.

I am a Kenai River fishing guided and have been meeting these HB 452 type requirements many years.

I have never seen a need to give anyone first aid or ever observed HB 452 type problems on any cr.

I have seen alcohol problems but we will never see alcohol screening by the U.S.C.G..

I have been guiding for 22 years in Alaska and I have never seen the need for these regulations but someday, somewhere it may come in handy. Is that the standard? "It could be handy once in your life"?

The Kenai River may have generated this "bureaucratic HB 452 maze" but that has done little for its Professional Guide Image.

Even if these requirements did result in professionalism or a better guided public image, that still would not justify the state straying from its fisheries trust duty.

In my opinion there is nothing constitutional about creating a guided sport fish Use. The real problem is that people are attempting to write sport fish "limited entry law" within vehicles like HB 452. These people have a very big problem with the Alaska Constitution. In my opinion these people will invest large amounts of effort just to have it all voided within a future Alaskan Constitutional Court decisions.

People may be able to make these kind of resource changes within subjects like land, timber or other natural resources but "wildlife, waters and fisheries" are Alaska trust resources and cannot be manipulated like this. It is not legal in Alaska.

If there is anyone out there who can prove that a guided angler is somehow not similarly situated to a nonguided angler, I wish they would please speak up? Alaska laws and regulations which govern how we use our trust natural resources must be applied equally to all Alaskans similarly situated with reference to the subject matter and purpose to be served by the law or regulation. Guided and nonguided anglers do everything the same and they do it side by side therefore they are similarly situated and fully protected by the Alaskan Constitution.

The Constitution of the State of Alaska

Adopted by the Constitutional Convention February 5, 1956

Ratified by the People of Alaska April 24, 1956

Became Operative with the Formal Proclamation of Statehood January 3, 1959

Article 8 - Natural Resources

§ 3. Common Use

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

§ 17. Uniform Application

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

AS 16.05.251, guided sport fish regulation.

Alaska Law

Sec. 16.05.251. Regulations of the Board of Fisheries.

(e) The Board of Fisheries may allocate fishery resources among personal use, sport, guided sport, and commercial fisheries. The board shall adopt criteria for the allocation of fishery resources and shall use

the criteria as appropriate to particular allocation decisions. The criteria may include factors such as

- (1) the history of each personal use, sport, guided sport, and commercial fishery;
- (2) the number of residents and nonresidents who have participated in each fishery in the past and the number of residents and nonresidents who can reasonably be expected to participate in the future;
- (3) the importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption;
- (4) the availability of alternative fisheries resources;
- (5) the importance of each fishery to the economy of the state;
- (6) the importance of each fishery to the economy of the region and local area in which the fishery is located;

(7) the importance of each fishery in providing recreational opportunities for residents and nonresidents.

Alaska Supreme Court

Owsichuk v. State, 763 P. 2d 488 [Alaska 1988]

"The state argues that [exclusive guided areas] do not deny Owsichuk common use of the wildlife resources because he, like any other member of the public, may hunt recreationally in these areas. We reject this argument. In CWC Fisheries v. Bunker, 755 P.2d 1115, 1121 n. 4 [Alaska 1998], we noted that the public trust doctrine guaranteed fishermen access to public resources for "private commercial purposes" as well as for recreation. The same rationale applies to professional hunting guides under the common use clause. The common use clause makes no distinction between use for personal purposes and use for professional purposes."

Don Johnson

Soldotna, Alaska

ccpwow@gci.net

By - Charles E. Tulin & Associates
Attorneys at Law

CONSTITUTIONALITY OF GUIDED FISHING REGULATIONS

This memorandum addresses the concerns of the Alaska Board of Fish in assuring the escapement of King Salmon up the Kenai River, thereby protecting the fish stock and future runs. All agree, and it is undisputed, that the board can adopt regulations and set policy [or make recommendations to the legislature] to meet escapement goals.

The question is how to assure required escapement by adopting regulations which comply with Alaska law and the Alaska State Constitution. Of more immediate concern to the Kenai River Professional Guides Association is the following:

"Can the Board restrict sport fishing guides and their clients in a manner different from the general public?"

The issue presented is the validity, under Article VIII of the Alaska Constitution, of various proposed fishing regulations [discussed herein] relating to guided sport fishing. For the reasons stated, it appears that many of these proposed regulations would be invalid, and would not survive a court challenge.

I. TEXT OF ARTICLE VIII PROVISIONS

Article VIII, Section 3 of the Constitution provides:

"Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

Article VIII, Section 15, provides:

"No exclusive right or special privilege of fishery shall be created or

authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State."

Article VIII, Section 17, provides:

"Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation."

The provisions of Article VIII "were intended to permit the broadest possible access to and use of state waters by the general public." *Wernberg v. State*, 516 P. 2d 1191, 1198-99 [1974], *reg'g denied*, 519 P. 2d 801 [Alaska 1974].

II. CHALLENGE UNDER SECTION 3 [COMMON USE] AND SECTION 15 [EXCLUSIVE RIGHT]

Since the jurisprudence surrounding these sections overlap considerably, they will be treated together. It appears that the proposed regulations involved are invalid under these provisions. Section 15 does allow differential treatment of different groups of users. In *Kenai Pen. Fisherman's Co-op v. State*, 628 P. 2d 897 [Alaska 1981], the Alaska Supreme Court upheld a regulation differentiating between sport and commercial fishermen:

" While section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sports, and subsistence fishermen. To conclude that, because a certain species is made available for sport fishing in a given area, commercial fishing of the same species in the same area must also be allowed, would be to go far beyond the purpose of the section."

Id. at 904.

While decided under the 1924 White Act, and not under the Constitutional Provisions referred to above, *Hynes v. Grimes Packing Co.*, 165 F.2d 323 [9th Cir. 1947], vacated on other grounds, 337 US 86 [1949], is instructive, as it was cited with approval in *Kenai*, 628 P.2d 897, 904 n 17 and in *McDowell v. State*, 785 P.2d 1, 7 [Alaska 1989]. *Hynes* involved the validity of certain exclusive fishing rights granted to certain Native Alaskans. The White Act, like Section 15 of the Constitution, provided that "no exclusive or several right of fishery shall be granted. . ." 165 F.2d at 330. The Ninth Circuit held that this provision did "not permit a monopoly of fishing in these Indian citizens as a conservation measure."

The proponents of the exclusive grants had argued that the grants were valid arguing that "the licensee who share in the monopoly so may be limited because the balance between catch and reproduction of salmon is better maintained." *Id.* at 330

The Ninth Circuit rather summarily disposed of this argument by citing the above-quoted provision of the White Act.

Hynes, given the fact that it was cited with approval in Kenai and McDowell, seems particularly apt to the instant case. It may very well be that the Board of Fisheries may promulgate regulations to promote legitimate conservation interests. But Hynes seems to stand for the proposition that the State may not differentiate between users merely upon the ground that the non-favored user stands to receive a commercial advantage by use of the resource.

McDowell v. State, 785 P. 2d 1 [Alaska 1989] struck down, under the above-quoted provisions of Article VIII, preferences for subsistence fishing prevised partly upon being "a resident domiciled in a rural area of the state." Id. A group of subsistence fishermen, not domiciled in rural areas, challenged the preference. Its rationale seems somewhat apt to the instant situation:

"As noted above, the state seeks to distinguish Hynes on the ground that Hynes involved a closed class of recipients of a special privilege, whereas the 1986 subsistence law does not because anyone who wants to hunt and fish for subsistence purposes can move to a rural area. We find this argument unpersuasive. If it were valid, virtually any discrimination based upon residence would be justified--the residents of the disfavored area could simply move." Id. at 7.

While the instant situation does not involve residence, this language of McDowell is instructive. In the instant situation, the class which may be discriminated against are the fishermen being guided who lack either the expertise as fishermen or the boats and other equipment necessary to engage in the sport. It is indeed true that [if restrictive regulations were passed] guided fishermen would not be banned from the sport of fishing: They could simply be told to acquire more expertise and their own equipment, in which case the services of a guide would be unnecessary. But this seems to be indistinguishable from the implied command in McDowell, where the restricted users were told that they simply needed to move to a rural area. In either case, as a practical matter, a certain group of users is restricted. Such a result is unconstitutional.

This reasoning gains support from Owsichuk v. State, 763 P. 2d 488 [Alaska 1988], a case involving hunting guides. Without the services of a guide, many individuals would be denied access to sport hunting and fishing. And public access to Alaska's natural resources is the paramount policy of Article VIII of the Constitution. As the Court stated in Owsichuk:

"[In previous cases,] we have indicated an intent to apply the common use clause in a way that strongly protects public access to natural resources. First, with respect to article VIII generally, we have written, "A careful reading of the constitutional minutes establishes that the provisions in article VIII were intended to permit the broadest possible access to and use of state waters by the general public."

Id. at 492.

Since [under proposed regulations] individual sport fishermen who lack skill and equipment and require a guide would be precluded from

participation in sport fishing on certain days or certain days or between certain hours, public access is greatly restricted by differentiating between sport fishermen and guided sport fishermen.

While it did not explicitly so hold, it appears that Owsichuk is supportive of a sportsman's right to the common use of resources while guided. The court states:

" The state argues that [exclusive guided areas] do not deny Owsichuk common use of the wildlife resources because he, like any other member of the public, may hunt recreationally in these areas. We reject this argument. In *CWC Fisheries v. Bunker*, 755 P.2d 1115, 1121 n. 4 [Alaska 1998], we noted that the public trust doctrine guaranteed fishermen access to public resources for "private commercial purposes" as well as for recreation. The same rationale applies to professional hunting guides under the common use clause. The common use clause makes no distinction between use for personal purposes and use for professional purposes."

Id. at 497.

The Court also noted in a footnote:

" The work of a guide is so closely tied to hunting and taking wildlife that there is no meaningful basis for distinguishing between the rights of a guide and the rights of a hunter under the common use clause."

Id. at 497 n. 15.

The Alaska Supreme Court has made clear that regulation of the "means or method" of taking fish is valid [assuming, of course, that the regulation promotes the ideals of conservation and sustainability mandated by the constitution], whereas restrictions placed upon a particular class of users are invalid. For example, in *Alaska Fish Spotters v. State*, 838 P. 2d 798 [Alaska 1992], the Court held valid a prohibition against airborne spotters. It held this prohibition valid in that it applied "equally to all persons in the state," but prohibited only the use of a certain "tool" [i.e. aircraft]. Id. at 802.

" The Court did acknowledge that by banning this "tool", a certain group of users would necessarily be restricted. "Although applying equally to all persons in the state, each ban directly affected only a small number of people who had previously used the banned tool. Each ban precluded a preferred use of the fisheries resource. However, neither precluded all uses of the resource." Id. at 802.

The Court catalogued a number of restrictions which, like aircraft, would clearly come within the "tool" category: For example, it cited regulations relating to the size of boats in certain operations, the use of explosives or poisons, the use of seine drums or reels, the use of certain monofilament seines, and the use of artificial lights. Id. at 802

The Court in *Alaska Fish Spotters* upheld the ban against the use of aircraft because the aircraft were clearly another "tool" such as those previously listed. In other words, while the regulation did discriminate against a certain class of users [i.e. persons employed as fish spotters], this claim of discrimination arose only incidentally from a permissible discrimination against a certain class of tools [i.e. the aircraft being

operated by those spotters].

In the situation before us, the Board of Fisheries is clearly cognizant of its need to regulate "means or method" of taking fish. At least one Board member attempted to find some "means or method" which could be regulated. For example, he questioned whether fishing could be restricted from boats bearing commercial licenses [since presumably a commercial guide's boat bears such a license]. While these ideas were apparently rejected, this evidence does indicate that the Board is searching, perhaps in vain, for a "means or method" which could be regulated.

III. CHALLENGE UNDER SECTION 17 (UNIFORM APPLICATION)

Under Section 17's uniform application clause, the "means used to further the important state interest [i.e. conservation and sustainability] must be carefully drawn and designed for the " least possible infringement on article VIII's open access values." *Gilbert v. State Dept. of Fish and Game*, 803 P. 2d 391 [Alaska 1990].

In order to prevail in a challenge under Section 17, the State must show that sport fishermen and guided sport fishermen are not "similarly situated." In analyzing this issue, the Court has looked primarily at a regulation's necessity in relation to natural resource issues. For example, in upholding a regulation differentiating between two fisheries in *Gilbert*, the court noted the natural differences between the two fisheries, the size of the populations, and traditional harvest levels. Distinctions between users [as opposed to naturally occurring distinctions between resources] were apparently given little consideration.

The application of the Common-Use clause, Article VIII, Section 3, to guided hunting was before the Supreme Court in *Owsichek v. State, Guide Licensing and Control Board*, 763 P. 2d 488 [Alaska 1988]. Even though *Owsichek* involved hunting, and not fishing, the case is relevant to the instant case, as the court held that the same policies applies to both fish and wildlife. *Id.* at 492.

IV. OTHER OBSERVATIONS APPLICABLE TO THIS CASE

The various quoted provisions of Article VIII are somewhat overlapping. Taken together, they might be summarized as follows:

1. In general, the state may not discriminate arbitrarily against a particular class of users.
2. The state may, however, in order to carry out the policies of conservation and sustainability, discriminate against particular methods and means of taking fish and wildlife.

In this situation, it is clear that the State would argue that it is only discriminating against a particular method or means: Taking fish or wildlife with the assistance of a commercial guide. I believe, however, that this argument would fail.

The State cannot point to any particular "tool" that is being used, other than the guide himself or herself. It should be noted, however, that this "tool" is not really being banned by the regulations.

To see this, consider a hypothetical fishing party of two sport fishermen,