

**ALASKA LEGISLATURE**

**2754**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004**

### **Benefits of CQEs:**

- CQEs improve the economic viability of these communities through local control of fishing privileges.
- The majority of the 42 eligible communities in the proposed rule have experienced an out-migration of quota resulting in a significant decline in the number of quota shares held by local residents. The amendment should provide these communities with a mechanism to reverse the trend and this legislation will provide essential funding for the program.
- CQEs will provide additional employment opportunities for residents, help diversify fishing operations from salmon to halibut and sablefish, and increase efficiency by using existing salmon infrastructure such as vessels, processing plant and cold storage facilities.

### **Impact of the CQE legislation on Financial Services**

- This legislation will not adversely impact private sector lenders. Section one of the bill requires that loans may be made only if the applicant is not eligible or qualified for financing from other recognized commercial lending institutions. This same requirement is already contained in the Commercial Fishing Revolving Loan Fund (CFRLF) statute for loans made to individuals to purchase quota shares.
- The CFRLF has adequate cash flow to handle anticipated loan demand. The Department of Community and Economic Development (Department) expects the program to phase in over a period of several years as communities form CQE's, establish a capital base necessary to meet down payment requirements and locate quota shares to purchase.
- The Department will amend the CFRLF regulations (3 AAC 80.055 (a)) to ensure that if total loan demand for the program ever exceeds the amount of capital available for loans that applications submitted by individuals to purchase limited entry permits, vessels, gear, or quota shares will be processed first.
- There will be no additional administrative costs associated with this proposal. The Department will use existing staff, expertise and infrastructure to handle CQE loans requests.

*April 15, 2004*

**HB554/SB387**  
**Commercial Fishing Loans for Quota Shares**  
**Eligible Communities**

There are 42 Communities with 13,030 residents that were determined by the National Marine Fisheries Services to eligible for the program. These communities are listed according to the halibut regulatory areas as follows:

**Area 2C**  
**8,119 Residents**

Angoon  
Coffman Cove  
Craig  
Edna Bay  
Elfin Cove  
Gustavus  
Hollis  
Hoonah  
Hydaburg  
Kake  
Kassan  
Klawock  
Metlakatla  
Meyers Chuck  
Pelican  
Point Baker  
Port Alexander  
Port Protection  
Tenakee Springs  
Thorne Bay  
Whale Pass

**Area 3A**  
**2,711 Residents**

Akhiok  
Chenega Bay  
Halibut Cove  
Karluk  
Larsen Bay  
Nanwalek  
Old Harbor  
Ouzinkie  
Port Graham  
Port Lions  
Seldovia  
Tatitlek  
Tyonek  
Yakutat

**Area 3B**  
**2,200 Residents**

Chignik  
Chignik Lagoon  
Chignik Lake  
Ivanof Bay  
King Cove  
Perryville  
Sand Point



## Amending the Halibut and Sablefish IFQ Program

### A New Opportunity for Gulf of Alaska Coastal Communities

Restricted Access Management (RAM) • Alaska Region, NOAA Fisheries (NMFS)

Phil Smith, RAM  
April 14, 2004

**Introduction:** Within the next week or so, the U.S. Secretary of Commerce will publish an amendment to the Alaska halibut and sablefish Individual Fishing Quota (IFQ) program. The purpose of the amendment is to provide new opportunities for coastal community residents to benefit from the IFQ program. The amendment will allow those communities to form non-profit corporations under Alaska law; the non-profits will gain eligibility to receive quota by transfer. Quota obtained by the non-profit on behalf of an eligible community will then be fished by a community resident.

**Background:** Under the halibut/sablefish IFQ program entry to the fisheries is limited to those who hold quota shares. Quota, which is transferable, was initially issued to persons who had a history of fishing during the late 1980s. Under existing rules, quota may only be transferred to those who received shares initially or to "IFQ Crewmembers" (i.e., individuals who can demonstrate that they have commercially fished for a minimum of 150 days).

Since the beginning of the program in 1995, a large amount of the quota initially issued to people living in smaller Gulf of Alaska communities has been voluntarily transferred to people living in larger communities. Although each quota holder made up his or her own mind to transfer the quota, the effect has been a decrease in quota in the community and this fact has raised concerns about the overall economic viability of these smaller communities.

To address this issue, the North Pacific Fishery Management Council (Council) devised a program to provide the opportunity for eligible communities to create non-profit corporations to collectively hold the quota on behalf of the community.

**Program Description:** Under the program, "eligible communities" are those that have fewer than 1,500 residents (2000 Census), that have a history in the fisheries, that are not on the road system, and that have been designated by the Council. There are currently 42 designated communities, including 21 in South-central and 21 in Southeast.

Each of these communities (or several communities working together) may form a non-profit corporation. Once formed, the non-profit will apply to NMFS for

authority to act on behalf of the community(ies). Upon approval of the application, the non-profit will be designated as a "Community Quota Entity" (CQE). Before approving the application, NMFS will provide it to the State (Department of Community and Economic Development) for review and comment.

Once designated, a CQE will be eligible to receive quota on behalf of the community(ies) it represents. It is anticipated that the CQE will buy the quota from the existing quota market (prices vary, but currently quota sells for around \$12/pound).

When the annual IFQ is issued, the CQE will lease it to fishers who are residents of the communities on whose behalf the CQE holds the quota.

Allocation of the fishing profits will be determined by contract between the CQE and the fisher; it is expected that some will be returned to the CQE to repay loans used to buy the quota and to expand the community's quota holdings.

**Other Program Elements:** To insure that CQEs don't force individual quota purchasers out of the market, there are strict caps on the amount of quota that may be held by a CQE on behalf of any eligible community, and there is also a cap on the aggregate quota that may be held by CQEs on behalf of all communities. Additionally, there is a limit on the number of halibut and sablefish "blocks" that can be held by CQEs. Finally, CQEs will be required to submit an Annual Report that details their experiences under the program (the Reports will be submitted to NMFS and the Council and will be public information).

**Conclusion:** It is important to note that this program does not allocate fish and it does not allocate money; instead, it allocates opportunity. To that end, we hope that the creativity and hard work of coastal residents will make the program a success.

**More Information:** We welcome questions about this important program. Please contact us as follows:

Restricted Access Management Program  
Alaska Region, NOAA Fisheries (NMFS)  
1-800-304-4846; or (in Juneau): 907-586-7344  
e-mail: RAM.Alaska@noaa.gov  
[www.fakr.noaa.gov/ram](http://www.fakr.noaa.gov/ram)



CENTRAL COUNCIL  
TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA  
ANDREW P. HOPE BUILDING  
320 West Willoughby Avenue • Suite 300  
Juneau, Alaska 99801-1726

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**Testimony Supporting SB 387**  
By: Don Bremner, Staff,  
T&H Central Council Business & Economic Development  
April 19, 2004

On Behalf of The S.E. Alaska Villages which Central Council represents we submit comment in support of SB 387.

Central Council Indian Tribes of Alaska has been working with the Southeast Alaska Intertribal Fish and Wildlife Commission; Communities and tribes of S.E. Alaska to accomplish the following in support of the Community IFQ Program;

1. Worked with the North Pacific Fisheries Management Council on behalf of all communities and tribes of S.E. Alaska to gain passage of the Community IFQ program.
2. Are working with all communities and tribes to educate them about the program and to gain support to form a Regional Halibut and Sable Fish Nonprofit Corporation to assist in implementing the IFQ program.
3. Worked with the RAM Division; and State Community and Economic Development Department to help develop awareness of the program in the S.E. Villages.
4. Numerous letters and documentation about the benefits of the IFQ program has been shared with each S.E. Alaska community and tribe through meetings; letters; faxes; phone calls and e-mails. (Main documents attachment I.)
5. Worked to gain our Congressional delegation support in coming up with Federal funding for the program.
6. Most recently Central Council Indian Tribes of Alaska General Assembly has passed a Resolution authorizing Central Council legal council to assist our Villages in drafting and filing the Nonprofit Articles of Incorporation and By-Laws, which once signed by the President and Tribal Secretary we will be able to move forward with meeting with our Tribal lawyers to accomplish the legal aspect of incorporation and be able to offer a Regional Nonprofit corporation entity to help implement this program. (Copy of Resolution attached II.)

Based upon our role of working with the North Pacific Fisheries Management Council; S.E. Communities; Tribes; Fishermen; Southeast Inter-tribal Fish and Wildlife Commission and State Department of Commerce and Economic Development Department, we believe that the Central Council Business and Economic Development Department is best positioned to assist the State with coordinating the implementation of this program in S.E. Alaska.

Central Council of Tlingit & Haida Indian Tribes of Alaska  
Sixty-Ninth General Assembly  
April 14-17, 2004  
Juneau, Alaska

Resolution 04-43

Title: **Support of Funding of Legal Formation for Community Purchase of Halibut and Sablefish Commercial IFQ Non-Profit Organizations**  
By: Tlingit Haida Indians of the City and Borough of Juneau

WHEREAS, communities throughout Alaska that are dependent on commercial halibut and sablefish fishing are in extreme economic distress due to fundamental, long term changes in the seafood markets, unprecedented low salmon prices and closure of many processing operations and the loss of most markets for Alaska fishermen; and

WHEREAS, the Alaskan fishing industry is facing a crisis of terrible proportion; and

WHEREAS, the loss of many processors has added to this crisis and created a situation in which it is physically impossible for the remaining Alaskan processors to commit to buying a vast majority of the fast approaching 2004 return; and

WHEREAS, many coastal communities are eligible to form Community IFQ's Nonprofit Corporations to purchase halibut and sablefish; and

WHEREAS, the NPFMC is drafting guidelines which determine eligible communities, appropriate ownership entities, Ownership caps on individual communities, Cumulative ownership caps, blocked and unblocked shares, vessel size restrictions, sale criteria, codes of conduct, administrative oversight, and sunset provisions important to our affected communities; and

WHEREAS, the opportunity to have the S.E. Alaska Coastal Communities benefit from such IFQ's is important to the economic survival of our Native villages;

NOW THEREFORE BE IT RESOLVED, that the Sixty-Ninth General Assembly of Central Council Tlingit and Haida Indian Tribes of Alaska convened in Juneau, Alaska on April 14-17, 2004 direct the Central Council President and Lawyers to work to draft and Incorporate a Regional S.E. Alaska Nonprofit Corporation to help our S.E. Villages benefit by these programs with any and all legal rights established under this program considered by the National Marine Fisheries Management Council.

ADOPTED this <sup>th</sup> 17 of April, 2004 by the Sixty-Ninth General Assembly of the Central Council of the Tlingit and Haida Indian Tribes of Alaska.

**GULF OF ALASKA COASTAL COMMUNITIES COALITION (GOAC<sup>3</sup>)**

P.O. Box 201236, Anchorage AK 99520

Phone: 907-561-7633 FAX: 907-561-7634

E-mail: [goaccc@alaska.net](mailto:goaccc@alaska.net)

[www.goac3.org](http://www.goac3.org)

DATE: May 2, 2004

TO: Representative John Harris, co-chair House Finance Committee  
Representative Bill Williams, co-chair House Finance Committee  
Representative Kevin Meyer, vice-chair  
Representative Mike Chenault  
Representative Hugh Fate  
Representative Richard Foster  
Representative Mike Hawker  
Representative Bill Stoltze  
Representative Eric Kroft  
Representative Reggie Joule  
Representative Cari Moses

RE: SB 387: An act authorizing the making of certain commercial fishing loans to eligible community quota entities for the purchase of certain fishing quota shares; and providing for an effective date.

Dear Representatives:

I am writing concerning the proposed legislation, Senate Bill 387, which has been recently introduced by Governor Frank Murkowski and approved by the Senate.

The Gulf of Alaska Coastal Communities Coalition (GOAC3) greatly appreciates the Governor's and other efforts in introducing a bill which will enable the pending CQEs (non-profit community quota entities) become eligible for specific commercial fishing loans through the Alaska Division of Investments.

CQEs will result from an amendment to the existing Halibut and Sablefish IFQ (Individual Fishing Quota) program which affects 42 eligible communities within the Gulf of Alaska. Amendment #66 is a program that the GOAC3 has promoted within the North Pacific Fisheries Management Council (NPFMC) since 1998.<sup>1</sup> It was approved by Council on April 10, 2002, and

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<sup>1</sup> The NPFMC web site on "Halibut issues" contains some of our white papers leading up to the passage of Amendment #66. The Council's own analysis under the EA/RIR for this issue details the economic impacts on communities. The GOAC3 has a member on the Council's Advisory Panel.

has subsequently been reviewed by the National Marine Fisheries Service (NMFS) and published in the *Federal Register* as a "Final Rule."<sup>2</sup> The effective date is June 1, 2004

The intent of Amendment #66 is to help neutralize some of the negative impacts of the 1995 implementation of the Halibut and Sablefish IFQ program. Research illustrated that many of our smaller communities in the Gulf of Alaska (less than 1500 in population and not connected to a larger community by a road system) lost a great amount of fishing opportunity and infrastructure because community fishermen did not qualify for initial issuance of quota share. Because the IFQ program was already in place, the Council felt their only option was to allow eligible GOA communities to form CQEs with the ability to *purchase* quota share as a qualified buyer.

Amendment #66 is a complex amendment to a complex program.<sup>3</sup> It has had numerous reviews by the Council and others, with many hours of public testimony. The GOAC3 feels that the final amendment is a positive opportunity with enough checks and balances built-in that we should all feel good about the protections it offers to each of our groups.

Why is Amendment #66 important to our smaller GOA communities and why is it important to the State of Alaska?

- It will provide an important opportunity to bring back lost fishing effort to smaller GOA coastal communities, which in turn provides increased revenue to the communities from harvesting, processing, jobs and infrastructure needs
- It will provide opportunity to keep revenue within the state
- It will provide opportunity to expand fisheries initiatives within communities
- It will encourage a great amount of local control and creativity while still protecting the integrity of the program
- It will create another market opportunity for quota share sellers

The GOAC3 has worked since 1998 on trying to find solutions to the continuing loss of fishing opportunity to the smaller GOA communities. The loss has been so dramatic in the last few years that we are greatly concerned about stabilizing the situation. Amendment #66 will provide one important way to do this.

We and the newly formed CQEs will be looking for funding sources from many places. Halibut and sablefish IFQ prices are at historic highs, in large part because the IFQ program has allowed harvesters and processors to offer a better product through a much longer fishing time. Because the prices are so high, it will be important for our CQEs to find sources of financing which are

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<sup>2</sup> April 30, 2004

<sup>3</sup> Please refer to a power point presentation created by Phil Smith of the National Marine Fisheries Service to explain Amendment #66 in greater detail. It also provides an excellent brief history of the IFQ program. The GOAC3 will be working with Phil to create an Amendment #66 FAQ.

flexible and give us the maximum level of opportunity to purchase quota share and lease to area residents. It is for this reason we strongly support SB 387.

We are working with the State of Alaska (Department of Community and Economic Development) and the National Marine Fisheries Service / Restricted Access Management Division to conduct regional community meetings addressing the details of the program and offer some ideas for financing the purchase of halibut and sablefish. This week we will be in communities on Kodiak Island and Aleutians East. Soon we will be travelling to Prince William Sound and Southeast communities. We hope that SB 387 is quickly approved by the Legislature so that the eligible communities can utilize the options it provides.

Members of the Legislature will be receiving many Public Opinion Messages in support of SB 387. If we can be of any assistance in providing further information, please do not hesitate to call us.

We thank you for your time and consideration of this important matter.

Sincerely,

Gale K. Vick, Executive Director  
Gulf of Alaska Coastal Communities Coalition (GOAC3)

Cc: GOAC3 Board of Directors and Technical Team  
Governor Frank Murkowski  
Alan Austerman, Fish Advisor, Office of the Governor  
Commissioner Edgar Blatchford, Department of Community & Economic Dev.  
Greg Winegar, DCED/ Division of Investments  
Phil Smith, National Marine Fisheries Service/ Restrict Access Management

**SB**

**388**

SFIN

FILE

SB 388

was referred to the  
Senate Finance  
Committee

No hearing was held  
on this bill

**SB**

**389**

**HFIN**

**FILE**



# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 389  
(S) Publish Date: 4/21/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
Title Corp.Conversion: Limited Liability Co. RDU Banking, Securities & Corporations (115)  
Component Banking, Securities & Corporations  
Sponsor Senate Labor & Commerce  
Requester Senate Labor & Commerce Component No. 1233

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

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 legislation will allow certain domestic or foreign corporations to convert to limited liability companies.

The division does not anticipate any fiscal impact with the proposed legislation.

Prepared by: Mark Davis, Director Phone (907) 465-2521  
Division Banking, Securities & Corporations Date/Time 4/20/04 12:11 PM  
Approved by: Edgar Blatchford, Commissioner Date 4/20/2004  
Agency Department of Community & Economic Development

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: SB 389  
(S) Publish Date: 4/21/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title Corp. Conversion: Limited RDU Revenue Programs & Services  
Liability Co. Component Tax Division  
Sponsor (S) Labor & Commerce  
Requester (S) Labor & Commerce Component No. 2476

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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						
Part-time						
Temporary						

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

Pursuant to federal income tax law, a limited liability company ("LLC") is an entity that is not automatically classified as a corporation. The default classification of a multimember business entity organized as an LLC is a partnership and the default classification of a single member business entity organized as an LLC is a disregarded entity where the owner is the taxpayer. The LLC may instead, however, elect to be taxed as a corporation in lieu of a default classification.

An LLC taxable as a corporation for federal income tax purposes is subject to the Alaska Corporation Net Income Tax in the same manner as any other corporation. An LLC with corporate member owners

Prepared by: Chuck Harlament Phone 465-2320  
Division Tax Division Date/Time 4/19/04 8:25 AM  
Approved by: Steve Porter, Deputy Commissioner Date 4/19/2004  
Agency Department of Revenue

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FISCAL NOTE #2

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. SB 389

ANALYSIS CONTINUATION

that is treated as a partnership for federal income tax purposes is not itself subject to the Alaska income tax but each corporate owner would report the owner's share of the income and apportionment factors of the LLC on the owner's Alaska corporate tax return. In essence, there should be no income tax effect as long as the LLC either elects to be taxed as a corporation or the LLC is 100% owned by corporate entities, and remains so following the conversion. Since the bill provides that only subsidiary corporations may convert to an LLC the act of conversion would not have a fiscal impact on state tax revenues regardless of the federal tax characterization as either a corporation or partnership.

Current tax law provides a large incentive for business to be conducted in the state outside the regular corporate form, as partnerships, individuals, and S-Corporations are not subject to the income tax. The bill provides for a more direct method of converting a corporate subsidiary to an LLC, but does not influence the federal or state tax consequences. Since this incentive already exists, the practical effect of the bill is to enable conversions that would not occur under existing law due to non-tax reasons. Therefore, there should be no measurable revenue impact due to the legislation. It should be noted that a measurable revenue impact is possible if the conversion option were made available to non-subsiary corporations.

# Alaska State Legislature

DURING SESSION  
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## SENATOR CON BUNDE

District P

VICE-CHAIR: SENATE FINANCE COMMITTEE  
CHAIR: SENATE LABOR & COMMERCE COMMITTEE  
MEMBER: LEGISLATIVE BUDGET & AUDIT COMMITTEE

### Sponsor Statement for SB 389

**“An Act relating to the conversion of certain corporations to limited liability companies; and providing for an effective date.”**

Many states allow a corporation to be converted to a limited liability company (LLC). Alaska allows every kind of business except a corporation to be converted into a LLC. SB 389 amends existing law to allow subsidiary corporations owned directly or indirectly by one or more parent corporations to convert to limited liability companies (LLCs). Restricting this authority to subsidiaries ensures there is not a negative tax consequence.

Many Alaska Native Corporations (ANCs) have subsidiary companies that are active in the field of government contracting. For example, the ANCs and their subsidiaries are eligible to participate in the federal 8(a) contracting program. However, in order to participate in these programs, the ANCs have had to comply with the regulations promulgated by the Small Business Administration (SBA). Formerly, these regulations required that the ANCs establish subsidiary corporations with a great deal of separation in management from the parent.

LLCs are now much more widely accepted as a form of doing business. As a result, the SBA regulations have changed. The most efficient way for an ANC to participate in minority contracting is to use a LLC. Almost all of the subsidiaries that have been formed for minority contracting in recent years have been LLCs. However, there are still some subsidiary corporations left from the old days. These corporations could be changed into LLCs under current law by a roundabout process of liquidating the corporation and transferring its assets to a new LLC. This procedure is fraught with problems for the minority contracting subsidiaries. It means that the subsidiary must get the government agency for each of its contracts to agree to the transfer. The SBA must also approve each transfer of a government contract. This can probably be accomplished, but it is time consuming and inefficient.

The efficient way to turn these subsidiaries into LLCs is to convert them. If Alaska elects to not change its law to be comparable to that in other states, businesses will be encouraged to form new entities elsewhere. For example, the law of Colorado and of Delaware is more favorable than Alaska's because it is possible to convert a corporation to an LLC. Changing the law will not allow an action that cannot already be done; it will just make the procedure quicker and more efficient.

It is our understanding that the Department of Revenue does not object to the change, so long as it does not present an adverse tax impact. Since the subsidiary corporations are consolidated with the parent for tax purposes, they do not pay a separate corporate income tax. For that reason, the wording of the amendment is designed to allow conversion only by subsidiary corporations. This means that there should be no tax impact resulting from the change.

# Compliments of Mycorporation.com

## Advantages of forming an LLC

**In general:** An LLC is a hybrid between a partnership and a Corporation in that it combines the "pass-through" treatment of a partnership with the limited liability accorded to corporate shareholders.

**Two members required:** Unlike a corporation which can have as few as one shareholder, most states require that an LLC consist of two or more members (owners). Recently, however, more states are allowing single-member LLCs. Please note, however, that the IRS may treat a single person LLC differently than an LLC with more than one member.

**Separate Legal Entity:** Like limited partnerships and corporations, an LLC is recognized as a separate legal entity from its "members."

**Limited Liability:** Ordinarily, only the LLC is responsible for the company's debts thus shielding the members from individual liability. However, there are some exceptions where individual members may be held liable:

**Guarantor Liability:** Where an LLC member has personally guaranteed the obligations of the LLC, he or she will be liable. For example, where an LLC is relatively new and has no credit history, a prospective landlord about to lease office space to the LLC will most likely require a personal guarantee from the LLC members before executing such a lease.

**Alter Ego Liability:** Very similar to the judicial doctrine applied to corporations where a court may hold the individual shareholders liable where the business entity is merely the "Alter Ego" of its shareholders, a member of an LLC may also be held liable for the LLC's debts if the court imposes its "alter ego liability" doctrine.

Please note, however, that although a corporation's failure to hold shareholder or director meetings may subject the corporation to alter ego liability, this is not the case for LLCs in California. An LLC's failure to hold meetings of members or managers is not usually considered grounds for imposing the alter ego doctrine where the LLC's Articles of Organization or Operating Agreement do not expressly require such meetings.

**Management and control:** Management and control of an LLC is vested with its members unless the articles of organization provide otherwise.

**Voting Interest:** Ordinarily, voting interest directly corresponds to interest in profits, unless the articles of organization or operating agreement provide otherwise

**Transferability:** No one can become a member of an LLC (either by transfer of an existing membership or the issuance of a new one) without the consent of members having a majority in interest (excluding the person acquiring the membership interest) unless the articles of organization provide otherwise.

**Duration:** Although many states now allow an LLC to have a perpetual existence, LLC's traditionally were required to specify the date on which the LLC's existence will terminate. In most cases, unless otherwise provided in the articles of organization or a written operating agreement, an LLC is dissolved at the death, withdrawal, resignation, expulsion, or bankruptcy of a member (unless within 90 days a

majority in both the profits and capital interests vote to continue the LLC).

**Formalities:** The existence of an LLC begins upon the filing of the Articles of Organization with the Secretary of State. The articles must be on the form prescribed by the Secretary of State. Among the required information on the form is the latest date at which the LLC is to dissolve and a statement as to whether the LLC will be managed by one manager, more than one manager, or the members.

To validly complete the formation of the LLC, members must enter into an Operating Agreement. This Operating Agreement may come into existence either before or after the filing of the Articles of Organization and may be either oral or in writing.

Although states have differing definitions for LLC's, the more important scorekeepers the IRS. Per my Jeff's sister and husband, who has worked for the IRS since 1978, the IRS will consider an LLC a corporation, if they determine so, thereby subjecting it to double taxation.

Liz Ross  
RGMC  
*Turning Ideas into Actions*  
321-235-0253  
[www.rgmc.biz](http://www.rgmc.biz)

## **AS 10.50.570. Conversion to Limited Liability Company.**

(a) Any other entity may convert to a limited liability company by filing with the department

(1) a certificate of conversion to a limited liability company that has been executed under (b) of this section by one or more persons organizing the conversion; and

(2) articles of organization that comply with AS 10.50.075 and that have been signed by one or more persons organizing the conversion.

(b) The certificate of conversion to a limited liability company must state

(1) the date on which and the jurisdiction where the other entity was first created, formed, or incorporated, or otherwise came into being, and, if the other entity has changed its jurisdiction, its jurisdiction immediately before its conversion to a limited liability company;

(2) the name of the other entity immediately before the filing of the certificate of conversion to a limited liability company;

(3) the name of the limited liability company as stated in its articles of organization filed under (a) of this section; and

(4) the future effective date or time, which must be a certain date or a certain time, of the conversion to a limited liability company if the conversion is not to be effective on the filing of the certificate of conversion to a limited liability company and the articles of organization.

(c) On the filing with the department of the certificate of conversion to a limited liability

company and the articles of organization, or upon the future effective date or time of the certificate of conversion to a limited liability company and the articles of organization, the other entity is converted to a limited liability company and, after the conversion, is subject to all of the provisions of this chapter, except that, notwithstanding AS 10.50.080, the existence of the limited liability company is considered to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first created, formed, or incorporated, or otherwise came into being.

(d) The conversion of any other entity to a limited liability company does not affect any obligation or liability of the other entity incurred before the conversion, or the personal liability of any person that is incurred before the conversion.

(e) When a conversion of any other entity to a limited liability company becomes effective under this section, for all purposes of the laws of this state,

(1) all rights, privileges, and powers of the other entity, all real, personal, and mixed property, all debts due to the other entity, and all other things and causes of action belonging to the other entity, are vested in the limited liability company and are after the conversion, the property of the limited liability company as they were of the other entity;

(2) the title to any real property vested by deed, or otherwise vested, in the other entity does not revert and is not in any way impaired by reason of this chapter;

(3) all rights of creditors and all liens on property of the other entity attach to the limited liability company; and

(4) all debts, liabilities, and duties of the other entity attach to the limited liability company, and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the limited liability company.

(f) Unless otherwise agreed, or as required under the applicable law of another state, any other entity that converts to a limited liability company under this section is not required to wind up its affairs or to pay its liabilities and distribute its assets, and the conversion does not constitute a dissolution of the other entity.

(g) Before filing a certificate of conversion to a limited liability company with the department, a limited liability company agreement must be approved in the manner provided for by the document, instrument, agreement, or other writing governing the internal affairs of the other entity and the conduct of its business, or by applicable law, as appropriate.

(h) The provisions of this section may not be construed to limit the accomplishment of a change in the law governing, or of the domicile of, any other entity to this state by any other means provided for in a limited liability company agreement or other agreement, or, as otherwise permitted by law, including by the amendment of a limited liability company agreement or other agreement.

(i) In this section, "other entity" means a business trust, an association, a real estate investment trust, a common law trust, or any other unincorporated business, including a general partnership, a registered limited liability partnership, a limited partnership, a limited liability limited partnership, and a foreign limited liability company.

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KONIAG  
INCORPORATED

April 23, 2004

The Honorable Con Bunde  
Chairman  
Senate Labor & Commerce Committee  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99801-1182

VIA FAX  
465-3871

Re: SB 389 -- Conversion of Subsidiaries to LLC's

Dear Chairman Bunde:

On behalf of Koniag, Inc., I want to express our appreciation for your cooperation in permitting your committee to sponsor SB 389. Koniag strongly supports the passage of SB 389. As I am certain you are aware, the Alaska Native Corporations have been actively involved in investing in businesses in Alaska. The enactment of this law will provide us with additional flexibility in making those investments, without being tied to traditional structures that aren't that beneficial. This change will help Alaska be on equal footing with other states with respect to the opportunities offered by their laws for the structure of business.

We have appreciated your support and respectfully request your continued support of SB 389.

Yours truly,

KONIAG, INC.

Dennis Metrokin  
President

cc: Martha Malavansky, President of The Aleut Corp.  
Mark Hickey  
William H. Timme, Koniag General Counsel  
Vicki Otte, ANCSA President/CEO Assn

4300 B Street, Suite 407  
Anchorage, Alaska 99503  
(907) 561-2668  
FAX (907) 562-5258



April 20, 2004

The Honorable Con Bunde  
Chairman  
Senate Labor & Commerce Committee  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99801-1182

Re: Sealaska Corporation Support for Senate Bill No. 389 – Conversion of  
Certain Corporations to Limited Liability Companies

Dear Chairman Bunde:

On behalf of Sealaska Corporation, I wish to express strong support for Senate Bill No. 389 – Conversion of Certain Corporations to Limited Liability Companies (“SB389”). Sealaska is the Regional Corporation for Southeast Alaska. Over the past 20 years, Sealaska has been a stable contributor to the regional and state economy. A recent McDowell report prepared for Sealaska concluded that Sealaska is the largest private employer in S. E. Alaska.

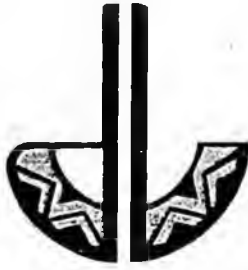
Sealaska Corporation has numerous operating subsidiaries that benefit from the operating flexibility afforded by the Limited Liability Company Act (AS 10.50; “LLC Act”). The LLC is the structure of choice for Sealaska subsidiary entities. Under current law there has been no means, short of dissolving the corporation, to convert a for-profit entity into an LLC. SB389 will make it possible for Sealaska’s existing corporate subsidiaries to take advantage of the benefits of the LLC Act by empowering the direct conversion of for-profit subsidiary corporations into LLCs.

Sealaska appreciated the Labor & Commerce Committee for sponsoring SB389 and urges the Committee to take prompt action to assure its passage.

Sincerely,

SEALASKA CORPORATION

Chris E. McNeil, Jr.  
President & CEO



## Doyon, Limited

---

1 Doyon Place, Suite 300  
Fairbanks, Alaska 99701-2941  
(907) 459-2000  
info@doyon.com

April 23, 2004

The Honorable Con Bunde  
Chairman  
Senate Labor & Commerce Committee  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99801-1182

Re: Doyon, Limited Regional Corporation Support for Senate bill No. 389 –  
Conversion of Certain Corporations to Limited Liability Companies

Dear Chairman Bunde:

On behalf of Doyon, Limited, I wish to express strong support for Senate Bill No. 389 – conversion of Certain Corporations to Limited Liability Companies ('SB 389'). As you may be aware, Doyon, Limited is the Regional Corporation, formed pursuant to the Alaska Native claims Settlement Act ('ANCSA') for primarily Athabaskan people in the interior region of Alaska. For many years, Doyon, Limited has enjoyed the position of one of the largest private corporations in the state, with gross revenues of approximately \$56,224,275.00 annually. Doyon, Limited is also the largest private landowner in the State, steadily contributing to a productive Alaska economy.

Doyon, Limited has in excess of fifteen operating subsidiary and affiliate companies working in Alaska, across the nation and internationally. The operating flexibility and tax benefits afforded by the Limited Liability Company Act (AS 10.50; "LLC Act") make it the structure of choice for new Doyon, Limited subsidiary entities. However, under current law there has been means, short of dissolving the corporation, to convert a for-profit entity into an LLC. SB 389 will make it possible for Doyon, Limited's existing corporate subsidiaries to take advantage of the benefits of the LLC Act by empowering the direct conversion of for-profit subsidiary corporations into LLC's.

Page 2  
The Honorable Con Bunde

Doyon, Limited thanks the Labor & Commerce Committee for sponsoring SB 389 and urges the Committee to take prompt action to assure its passage.

Very truly yours,

DOYON, LIMITED

A handwritten signature in cursive script, appearing to read "Orie Williams".

Orie Williams  
President

*OW/mkw*



April 19, 2004

The Honorable Con Bunde  
Chairman  
Senate Labor & Commerce Committee  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99801-1182

Re: Arctic Slope Regional Corporation Support for Senate Bill No. 389 – Conversion  
of Certain Corporations to Limited Liability Companies

Dear Chairman Bunde:

On behalf of Arctic Slope Regional Corporation ("ASRC"), I wish to express strong support for Senate Bill No. 389 – Conversion of Certain Corporations to Limited Liability Companies ("SB 389"). As you may be aware, ASRC is the Regional Corporation, formed pursuant to the Alaska Native Claims Settlement Act ("ANCSA") for the Inupiat People of the Arctic Slope Region of Alaska. For many years, ASRC has enjoyed the position of the largest private corporation in the State, with gross revenues of approximately \$1 billion annually. ASRC is also the largest private employer in the State, steadily contributing to a productive Alaskan economy.

ASRC has in excess of seventy (70) operating subsidiary and affiliate companies working in Alaska, across the nation and internationally. The operating flexibility and tax benefits afforded by the Limited Liability Company Act (AS 10.50; "LLC Act") make it the structure of choice for new ASRC subsidiary entities. However, under current law there has been no means, short of dissolving the corporation, to convert a for-profit entity into an LLC. SB 389 will make it possible for ASRC's existing corporate subsidiaries to take advantage of the benefits of the LLC Act by empowering the direct conversion of for-profit subsidiary corporations into LLCs.

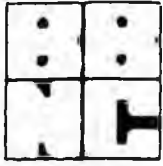
ASRC thanks the Labor & Commerce Committee for sponsoring SB 389 and urges the Committee to take prompt action to assure its passage.

Very truly yours,

ARCTIC SLOPE REGIONAL CORP.

A handwritten signature in dark ink, appearing to read "Oliver Leavitt", is written over a light-colored background.

Oliver Leavitt, Chairman and Vice President  
Government Affairs



# Bristol Bay Native Corporation

*Enriching Our Native Way of Life*

800 Cordova Street, Suite 200 / Anchorage, Alaska 99501-6299 / (907) 278-3602 / fax (907) 276-3924

April 16, 2004

The Honorable Con Bunde  
Chairman  
Senate Labor & Commerce Committee  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99801-1182

Dear Senator Bunde:

Bristol Bay Native Corporation (BBNC) is writing in support of SB 389, concerning limited liability companies. We appreciate the fact that you have agreed to sponsor this bill and facilitate fixing an onerous process.

BBNC is an active participant in the Small Business Administration's (SBA) 8(a) program. We have several companies participating in the program as corporations and have contemplated converting some of them to LLC's. Accomplishing that objective in Alaska is currently too big an obstacle.

We sincerely hope that this piece of legislation will move through supported by the full house and senate.

Respectfully,

A handwritten signature in black ink that reads "Tom Hawkins".

Tom Hawkins  
Senior Vice-President and COO



THE 13TH REGIONAL CORPORATION  
*An Alaska Native Corporation*

1156 Industry Drive

Seattle, WA 98188

206/575-6229

FAX 206/575-6283

Email: [info@the13thregion.com](mailto:info@the13thregion.com)

April 16, 2004

The Honorable Con Bunde, Chairman  
Senate Labor & Commerce Committee  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99804-1182

Attn: Jane Alberts  
VIA FACSIMILE: (907) 465-3871

RE: SB 389

Dear Chairman Bunde:

We would like to confirm our support of SB 389. We formed three (3) new LLC companies as of January 2004, because of the federal tax advantage to as a pass through to its members. However, keeping in mind that each state has its own laws regarding LLC'S.

Our one non-LLC subsidiary (M. Kennedy Co., Inc.) will be graduating from the SBA's 8(a) program soon, so we may need to determine its future related to its organizational structure. All future companies that we form will be LLC'S.

As a result, the tax advantage of converting to an LLC form of organization, is something each Regional Corporation should be able to utilize and we encourage your passing this bill.

Sincerely,

Kenneth Krajewski  
CEO



**NANA Development Corporation**

1001 E. BENSON BOULEVARD, ANCHORAGE, ALASKA 99504 / (907) 265-4100 / FAX (907) 265-4123

April 20, 2004

The Honorable Con Bunde  
Chairman  
Senate Labor & Commerce Committee  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99801-1182

Via Facsimile: 907-465-3871

Re: Senate Bill 389

Dear Honorable Con Bunde:

NANA Development Corporation would like to thank you for allowing your committee to sponsor Senate Bill 389. On behalf of NANA, I offer this letter of support for Senate Bill 389. We feel the passage of Senate Bill 389 would be beneficial to NANA and to all other corporations as well.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacquelyn R. Luke". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jacquelyn R. Luke  
Vice President, General Counsel





April 19, 2004

Honorable Con Bunde  
Chairman  
Senate Labor & Commerce Committee  
State Capitol  
Juneau, Alaska 99801-1182

Dear Senator Bunde:

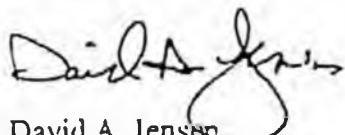
The Aleut Corporation incorporated C Corporations prior to legislation authorizing incorporation of Limited Liability Corporations. All of our new defense contracting companies have been or will be incorporated pursuant to provisions of incorporation of LLC's. The Aleut Corporation desires to standardize the corporate status of the subsidiary companies so that all subsidiary companies are LLC's strictly for tax and accounting purposes.

There is no affect on State corporate tax income whatsoever by permitting this conversion. Since our subsidiaries are 100% wholly owned there is no Federal income tax affect either. The Aleut Corporation consolidates all subsidiary company income and files a consolidated Federal and State income tax return annually.

Currently, other many states permit this conversion. It is logical that the State of Alaska clarify the statutory ambiguity by clearly authorizing conversion.

We look forward to testifying on support of SB389

Sincerely,  
THE ALEUT CORPORATION



David A. Jensen  
Chief Executive Officer



THE 13TH REGIONAL CORPORATION  
*An Alaska Native Corporation*

1156 Industry Drive

Seattle, WA 98188

206/575-6229

FAX 206/575-6283

Email: [info@the13thregion.com](mailto:info@the13thregion.com)

April 16, 2004

The Honorable Con Bunde, Chairman  
Senate Labor & Commerce Committee  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99804-1182

Attn: Jane Alberts

VIA FACSIMILE: (907) 465-3871

RE: SB 389

Dear Chairman Bunde:

We would like to confirm our support of SB 389. We formed three (3) new LLC companies as of January 2004, because of the federal tax advantage to as a pass through to its members. However, keeping in mind that each state has its own laws regarding LLC'S.

Our one non-LLC subsidiary (M. Kennedy Co., Inc.) will be graduating from the SBA's 8(a) program soon, so we may need to determine its future related to its organizational structure. All future companies that we form will be LLC'S.

As a result, the tax advantage of converting to an LLC form of organization, is something each Regional Corporation should be able to utilize and we encourage your passing this bill.

Sincerely,

Kenneth Krajewski  
CEO

**SB**

**391**

**SFIN**

**FILE**

SB 391

was referred to the  
Senate Finance  
Committee

No hearing was held  
on this bill

**SB**

**392**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: May 8, 2004

FURTHER REFERRALS:

Date of Committee Action: 5/10/04

The FINANCE Committee considered:

SB 392

SENATE BILL NO. 392

REGULATORY COMMISSION OF ALASKA

"An Act relating to the expenses of investigation, hearing, or public advocacy before the Regulatory Commission of Alaska, to calculation of the regulatory cost charge for public utilities and pipeline carriers to include the Department of Law's costs of its public advocacy function, to inspection of certain books and records by the attorney general when participating as a party in a matter before the Regulatory Commission of Alaska; 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
- CEC
- 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

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
<del>CEC</del>	<del>1</del>			
LAW	3	✓		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>K. Meyer</i>	Meyer			X	
<i>M. Hawk</i>	Hawk			X	
<i>[Signature]</i>	<del>SWIFT</del>				
<i>[Signature]</i>	Edwards			X	
<i>[Signature]</i>	CROTT				
<i>[Signature]</i>	MOSES				
<i>[Signature]</i>	Chenault				
<i>[Signature]</i>	Fate				
<i>[Signature]</i>	Foster				
<i>[Signature]</i>	HARRIS				
Chair: <i>[Signature]</i>	Williams				
Chair: <i>[Signature]</i>	Williams				

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 392  
 (S).Publish Date: 4/21/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Regulatory Commission of Alaska RDU Regulatory Commission of Alaska (399)  
 Component Regulatory Commission of Alaska  
 Sponsor Senate Labor & Commerce  
 Requester Senate Labor & Commerce Component No. 2417

**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						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( 1141 )</b>	*	*	*	*	*	*
------------------------------------	---	---	---	---	---	---

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1141 - RCA Receipts						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: \_\_\_\_\_  
 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 legislation codifies the establishment of and funding for the Regulatory Commission of Alaska's (RCA's) Public Advocacy Section in the Department of Law.

Sections 12 and 13 would have the effect of redistributing an estimated \$18,287.60 of hearings costs, previously allocated to the Department of Law, to all other utilities that pay regulatory cost charges (RCC's). The RCA does not budget for these types of transactional costs on an on-going basis, and therefore future fiscal impacts are indeterminate.

The RCA's budget is funded through the Regulatory Cost Charge (RCC) mechanism and direct charge mechanisms. No general funds are allocated for support of the agency. The RCC is recalculated each year and allows the agency to recover its operating costs through an assessment on the revenues of the utilities and pipeline carriers it regulates.

Prepared by: Mark K. Johnson, Commissioner, Chair Phone (907) 276-6222  
 Division Regulatory Commission of Alaska Date/Time 4/20/04 1:17 PM  
 Approved by: Edgar Blatchford, Commissioner Date 4/20/2004  
 Agency Department of Community & Economic Development

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: SB 392  
(S) Publish Date: 4/29/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title "An Act relating to the expenses of investigation, RDU CIVIL  
hearing, or public advocacy before the Regulatory..." Component Regulatory Affairs Public Advocacy  
Sponsor Senate Labor & Commerce  
Requester Senate Labor & Commerce 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	300.0	300.0	300.0	300.0	300.0	300.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 Interagency Receipts	(1,012.8)	(1,012.8)	(1,012.8)	(1,012.8)	(1,012.8)	(1,012.8)
1141 RCA Receipts	1,312.8	1,312.8	1,312.8	1,312.8	1,312.8	1,312.8
<b>TOTAL</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>

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 amends AS 42.05.254 by clarifying that the general costs of public advocacy will continue to be paid from the established regulatory cost charge mechanism. The bill also exempts state agencies from reimbursing the Regulatory Commission of Alaska (commission) for commission costs in a proceeding to which the state agency is a party. The bill adjusts the previously established statutory cap on the regulatory cost charge upwards by .07% and allocates the total amount between the RCA and the Department of Law's public advocacy function. The increase is to allow for the \$300,000 increase in budget authority shown in this fiscal note. Additionally, the bill provides the Department of Law qualified access to utility and pipeline carrier books and records similar to that afforded the RCA's former public advocacy staff.

Prepared by: Kathryn A. Daughhete, Director  
Division: Administrative Services  
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General  
Agency: Department of Law

Phone 465-3673  
Date/Time 4/22/04 3:54 PM  
Date 4/22/2004

FISCAL NOTE #3

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. SB 392

ANALYSIS CONTINUATION

Continuing in the spirit of Executive Order 111, the Governor's FY 2005 amended budget completes the transfer of responsibility and oversight for the regulatory public advocacy function by transferring the associated staff positions and adding additional interagency receipt authority to the newly created Regulatory Affairs Public Advocacy section in the Department of Law. Through the statutory changes proposed in this legislation, the new section shall be budgeted directly from the regulatory receipts rather than through an interagency transfer of funds. This fiscal note converts the receipts portion only but may require further amending to include the transfer of expenditure authorization and positions if the portion of the Governor's amended budget that would make that change is not adopted.

## SB 392 (RCA Public Advocacy) Section by Section Analysis

**Sections 2, 3, 4, 9, 10 & 11:** These sections clarify that the general costs of public advocacy for utility and pipeline matters before the Regulatory Commission of Alaska (RCA) will continue to be paid from the existing regulatory cost charge mechanism under AS 42.05.254 and AS 42.06.286.

Historically, advocacy on behalf of the public interest was performed by personnel within the RCA. Therefore, the cost of that advocacy was a part of the RCA's budget funded by receipts from the regulatory cost charge, not from the general fund. Effective July 1, 2003, Executive Order 111 (issued during last year's legislative session) transferred the responsibility for public advocacy from the RCA to the attorney general and established the public advocacy function within the Department of Law (DOL).

These sections of SB 392 amend existing statutes to complete the transfer of authority by expressly providing that regulatory cost charge receipts will continue to pay the costs associated with the public advocacy function that is now administered by the DOL. (Public advocacy funding is currently administered through a separate RDU within the RCA. It will be transferred from the DCED to DOL.) They do not change the regulatory cost charge mechanism.

**Sections 1 & 8:** First, these sections of SB 392 increase the regulatory cost charge ceiling by .0007 (from the current .80% to .87%) of the total adjusted gross revenues of all regulated public utilities and pipeline carriers derived from operations in the state. The regulatory cost charges that the RCA annually expects to collect may not exceed the ceiling. The existent cap has not changed since the statute was enacted in 1992. This adjustment in the regulatory cost charge ceiling constitutes an increment of approximately \$300,000. The purpose of the increase in the cap is to provide adequate funding to retain experts when necessary to support the DOL's public advocacy function before the RCA.

The RCA budget did not historically contain a specific line item for expert retention by its public advocacy staff.

Second, under the adjusted overall regulatory cost charge ceiling, these sections specify separate, fixed caps on the respective budgets of the RCA and the DOL public advocacy function. This will complete the transfer of authority for public advocacy by providing each entity with budgetary independence from the other. Accordingly, the RCA budget amount may not exceed .70 % of the total adjusted gross revenues of all regulated public utilities and pipeline carriers; and the DOL public advocacy budget may not exceed .17% of those same total adjusted gross revenues (.70%+.17%=.87%, the adjusted overall cap).

The legislature maintains the authority to appropriate the budget of the RCA and the budget of the DOL public advocacy function.

**Sections 5 & 11:** These sections of SB 392 provide the attorney general with qualified access to utility or pipeline carrier books and records when he participates in RCA dockets in a public interest advocacy role under AS 42.04.070(c) or AS 44.23.020(e).

Prior to the transfer of authority to the attorney general under Executive Order 111, public interest advocacy was performed by Commission staff, who had a statutory right to unfettered access to utility or pipeline carrier records in order to perform their function.

AS 42.05.501 and AS 42.06.440. Such access allows efficient and economical use of state resources to investigate public utility and pipeline carrier public interest issues in cases where the commission has determined that comprehensive review and hearing is appropriate. This need for efficient and economical access has not changed by the shift of responsibility for public interest advocacy to the Attorney General. The amendments to AS 42.05.501 and AS 42.06.440 acknowledge these goals but also provide the utility or pipeline carrier with an opportunity for objection to the commission.

**Sections 7 & 12:** These sections of SB 392 work in tandem with Sections 5 and 11 of SB 392. The amendments recognize that public utilities and pipeline carriers may need to request that documents obtained by the attorney general under the amendments contemplated by Sections 5 and 11 be held confidential from public disclosure under the Public Records Act. AS 40.25 *et. seq.* Sections 7 and 12 provide a vehicle for public utilities and pipeline carriers to do so, which request would then be reviewed by the commission for a good cause determination.

**Sections 6 & 13:** These sections explicitly exempt other state agencies from reimbursing the RCA for costs under AS 42.05.651 and AS 42.06.610 in proceedings to which the state agency is a party. Existent law does not expressly include or exclude state agencies from paying RCA costs. Allowing one state agency to order another state agency to pay its costs provides no net fiscal benefit to the State of Alaska. In fact, the agency subject to the RCA order expends resources to prepare and request an appropriation from the legislature to pay the RCA and the legislature expends resources examining and acting on the request. These sections would not affect the RCA's ability to require reimbursement from parties that are not state agencies.

**Sections 14 & 15:** These sections of SB 392 amend the uncodified law to provide that specific provisions enacted by Sections 6 and 13 of this Act apply to RCA orders issued in related proceedings begun before the effective date of the Act and that those specific provisions are retroactive to May 30, 2003.

**Section 16:** This section amends the uncodified law to instruct the revisor of statutes to change the heading of AS 42.05.501.

**Section 17:** This section provides for an effective date of July 1, 2004.

20 April 2004

Contact: Daniel Patrick O'Tierney  
Senior Assistant Attorney General  
for Regulatory Affairs  
Office of the Public Advocate  
State of Alaska Department of Law  
(907) 269-5100  
[daniel\\_patrick\\_o'tierney@law.state.ak.us](mailto:daniel_patrick_o'tierney@law.state.ak.us)

# Alaska State Legislature

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## SENATOR CON BUNDE

District P

VICE-CHAIR: SENATE FINANCE COMMITTEE  
CHAIR: SENATE LABOR & COMMERCE COMMITTEE  
MEMBER: LEGISLATIVE BUDGET & AUDIT COMMITTEE

### **SB 392 Sponsor Statement** RCA Public Advocacy/Dept of Law

Last year's Executive Order 111 transferred the responsibility for advocacy on behalf of the public in utility matters before the Regulatory Commission of Alaska (RCA) from the RCA to the attorney general, and established the public advocacy function within the Department of Law (DOL). AS 42.23.020(e). As a result, RCA personnel historically responsible for public advocacy now act under the authority and direction of the DOL. This bill completes the prior transfer of authority by expressly providing for various aspects of its execution.

SB 392 clarifies that regulatory cost charge receipts (not general fund) will continue to pay for the general costs of public advocacy now administered by the DOL, just as those receipts historically paid for public advocacy costs when the function was performed by RCA personnel.

The bill also adjusts the regulatory cost charge ceiling and creates two, distinct percentages of total regulatory cost charge receipts to separately fund the RCA and the DOL public advocacy function in order to provide each entity with budgetary independence from the other.

SB 392 also provides the DOL with qualified access to utility or pipeline carrier records similar to that afforded the RCA's former public advocacy staff in order to maintain efficient and economical access to information where the RCA has determined that comprehensive review and hearing is appropriate.

Finally, the bill clarifies that state agencies are exempt from paying the allocated costs of RCA proceedings to which the state agency is a party because there is no net fiscal benefit to the state in doing so.

**SB \_\_\_: "An Act relating to the expenses of investigation, hearing, or public advocacy before the Regulatory Commission of Alaska, to calculation of the regulatory cost charge for public utilities and pipeline carriers to include the Department of Law's costs of its public advocacy function, to inspection of certain books and records by the attorney general when participating as a party in a matter before the Regulatory Commission of Alaska; and providing for an effective date."**

### **SB 392 (RCA Public Advocacy)**

➤ **Generally:**

- the need for the bill arises from the transfer of authority for public advocacy on matters before the Regulatory Commission of Alaska (RCA) under last year's **Executive Order 111**.
- E.O. 111 transferred the responsibility for advocacy on behalf of the public interest on utility matters from the RCA to the attorney general and established the public advocacy function within the Department of Law (DOL). AS 44.23.020(e). RCA personnel historically responsible for public advocacy now act under the authority and direction of the DOL.

➤ **Accordingly:**

- the bill **completes the prior transfer of authority** by expressly providing for various aspects of its execution, as regards public advocacy funding and access to records.

➤ **Specifically, the bill would:**

- clarify that *regulatory cost charge receipts (not general fund) will continue to pay for* the general costs of public advocacy now administered by the DOL, just as those receipts historically paid for public advocacy costs when the function was performed under the RCA. *See Sections 2,3,4,9,10, and 11.*
- adjust the regulatory cost charge ceiling and budget the RCA and the DOL public advocacy function, respectively, with *separate, fixed percentages of total* regulatory cost charge receipts under the adjusted ceiling. *See Sections 1 and 8.*
- provide the DOL with *qualified access to records* formerly obtained by the RCA's public advocacy staff. *See Sections 5, 7, 11, 12, and 16.*
- *explicitly exempt* state agencies from paying the allocated costs of RCA proceedings to which the state agency is a party. *See Sections 6, 13, 14 and 15.*

## **SB 392 (RCA Public Advocacy) Sectional Analysis**

**Sections 2, 3, 4, 9, 10 & 11:** These sections clarify that the general costs of public advocacy for utility and pipeline matters before the Regulatory Commission of Alaska (RCA) will continue to be paid from the existing regulatory cost charge mechanism under AS 42.05.254 and AS 42.06.286.

Historically, advocacy on behalf of the public interest was performed by personnel within the RCA. Therefore, the cost of that advocacy was a part of the RCA's budget funded by receipts from the regulatory cost charge, not from the general fund. Effective July 1, 2003, Executive Order 111 (issued during last year's legislative session) transferred the responsibility for public advocacy from the RCA to the attorney general and established the public advocacy function within the Department of Law (DOL).

These sections of SB 392 amend existing statutes to complete the transfer of authority by expressly providing that regulatory cost charge receipts will continue to pay the costs associated with the public advocacy function that is now administered by the DOL. (Public advocacy funding is currently administered through a separate RDU within the RCA. It will be transferred from the DCED to DOL.) They do not change the regulatory cost charge mechanism.

**Sections 1 & 8:** First, these sections of SB 392 increase the regulatory cost charge ceiling by .0007 (from the current .80% to .87%) of the total adjusted gross revenues of all regulated public utilities and pipeline carriers derived from operations in the state. The regulatory cost charges that the RCA annually expects to collect may not exceed the ceiling. The existent cap has not changed since the statute was enacted in 1992. This adjustment in the regulatory cost charge ceiling constitutes an increment of approximately \$300,000. The purpose of the increase in the cap is to provide adequate funding to retain experts when necessary to support the DOL's public advocacy function before the RCA. The RCA budget did not historically contain a specific line item for expert retention by its public advocacy staff.

Second, under the adjusted overall regulatory cost charge ceiling, these sections specify separate, fixed caps on the respective budgets of the RCA and the DOL public advocacy

function. This will complete the transfer of authority for public advocacy by providing each entity with budgetary independence from the other. Accordingly, the RCA budget amount may not exceed .70 % of the total adjusted gross revenues of all regulated public utilities and pipeline carriers; and the DOL public advocacy budget may not exceed .17% of those same total adjusted gross revenues (.70%+.17%=.87%, the adjusted overall cap).

The legislature maintains the authority to appropriate the budget of the RCA and the budget of the DOL public advocacy function.

**Sections 5 & 11:** These sections of SB 392 provide the attorney general with qualified access to utility or pipeline carrier books and records when he participates in RCA dockets in a public interest advocacy role under AS 42.04.070(c) or AS 44.23.020(e).

Prior to the transfer of authority to the attorney general under Executive Order 111, public interest advocacy was performed by Commission staff, who had a statutory right to unfettered access to utility or pipeline carrier records in order to perform their function. AS 42.05.501 and AS 42.06.440. Such access allows efficient and economical use of state resources to investigate public utility and pipeline carrier public interest issues in cases where the commission has determined that comprehensive review and hearing is appropriate. This need for efficient and economical access has not changed by the shift of responsibility for public interest advocacy to the Attorney General. The amendments to AS 42.05.501 and AS 42.06.440 acknowledge these goals but also provide the utility or pipeline carrier with an opportunity for objection to the commission.

**Sections 7 & 12:** These sections of SB 392 work in tandem with Sections 5 and 11 of SB 392. The amendments recognize that public utilities and pipeline carriers may need to request that documents obtained by the attorney general under the amendments contemplated by Sections 5 and 11 be held confidential from public disclosure under the Public Records Act. AS 40.25 *et. seq.* Sections 7 and 12 provide a vehicle for public utilities and pipeline carriers to do so, which request would then be reviewed by the commission for a good cause determination.

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20 April 2004

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**SB**

**392**

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 04/21/04

FURTHER:

REPORTED OUT  
APR 28 2004  
SENATE FINANCE  
COMMITTEE

DATE TURNED  
IN TO OFFICE: 28 April 2004

Finance Committee considered

SENATE BILL NO. 392

SB 392 REGULATORY COMMISSION OF ALASKA

"An Act relating to the expenses of investigation, hearing, or public advocacy before the Regulatory Commission of Alaska, to calculation of the regulatory cost charge for public utilities and pipeline carriers to include the Department of Law's costs of its public advocacy function, to inspection of certain books and records by the attorney general when participating as a party in a matter before the Regulatory Commission of Alaska; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ 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#
LAW	4/22/04	300.0			

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
COCHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>			
COCHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>			

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APR 28 2004

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: SB392-Law-RAPA-4-22-C  
Bill Version: SB 392  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title "An Act relating to the expenses of investigation, hearing, or public advocacy before the Regulatory..." RDU CIVIL  
Component Regulatory Affairs Public Advocacy  
Sponsor Senate Labor & Commerce  
Requester Senate Labor & Commerce 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	300.0	300.0	300.0	300.0	300.0	300.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>

<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>						

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 Interagency Receipts	(1,012.8)	(1,012.8)	(1,012.8)	(1,012.8)	(1,012.8)	(1,012.8)
1141 RCA Receipts	1,312.8	1,312.8	1,312.8	1,312.8	1,312.8	1,312.8
<b>TOTAL</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>

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 amends AS 42.05.254 by clarifying that the general costs of public advocacy will continue to be paid from the established regulatory cost charge mechanism. The bill also exempts state agencies from reimbursing the Regulatory Commission of Alaska (commission) for commission costs in a proceeding to which the state agency is a party. The bill adjusts the previously established statutory cap on the regulatory cost charge upwards by .07% and allocates the total amount between the RCA and the Department of Law's public advocacy function. The increase is to allow for the \$300,000 increase in budget authority shown in this fiscal note. Additionally, the bill provides the Department of Law qualified access to utility and pipeline carrier books and records similar to that afforded the RCA's former public advocacy staff.

Prepared by: Kathryn A. Daughetee, Director Phone 465-3673  
Division Administrative Services Date/Time 4/22/04 3:54 PM  
Approved by: Kathryn Daughetee for Gregg D. Renkes, Attorney General Date 4/22/2004  
Agency Department of Law

FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. SB 392

ANALYSIS CONTINUATION

Continuing in the spirit of Executive Order 111, the Governor's FY 2005 amended budget completes the transfer of responsibility and oversight for the regulatory public advocacy function by transferring the associated staff positions and adding additional interagency receipt authority to the newly created Regulatory Affairs Public Advocacy section in the Department of Law. Through the statutory changes proposed in this legislation, the new section shall be budgeted directly from the regulatory receipts rather than through an interagency transfer of funds. This fiscal note converts the receipts portion only but may require further amending to include the transfer of expenditure authorization and positions if the portion of the Governor's amended budget that would make that change is not adopted.

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## SENATOR CON BUNDE

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## **SB 392 Sponsor Statement** RCA Public Advocacy/Dept of Law

Last year's Executive Order 111 transferred the responsibility for advocacy on behalf of the public in utility matters before the Regulatory Commission of Alaska (RCA) from the RCA to the attorney general, and established the public advocacy function within the Department of Law (DOL). AS 42.23.020(e). As a result, RCA personnel historically responsible for public advocacy now act under the authority and direction of the DOL. This bill completes the prior transfer of authority by expressly providing for various aspects of its execution.

SB 392 clarifies that regulatory cost charge receipts (not general fund) will continue to pay for the general costs of public advocacy now administered by the DOL, just as those receipts historically paid for public advocacy costs when the function was performed by RCA personnel.

The bill also adjusts the regulatory cost charge ceiling and creates two, distinct percentages of total regulatory cost charge receipts to separately fund the RCA and the DOL public advocacy function in order to provide each entity with budgetary independence from the other.

SB 392 also provides the DOL with qualified access to utility or pipeline carrier records similar to that afforded the RCA's former public advocacy staff in order to maintain efficient and economical access to information where the RCA has determined that comprehensive review and hearing is appropriate.

Finally, the bill clarifies that state agencies are exempt from paying the allocated costs of RCA proceedings to which the state agency is a party because there is no net fiscal benefit to the state in doing so.

Senate Bill: SB 392  
Short Title: RCA Public Advocacy/Dept. of Law  
Sponsor: Senate Labor and Commerce  
Current Version: SB 392  
Contact: Senator Bunde's office 365-4843

### **Summary**

- Clarifies that regulatory cost charges will fund the DOL public advocacy function;
- Modifies the regulatory cost charge mechanism to provide the DOL public advocacy function with budgetary independence from the RCA;
- Provides DOL public advocacy function with qualified access to utility records;
- Clarifies that state agencies are exempt from paying allocated costs of proceedings before the RCA.

### **Benefits**

- Completes consolidation of public advocacy within DOL;
- Gives advocacy function budgetary independence from RCA ;
- Gives DOL advocates qualified access to utility records to facilitate economical and efficient investigation;
- Eliminates inefficiency by exempting state agencies from paying allocated costs of RCA proceedings

### **Background**

Last year Executive Order 111 transferred the responsibility for advocacy on the behalf of the public in utility matters before the RCA from the RCA to the attorney general and established the public advocacy function within the DOL. RCA personnel historically responsible for RCA public advocacy (PAS) now act under the authority and direction of the DOL. The regulatory cost charge receipts historically funded the RCA and RCA personnel serving in the public advocacy role. With the transfer of that function and the associated personnel to DOL it is necessary to revise the RCC funding authority as well.

SB \_\_\_: "An Act relating to the expenses of investigation, hearing, or public advocacy before the Regulatory Commission of Alaska, to calculation of the regulatory cost charge for public utilities and pipeline carriers to include the Department of Law's costs of its public advocacy function, to inspection of certain books and records by the attorney general when participating as a party in a matter before the Regulatory Commission of Alaska; and providing for an effective date."

### SB 392 (RCA Public Advocacy)

➤ Generally:

- the need for the bill arises from the transfer of authority for public advocacy on matters before the Regulatory Commission of Alaska (RCA) under last year's **Executive Order 111**.
- E.O. 111 transferred the responsibility for **advocacy on behalf of the public** interest on utility matters from the RCA to the attorney general and established the public advocacy function within the Department of Law (DOL). AS 44.23.020(e). RCA personnel historically responsible for public advocacy now act under the authority and direction of the DOL.

➤ Accordingly:

- the bill **completes the prior transfer of authority** by expressly providing for various aspects of its execution, as regards public advocacy funding and access to records.

➤ Specifically, the bill would:

- clarify that *regulatory cost charge receipts (not general fund) will continue to pay for* the general costs of public advocacy now administered by the DOL, just as those receipts historically paid for public advocacy costs when the function was performed under the RCA. *See Sections 2,3,4,9,10, and 11.*
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- provide the DOL with *qualified access to records* formerly obtained by the RCA's public advocacy staff. *See Sections 5, 7, 11, 12, and 16*
- *explicitly exempt* state agencies from paying the allocated costs of RCA proceedings to which the state agency is a party. *See Sections 6, 13, 14 and 15*

## SB 392 (RCA Public Advocacy) Sectional Analysis

**Sections 2, 3, 4, 9, 10 & 11:** These sections clarify that the general costs of public advocacy for utility and pipeline matters before the Regulatory Commission of Alaska (RCA) will continue to be paid from the existing regulatory cost charge mechanism under AS 42.05.254 and AS 42.06.286.

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These sections of SB 392 amend existing statutes to complete the transfer of authority by expressly providing that regulatory cost charge receipts will continue to pay the costs associated with the public advocacy function that is now administered by the DOL. (Public advocacy funding is currently administered through a separate RDU within the RCA. It will be transferred from the DCED to DOL.) They do not change the regulatory cost charge mechanism.

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Second, under the adjusted overall regulatory cost charge ceiling, these sections specify separate, fixed caps on the respective budgets of the RCA and the DOL public advocacy

function. This will complete the transfer of authority for public advocacy by providing each entity with budgetary independence from the other. Accordingly, the RCA budget amount may not exceed .70 % of the total adjusted gross revenues of all regulated public utilities and pipeline carriers; and the DOL public advocacy budget may not exceed .17% of those same total adjusted gross revenues (.70%+.17%=.87%, the adjusted overall cap).

The legislature maintains the authority to appropriate the budget of the RCA and the budget of the DOL public advocacy function.

**Sections 5 & 11:** These sections of SB 392 provide the attorney general with qualified access to utility or pipeline carrier books and records when he participates in RCA dockets in a public interest advocacy role under AS 42.04.070(c) or AS 44.23.020(e).

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**Sections 7 & 12:** These sections of SB 392 work in tandem with Sections 5 and 11 of SB 392. The amendments recognize that public utilities and pipeline carriers may need to request that documents obtained by the attorney general under the amendments contemplated by Sections 5 and 11 be held confidential from public disclosure under the Public Records Act. AS 40.25 *et. seq.* Sections 7 and 12 provide a vehicle for public utilities and pipeline carriers to do so, which request would then be reviewed by the commission for a good cause determination.

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20 April 2004

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April 26, 2004

The Honorable Lyda Green, Co-Chair  
Senate Finance Committee  
Alaska Capitol, Room 516  
Juneau, AK 99801-1182

The Honorable Gary Wilken, Co-Chair  
Senate Finance Committee  
Alaska Capitol, Room 518  
Juneau, AK 99801-1182

Dear Chairs Green and Wilken:

**SB 392 (Senate Labor and Commerce)—Support**

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the Senate Finance Committee to support SB 392, sponsored by the Senate Labor and Commerce Committee. SB 392 would reinforce the ability of the Attorney General to represent our citizens as the public advocate in matters before the Regulatory Commission of Alaska (RCA).

AARP relies on the RCA because it offers our members and all Alaskans the best opportunity to achieve basic consumer protections:

- The ability to make informed choices about utility services
- The security of safe and reliable energy and telecommunications services
- The assurance that sales practices and advertisements are fair, so they do not confuse, mislead, or frighten the public
- The reassurance that consumers receive accurate information, communicated clearly and in plain language, so we understand our rights and remedies

The Attorney General's office has responsibility for public advocacy under the Regulatory Commission of Alaska. SB 392 will allow the Attorney General to recoup expenses for this function from the utilities. We think this makes sense. With tight budgets, unless the Attorney General can recoup RCA-related costs from the utilities, the public advocacy costs will be weighed against competing priorities within the budget of the Attorney General. It is much more effective to break out expenses related to the RCA and have them paid by the utilities. This will allow the Attorney General to fulfill his RCA-related public advocacy functions properly.

SB 392 also allows the Attorney General access to the accounts and documents of each utility so that the Attorney General will be able to represent the citizens of Alaska more effectively. Without access, the Attorney General is prevented from weighing all factors relevant to a case before the RCA.

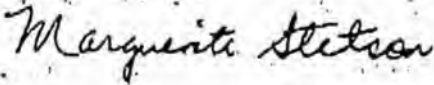
The RCA assures consumers the right to affordable rates and access to such basic necessary services as utilities and communications. We rely on the Attorney General to represent consumers on cases before the RCA. Without the provisions of SB 392, the RCA will not be able to protect our rights as consumers. AARP families need SB 392; all Alaskans need this bill.

AARP recommends an "AYE" vote on SB 392.

If you have any questions about our position, please feel free to contact Marie Darlin, Coordinator of the AARP Capital City Task Force (907- 586-3637); Patrick Luby, AARP Legislative Representative (907-762-3314); or me (907-245-5259).

Thank you for your consideration.

Sincerely,



Marguerite Stetson  
AARP State Coordinator for Advocacy  
3009 Northwood Street  
Anchorage, Alaska 99517-1871  
907-245-5259 (voice)  
907-245-5279 (fax)  
[ffmas@aurora.uaf.edu](mailto:ffmas@aurora.uaf.edu)

CC: Vice-Chair Con Bunde  
Senator Ben Stevens  
Senator Fred Dyson  
Senator Lyman Hoffman  
Senator Donny Olson  
Marie Darlin  
Patrick Luby

SB 392

NAME: PAT LUBY Subject/Bill No: SB 392

Co./Dept./Title: AARP ADVOCACY DIRECTOR Phone: 907-762-3314

Address: 3601 C ST #1420, A/A Zip: 99503

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

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Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NOT Heard

4/28/04 AM

SENATE FINANCE COMMITTEE

SIGN-IN

SB 392-REGULATORY COMMISSION OF ALASKA

NAME: PAT LUBY Subject/Bill No: SB 392  
 Co./Dept./Title: ADVOCACY DIRECTOR AARP Phone: 907-762-3314  
 Address: 3601 C ST #1420, A/A Zip: 99503  
 Do you wish to testify?  Yes  No  Respond To Questions

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

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

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

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 04/20/04

FURTHER: Finance

Date of 5-Day Notice: 4/15/04  
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 4/20/04

Labor and Commerce Committee considered SENATE BILL NO. 392

**SB 392 REGULATORY COMMISSION OF ALASKA**

"An Act relating to the expenses of investigation, hearing, or public advocacy before the Regulatory Commission of Alaska, to calculation of the regulatory cost charge for public utilities and pipeline carriers to include the Department of Law's costs of its public advocacy function, to inspection of certain books and records by the attorney general when participating as a party in a matter before the Regulatory Commission of Alaska; and providing for an effective date."

and recommends:

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

<b>Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>House Bill:</b>	
<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#
DCED	4/29/04		✓		1
LAW	4/20/04	✓			2

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

**SIGNATURES AND RECOMMENDATIONS:**

	Do PASS	Do NOT PASS	NO REC	AMEND
Seckins <i>Ralph Seckins</i>	✓			
E. Stevens <i>[Signature]</i>	✓			
CHAIR: <i>[Signature]</i>	✓			

**SB**

**393**

**HFIN**

**FILE**



# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSSB 393(FIN)  
(S) Publish Date: 5/1/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: UA  
Title TAKE PERM FUND DIVIDEND FOR L BRU UA  
Sponsor FINANCE Component \_\_\_\_\_  
Requester \_\_\_\_\_ 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	75.0	25.0	25.0	25.0	25.0	25.0
Travel	5.0					
Contractual	15.0					
Supplies	5.0	5.0	5.0	5.0	5.0	5.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>100.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (1048)</b>	<b>400.0</b>	<b>350.0</b>	<b>300.0</b>	<b>250.0</b>	<b>180.0</b>	<b>130.0</b>
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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						
1048 University Receipts	100.0	30.0	30.0	30.0	30.0	30.0
<b>TOTAL</b>	<b>100.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>

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		1	1	1	1	1
Temporary	1					

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

Currently, UA has a very aggressive process to collect unpaid tuition, fees and other charges such as dorm fees, parking tickets, lost library books, etc. The process includes notices at 30, 60, 90, 120 and 180 days, administering deferred payment plans, and employing collection agencies. However, even with these collection efforts there is currently over \$1M owed to the university that is at least 180 days past due. Given the number of Alaska resident students, we estimate that \$800K of the \$1M, that is over 180 days old, is attributed to students receiving a PFD. For appropriate protection of each citizen, this legislation provides for extensive notification, warning and appeals processes in advance of being able to garnish a permanent fund dividend. Therefore, of the \$800K, we estimate about \$400K would be collectible via this mechanism in the first year. Thereafter, that amount will likely decline each year to a minimum of \$100K annually in 5 to 10 years.

Prepared by: Pat Pitney Phone 474-5889  
Division: University of Alaska Date/Time 4/28/04 8:57 AM  
Approved by: Pat Pitney Date 4/28/2004  
Agency: University of Alaska

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSSB 393(FIN)  
(S) Publish Date: 5/1/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title Take Perm Fund Dividend for RDU Revenue Programs & Services  
University Fees Component Permanent Fund Dividend  
Sponsor Senate Finance Committee  
Requester Senate Finance Committee Component No. 981

**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	15.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>15.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Permanent Fund Dividend Fund	15.0					
<b>TOTAL</b>	<b>15.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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						0
Part-time						
Temporary						

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

This bill would authorize the university to claim up to 100% of an individual's Permanent Fund Dividend for payment of defaulted tuition, fees and other charges of the University of Alaska. The university estimates approximately 1,700 garnishments in the first year and something less in subsequent years.

This fiscal note covers the cost of programming the PFD garnishment system, warrant, and direct deposit programs as needed to accommodate a new agency with authority to claim up to 100% of an individual's dividend. Once the computer programs are in place, claims will be handled electronically and there should be no increase in cost to process the university garnishments from year to year.

Prepared by: Sharon Barton Phone 465-4785  
Division Permanent Fund Dividend Date/Time 4/25/04 11:45 PM  
Approved by: Steve Porter, Deputy Commissioner Date 4/25/2004  
Agency Department of Revenue

## ATTACHEMENT

### Designated Evaluation and Treatment Program

Beginning in the late 1970s, the Designated Evaluation and Treatment Program provided funding on a fee-for-service basis to local community hospitals and specialty hospitals. This funding covered psychiatric inpatient care to certain persons, enabling them to receive care close to home and family. The population initially served by the program was anyone who did not have the means to pay the bill for hospital and related services. The budget, while limited, enabled the program to compensate hospitals for psychiatric inpatient care provided to "indigent" persons, without any further restrictions.

Growth in the program and increases in hospital rates pushed program costs beyond the available budget, and the first restriction was imposed. The program policy was changed to provide payment only for persons who were under civil commitment. A task force, appointed to resolve payment issues, recommended that the hospitals be paid at the Medicaid rate.

The Designated Evaluation and Treatment Program has become a vital part of the necessary array of community services that must be in place before the Alaska Psychiatric Institute can assume its role as the tertiary care facility for Alaska. It provides acute hospital psychiatric care treatment close to ones home community and support network.

In 1998, the federal government made funds available to assist low-income individuals in paying for evaluation and treatment services in designated mental health facilities. The funding was available through FY 01. During the 21<sup>st</sup> session of the Alaska State Legislature, Senate Bill 97 became law. It created the Mental Health Treatment Assistance Program (AS 47.31.005 - 47.31.100) and directed the department to adopt regulations to implement the program (after consulting with the Alaska Mental Health Trust Authority).

House HESS Questions 3/25/04 HB 535

Draft 3/31/04

- 1) If a person has been sent to a DET facility on a court order, would the DBH have any authority to question or overthrow the court order.

Attn Gen – the DBH would be obligated to follow that order

However, the treating physician can discharge a person who does not meet admission criteria.

- 2) How many youth are treated in DET facilities?

Seven (under 3%) admissions occurred in FY 03 out of a total 244 admissions; one youth entered the hospital twice. None exceeded the evaluation phase of up to 7 days.

- 3) What is the explanation for the increased length of stay at Bartlett?

See attached list of reasons for extended stays as explained by Bartlett justified by clinical reasons in the best interests of the patient

- 4) Why is cost of care at Mt. Edgecumbe so high compared to Bethel for example?

All IHS hospitals have a nationally determined rate that is the same for all hospitals

General answer is full cost studies are conducted every four years which include facility depreciation and are used to collect Medicaid funds.

- 5) What would happen if API were full?

- See # 3 – We can ask a DET facility to keep someone longer
- API is being more assertively managed to avoid being full – Current CEO has not turned anyone away

- 6) Could we send anyone to a correctional facility if API is full?

Attn Gen. -- DHSS will pay for another placement – we will not send to correctional facility (notwithstanding hold in jail while transportation being arranged for combative patients – leads to discussions about developing more assertive local DET and other medication options including Dr. to Dr. discussions with local physicians and API physicians.

- 7) Why are there different poverty levels eligibility definitions -- example between DET and Denali Kid Care.

There are at least 9 categorical programs using poverty definitions ranging from 100 – 250% of federal poverty guidelines. Each was developed at different times, under different climates and different administrations.

See attached data summary sheet.

- 8) What is the comparable API Daily Medicaid Rate?

I was in error reporting the daily cost at API as \$669. That rate did not include depreciated facility costs. The Medicaid Rate was calculated at \$757.46/day calculated with the same standardized procedure used to calculate the other Medicaid rates used for other hospitals.

A rate for the new facility has not been calculated.

- 9) Are the Medicaid Rates cost shifting from higher Medical Costs such as surgery?

(Note: DHSS efforts to restructure psychiatric hospital rate.)

- 10) How will be using First Health and MD to monitor program?

See Summary of Proposed DET Monitoring Process

- 11) How have other states managed DET like programs in terms of an entitlement vs. limitations of budget.

Dan Branch, Att. Gen. Office has been asked to attend on 4/2/04

### Length of Stay Extensions at Bartlett FY 03

- Difficulty in stabilizing on medications; developed many side effects to medications
- Placement, working w/ courts to get guardianship
- Difficulty in stabilizing medications, many reactions
- Placement, unable to release safely by self, not appropriate for API
- MD felt API placement inappropriate, better to stay within the southeast community
- Stabilizing on medications
- Difficulty in stabilizing on medications related to reactions/EPS
- Was off medication completely, restarted and stabilized
- Stabilizing on medications
- Co-occurring ETOH abuse, needing extra time
- Newly diagnosed, stabilizing on medication

Hospital CEO notes that most delays occurred with patients sent from across the region where resources tend to be less than in Juneau. Sixty-four percent of the delays were related to medication issues. More assertive discharge planning may be able to facilitate earlier discharges. Discharge planning should begin on Day of Admission by hospital staff and local programs. More active management by DBH/API/First Health may facilitate more timely discharges.

**2004 Monthly Federal Poverty Guidelines for Alaska**  
**Effective 4/1/2004**

<b>HOUSEHOLD SIZE</b>	<b>QMB Working Disabled (premium level)</b> 100%	<b>SLMB Base</b> 120%	<b>SLMB Plus</b> 135%	<b>Denali KidCare (limit for insured children)</b> 150%	<b>Denali KidCare (limit for uninsured children) and Pregnant Women</b>	<b>Transitional Medicaid (DET)</b> 185%	<b>QDWI</b> 200%	<b>Working Disabled (Transition Back to Work)</b> 250%
1	\$970	\$1,163	\$1,309	\$1,454	\$1,635	\$1,793	\$1,939	\$2,423
2	\$1,301	\$1,561	\$1,757	\$1,952	\$2,208	\$2,407	\$2,602	\$3,253
3	\$1,633			\$2,449	\$2,782	\$3,021	\$3,265	\$4,082
4	\$1,965			\$2,947	\$3,355	\$3,634	\$3,929	\$4,911
5	\$2,296			\$3,444	\$3,928	\$4,248	\$4,592	\$5,740
6	\$2,628			\$3,942	\$4,501	\$4,861	\$5,255	\$6,569
7	\$2,960			\$4,439	\$5,074	\$5,475	\$5,919	\$7,398
8	\$3,291			\$4,937	\$5,647	\$6,089	\$6,582	\$8,228
Ea Addl	\$332			\$498	\$574	\$614	\$664	\$830

QMB – Qualified Medicare Beneficiary

SLMB Base – Special Low Income Medicare Beneficiary

SLMB Plus – Special Low Income Medicare Beneficiary with Special Circumstances

QDWI – Qualified Disabled and Working Individuals