ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2349 SCOMM 99. HOUSE SPEC. WORLD TRADE...RELATIONS, 1995-1996 64

commercial operations along the Northern Sea Route. Half of the effort had already been accomplished on a year round basis. For almost 15 years now, Russia has had the western half of the route for the transport of metal ores and supplies. His goal was to try to expand the commercial operation between the North Atlantic Basin and the Pacific Basin. In just two years, they were able to expand the operations to 11 months of the year and were on the verge of announcing after centuries of trying that we could operate the route year round. The state of Alaska also took the lead in obtaining federal funding for reconnaissance studies by the Corps of Engineers.

Number 570

MR. ORR strongly encouraged the committee to provide for funding to keep things moving along the lines they had originally intended. Mr. Orr said he believes the wood product sector has a lot of merit.

TAPE 95-6 SIDE B
Number 014

MR. ORR commented that people in the Northwest, Alaska and Canada are really ripe on being able to compete new transportation routes. We have been too far away from markets outside the Pacific Rim and that's the case for some of Alaska's minerals. It's certainly the case for Alaska's fisheries. The first $200,000 the Alaska Legislature appropriated, went to a very good cause and a great deal of federal; money was brought in.

Number 052

REPRESENTATIVE EILEEN MACLEAN went on record as supporting the Northern Sea Route. It's too expensive to transport materials and goods from Seattle. So the Northern Region has started test trial runs from Canada. We can transport fuel from Canada all along the northern coast.

Number 091

REPRESENTATIVE GAIL PHILLIPS asked if Dr. Sackinger had made a presentation to the Northern Forum.

DR. SACKINGER said he had not made a presentation recently, it was about a year and half ago.

REPRESENTATIVE PHILLIPS said it was very important that the Northern Forum be kept abreast on this. She asked Dr. Smith about what kind of money would the state need to give the Department of Transportation budget to match.

Number 110

DR. SMITH said the original budget was around $3.2 million and its been reduced to $100,000, and this puts the number of construction projects in jeopardy. Its not necessarily related to the Northern Sea Route, but for port developments that are scheduled for construction. The two projects in jeopardy are the continuing construction of a breakwater at Kodiak and erosion-control measures at Bethel.

REPRESENTATIVE PHILLIPS asked Mr. Walker about standardization of vessel ice classification.

Number 125

MR. WALKER stated that currently there are various classifications among countries around the world. that rate their vessels on the strength of their vessels, their capabilities and where it can safely operate to protect the environment, carry certain cargoes. What this would do is facilitate transit of foreign vessels through the Northern Sea Route through domestic waters and coastal waters of Russia sop that they would accept someone else's classification. Presently its a hodge podge.

Number 160

CHAIRMAN BARNES said that she had heard there is an excess of icebreakers in Canada, that they are selling for shipping.

MR. WALKER answered that there are commercial ones. The Canadian government has for years operated an extensive ice breaking fleet for the re-supply and for convoy duties in Eastern Canada and for re-supply of the Canadian arctic villages and the assistance to commercial enterprise, much as we do in the Great Lakes. Our fleet has dwindled down to two with a third one to be constructed in the U.S. The Canadian fleet is about eight now of the

state-owned vessels. They are in a terrible financial situation also and are looking to commercialize some of their operations.

Number 185

MR. WALKER said the United States has two icebreakers in its entire fleet, both in the Coast Guard.

CHAIRMAN BARNES thanked the presenters. CHAIRMAN BARNES introduced a resolution through the Rules Committee.

Number 230

ADJOURNMENT

There being no further business to come before the House Special Committee on World Trade and State/Federal Relations, CHAIRMAN BARNES adjourned the meeting at 6:12 p.m.

Official Business

COMMITTEES:
Natural Resources
Legislative Council

Alaska State Legislature

Office of World Trade
And
State/Federal Relations

REPRESENTATIVE
RAMONA L. BARNES
District 22

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P O Box 103382
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(907) 337-7737
(907) 258-8163

State Capitol
Juneau, AK 99801-1182
(907) 465-3438

House Special Committee on World Trade & State/Federal Relations

April 20, 1995 5 p.m.
Capitol, Room 408

AGENDA

I. CALL TO ORDER

II. ROLL CALL

III. COMMITTEE CALENDAR

* HJR 31 "A Resolution urging the United States Congress to consider and enact legislation to revise the Internal Revenue Code to levy a flat tax."

* HJR 39 "A Resolution relating to the Northern Sea Route."

* HJR 41 "A Resolution supporting an exemption from the Jones Act for bulk commodities, such as coal and coal derived fuels, produced in Alaska."

(* first public hearing)

IV. OLD BUSINESS

V. NEW BUSINESS

VI. ADJOURNMENT

*** FIRST COMMITTEE OF REFERRAL CHANGE ***

PLEASE DISREGARD PREVIOUS VERSION

AND

REPLACE WITH THIS CORRECTED VERSION

HJR 31 A

HOUSE JOINT RESOLUTION NO. 31

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES JAMES, Kott

Introduced: 2/15/95
Referred: House Special Committee on World Trade and State/Federal Relations, Finance

A RESOLUTION

Urging the United States Congress to consider and enact legislation to revise the Internal Revenue Code to levy a flat tax.

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

WHEREAS the current federal Internal Revenue Code is characterized by myriad exemptions, exceptions, loopholes, complicated schedules, and targeted tax breaks, and is fraught with pitfalls for the taxpayer who attempts to calculate the tax obligation due; and

WHEREAS, because the Code imposes a taxation on the earnings of personal savings, the tax is counterproductive of efforts to encourage individuals and families to save and invest a portion of their incomes; and

WHEREAS there is a need to replace the current federal Internal Revenue Code with a fairer, simpler tax system; and

WHEREAS substitution of a fixed-rate or "flat" tax would mean that all income would be taxed only once, at a uniform rate; and

WHEREAS a fixed-rate or "flat" tax would exclude from the definition of taxable income the earnings from personal and business savings, thereby eliminating the "savings penalty"; and

HOUSE JOINT RESOLUTION NO. 41

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES WILLIAMS, Bunde

Introduced: 4/6/95
Referred: House Special Committee on World Trade and State/Federal Relations, Transportation

A RESOLUTION

Supporting an exemption from the Jones Act for bulk commodities, such as coal and coal derived fuels, produced in Alaska.

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

WHEREAS 46 U.S.C. Appx. 861 - 889 (Merchant Marine Act of 1920), commonly known as the Jones Act, requires that seaborne shipping between United States ports be done on vessels that have been constructed in the United States and that are crewed by United States crews; and

WHEREAS this requirement has resulted in much higher costs for shipping bulk commodities on United States vessels between domestic ports than for shipping those commodities on foreign carriers between United States and foreign ports; and

WHEREAS there are currently no bulk carriers constructed in the United States that are capable of servicing the large-scale movement of Alaska coal and coal derived fuels; and

WHEREAS, because the transportation cost for a high-tonnage, low-value bulk commodity is often a significant part of the total delivered cost of that commodity, a higher shipping cost can frequently keep a bulk commodity from being competitive; and

WHEREAS Alaska coal and coal derived fuels are a potential fuel source for utilities

CORRECTION

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

Central Microfilm Services
Department of Education
State of Alaska

Rev. 6/98

HOUSE JOINT RESOLUTION NO. 31

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES JAMES, Kott

Introduced: 2/15/95
Referred: House Special Committee on World Trade and State/Federal Relations, Finance

A RESOLUTION

Urging the United States Congress to consider and enact legislation to revise the Internal Revenue Code to levy a flat tax.

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

WHEREAS the current federal Internal Revenue Code is characterized by myriad exemptions, exceptions, loopholes, complicated schedules, and targeted tax breaks, and is fraught with pitfalls for the taxpayer who attempts to calculate the tax obligation due; and

WHEREAS, because the Code imposes a taxation on the earnings of personal savings, the tax is counterproductive of efforts to encourage individuals and families to save and invest a portion of their incomes; and

WHEREAS there is a need to replace the current federal Internal Revenue Code with a fairer, simpler tax system; and

WHEREAS substitution of a fixed-rate or "flat" tax would mean that all income would be taxed only once, at a uniform rate; and

WHEREAS a fixed-rate or "flat" tax would exclude from the definition of taxable income the earnings from personal and business savings, thereby eliminating the "savings penalty"; and

WHEREAS the replacement of the current Internal Revenue Code with a fixed-rate or "flat" tax would restore a high degree of fairness to the manner in which the federal government treats the people of the United States.

BE IT RESOLVED that the Alaska State Legislature urges the United States Congress to consider and enact legislation to replace the current Internal Revenue Code with the levy of a fixed-rate or "flat" tax.

COPIES of this resolution shall be sent to the Honorable Bill Clinton, President of the United States; the Honorable Al Gore, Jr., Vice-President of the United States and president of the U.S. Senate; the Honorable Newt Gingrich, Speaker of the U.S. House of Representatives; the Honorable Bob Dole, U.S. Senate Majority Leader; the Honorable Tom Daschle, U.S. Senate Minority Leader; the Honorable Dick Armey, U.S. House Majority Leader; the Honorable Richard Gephardt, U.S. House Minority Leader; the Honorable Bob Packwood, Chair, and the Honorable Daniel Patrick Moynihan, ranking minority member, Senate Finance Committee; the Honorable Bill Archer, Chair, and the Honorable Sam Gibbons, ranking minority member, House Committee on Ways and Means; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in the United States Congress.

HOUSE JOINT RESOLUTION NO. 41

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES WILLIAMS, Bunde

Introduced: 4/6/95
Referred: House Special Committee on World Trade and State/Federal Relations, Transportation

A RESOLUTION

Supporting an exemption from the Jones Act for bulk commodities, such as coal and coal derived fuels, produced in Alaska.

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

WHEREAS 46 U.S.C. Appx. 861 - 889 (Merchant Marine Act of 1920), commonly known as the Jones Act, requires that seaborne shipping between United States ports be done on vessels that have been constructed in the United States and that are crewed by United States crews; and

WHEREAS this requirement has resulted in much higher costs for shipping bulk commodities on United States vessels between domestic ports than for shipping those commodities on foreign carriers between United States and foreign ports; and

WHEREAS there are currently no bulk carriers constructed in the United States that are capable of servicing the large-scale movement of Alaska coal and coal derived fuels; and

WHEREAS, because the transportation cost for a high-tonnage, low-value bulk commodity is often a significant part of the total delivered cost of that commodity, a higher shipping cost can frequently keep a bulk commodity from being competitive; and

WHEREAS Alaska coal and coal derived fuels are a potential fuel source for utilities

and industries on the west coast of the United States and in Hawaii; and

WHEREAS the current difference between Jones Act shipping rates and foreign shipping rates has made the delivered cost of foreign coal significantly less expensive than domestic coal as evidenced by the current supply agreements between a Hawaiian independent power producer and an Indonesian coal supplier; and

WHEREAS greatly increased coal usage figures prominently in the future generation plans for Hawaiian utilities and thus will create prospective markets for Alaska coal; and

WHEREAS it is the policy of the State of Alaska under AS 44.19.035 to persuade the Congress to repeal the Jones Act;

BE IT RESOLVED that the Alaska State Legislature opposes the application of the Jones Act to bulk commodities, such as coal and coal derived fuels, because of the Act's detrimental effect on Alaska commerce; and be it

FURTHER RESOLVED that the Alaska State Legislature respectfully requests the Congress to pass legislation exempting Alaska bulk commodities, such as coal and coal derived fuels, from provisions of the Jones Act.

COPIES of this resolution shall be sent to the Honorable Bill Clinton, President of the United States; the Honorable Al Gore, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Federico Pena, Secretary of the U.S. Department of Transportation; the Honorable Newt Gingrich, Speaker of the U.S. House of Representatives; the Honorable Bob Dole, Majority Leader of the U.S. Senate; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

"A NORTH SEA ROUTE TO ALASKA", a Talk by Dr. Orson Smith,
To the Juneau World Affairs Council, March 23, 1994,
Synopsis by Dr. Joe Sonneman

The Army Corps of Engineers in June 1995 will complete its two-year study of a North Sea route between the Pacific and Atlantic Oceans via the Arctic Ocean and Alaska.

Dr. Orson Smith, a ports, harbors, and coastal specialist with the Corps since 1973, said the Corp, composed mostly of civilians, has for the past two centuries worked to develop water resources in the U.S.

Showing slides of the Arctic regions, Dr. Smith said routes via either the center of the Arctic or along the Russia coast would make points north of San Franciso (in North America) or north of Korea (in Asia) closer to Europe than going through the Suez or Panama canals.

Smith said that the Soviet Union often used the Arctic Sea to supply its coast communities, but that the Soviet Union forbade other nations from using that route. But in 1987, Gorbachev opened this route to other nations' ships, as part of perestroika (and as a way to earn foreign exchange). Few used this.

The Alaska Department of Commerce in 1993 asked the Corps to investigate this now-possible route. Senator Stevens twice won $300,000 in appropriations to conduct the Corps study, Smith said.

The six-part information-gathering study includes: history of Arctic sea routes; design of Arctic ships; learning the climate; studying weather forecasting, investigating international efforts; and learning what commodities might be worthwhile to transport this way.

The Corps asked the University of Alaska at Fairbanks for help with the climatological study, because ice can vary by thickness, ridgeness, age, and wind-induced compactness or dispersion. Luckily, two visiting Russian scientists greatly helped to produce an out-standing climatological report, also telling the Russian infrastructure and helping to estimate shipping risks.

Bill Sackinger, now retired, also helped gather international information on the North Sea route--which is under study in Norway, with Russian and Japanese backing.

Both Gulf Engineers, knowledgeable in port economics and Corps studies, and DRI/McGraw-Hill, experienced in world sea trade statistics and macro-economic forecasting, combined to estimate likely commodities. Focusing first on existing trade, they found that non-ferrous metals now go, or could go, from Alaska to Europe, both from Skagway and from the Red Dog mine, using existing Unalaska port facilities.

The Corps compiled a global list of ice-breaking ships: there are hundreds, but most are medium-sized ships intende for Russian domestic service. The Finns--and also two German shipyards--lead the way in icebreaker ship design.

Russian requirements include: a marine-surveyed ship topped off in fuel and fully provisioned, with a Russian pilot, fully insured, and paying for icebreaker services.

Preliminary results look promising. A 45-60 day window in good weather [August-September] may allow ice-conditioned cargo ships to transit the route without icebreakers. But the weather and ice and sea conditions are highly variable. Another 30 days before and 30 days after might be passable, too, but only with icebreaker assistance. This limited time period could still allow for "thousands" of voyages each year, equivalent to a medium-sized port, about 20 million tons per year. [Anchorage now handles 3 M/t/yr; Rotterdam 300 M/t/yr].

Smith said ships would probably travel in convoys, so that one icebreaker could aid many ships. Some shippers are already interested.

U.S. Arctic research is focused on ecological aspects and climate change, not waterborne commerce, Dr. Smith added, suggesting that a modest change in emphasis might help make the North Sea route a reality. The Corps will first consider the route without port improvements, and will then evaluate what help port improvements might make.

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, ALASKA
P.O. BOX 898
ANCHORAGE, ALASKA 99506-0898

REPLY TO
ATTENTION OF:

PRESENTATION FOR THE HOUSE SPECIAL COMMITTEE ON WORLD TRADE AND STATE/FEDERAL RELATIONS

ALASKA STATE LEGISLATURE
MARCH 23, 1995

By Orson P. Smith, Ph.D.

The Northern Sea Route is a marine passage from the Atlantic to the Pacific Ocean, or vice versa, via the Arctic Ocean north of Russia. It extends approximately 3,000 miles from the Bering Strait on the Pacific to Murmansk, Russia, on the Barents Sea, which opens onto the Atlantic. The route offers distances between the Atlantic and Pacific basins 35 to 60 percent shorter than traditional routes through the Panama and Suez canals. The Northern Sea Route has been established since the 1930's, but until recently Russia, whose territory borders the route, carefully guarded it from foreign ships. Mikhail Gorbachev, then General Secretary of the Soviet Union, signaled Russia's willingness to open the route for international commercial shipping in an October 1987 address. Some international shipments have taken place since, but the dream of a busy new passage between markets of one basin and sources of supply in the other remains a goal for the future.

The Alaska Department of Commerce and Economic Development asked the Corps of Engineers in a February 1993 letter to investigate Alaskan port improvements related to the State's strategic position on the Northern Sea Route. The U. S. Congress appropriated $300,000 in November 1993 to begin the study and appropriated another $300,000 the next year to complete the work. The Corps study was administered by the Alaska District office in Anchorage, with technical assistance from the Corps' Cold Regions Research and Engineering Laboratory in Hanover, New Hampshire.

The Corps requires a focus on port improvements, but this unique assignment called for an extensive information-gathering effort at the start. The Cold Regions Lab assisted the Alaska District with an overview of the history and present status of the Northern Sea Route and the state of the art in design of arctic ships. I have provided the Committee with a publication of this work.

The University of Alaska assisted with a review of Russian capabilities to monitor and forecast arctic conditions and a summary of the highly variable climatological factors which affect the cost of shipping. Two Russian scientists, Drs. Andrey and Tatiana Proshutinsky, were instrumental in this effort. From St. Petersburg, Russia, they are visiting faculty members at the Institute of Marine Science at the University of Alaska Fairbanks. Dr. William Sackinger, an arctic ice specialist at the Geophysical Institute in Fairbanks, helped with a summary of international initiatives now under way, including the International Northern Sea Route Program.

This program is a multi-million dollar, multi-year study, administered in Norway and largely funded by Japanese interests.

We contracted the port planning firm Gulf Engineers and Consultants, Inc., of Baton Rouge, Louisiana, to apply their expertise in economic analysis of ports to forecast commodity flows over the Northern Sea Route. The Gulf specialists were assisted by DRI/McGraw-Hill of Washington, DC, and compiled a summary of historical world sea trade statistics and a forecast of commodity flows which could be diverted from canal routes.

The Corps Cold Regions Lab inventoried the world fleet of ice-breakers and arctic cargo ships, with the assistance of Leonid Tunik, a specialist in Russian arctic ships. A commercial version of this inventory was published recently by Backbone Publishing of New York. The laboratory is now developing a computer simulation of the passage of selected cargo ships along the Northern Sea Route. This model applies the climatological information gathered by the study to estimate the average transportation cost for various commodities by simulating many voyages in the full range of possible conditions. The simulation results will be applied to adjust the forecast of commodity flows based on the competitiveness of the transportation cost.

Preliminary forecasts indicate that non-ferrous ores have the best prospects for Alaskan exports. The ore terminal at Skagway has exported lead and zinc ore from a mine in Faro, British Columbia, to Europe in years past. The terminal is owned by the State of Alaska. The State-owned ore terminal near Kivalina on the Chukchi Sea has also exported lead and zinc ore to Europe from the Red Dog Mine by lightering on barges to deep-draft vessels anchored offshore. The efficiency of this operation is constrained by the shallow approach to the terminal, the presence of ice, and concerns for whales' summer migration along this coast. The Alaska District is in contact with port operators at Skagway and the Red Dog Mine terminal and with the Alaska Industrial Development and Export Authority to investigate port improvements at these sites.

Preliminary forecasts for the entire Pacific rim indicate the possibility of a substantial increase in commodity flow via the Northern Sea Route in future decades. The forecast will be tested by the ship transit simulation program, but appears now to be large enough that shipments could extend beyond the optimum climatic conditions of August and September. Shipments beyond this best season are certain to require ice-breaker escort along most of the route. Unalaska appears to be a good port for marshalling east-bound Northern Sea Route convoys. The Anchorage firm of Tryck Nyman Hayes has been contracted to investigate port improvement prospects at Unalaska.

Two public workshops for the Northern Sea Route study took place in Anchorage, one in February and one in August of 1994. Experts world-wide have been consulted by telephone and electronic mail. The intensity of interest in the Northern Sea Route around the globe is impressive.

The Corps will publish its Northern Sea Route Reconnaissance Report in June 1995. The report will recommend site-specific feasibility studies of port improvements that appear economically justified. A non-federal sponsor must agree to provide the Corps with 50 percent of the cost for these studies to proceed. We hope any agreements necessary can be executed in 1995.

The report will also recommend efforts by others, which could enhance the commercial prospects for Alaskan businesses. The findings of the Northern Sea Route study may lead Alaskan leaders to consider such options as these:

1. Augmenting relations with trading partners in the Arctic and Europe, perhaps through the programs of the Alaska Department of Commerce and Economic Development, the University of Alaska, and the Northern Forum;

2. Pursuing the Federal interest, through cost-sharing port projects with the Corps of Engineers, intermodal transportation projects by the Alaska Department of Transportation and Public Facilities and the Federal Highway Administration, chart improvements by the National Oceanic and Atmospheric Administration, and improved aids to navigation and safety measures in the arctic by the U. S. Coast Guard;

3. Stimulating applied research and development, which might shift some of the present focus of U.S. arctic research on environmental concerns to matters affecting the future of commercial shipping in the arctic, such as climatological factors affecting shipping cost, the design of arctic cargo ships, and the design of shallow-draft supply vessels to serve rural Alaskan communities.

The Alaska Department of Commerce and Economic Development has asked the Corps to study the possibility of extending the navigation season along the Kuskokwim and Yukon Rivers, and has requested another study on ways to improve the supply system for coastal communities of arctic Alaska. The President's 1996 budget includes funds to begin investigation of Kuskokwim River navigation. Proposed studies of the Yukon River and the arctic coast have not been funded.

The Alaska District of the Corps of Engineers appreciates this opportunity to review the findings to date of our Northern Sea Route Reconnaissance Study. We look forward to furnishing this Committee copies of our final report and will be glad to provide you with any other information at our disposal.

Committees:
House Resources
Co-Chairman
World Trade &
State Federal Relations
Transportation
Rules
Oil & Gas

Alaska State Legislature

During Session:
State Capitol
Juneau, AK 99801-1182
(907) 465-3424
Fax (907) 465-3793

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352 Front Street
Ketchikan, AK 99901
(907) 247-4672
Fax (907) 225-8546

Representative William K. Williams

SPONSOR STATEMENT

HJR 41 — JONES ACT EXEMPTION

Alaska is a great storehouse of the world's finest coal. Because of its high quality and Alaska's strategic geographic location, Alaska coal is well positioned to help meet the growing Pacific Rim demand. Part of that demand is likely to develop in Hawaii and on the west coast of the mainland United States. Particularly important is the growing need for high rank blending coal in the Pacific Northwest.

Unfortunately, the restrictions of the Jones Act create a financial barrier to an Alaska response to markets located in the United States. Under current conditions, Alaska suppliers of coal will be non-competitive with Asian coal shipments to U.S. ports. This harms both Alaska and the United States balance of trade.

HJR 41 asks Congress to carve out of the Jones Act an exemption for Alaska bulk commodities, thus allowing Alaska coal suppliers to respond to new opportunities in the world market for coal. There are currently no U.S. manufactured vessels capable of servicing large scale movements of Alaska coal. Therefore, a Jones Act exemption is an important part of any effort to market Alaska coal, especially since the effort is likely to include markets in the western U.S. and Hawaii.

HJR 41 will send a strong message of support from the legislature to the Alaska coal industry. It will lend support to the Alaska congressional delegation's ongoing effort to represent Alaska interests in Congress. HJR 41 is consistent with state policy set forth in Title 44 which requires the governor to use "best efforts and all available means to persuade the United States Congress to repeal" the Jones Act.

HJR 41 makes good sense for Alaska. I urge its immediate passage.

Official Business

COMMITTEE: World Trade

DATE: Apr 20 1995

SIGN-IN

Subject of meeting:
HJR 31
HJR 39
HJR 41

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Jules Tileston	DNR - ANC		DNR	No
Tom Crafford	2525 C St #500 Anch AK 99503	274-8638	CIRI / HJR41	Yes
Jannette James	3068 Badger Rd North Pole AK (Sponsor)		HJR 31	Yes
Paul Fuhrman	10652 Portar LN 99801	790-3038	Self - HJR39	Yes
Alan Waller	3437 Meander Way 99801	790-3636	Self HJR39	No - Yes

HOUSE SPECIAL COMMITTEE ON
WORLD TRADE AND STATE/FEDERAL RELATIONS
April 20, 1995
5:10 p.m.

MEMBERS PRESENT

Representative Ramona Barnes, Chairman
Representative Gary Davis
Representative Bill Williams
Representative Gene Kubina

MEMBERS ABSENT

Representative Gail Phillips, Vice Chairman
Representative Eldon Mulder
Representative Jerry Mackie

COMMITTEE CALENDAR

* HJR 39: Relating to the Northern Sea Route.

PASSED OUT OF COMMITTEE

* HJR 31: Urging the United States Congress to consider and enact legislation to revise the Internal Revenue Service Code to levy a flat tax.

PASSED OUT OF COMMITTEE

* HJR 41: Supporting an exemption from the Jones Act for bulk commodities, such as coal and coal derived fuels, produced in Alaska.

PASSED OUT OF COMMITTEE

(* First public hearing)

WITNESS REGISTER

ORSON P. SMITH, PE, PhD.
Coastal Engineer/Oceanographer
Civil Works Branch
United States Army Corps of Engineers
Post Office Box 898
Anchorage, Alaska 99506-0898
Telephone: 753-2632
POSITION STATEMENT: Supported HJR 39

PAUL FUHS, Self
10652 Portar Lane
Juneau, Alaska 99801
Telephone: 790-3030
POSITION STATEMENT: Supported HJR 39

REPRESENTATIVE JEANNETTE JAMES
Alaska State Legislature
State Capitol, Room 102
Juneau, Alaska 99801-1182
Telephone: 645-3743
POSITION STATEMENT: Offered sponsor statement to HJR 31

JACK PHELPS, Legislative Assistant
Representative Bill Williams
Alaska State Legislature
State Capitol, Room 128
Juneau, Alaska 99801-1182
Telephone: 465-3424
POSITION STATEMENT: Provided position statement for HJR 41

THOMAS CRAFFORD, Manager
Minerals and Coal
Cook Inlet Region, Inc.
2525 C Street, Suite 500
Anchorage, Alaska 99503
Telephone: 274-8638
POSITION STATEMENT: Supported HJR 41

PREVIOUS ACTION

BILL: HJR 39
SHORT TITLE: NORTHERN SEA ROUTE DEVELOPMENT
SPONSOR(S): SP CMTE WORLD TRADE & ST/FED RELATIONS

JRN-DATE	JRN-PG		ACTION
03/27/95	932	(H)	READ THE FIRST TIME - REFERRAL(S)
03/27/95	932	(H)	WTR, TRANSPORTATION
04/20/95		(H)	WTR AT 05:00 PM CAPITOL 408

BILL: HJR 31
SHORT TITLE: ENDORSE FEDERAL FLAT INCOME TAX
SPONSOR(S): REPRESENTATIVE(S) JAMES,Kott

JRN-DATE	JRN-PG		ACTION
02/15/95	369	(H)	READ THE FIRST TIME - REFERRAL(S)
02/15/95	369	(H)	FINANCE
02/27/95	511	(H)	COSPONSOR(S): KOTT
03/15/95	756	(H)	WTR REFERRAL ADDED
04/20/95		(H)	WTR AT 05:00 PM CAPITOL 408

BILL: HJR 41

SHORT TITLE: JONES ACT EXEMPTION FOR BULK COMMODITIES
SPONSOR(S): REPRESENTATIVE(S) WILLIAMS,Bunde,Kott

JRN-DATE	JRN-PG		ACTION
04/06/95	1051	(H)	READ THE FIRST TIME - REFERRAL(S)
04/06/95	1051	(H)	WTR, TRANSPORTATION
04/11/95	1270	(H)	COSPONSOR(S): KOTT
04/20/95		(H)	WTR AT 05:00 PM CAPITOL 408

ACTION NARRATIVE

There is no tape available due to technical difficulties.

The meeting of the House Special Committee on World Trade and State/Federal Relations was called to order by Chairman Ramona Barnes at 5:10 p.m. Members present at the call to order were Representatives Barnes, Davis and Kubina. Members absent were Representatives Phillips, Mulder, Williams and Mackie.

CHAIRMAN RAMONA BARNES stated that there was not a quorum present, but would conduct the meeting until such time as a quorum could be satisfied.

HJR 39 - NORTHERN SEA ROUTE DEVELOPMENT

DR. ORSON P. SMITH, Project Manager for the study of the Northern Sea Route for the United States Army Corps of Engineers, testified via teleconference from Anchorage in support of HJR 39, reiterating much of his testimony from a previous World Trade State/Federal Committee meeting (3/23/95). Dr. Smith urged passage of the Resolution.

PAUL FUHS, spoke in favor of HJR 39, stating that he had no changes to make to the legislation. He hoped the legislature would be able to act on the Resolution this session.

REPRESENTATIVE GARY DAVIS informed the committee that he would confer with his committee to waive HJR 39 from the House Transportation Committee.

REPRESENTATIVE BILL WILLIAMS arrived at 5:17 p.m.

REPRESENTATIVE RAMONA BARNES noted that with Representative Williams presence, a quorum had been satisfied.

REPRESENTATIVE GENE KUBINA made a motion to move HJR 39 out of committee with individual recommendations.

CHAIRMAN BARNES asked if there were any objections. Hearing none, the motion passed out of the Special Committee on World Trade and State/Federal Relations.

HJR 31 - ENDORSE FEDERAL FLAT INCOME TAX

REPRESENTATIVE JEANNETTE JAMES, sponsor of the Resolution, stated the current federal Internal Revenue Code is characterized by loopholes, exceptions, exemptions, complicated schedules, and targeted tax breaks, which makes it difficult for the taxpayer to calculate the tax obligation due. Thus, there is a real need to replace the current system with one that is fairer and simpler.

This Resolution calls for the United States Congress to enact legislation replacing the current IRS tax code with a fixed-rate or "flat" tax. This will create a tax system that is less difficult to comply with and tax all income once. A "flat" tax would also exclude from the definition of taxable income the earnings from personal and business savings, encouraging individuals and families to save and invest a portion of their incomes.

REPRESENTATIVE KUBINA asked if this would exempt all savings from taxation. A scenario would be that people who earn millions each year could place huge sums of money into personal savings and thus escape being taxed.

REPRESENTATIVE JAMES said that it was the intent of the measure to help the struggling and average income families who had scrimped and saved all year long and then be penalized by taxes. The current system does not work. She added that the "devil of this Resolution is in the details," referring to the fact that the millionaires and billionaires of this country would find ways around this measure.

REPRESENTATIVE KUBINA suggested that deleting lines 14-16 on page 1, would tighten up the language and intent of the Resolution.

REPRESENTATIVE JAMES supported the suggested change.

REPRESENTATIVE DAVIS suggested amending HJR 39 by changing "would" on line 14, page 1 to "could".

REPRESENTATIVE JAMES said she would support any change that would keep in tact where individuals would not have to pay a "penalty" for savings.

REPRESENTATIVE KUBINA made a motion to delete lines 14-16.

CHAIRMAN BARNES asked if there were any objections. Hearing none, the motion passed.

REPRESENTATIVE DAVIS asked what percent of Internal Revenue Service would be eliminated by this Resolution.

REPRESENTATIVE JAMES was not certain of the total effect the Internal Revenue Service would feel by this measure.

REPRESENTATIVE DAVIS made a motion to move CSHJR 31(WTR) out of committee with individual recommendations.

CHAIRMAN BARNES asked if there were any objections. Hearing none, the motion passed.

HJR 41 - JONES ACT EXEMPTION FOR BULK COMMODITIES

JACK PHELPS, Legislative Assistant to Representative Bill Williams, stated that HJR 41 asks Congress to carve out of the Jones Act an exemption for Alaska bulk commodities, thus allowing Alaska coal suppliers to respond to new opportunities in the world market for coal. There are currently no United States manufactured vessels capable of servicing large scale movements of Alaska coal. Therefore, a Jones Act exemption is an important part of any effort to market Alaska coal, especially since the effort is likely to include markets in the western United States and Hawaii.

MR. PHELPS said that Alaska is the only state that is discriminated against by the Jones Act. Under current conditions, Alaska suppliers of coal will be noncompetitive with Asian coal shipments to the United States ports, which harms both Alaska and the United States balance of trade.

MR. PHELPS added that HJR 41 is consistent with state policy set forth in Title 44 which requires the Governor to use "best efforts and all available means to persuade the United States Congress to repeal" the Jones Act.

THOMAS CRAFFORD, Manager, Minerals and Coal for Cook Inlet Region, Inc., testified in support of HJR 41 and that he's always looking into safe methods for shipping coal.

CHAIRMAN BARNES asked Mr. Crafford if he was familiar with the Healy Coal Project. She said that a Hawaii market would be very advantageous for Alaska.

MR. CRAFFORD responded by saying that he knew of the project, but was not totally familiar with it.

REPRESENTATIVE DAVIS asked Mr. Crafford about the status of the Beluga coal fields.

MR. CRAFFORD stated that no one had stepped forward to work these fields. Coal is a much different commodity in terms of handling and shipping. It's not like oil, where if a spill would occur, it would leave a major impact on the environment.

REPRESENTATIVE DAVIS made a motion to pass HJR 41 out of committee with individual recommendations.

CHAIRMAN BARNES asked if there were any objections. Hearing none, the motion passed.

ADJOURNMENT

There being no further business to come before the House Special Committee on World Trade and State/Federal Relations, CHAIRMAN BARNES adjourned the meeting at 5:45 p.m.

Official Business

COMMITTEES:
Natural Resources
Legislative Council

Alaska State Legislature

Office of World Trade
And
State/Federal Relations

REPRESENTATIVE
RAMONA L. BARNES
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House Special Committee on World Trade & State/Federal Relations

February 20,1996 5 p.m.
Capitol, Room 124

AGENDA

I. CALL TO ORDER

II. ROLL CALL

III. COMMERCE AND ECONOMIC DEPARTMENT OVERVIEW BY COMMISSIONER WILLIE HENSLEY

IV. OLD BUSINESS

V. NEW BUSINESS

VI. ADJOURNMENT

HOUSE SPECIAL COMMITTEE ON WORLD
TRADE AND STATE/FEDERAL RELATIONS
February 20, 1996
5:10 p.m.

MEMBERS PRESENT

Representative Ramona Barnes, Chairman
Representative Eldon Mulder
Representative Bill Williams
Representative Gary Lee Davis
Representative Gene Kubina

MEMBERS ABSENT

Representative Gail Phillips, Vice Chairman
Representative Mackie

COMMITTEE CALENDAR

Overview by the Commissioner of the Department of Commerce and Economic Development.

WITNESS REGISTER

William L. Hensley, Commissioner
Department of Commerce
and Economic Development
P.O. Box 110800
Juneau, Alaska 99811-0800
Telephone: (907) 465-5442
POSITION STATEMENT: Overview presentation regarding the Department of Commerce and Economic Development

Debbie Sedwick, Deputy Commissioner
Department of Commerce
and Economic Development
P.O. Box 110800
Juneau, Alaska 99811-0800
Telephone: (907) 465-5442
POSITION STATEMENT: Overview presentation regarding the Department of Commerce and Economic Development

PREVIOUS ACTION

None

ACTION NARRATIVE

TAPE 96-1, SIDE A
Number 000

CHAIRMAN RAMONA BARNES called the House Special Committee on World

Trade and State/Federal Relations to order at 5:10 p.m.. Members present at the call to order were Representatives Mulder, Williams, and Davis. Representative Kubina arrived at 5:19 p.m. Members not present were Phillips and Mackie.

CHAIRMAN BARNES introduced Commissioner Hensley to give a brief overview of what the Department of Commerce and Economic Development is doing in the area of world trade, as well as, state and federal relations.

Number 099

WILLIAM HENSLEY, Commissioner, Department of Commerce and Economic Development stated that he was pleased Representative Barnes had taken the Chairmanship of this committee and that she had taken an interest in international trade. He felt that this was very important and said that the department was happy to work with this committee on trade issues.

COMMISSIONER HENSLEY noted that since he met with the committee a year ago the department has met with hundreds of exporters and importers. They've hosted and been hosted by high level government officials from many countries. Personally, Commissioner Hensley said he had discovered the importance of trade for high level protocol. The department has organized visits by delegations from Korea, Taiwan, the People's Republic of China, as well as, the Canadian Ambassador to the United States. All of these visits had assisted them in cementing further, the State of Alaska's ties with their top trading partners.

COMMISSIONER HENSLEY said that after various meetings with the countries as outlined, he came to the conclusion that Alaska in the overall picture is a small fish in a giant pond. A great amount of competitive activity is taking place in trade, which made it clear to him that Alaska has to make the most of the resources that they have in dealing with international trade and coordinating their activities and focusing their efforts.

Number 347

COMMISSIONER HENSLEY also realized that Alaska in some areas does not have the best reputation as it could have, as a place to do business. Alaska needs to work on their image and their efforts in the international arena, but Alaska does have it's strengths. People around the world do recognize the magical aspects of the state of Alaska, particularly in those countries where there are millions of people packed into small spaces. The notion of Alaska and it's pristine environment, it's space and mystic is a real plus with Alaska's dealings abroad.

Number 417

COMMISSIONER HENSLEY stressed that under the leadership of Governor Knowles the administration has made strenuous efforts to communicate with Alaskan businesses. The administration has worked to ensure that government does what's relevant to Alaska's efforts to create jobs and to diversify the economy. The governor introduced the notion of marketing Alaska in his "State of the State" message last year, when he said that the State of Alaska was open and ready for business. The department has tried to convey this concept during this last year. The governor also named 125 individuals to serve on a "Marketing Alaska" effort that worked extensively over the course of the summer and especially with those individuals in fisheries and tourism. The idea was to try to better position Alaska, by marketing Alaska's resources and expertise in a global environment. The Marketing Alaska Report contains literally dozens of recommendations to improve the business climate in Alaska.

COMMISSIONER HENSLEY also noted that the Russia Agency Work Group had been formed and a variety of different interests are working in this arena. They have not had very good coordination thus far, but as of this summer, they've initiated periodic meetings with all of these groups to ensure that there is communication between them. Commissioner Hensley also sat on the Sahkalin-Alaska working group, which was named by the governor, to increase the trade and communications between Alaska and this oil rich region. He noted that this was a natural market place for the products and services of Alaska.

Number 586

COMMISSIONER HENSLEY acknowledged that the governor has personally advocated trade opportunities with a number foreign guests, including President Lee, the governors of several far east regions, such as Sahkalin and Chukotka. He also attended the Taiwan United States of America/Republic of China (USA/ROC) conference in Anchorage which was held there. He also met with the governor of Hokkaido, Japan during the Sahkalin earthquake relief mission last summer. He also met with the Yukon government leader to discuss joint issues of tourism, trade, transportation and maintenance, as well. The department also met with the Canadian Ambassador regarding conflicts of seafood fisheries in Southeast Alaska and also on other issues.

COMMISSIONER HENSLEY said that the Lieutenant Governor has met with the South Korean president, as well as, the Chinese President to discuss among other things, marketing Alaskan natural gas and North Slope crude oil. The governor has appointed a group of Alaskans to work with the Gore-Chernomyrdin Working Group. Commissioner Hensley personally attended the meeting held in Seattle last year. He is one of the appointees to the Ad Hoc working group. The purpose behind this organization is to increase commerce between the west coast United States and Russia, as well as the Russia Far

East. They expect to meet again in March in a planning group. The U.S. Department of Commerce in Washington is finalizing the agenda.

Number 702

COMMISSIONER HENSLEY reminded the committee members that Alaska is a participant in the Northern Forum, as well as, the Arctic Council. The governor sent Commissioner Hensley to Hokkaido to represent him at a meeting of the Northern Forum this past year, where the Commissioner was able to communicate directly with a variety of governors from different parts of the Arctic. During this past year, the Commissioner has been exposed to trade at a variety of different levels and he continues to recognize that trade has been important in Alaska's past. Trade will be important and critical in the future, consequently the department is working on an agenda for the governor to travel to some of the state's key trading areas. He noted that the Assistant Commissioner will go into more detail about the specifics of what the department has done, including the department's efforts to build a better focus on tourism and trade, as well as economic development.

Number 761

REPRESENTATIVE ELDON MULDER thanked the Commissioner for his presentation and said he appreciated the Commissioner's efforts in expanding marketing opportunities for Alaska. He agreed that efforts the department can take to add additional revenues for the state will help plug the budget gap, as well as, increasing revenues from taxes or any other opportunities. He thought that these efforts were along the lines consistent with where the state is trying to go.

REPRESENTATIVE MULDER referred to the Natural Gas Pipeline. He then asked the Commissioner what the administration's position is on this project and what objectives the department has taken thus far. What is the administration's position with working with the Natural Gas Pipeline producers and what will they propose to the legislature as a course of action.

Number 830

COMMISSIONER HENSLEY stated that firstly, he was very keen about learning more in relation to the production of natural gas. When they first met with the producers last year, it was an educational experience. It was hard for him to believe that after all these many years of producing oil, Alaska and the producers had never been able to sit down and talk business about the future. He noted that former Governor Hickel's efforts to finalize some of the outstanding legal suits with the oil companies and the competitive nature of other vast, spaces being opened up for exploration had furthered these discussions along.

COMMISSIONER HENSLEY said that when they met with Exxon, Arco and BP, the department queried them about the natural gas. Knowing that these are very large companies that have interests throughout the globe, the department was keen on finding out what their opinions were about the Natural Gas Pipeline. All of them recognize that gas is a major resource, especially Exxon who said that in North America gas was their largest resource. Through the Oil and Gas Policy Council and exploring a variety of other issues, the department has not gotten into Liquid Natural Gas (LNG) specifically at this point, although he mentioned a briefing by the oil companies regarding what they had learned to date about the design and engineering, the credit sources and the market as of two months ago, prior to their travel to the other potential market areas.

COMMISSIONER HENSLEY added that during Governor Hammond's term in office, he served on a panel lead by former Governor Hickel which looked at the Natural Gas market. He felt as though this was one of those projects which was so large and complicated it almost seemed like the stars had to be lined up for it to become a competitive reality. The governor has tasked a sub-group of the cabinet to look at about a dozen to 14 different issues which they need to discuss regarding the LNG project. It is such a hugh investment, from the production end, to transportation and to the consumer end. The department is looking at a wide range of issues that they need to resolve in their own minds. He feels that the private sector has to be a driver in this project. They need to see the return in this. Alaska's role is to try and facilitate every way that they can, not only in-state, but as well as working with Washington, D.C. They will need the support of the National Administration in order to compete with other parts of the world, which has an abundance of gas.

Number 1102

REPRESENTATIVE MULDER said he applauded the administration's efforts, but for what it's worth, he felt it would behoove the administration to include a majority and minority member from both the House and Senate in these discussions. As the trustees of Alaska, the legislature is also charged with making certain that Alaskans get the best return for their investment of resources. The legislature and the administration need to walk hand in glove, not as partisans, but as a unified front. If together they can come up with a concrete policy, this would mean additional revenue and additional jobs for all Alaskans.

COMMISSIONER HENSLEY said the gas pipeline would be a world class investment and after traveling through Asia he felt as though Asia needs this type of pollution-free energy. The administration is definitely supportive of the project and they are working at discovering for themselves, answers to key questions.

Number 1185

CHAIRMAN BARNES believed that on the point of natural gas, that there was a window of opportunity for Alaska. She felt as though they were nearing a point where this window will close. There are other large pockets of gas in the world which will come on line. If Alaska isn't out front to force this pipeline or whatever it takes to get this gas to market, or to develop a strategy to make it economically feasible, then Alaska will miss the boat.

CHAIRMAN BARNES said she spoke to Exxon about going a different route into Western Alaska, out of Kivalina. She thought that this would be great, but there are no existing permits for this route. They could use the Northern Sea Route, in order to carry this gas to market, but she was afraid if they went back into the permitting process for a different route that this would delay again Alaska entering a world market. Alaska is behind the "eight ball" as it stands now.

CHAIRMAN BARNES also has met on three occasions this year with both the Chairman of the Board and the President of China Petroleum. The last time she was in China, they even encouraged Alaska to become a participant in the line. She told them, she didn't know if Alaskans wanted to become a participant, but said there were other ways for them to break into this market.

COMMISSIONER HENSLEY said he knew this alternate route was being looked at, but he didn't know if it was primarily done so with the notion of looking at a design and an alternate which would make it more economically feasible. He understood what Chairman Barnes said about the problems which permitting might create. In earlier days, things were done for national defense reasons. Alaska is the only Arctic region the United State has. The idea of the Arctic port has some benefits for the nation, as well as, Alaska, for the purpose of shipping coal, LNG or zinc. He knows that the producers have also looked at this alternative from the perspective of Arctic shipping and even in light of the ice conditions they think it's feasible, but he understood Chairman Barnes concern.

Number 1386

CHAIRMAN BARNES again stressed that her only concern with this particular project was that she feels there is a window for Alaska to enter the world market. Unless the state is able to get an expedited review of permits, she felt as though it would take forever for the state to get into position to build an Arctic port. Tetalina has been studied as a deep water port, which is part of the latest report done by the Corp of Engineers. The Corp studied three ports, Tetalina, Haines and Unalaska. She thought that these ports should be developed, but she didn't necessarily want to see them tied to the gas which needs to get to market. If they could build a port at Tetalina, what it would do for zinc and coal would

be tremendous.

Number 1449

REPRESENTATIVE GENE KUBINA said the more he listens to this debate and after having read about other markets around the world, he fears that two to three years from now, this major project, whether in India, Qatar, or some place else, will be in motion at a cost higher than what Alaska's project will be. He said he's not sure everything possible is being done to determine just how competitive the Alaskan project really is. He noted that the players in the Alaska project have interests in other countries as well and that a conflict of interest might exist. He asked what Alaska should do to protect it's interests. He added that this project is a safe bank account for 20 to 40 years and wondered if it would be better to develop these projects in other countries and leave the Alaska reserves for next generations.

COMMISSIONER HENSLEY felt as though he understood what Representative Kubina was saying. He pointed out that often times he is personally uncertain about what the real situation is. These companies do have substantial interests throughout the globe and of course they are looking out for their own interests. He felt that Alaska needs to have their own plan and he felt as though the governor is beginning to focus on the right questions. He noted that the administration has constant interactions with industry. He said it's hard to determine at what point to begin the real push. These other countries do have the benefit of controlling their own governments and their own resources, which makes attractive investments in their own country. Alaska is not quite as flexible. Alaska would need a boost from the federal government in helping to be competitive. He added that they would certainly work with the legislature to accomplish this.

Number 1636

REPRESENTATIVE KUBINA noted a section of the meeting notes with China Petroleum Company where the president of this company said he's waiting patiently for this line to be constructed. China appears to be involved in exploring and willing to invest in Alaska. He thought these meeting notes would be good reading for the Commissioner.

COMMISSIONER HENSLEY said that he did meet with this same gentleman on their trip since it was shortly after President Lei's visit to Alaska. They literally threw the doors open. This type of investment would certainly help make the project more feasible. He noted that an investment such as this would be a great asset.

CHAIRMAN BARNES said the Chinese have committed to buy 25 percent of Alaska's gas, just as when she first went over there. She noted to the Commissioner that this committee would not exist if they did

not have a lot of concern about what's going on as it relates to world trade and Alaska's competitiveness in the area of world trade. The committee needs to be kept informed. They should not have to fight to be a part of whatever is going on in Alaska. She should not have to call up and demand agendas and this type of thing. The legislature should automatically be made part of meetings or to participate in any trips. She used the USA/ROC conference as an example of this lack of legislative involvement.

COMMISSIONER HENSLEY said he agreed that communication is important and he said that his office is open to her for any information which she might need.

CHAIRMAN BARNES said specifically, in regards to the Chernobyl project, that it's important that Alaska not continue to loose to Seattle. Alaska continues to loose over and over, in any venue, Seattle manages to beat Alaska. This has got to stop. The emphasis in on a global economy and Alaska has to be a player. Alaska cannot be a player unless the legislative body is not involved in the process. The department can't do it by themselves because first of all they won't have the money. People are not going to give them money for things that they don't understand.

COMMISSIONER HENSLEY said he got her message and clearly the department is trying to do more with less. The budget for trade activities has been substantially reduced over the years. He felt as though their efforts needed to be cooperative.

Number 1889

REPRESENTATIVE MULDER stressed his message about the department and the legislature moving hand in hand. He noted that the members of the legislature have established a repertoire with different entities and could be a good resource to the department. He also stressed the task force appointed by the governor dealing with the gas pipeline. This pipeline issue is very important to the state. If they can come to a consensus before hand, this would make sense. There's plenty of credit to go around on the work that's already been done. What matters is a good return for their constituents and for the generations yet to come.

Number 1990

DEBBIE SEDWICK, Deputy Commissioner, Department of Commerce and Economic Development was next to testify. She pointed out that trade plays a crucial role in Alaska. Each year Alaska exports more than $2 billion of goods and products to the world, everything from resources such as timber and zinc to value added products, such as salmon ham and cold weather technology. This doesn't even take into account the export of services such as telecommunications or environmental services or the approximately $2.5 million which goes through Alaska's airports every year.

MS. SEDWICK noted that in Alaska there is British money in oil, Korean money in coal, Canadian money in mining, Japanese money in fish, etc. The impact of this trade is far-reaching. It provides good paying jobs and growth statewide. Based on a U.S. Department of Commerce survey, Alaska's exports create about 50,000 jobs a year in Alaska, but as Chairman Barnes pointed out, Alaska is very vulnerable and the department recognizes this. She noted that Alaska is anything but secure in all of these areas because competition is very intense.

MS. SEDWICK stated that Alaska faces smart, well financed competitors who are happy to grab Alaska's market share. Today there are 56 American offices and 105 foreign offices in Japan, ready to take what Alaska is sending to these countries. The state of Alaska must work well and together to better position themselves in order to succeed abroad.

Number 2092

MS. SEDWICK outlined for the committee the direction which the department is taking. The department has created out of the former divisions of Trade and Economic Development, the division of Trade and Development (DTD). They hope to save money by doing so and this enables them to put their specialists together with their marketing people. The people in the department have been working closely together, but the coordination from the top had been lacking. By bringing these entities together, saving money will help and having this money for programs will help as opposed to fixed costs.

MS. SEDWICK stated that as a newly emerged division, their mission is to increase and enhance the demand for Alaska's products and services, to ensure a supportive business climate and to stimulate economic growth statewide. They also will strive to increase private sector employment and economic opportunities for Alaskans. Most immediately, they have been working on the "Marketing Alaska" initiatives which will provide a blueprint for the state as a better place to do business. They will continue to focus on this in the months ahead.

MS. SEDWICK added that in the trade arena, the department works to build trade in a number of ways, finding buyers for Alaskan sellers, getting up to date market information for Alaskans and building the state's relationship with key trading partners. She noted some of the following examples: DTD lead a seafood trade mission to and from Taiwan over the past year, bringing buyers and sellers together which resulted in a 340 percent increase of purchased fish, mostly from Alaskans, which will take salmon exports to about the $4 million mark this year. Entech, Inc., which is a subsidiary of Arctic Slope Regional Corporation, worked with the department of Trade and Development to find markets for it's incinerator technology, as a result of the efforts of the

department they were able to locate an opportunity in Malaysia. DTD helped them find the federal funds in order to send a trade mission over. They are currently conducting test burns in Malaysia.

MS. SEDWICK went on to note that the Alaska-Sahkalin working group, which the Commissioner spoke about, was organized by DTD and staffs the Alaska Sahkalin Working Group which is the public partner initiative that seeks to build business ties for Alaskans on Sahkalin Island. She stressed that securing jobs in the oil fields service industries are the target here. DTD spearheaded the state's strategic protocol efforts providing links with Alaska's most important trading partners. As the Commissioner spoke about, the department had participated in visits by Taiwanese President Lee, Korea President Kim, Canadian Ambassador Chretien and also officials from Indonesia, Japan, Russia and elsewhere this year. They also lead the state's earthquake relief efforts to Sahkalin Island, as well as the September 1995 Northern Forum Conference.

MS. SEDWICK said that the department's work is always going to be sector driven. When the state does trade shows, they would like companies to be with them. This will help to ensure that when they host delegations from abroad, private industry is always at the table. When Sahkalin Governor Farkhutdinov came to visit last September the staff raised nearly $11,000 from private industry to underwrite the cost tied to this visit. This type of private/public partnership is essential to how the department works and it will remain important to them. They must ensure their efforts are tethered to industry's needs.

MS. SEDWICK stated that in regards to Alaska's overseas presence they are maintaining offices in Japan and Korean, as well as maintaining their contractor in Taiwan. There are good reasons for this structure. Asia is by far and away Alaska's most important customer. Japan alone counts for roughly two thirds of all of Alaska's exports and in the first nine months of 1995, Japan imported more than $1.6 billion worth of Alaskan products. Korea imported roughly $164 million and Taiwan imported roughly $60 million. All of these figures are up from 1994.

MS. SEDWICK noted that the Korea and Japan offices serve four main roles: access, intelligence, visibility and advocacy. Overseas staff makes contacts on Alaska's behalf, provides access for Alaskans seeking buyers and investments from abroad, they arrange meetings for dozens of missions and they identify specific trade opportunities which are publicized by the Anchorage office. A specific example of this was in the Korean office. Katchemack Seafoods of Homer and Dutch Harbor, Owner, Bill Sullivan let the department know that he was looking for buyers for fresh cod. Today, he employs four to five people year round and ships approximately $800,000 a year of fresh cod to Korea. As far as providing intelligence which is very important to sellers, trends

and forecasts, alert what's going on which can immediately aid to people in Alaska. An example of this would be Sea Alaska Corporation which has limestone deposits in southeast. They used the Japan office to research the potential for their exports, they undertook a feasibility study and are now sending commercial samples to potential Japanese importers.

MS. SEDWICK said that the department provides visibility, helping Alaskans to battle fierce global competition. They participate in trade shows and meet regularly with key government officials. They worked on the trade delegation which Mayor Rick Mystrom hosted last fall, providing services to this forum and also to the Anchorage Economic Development Corporation. As far as advocacy, the department handles unfair trade practices and resolves trade disputes. In Taiwan, Ida Yao, Alaska's new contractor will focus on seafood and tourism, two areas which the department feels has great promise. This contractor will also focus on trade missions to Alaska and to Taiwan.

MS. SEDWICK noted that this structure has and will continue to produce important results, creating opportunities for our Alaska exporters and a strong base for Alaska's economy. In round table discussions, the department knows there are challenges. They've talked with exporters and met with community leaders and through the legislature's own recently completed trade survey, they know there are challenges. They need to better coordinate the trade assistance services that are offered now by a variety of different agencies. They need to work more efficiently, since funding levels continue to fall. In the past years, international trades funding has fallen 40 percent and the department took another 10 percent cut this year to meet the governor's spending plan.

MS. SEDWICK stressed that they need to protect Alaska's position in key markets like Japan and Korea, while still finding resources to help exporters branch into new areas. They need to sharpen their efforts and be more proactive. They need to make sure that all their actions are of value to Alaska's business community so they can better measure their outcomes and results.

MS. SEDWICK outlined the department's future efforts. The division working directly with Commissioner Hensley established the Russian Agency Working Group, which develops ties with the Russia Far East. They are looking at all ways of saving money, simple steps such as using E-mail instead of faxes, which has saved them about $14,000 this year. In her opinion everything is something that needs to be looked at.

MS. SEDWICK stated that overseas after they made the decision to merge trade and tourism staffs in Tokyo, they are closing down the office that trade and tourism occupies. They have found new, less expensive space. They expect this will save them $40,000 this year. They are also looking in Korea to share office space with

Anchorage Visitor Convention Bureau (AVCB) and some of the private sector people. They hope by the end of this fiscal year they will be able to say they found an opportunity there to leverage private sector dollars and save some money.

TAPE 96-1, SIDE B
Number 011

MS. SEDWICK said the department is expanding into emerging markets, taking steps to ensure that Alaskans find new markets for their goods and services. They are broadening their efforts in Taiwan to increase support for their Taiwan contractor next year to promote seafood, tourism and technical services. They are promoting technical services exports, oil and gas services, environmental services and telecommunications to find new markets in Asia. They will place particular emphasis on Korea, the Russian Far East and the other growing Asia markets, strengthening their government ties, for instance, the Alaska Sahkalin Working Group and the Gore-Chernomyrdin Ad-hoc Working Group. Through strategic protocol efforts they will continue to work on government to government ties, because they feel as though a more stable business environment for their traders is one of the most important things they can do in this area. She also noted building new seafood markets, possibly through trade missions to China and Singapore. Their challenge is great, they must maintain their position in existing markets, but help their companies find new buyers else where. They must reduce their spending and increase their efficiency, they must ensure that their work is valued by the private sector. There are many committed, qualified people working to build Alaska's markets overseas. She has spent a good deal of time since September meeting with these people, learning about their efforts and assimilating their recommendations into work plans for the coming year.

Number 040

MS. SEDWICK responded to a question by Representative Davis regarding the limestone market in Southeast. She said they were looking at the raw materials with an eye to a value added commodity. She saw this as an opportunity to explore as much as they can.

Number 072

CHAIRMAN BARNES noted that on two separate occasions she had asked for a breakdown on the money spent in Taiwan.

MS. SEDWICK said she had this information and would deliver it first thing in the morning.

CHAIRMAN BARNES stated that she felt Alaska's emphasis should be more broad and should go further than just Japan and Korea.

Number 140

REPRESENTATIVE GARY DAVIS asked about the job opportunities related to the Sahkalin Island project. He understood that even in the natural gas area, he thought that this was a great find, but the extent of it hadn't been delineated yet. He understood the reserve was tremendous and he noted Alaska's experience with cold weather technology. He also mentioned the oil company executives from Alaska, such as Marathon, etc., which are also active over there, but he pointed out that there is a lot of unemployment there now. This export technology would be more technical though. He thought this would really fill her plate, if the department chose to pursue all of these avenues.

MS. SEDWICK noted that Alaska has a lot of talented people residing in their state. Last year when Arco had their big lay off, there were a lot of people who wanted to stay in Alaska. If they could find opportunities for these people of expertise, they would stay. When she traveled to Taiwan, she was overwhelmed to see that there was a real need for Alaska's services. She added that sector people need to be in place to market these skills as well.

Number 239

CHAIRMAN BARNES noted for everyone's information that Taiwan is exactly the size of the Kenai Peninsula with 23 million people living there. They have one of the most robust economies in the world. They are fourteenth in the world economies and it's a company which offers tremendous potential to Alaska.

REPRESENTATIVE DAVIS stated that it appears that the department's approach seems to fit his philosophy, that people need to come to the department with ideas, then the department can pursue markets and make contacts. They don't need government telling people what they need, rather they need people coming to government asking for assistance.

MS. SEDWICK referred to the "Marketing Alaska" effort, which would be presented next week. It addresses this concept of private sector driven initiatives and a lot of the ideas came from the private sector.

Number 316

CHAIRMAN BARNES thought it might be important for this committee to know that the Anchorage Economic Development Authority and their new director is very actively working to put together Alaska's cold weather expertise. She thought they were doing a very fine job. She then went over the materials in everybody's packets.

CHAIRMAN BARNES made reference to the letter from Representative Elton, which was sent to the Speaker and Chairman Barnes regarding

a meeting at his house about the foreign trade liaisons from the Alaska Seafood Marketing Institute. She then referred to materials regarding a trade mission to Russia, a trade mission to China, and the agenda regarding her recent trip to Taiwan. These materials she went into more detail about, since it wasn't in report form.

CHAIRMAN BARNES was the guest of the Pan-Pacific Professional Management Conference in Taiwan and was the key-note speaker there. She spoke right after President Lee opened the conference and the agenda included the ten days which they spent there, as well as, three days they spent in Kaohsiung. She noted that at the back of their packets the attendees should find a newspaper article where she met with the mayor of Kaohsiung. At each of these meetings there was quite a large delegation of businesses.

CHAIRMAN BARNES then addressed the return visits scheduled to Alaska. Mr. John Kao is one of the guests scheduled to attend. He heads the Tuntex Group, one of the largest firms in the world for a country of that size, and does $7 billion worth of business a year. They are very interested in doing business in Alaska, particularly in the market of hotel construction. Chairman Barnes noted that when the base was closed at Shublik Bay in the Philippines, this company invested $200 million to develop an industrial center, but there was a problem with the local government. They just walked away from this $200 million project until these problems can be worked out. They're big enough that they can walk away from this large investment. Mr. Kao will be visiting from March 1 - 5, primarily to find out what it's like here in the winter time. If the Ship Creek Redevelopment project fell through, he's willing to build the whole project. It wouldn't be a small hotel, because they don't build anything smaller than 600-room facilities. He will be Chairman Barnes's guest and she took the opportunity to invite anyone who will be in Anchorage area during this time to attend their scheduled meetings.

Number 478

CHAIRMAN BARNES then referred to the trip to Russia. This group were guests of the Krasnogorsk people. A return trip to Alaska has been in the planning stages since September of 1995, but unfortunately the mayor of Krasnogorsk, Roman Popkovich, is a retired Major General from the Soviet Army and was also a member of their parliament and Chernomyrdin would not let he and his delegation leave. Chairman Barnes encouraged everyone to attend these meetings, especially during the visit of John Kao since he is very interested in investing in Anchorage. Chairman Barnes also said that ties with Russia are very important, not just with the Russia Far East, since this has been a mistake made in the past. Russia has a centralized government and unless this government says things are going to happen, they don't, not even today. The committee's emphasis has been on this central government and they've met with their equivalent of the United State's National

Oceanic and Atmospheric Administration (NOAA), in regards to the Northern Sea Route. She also noted that Representative Davis went to Japan for a Northern Sea Route meeting there.

Number 596

CHAIRMAN BARNES noted that she wanted everyone to have these packets outlining all the things the committee has done and the people who have accompanied them during these trips. The return visits are paid for and taken care of. She said that if anyone wonders where she got the money to do all of this, she was the guest of the Taiwanese when she went to Taiwan, the guest of Mainland China when she went there, and she was the guest of Russia when she went there. Hence, these people will be her guests when they come here. There were legislators and business people who were very involved in these delegations.

ADJOURNMENT

CHAIRMAN BARNES adjourned the World Trade Meeting at 6:15 p.m.

Official Business

COMMITTEES:
Natural Resources
Legislative Council

Alaska State Legislature

Office of World Trade
And
State/Federal Relations

REPRESENTATIVE
RAMONA L. BARNES
District 22

Anchorage
P.O. Box 103382
Anchorage, AK 99510
(907) 337-7737
(907) 258-8163

State Capitol
Juneau, AK 99801-1182
(907) 465-3438

House Special Committee on World Trade & State/Federal Relations

April 29,1996 5 p.m.
Capitol, Room 124

AGENDA

I. CALL TO ORDER

II. ROLL CALL

III. HEAR HOUSE BILL 548

IV. OLD BUSINESS

V. NEW BUSINESS

VI. ADJOURNMENT

CS FOR HOUSE BILL NO. 548(WTR)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON WORLD TRADE AND STATE/FEDERAL RELATIONS

Offered: 4/30/96
Referred: Finance

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

A BILL

FOR AN ACT ENTITLED

"An Act authorizing the amendment of Northstar Unit oil and gas leases between the State of Alaska and BP Exploration (Alaska) Inc.; and providing for an effective date."

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

*** Section 1.** LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that

(1) the production of oil and gas from state land is a matter of statewide interest and effect because it is an important source of revenue to the state and job opportunities for the people of the state;

(2) BP Exploration (Alaska) Inc. holds state oil and gas leases in the Northstar Unit that include net profit share provisions;

(3) unless the net profit share provisions of the Northstar Unit leases are amended, production of oil and gas from the unit is highly unlikely to begin before the year 2002, if at all;

(4) because of the development account provisions of the net profit share

leases, the later that these leases are developed, the less "net profits" the state receives;

(5) if the net profit share provisions of the Northstar Unit leases are amended, full production of oil and gas from the unit may begin as early as the year 1999;

(6) amending the net profit share provisions of the Northstar Unit leases to provide for a supplemental royalty will maximize the economic benefits of oil and gas production to the people of the state by encouraging timely production from the unit;

(7) the development of the Northstar Unit will provide additional revenue to the state;

(8) the timely development of the unit may result in increased state revenue in future lease sales; and

(9) the timely development of the unit may result in technological breakthroughs and other cost savings that may make other development opportunities in Alaska economically feasible.

(b) With respect to the effect of the effort to secure earlier development of the leases on employment opportunities for state residents and on the state's economy, the legislature finds that

(1) paragraph 41 of the 1980 lease and paragraph 31 of the 1983 lease are to be amended; under each of the proposed amendments,

(A) the lessee, BP Exploration (Alaska) Inc., undertakes

(i) to use its best efforts to advertise for, recruit, and employ qualified residents of the state;

(ii) to contract with existing licensed Alaska firms to fabricate the modules to develop the Northstar Unit leases within the state and, in contracting with those firms, to encourage its contractors to employ and, when necessary, train existing state residents;

(iii) to enter into contracts with Alaska-licensed vendors, contractors, and suppliers for the provision of supplies and services; and

(B) several state agencies with responsibility for improving the employment opportunities of state residents, including training, commit to efforts to supplement and support the lessee's undertakings;

(2) the lessee, BP Exploration (Alaska) Inc., has made significant investments

in the state, is ranked as one of the state's largest private sector employers, and regularly enters into contracts to obtain support services; consequently, the lessee's fulfillment of the undertakings described in (1) of this subsection should materially contribute to existing resident workforce employment opportunities and to the state's economic stability;

(3) a good faith effort by the lessee, BP Exploration (Alaska) Inc., and the state agencies to fulfill the undertakings described in (1) of this subsection should ensure that, under the amended leases, benefits will accrue directly and immediately to the people of the state; and

(4) the mutual commitments made by the parties to the lease in these amendments to secure to state residents and businesses the advantages and benefits of both expanded resident hire opportunities and additional work by in-state businesses are in the best interests of the people of the state and are considerations of paramount importance to the legislature in its decision to conditionally approve the proposed amendments of the Northstar Unit leases.

*** Sec. 2.** LEGISLATIVE INTENT REGARDING MEANING OF SPECIFIC RESIDENT EMPLOYMENT REQUIREMENTS. (a) The legislature wishes to set out its intent regarding meaning of certain words and phrases used in the "First Amendment to the Northstar Unit Leases between the State of Alaska and BP Exploration (Alaska) Inc. ('Northstar Amendment')" that is approved by this Act. Specifically, the legislature wishes to set out its intent regarding Paragraph 41 of the 1980 Leases titled "Employment of Alaskan Residents" and Paragraph 31 of the 1983 Lease titled "Employment of Alaskan Residents" in the Northstar Amendment, collectively the "Employment Paragraphs." The legislature intends that the Alaska residents and contractors discussed in the Employment Paragraphs are truly Alaskan and that Alaska residents throughout the state be given an opportunity to obtain employment on the Northstar project.

(b) The legislature believes that

(1) the findings made by the legislature in AS 36.10.005(a)(1) - (8) and (11) - (18), (c), and (d), regarding an employment preference for Alaska residents on state construction projects are equally applicable to the Northstar Amendment; and

(2) the state has a compelling interest in reducing the level of unemployment among its residents.

(c) The legislature intends, for purposes of the Employment Paragraphs, that

(1) the phrases "Alaska resident," "residents of Alaska," and "resident personnel" mean an individual who is physically present in the state with the intent to remain in the state indefinitely and to make a home in the state;

(2) an individual demonstrates that intent by maintaining a residence in the state;

(3) other acceptable proof of that intent includes evidence that the individual: is registered to vote in the state, attends school in the state, possesses an Alaska driver's, fishing, trapping, or hunting license, or receives a permanent fund dividend; and

(4) the hiring entity may also require that the individual state under oath that the individual is not claiming residency outside of the state or obtaining benefits under a claim of residency outside of the state.

(d) The legislature intends that for purposes of the Employment Paragraphs,

(1) the word "available" means Alaska residents who are located anywhere in the state, not just in the area of the state where the work is to be performed; and

(2) the word "qualified" means an individual who either currently possesses the requisite education, training, skills, or experience to perform the work necessary for a particular position or is capable of performing such skills after completing one of the job training programs contemplated in the Employment Paragraphs.

(e) The legislature understands that nonresidents will be hired only if there are no available and qualified Alaska residents to perform the work. For purposes of the Employment Paragraphs, the legislature intends that the requirement to "advertise for available positions locally" includes advertising in newspapers and other publications located throughout the state, including rural areas, not just in the location where the work is to be performed.

(f) The legislature further intends that the requirement to "use Alaska job service organizations" includes those offices maintained by the Department of Labor whose functions are to aid the unemployed in finding employment and any job service organization located throughout the state, not just the location where the work is to be performed.

(g) The legislature intends that, for purposes of the Employment Paragraphs, the phrases "Alaska Contractors" and "Alaska firms" mean a firm or contractor that

(1) holds an Alaska business license;

(2) maintains its principal place of business in the state; and

(3) is

(A) a sole proprietorship and the proprietor is an Alaska resident;

(B) a partnership and more than 50 percent of the partners are Alaska residents;

(C) a corporation that has been incorporated in the state or is authorized to do business in the state; or

(D) is a joint venture composed entirely of ventures that qualify under this paragraph.

(h) For purposes of Employment Paragraphs, the legislature intends that the lessee's reporting obligations comply with the reporting requirements of 8 AAC 30.062 and shall include information regarding the number of nonresidents hired within the past year, and the number of Alaska contractors and non-Alaska contractors hired within the past year.

* **Sec. 3.** AMENDMENT OF LEASES AUTHORIZED. (a) The State of Alaska and BP Exploration (Alaska) Inc. are parties to the following leases in the Northstar Unit:

(1) ADL 312798, effective February 1, 1980;

(2) ADL 312799, effective February 1, 1980;

(3) ADL 312808, effective February 1, 1980;

(4) ADL 312809, effective February 1, 1980; and

(5) ADL 355001, effective August 1, 1983.

(b) The commissioner of natural resources may amend the Northstar Unit leases described in (a) of this section to the extent set out in the "First Amendment to the Northstar Unit Leases Between the State of Alaska and BP Exploration (Alaska) Inc.", dated March 22, 1996, if the amendment includes a provision as follows:

(1) Paragraph 41 of each of the leases described in (a)(1) - (4) of this section is replaced in its entirety as follows:

"41. EMPLOYMENT OF ALASKAN RESIDENTS. Lessee shall comply with all valid federal, State and local laws in hiring Alaska residents and contractors and shall not discriminate against Alaska residents or contractors. Within the constraints of law, lessee shall employ Alaska residents and contractors to the extent they are

available and qualified. Subject to the foregoing:

Lessee voluntarily agrees to adopt a program to hire residents of Alaska. Lessee shall advertise for available positions locally and use Alaska job service organizations to notify the Alaskan public. For work in connection with this lease, lessee shall use best efforts to contract with Alaska firms and fabricate modules in Alaska, whenever feasible. Lessee shall encourage its contractors to employ and train, when necessary, residents of Alaska. In determining feasibility, lessee shall consider commercial, health, safety, and environmental conditions and requirements to ensure maintenance of lessee's operational standards. Lessee shall submit annually to the director, division of oil and gas, for transmission to the Department of Labor, a report that details the specific measures lessee and its contractors and subcontractors have taken or are planning to take to recruit qualified Alaska residents for available jobs, describes on-the-job training opportunities, and describes lessee's efforts to hire Alaska firms for work in connection to this lease. Lessee shall furnish the Department of Labor a quarterly report regarding the employment of Alaska residents on the leased area in compliance with regulations by the Commissioner of Labor. The report must also include statistical data concerning the number of resident personnel hired within the past year for this lease";

(2) Paragraph 31 of the lease described in (a)(5) of this section is replaced in its entirety as follows:

"31. EMPLOYMENT OF ALASKAN RESIDENTS. Lessee shall comply with all valid federal, State and local laws in hiring Alaska residents and contractors and shall not discriminate against Alaska residents or contractors. Within the constraints of law, lessee shall employ Alaska residents and contractors to the extent they are available and qualified. Subject to the foregoing:

Lessee voluntarily agrees to adopt a program to hire residents of Alaska. Lessee shall advertise for available positions locally and use

Alaska job service organizations to notify the Alaskan public. For work in connection with this lease, lessee shall use best efforts to contract with Alaska firms and fabricate modules in Alaska, whenever feasible. Lessee shall encourage its contractors to employ and train, when necessary, residents of Alaska. In determining feasibility, lessee shall consider commercial, health, safety, and environmental conditions and requirements to ensure maintenance of lessee's operational standards. Lessee shall submit annually to the director, division of oil and gas, for transmission to the Department of Labor, a report that details the specific measures lessee and its contractors and subcontractors have taken or are planning to take to recruit qualified Alaska residents for available jobs, describes on-the-job training opportunities, and describes lessee's efforts to hire Alaska firms for work in connection to this lease. Lessee shall furnish the Department of Labor a quarterly report regarding the employment of Alaska residents on the leased area in compliance with regulations by the Commissioner of Labor. The report must also include statistical data concerning the number of resident personnel hired within the past year for this lease"; and

(3) These amendments take effect when and if an Act(s) substantially similar to the act, attached as Exhibit D and incorporated by reference, takes effect. This amendment is dated for reference purposes as of March 22, 1996.

*** Sec. 4.** REPORTING PROVISIONS. The lessee, BP Exploration (Alaska) Inc., shall file with the commissioner of labor at least every six months the reports that the commissioner of labor determines are necessary to evaluate the lessee's efforts described under sec. 3(b) of this Act. The commissioner shall submit copies of these reports to the legislature.

*** Sec. 5.** SEVERABILITY. Under AS 01.10.030, the provisions of this Act are severable.

*** Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).

John C. Morgan
President, Alaska

BP EXPLORATION

BP Exploration (Alaska) Inc.
900 East Benson Boulevard
P.O. Box 196612
Anchorage, Alaska 99519-6612
(907) 564-5422

April 29, 1996

The Honorable Ramona Barnes, Chair
House World Trade and State/Federal
Relations Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Representative Barnes:

The development of the Northstar field is an important project to the residents of Alaska and BP Exploration. Northstar development will provide jobs for Alaskans, new business opportunities for Alaskan businesses, and significant revenues to the state.

BP Exploration has voluntarily and publicly committed to recruit and hire qualified Alaska residents for the Northstar Development. We have also publicly committed to encourage Northstar contractors to recruit, hire, and train, when necessary, Alaska residents.

Furthermore, BP has voluntarily and publicly committed to use Alaska contractors to build in Alaska Northstar production and processing modules. BP has committed to spend $30 - 40 million to build in Alaska the larger and more complex modules for assembly for sealift providing that suitable facilities to do this are available. We are working with our contractors to do everything possible to ensure the facilities will be available.

Our reputation depends on our honoring these commitments and reporting our results to the people of Alaska.

We appreciate the opportunity to provide comments to your committee.

Sincerely,

John C. Morgan

SCOMM

99:2

Commissioner of Department of Natural Resources

Resume of:
JOHN TERRY SHIVELY

Birthday: July 1, 1943
Wife: Alexandra
Daughter: Natasha
Residence: Anchorage, Alaska Telephone: (907) 274-6472

EMPLOYMENT BACKGROUND

March 1992 - September 1994

Senior Vice President and Chief Operating Officer
NANA Development Corporation

Oversaw the business operations of NANA, including tourism, oilfield operations, security company, joint ventures, and Red Dog activities. Managed certain lobbying efforts in Washington, D.C.

October 1986 - March 1992

Senior Vice President
NANA Regional Corporation

Supervised the Anchorage office which included oilfield operations, security company, joint ventures, Red Dog activities, and finance and accounting functions. Also, participated in lobbying efforts in Washington, D.C.

April 1987 - January 1988

Chairman and CEO
United Bancorporation Alaska, Inc.
and United Bank Alaska (UBA)

Served as Chairman and CEO during a process in which the holding company and the two banks (one of which was failing) it owned were merged with another failing bank which received new capital from the FDIC and private sources.

October 1985 - October 1986

Consultant
Self-employed

Clients included Alaska Federation of Natives, NANA Regional Corporation, Alascom, and Brice, Inc. Worked as a lead lobbyist on AFN's 1991 legislation.

December 1983 - July 1985

Chief of Staff to Governor Bill Sheffield, State of Alaska.

Was the Governor's chief advisor on major policy issues, and oversaw the day to day operations of the Governor's office and the Cabinet.

September 1975 - November 1983

Vice President of Operations
NANA Regional Corporation

Worked directly for the President of NANA in overseeing day-to-day business operations. Also responsible for lobbying efforts both in Juneau and Washington, D.C. on matters such as oil and gas taxation and land claims issues.

In May, 1977, transferred to the NANA Development Corporation office in Anchorage to work as Vice President of Operations. Duties continued in a similar vein, except no responsibility for operations in Kotzebue. Worked directly for the President of NANA Development Corporation in administering NANA's construction company, pipeline and oil field services, utilities and security companies. Promoted to Senior Vice President in 1982.

September 1974 - May 1975

Alaska Community College
(Part-time)

Taught a three-credit course on the history and interpretation of the Alaska Native Claims Settlement Act.

December 1972 - August 1975

Alaska Federation of Natives
Executive Vice President

Served as Executive Vice President responsible for overseeing the financial and administrative matters of the Alaska Federation of Natives, including $10 million worth of grants and programs. These programs provided services in the fields of health, education, housing and business technical assistance. Also assisted in lobbying and working with the Congress, the Alaska State Legislature, and various state and federal organizations on matters relating to the Trans-Alaska Pipeline, Native Land Claims, Coastal Zone Management and OCS impact.

November 1969 - December 1972

Rural Alaska Community Action Programs
Deputy Director, Executive Director

Served as Deputy director for a little over a year and was then hired as Executive Director. Responsible for overseeing the programs of the Community Action Program for Rural Alaska, including Headstart, Village Development, Heavy Equipment Program, Emergency Food and Medical Services Program, and several other programs. Annual budgets totaled approximately $4 million.

May 1969 - November 1969

Alaska Federation of Natives
Consultant

Served as a consultant to set up the health program that I developed while working for the Greater Anchorage Area Community Action Agency.

September 1968 - May 1969

Health Planner
Greater Anchorage Area Community Action Program

Developed and worked on funding for a major health grant for the communities of Nome and Bethel. Also worked on funding proposal for Comprehensive Health Planning Grant for Anchorage.

July 1965 - August 1968

VISTA Volunteer

Served as a VISA Volunteer working in Bethel, Yakutat, and Fairbanks, Alaska. Worked primarily with youth groups and the court system in Bethel. In Yakutat worked as Assistant to the Mayor and with youth. While stationed in Fairbanks, was supervisor of 30 VISTA Volunteers for northern and western Alaska.

EDUCATION

Taft School, Watertown, Connecticut;
University of North Carolina, Chapel Hill, North Carolina. Bachelor of Arts Degree in Political Science.

SELECTED MEMBERSHIPS AND ASSOCIATIONS:

Governor's Rural Affairs Council (1971 - 1976)

Governor's Manpower Commission (1971)

Greater Anchorage Area Comprehensive Health Planning Council
(1974 - 1975)

Alaska Public Interest Research Group (AKPIRG) Board of Directors
(1975, Founding Board Member), (1986 - 1991, Chairman 1987 -

1988)

Alaska Federation of Natives Steering Committee on Oil and Gas Taxation (1976 - 1977)

Unicorp, Inc., Board of Directors (Bank Holding Company) (1977 - 1983) (1987)
City of Kotzebue OCS Impact Committee (1977)

Board of Regents, University of Alaska (1979 - 1983)

Alaska Commission on Postsecondary Education (1980 - 1982)

Alaska United Drilling, Inc. (1980 - 1983)

Alaska Board of Game (1983), Chairman (1983)

All Saints Episcopal Church Vestry (1988 - 1990)

Alaska Federation of Natives, Legislative Committee Chairman (1989 -)

Anchorage Symphony Board of Directors (1991 -)

Junior Achievement of Alaska, Inc. Board of Directors (1991 - 1994)

Democratic Leadership Council Board of Directors (1993 -)

Who's Who in the World

Who's Who in Business and Finance

Who's Who in the West

PUBLICATIONS

"The Educational Needs of Alaska's Native Population and the Means to Improve School Programs as seen by the Rural Alaska Community Action Program" (22nd Alaska Science Conference, University of Alaska, August 18, 1971)

"An Assessment of the Alaska Native Claims Settlement Act" (Alaska Public Interest Research Group, December 31, 1974)

"An Assessment of the Alaska Native Claims Settlement Act" (Manual of Indian Law, American Indian Law Training Program, Inc. 1976)

"Alaska Native Corporations and Native Lands" (Rocky Mountain Mineral Law Foundation, 1978)

"State of Alaska an the Alaska Native Claims Settlement Act" (Conference on Alaska's Future Frontiers, December 1979)

"Subsistence Hunting in Alaskan Parks" (National Parks, March 1981)

13 Feb 1995

Senate Resource Committee
Senator Loran Lemon, Chair

The following letter voices my concern with the appointment of John Shively for Commissioner of Natural Resources. I will appreciate any consideration given to my concern.

Thank you

Dale Bondurant

Please furnish the House Resource Committee with a copy of my letter.

13 Feb 1995

To All Legislators

I am well aware and very concerned about the history of some of Mr John Shivelys involvement in the Natural Resources of Alaska. I am most concerned about what I consider his contempt for the peoples imput and interest in such a public matter as the States Natural Resources.

I remember a series of meetings, held several years ago at which the subject was the attempts to gain private ownership of the public and navigable waters encompassed within the Native land selections. These meetings were well represented by Federal and Corporations interests but with very little presence for the most important interest of the people of the State.

Our Nation's past and present history reflects that these waters and the underlying lands and natural resources are retained, for the benefit of the public as a whole, by the State. In this instance the potential is in untold Natural Resource wealth (ie primary source of the Alaska Permanent Fund and State finance revenues) and most important the constitutional right of continued free public access to the waters.

At one of this series of meeting I, as one of only two public members present, well

remember an off-hand remark by Mr Shively. His related remark was a lack of concern for the voiced public opposition by "two sportsmen" as they would not have the "money" to stay actively involved in this matter. To me such a statement, no matter who's interests a person may represent, shows a lack of respect for the public, no matter their size or concerned involvement.

Alaskan's must ask if Mr Shively's position, in this Water and Natural Resources ownership matter also showed a personal obligation to a lesser concern for the good of the people as a whole; as was his "mistake" in the Fairbanks debauchery of the public's interests. I believe that such a cavalier attitude, as Mr Shively displayed in these two public incidents, is not an acceptable committment to the public as is required of any Commissioner. I had hoped that Governor Knowles would reexamine his proposed appointment of Mr Shively Commissioner of Alaska's public Waters and Natural Resource.

Now I request Legislators to withhold confirmation of Mr Shively to this most important position, in the interest of All Alaskans

Dale Bondurant
Phone 262-0818 HC 1 Box 1197
Soldotna AK 99669

SCOMM

99:3

ONC

ORUTSARARMUIT NATIVE COUNCIL

February 9, 1995

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

Honorable Governor Knowles,

On behalf of ONC we would like to support the following of the appointment to the Board of Fisheries.

__X__ Trifon

__X__ Hanson

__X__ Umphenour

Thank You.

ORUTSARARMUIT NATIVE COUNCIL

Henry Hunter

Henry Hunter, Chairman

cc: Senate Resource Committee
House Resource Committee

P.O. BOX 927, BETHEL, ALASKA 99559 (907) 543-2608 FAX (907) 543-2639 IN STATE ONLY 800-478-2654

RESUME

VIRGIL L. UMPHENOUR
2400 Davis Road
Fairbanks, Alaska 99701
(907) 456-3885
FAX 456-3889

OBJECTIVE

Appointment to the Alaska Board of Fish

QUALIFYING EXPERIENCE

Have been involved in all aspects of the fishing industry: commercial, sport, subsistance

COMMERCIAL

Have fished commercially on the Tanana River in Fairbanks since 1984. In 1985 became a commercial fish processor, processing both fish and roe from my fish and buying from commercial fishermen in Fairbanks, Nenana, Norton Sound and villages along the Yukon River. Have expanded this business so that now my company operates year round doing smoked fish and value added salmon products. Company does approximately 50,000 lbs of value added salmon products a year. Upwards of 250,000 lbs of salmon and roe can be processed during the summer months pending availability of fish.

SPORT

Have been an avid sport fisherman all my life. I have sport fished from the Kenai Peninsula to the Seward Peninsula and am well aware of the importance of the sport fishing industry to both the Alaskan sport fisherman and the tourism industry. My company processes in excess of 40,000 lbs/yr of sport caught fish.

SUBSISTANCE

Have subsistanced fished for two seasons while living in Nome. As a commercial fish processor, have dealt extensively with the commercial/subsistance fishermen of the Yukon River Drainage and Norton Sound. For the most part, fishermen in these areas commercial fish to obtain cash to support their subsistance lifestyle. I have seen first hand the devastating effects of the failed fish runs on these people.

HUMAN RELATIONS

Past and present positions have required a wide range of interpersonal skills, public information management techniques and political awareness. As a commercial fisherman/processor and former military officer, have learned to deal with a wide range of individuals and be cognizant of their special interests and concerns. Am able to work with others to strike a consensus on critical issues. Was co-organizer of the Yukon River Drainage Fishermen's Association (YRDFA). Prior to the formation of this organization, it was a common belief that fishermen on the Yukon would never work together. YRDFA has since become a model of cooperation, by showing that when it comes to protecting the common resource, fishermen will set aside their differences and work together.

COMMUNICATION

Certified military instructor. Am completely at ease when speaking to large groups of people.

EMPLOYMENT HISTORY

CEO, Interior Alaska Fish Processors, Inc.
Registered Alaskan hunting guide
Officer, US Army Reserve, retired

MEMBERSHIP

Delegate, US Canada Yukon River Salmon Treaty Negotiating Committee since 1988

Co-Chairman, Yukon River Drainage Fishermen's Association since Dec 1990

Tanana Valley Sportmen's Association, life member

REFFERENCES

Lt. Governor Jack Coghill
State Senator Georgianna Lincoln
State Representative Richard Foster
State Representative Irene Nicholia
State Representative Allen Vezey
Charles Meechan, Deputy Commissioner, ADF&G
Roger Huntington, BOG

878 Lynwood Way
North Pole, AK 99705
January 5, 1994

Honorable Walter J. Hickel
Governor, State of Alaska
PO Box 110001
Juneau, Alaska 99811-0001

Dear Sir

I herein present myself as a candidate to fill the upcoming vacancy on the Board of Fish. I am a commercial fisherman/processor, sport fisherman, and in the past, have been a subsistance fisherman. Hence, I have had actual experience in the three areas where the BOF must try to reach an equitable balance in allocating the fisheries resource. Trying to achieve a balance between these various interests is almost an impossible task.

Currently there are a certain number of sport fisherman on the Board and a certain number of commercial fisherman. These people are from costal communities. The vast interior region has no representation even though fish is one of their main sources of food. The dollar value of the fish resource on the commercial market exerts a strong influence on the BOF decisions. It is crucial that we get past looking at the fishing industry as how much we can sell the resource for. We must look at the resource with an eye toward conservation and as food and recreation for the people who live here. Unless we insure that enough fish return to the spawning grounds, there will be no fishing for anybody. Our tourist industry will suffer through the collapse of the sport fishery and our charished Alaskan lifestyle of living off the land will be diminished when we are no longer able to subsistance and sport fish to feed our families. For the Alaskan living in the bush, the traditional lifestyle will be destroyed. I believe that it is time to appoint Board members who care about the state's common fisheries resources and who have a balanced view of the needs of all of the user groups.

I am a commercail fishermen, but my company (Interior Alaska Fish Processors in Fairbanks) yearly processes thousands of pounds of sport caught fish. For the past several years there has been virtually no sport fishing in the Fairbanks area. Visitors have asked us where they can fish. We tell them they must go elsewhere. The Fairbanks Visitor and Convention Bureau has expressed great concern about the impact of the failed fishery both on local businesses and residents who fish for personal use.

As a fish processor, I buy fish from fishermen on the Yukon and Tanana Rivers and at Norton Sound. For the most part, commercial fishermen in the Interior and Norton Sound are also subsistance fisherman. The money they get from selling their catch is used to buy fuel, etc for their subsistance fishing and hunting. The 1993 failure of the summer and fall chum runs was devastating to the people who rely on these fish to feed their families. The people in Elim, on Norton Sound, have also experienced closures of their subsistance fisheries. This past year, many commercial/subsistance fishermen had there electricity cut off in August. They have had to rely on welfare and government subsidies. The economic impact of the salmon failures on the state is immense...yet there is no subsistance fishery representation on the BOF.

Since 1988 I have been a representative on the US/Canadian Yukon River Salmon Treaty Negotiating Committee. Through this position and as a commercial/sport/subsistance fisherman, I have gained a degree of expertise in both in river and terminal fisheries management. There is currently no one on the BOF with this qualification.

I feel I would be as asset to the BOF. Request your favorable consideration. Resume enclosed.

1 incl
as

Sincerely

Virgil L. Umphenour

878 Lynwood Way
North Pole, AK 99705
January 19,1995

Honorable Tony Knowles
Governor, State of Alaska
PO Box 110001
Juneau, Alaska 99811-0001

Dear Sir

My name is Virgil Umphenour and am currently a member of the Board Fish and I want to remain on the Board until the expiration of the term to which I was appointed. The Interior has not had a representative on the Fish Board for 8 years. Since that time the fish resources in the northerwestern and interior regions have been in serious decline.

Governor, have never met, but I would welcome the opportunity to meet with you before you make your final decision. For your information I have enclosed a copy of my resume and the letter of interest which I submitted in January 1994.

2 incl
as

Sincerely

Virgil L. Umphenour

Q

Box 1
Alakanuk, AK 99554
January 19, 1995

Honorable, Tony Knowles
Governor, State of Alaska
PO Box 110001
Juneau. Alaska 99811-0001

Dear Sir

My name is John Hanson and am a sitting member of the Board of Fish. My current term will be up at the end of January. I would like to be considered for another term. My long term Fish Board experience and knowledge of the State's fishing issues make me a valuable asset to the board process.

Sincerely

John Hanson

(6)

Alaska State Legislature

REPRESENTATIVE
JEANNETTE JAMES
P.O. Box 56622
North Pole, Alaska 99705
(907) 488-1546
FAX (907) 488-9006



While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House of Representatives

House District 34

January 26, 1995

The Honorable Tony Knowles
Third Floor Capitol Building
Juneau, AK 99801

Re: Virgil Umpenhour - Board of Fish

Dear Governor Knowles,

We are very concerned about the prospect or your replacing Virgil Umpenhour as a Board of Fish member before his term ends a little over a year from now.

Mr. Umpenhour is extremely well qualified to act as a member of the Board of Fish and represents the interest of the Interior fisheries, which has had very little representation in the past. These fisheries interests include, but are not limited to, subsistence, personal use, sports and commercial processing.

Historically the Board of Fish has been heavily weighted in favor of the Southern Alaska Commercial Fish industry. We do not quarrel with the notion that commercial fishing interests in this state are important for our state's economy and the interests of our residents; however, we are not willing to have this interest overwhelm the interest of the Interior residents and the recovery of our fish stocks.

Mr. Umpenhour is a long time resident of this state and enjoys a lot of support for his knowledge and ability. His activities on the U.S./Canada/Yukon River negotiation team over the past six years are

indicative of his respect by the industry. He also helped form the Yukon River Drainage Group and contributed to their success in solving problems for the fishery.

As as small commercial fish processor, he gives hope and support for the subsistence fishermen along the Yukon River by buying their fish. He understands the needs of the village participants.

The next meeting of the Board of Fish will be addressing the peninsula fisheries. Mr. Umpenhour has the most extensive information and knowledge regarding the historical and biological information about Area M fishery and needs to be a part of that Board of Fish meeting as it relates to the interest of the Interior fishing concerns. Any attempt to remove him before that meeting will indicate to us that your interest is more political than realistic for the benefit of Alaska as a whole.

Please submit Mr. Umpenhour's name to the legislature for the Board of Fish and allow him to complete his term.

Sincerely,

Representative Jeannette James

JJ/bc

RECEIVED JAN 25 1995

Keep Umphenour

Jan. 19, 1995

To the editor:

I am disappointed in Gov. Knowles. Bob King, the governor's press secretary, is quoted as saying that, "We're looking at putting our own people on all boards and commissions." The new administration is politicizing positions that were established to administer and allocate the state's resources and assets for the people. They were never intended to be used to pay off political debts or campaign promises to the big guys.

In the case of the Board of Fisheries currently held by Virgil Umphenour, it took the Interior eight long years to get it back. It was not traditionally held by Southeast. The Interior and Northwestern Alaska have had virtually no fish in their streams and rivers for the last four years. With Umphenour, we had a voice on the Board of Fisheries to speak for us agaisnt the big intercept fishermen on the coast.

Tony "The Boss" Knowles conned the Interior to get elected then sold us out!

RECEIVED JAN 25 1995

Eric Alexander
Fairbanks

RECEIVED JAN 27 1995

Fish politics

Jan. 23, 1995

To the editor:

Tony Knowles is setting up Tammany Hall in Juneau. He is removing people from commissions and jobs that aren't supposed to be used to pay off political debts. We lost Ralph Seekins from the Permanent Fund Board and now we might lose Virgil Umphenour from the Board of Fish.

Gov. Hickel appointed Umphenour to the fish board because the Interior and northwestern Alaska need a voice on the board. There are no more fish coming into our rivers . . . no fish for the sportsman, no fish for the people in the villages to put up for their winter food. The big guys from False Pass and Southeast control the fish board. I guess they put a lot of money in Tony's "grab" pot!

Marvin Londere
Fairbanks

Lawyer says Knowles cannot dump Umphenour

Governor wants to choose another

By KATE RIPLEY
Staff Writer

JUNEAU--A legislative attorney says Gov. Tony Knowles cannot kick a local fish processor off the state Board of Fisheries and replace him with his own appointee.

The Knowles administration, however, stands by its plan to replace Virgil Umphenour, owner of Interior Alaska Fish Processors Inc., of Fairbanks, with someone hand-picked by the governor.

Umphenour was appointed to the fish panel last July by former Gov. Walter J. Hickel to fill a vacancy. He has 1½ years left to serve.

The Legislature has not yet confirmed nor denied the appointment, so Knowles wants to put in his own nominee - most likely someone from Southeast Alaska.

But it's not that easy, according to a 12-page memo by Gerald Luckhaupt, an attorney for the Legislature. In a memo dated Friday, Luckhaupt told Nome Rep. Richard Foster that Knowles may not remove Umphenour on a political whim.

A Board of Fisheries member may be removed from office only for inefficiency, neglect of duty, misconduct in office, or for fish and game violations, Luckhaupt said.

Therefore, Umphenour's appointment is binding on Knowles--absent the Legislature's failure to confirm him.

Foster said he requested the legal opinion because he views the seat as a statewide seat--not one reserved for any particular region. Umphenour has done a good job on the board, Foster said.

"I know him to be fair and impartial on all matters of fishing," he said.

Rep. Jeannette James, R-North Pole, said the memo is encouraging.

"My read on it is the governor doesn't have the legal option to take Umphenour away," she said.

Umphenour, who was in Dillingham for a fish board meeting, could not be reached Monday for comment.

Knowles should simply allow Umphenour to serve out his term, James said.

That's not acceptable, said Knowles' press secretary Bob King.

"We feel we are on firm legal footing in putting a different name other than Umphenour's up for confirmation," King said. "We're aware of the different legal opinions."

Indeed, controversy over appointments by outgoing governors is nothing new. In 1982, former Gov. Jay Hammond appointed Michael Whitehead to the Alaska Commercial Fisheries Entry Commission. Then Bill Sheffield took office and appointed his own choice to the panel.

Like Knowles, Sheffield contended he had the authority to withdraw Hammond's nominee because the Legislature had not yet voted on the confirmation. But Whitehead sued to keep his job.

The state eventually settled the lawsuit by paying Whitehead his salary and benefits as a commission member through June 1983, as well as an additional $75,000.

Luckhaupt said the Umphenour case seems identical.

Past court cases from other states imply the Legislature could ignore Knowles and vote on Umphenour's appointment, even without Knowles' stamp of approval. Or the Legislature could ignore Umphenour and simply vote on Knowles' new nominee.

Whatever happens, it's likely not to be anytime soon.

The Legislature will not vote on confirmations until the end of the 120-day session in May.

King said Knowles may have an announcement about fish board appointments later this week. Two other seats on the panel expire at the end of the month.

STATE OF ALASKA - OFFICE OF THE GOVERNOR
Boards and Commissions Office

Applicant Endorsement List

Virgil Umphenour of **Fairbanks**
has been endorsed for the following board(s):

Board	Position	Endorser	Date
037		Abel Saccheus	06/27/94
037		Albert Jackson	01/20/94
037		Alice Fagerstrom	01/20/94
037		Alvin Owletuck	01/10/94
037		Annie Conger	01/25/94
037		Bert Sharp	02/01/94
037		Bill Fliris	01/07/94
037		Bosco Olson	01/12/94
037		Byron Haley	01/28/94
037		Carl Morgan Jr.	01/07/94
037		Carol Oliver	01/20/94
037		Daniel Nelson	01/12/94
037		Dean Paddock	06/01/94
037		Dorothy Barr	01/07/94
037		Edgar Jackson, Sr.	01/20/94
037		Fred Sagoonick	01/07/94
037		Fritz Willie	01/10/94
037		Gene Therriault	02/01/94
037		George Berry	01/14/94
037		George Yaska	01/27/94
096		Georgianna Lincoln	07/28/93
037		Georgianna Lincoln	01/28/94
037		Gilbert Gutierrez	01/21/94
037		Harry Wilde	02/01/94
037		Irene Nicholia	02/01/94
037		Jack Carpenter	01/07/94
037		Jack Coghill	02/20/91
096		Jack Coghill	02/20/91
037		Jack Coghill	01/10/94
037		Jeannette James	01/19/94
037		Joe Sitton	01/12/94
037		Joel Kawahara	02/03/94
037		John Davies	01/27/94
037		Joseph Peter	01/21/94
037		Kenneth Kingeekuk	01/11/94
037		Loretta Bullard	01/07/94
037		Luci Eningowuk	01/07/94
037		Lucy Olick	01/24/94
037		Lyman Hoffman	01/24/94
037		Martina Azean	01/11/94
037		Mike Dalton	01/24/94
037		Mike Miller	01/21/94
037		Myron Naneng	01/07/94
037		Myron Naneng	06/08/94
037		Nina Nanouk	01/27/94

STATE OF ALASKA - OFFICE OF THE GOVERNOR
Boards and Commissions Office

Applicant Endorsement List

Virgil Umphenour of **Fairbanks**
has been endorsed for the following board(s):

Board	Position	Endorser	Date
037		Nina Patkotak	01/20/94
037		Oliver "Bud" Burris	01/18/94
037		Ralph Seekins	01/17/94
037		Richard Foster	01/11/94
037	retain	Richard Foster	01/10/95
037		Steve Frank	02/01/94
037		Tom Brice	01/12/94
037		Will Mayo	01/05/94
037		William Topsekok	01/12/94

Total Endorsements: 54

1-17-95

Applicants to the Board of Fisheries

Trefon Angasan - Anchorage ✓
Dr. John R. White, Bethel
sp? – George Yasca, Fairbanks
Louis H. Green, Jr.- Nome
Mike Heimbuch - Homer
Oliver N. Holm - Kodiak
Richard Thummel - Kodiak
Bruce F. Stanford - Anchorage
Paul Swetzof - Anchorage
Ralph E. Lohse, Cordova
Gregory T. Williams - Cordova
Robert Piorkowski, Fairbanks
Dr. Patricia A. Crandell, Juneau
Charles Haley, Sitka
Dennis Hicks, Sitka
Jeff Meucci, Petersburg
Mim Robinson, Port Alexander
Ronald K.Sparks, Sitka

1/12 1/18 (Noon)

Board needs Interior member

Interior Alaska may not have the vast fishing industry that coastal areas enjoy, but decisions about fish management still have a significant effect on life here. The Interior needs a voice in those decisions.

Gov. Tony Knowles has told Virgil Umphenour, the only member of the state Board of Fisheries from the Interior, that his name likely will not be on the list submitted to the Legislature for confirmation in the next few weeks.

Maybe Knowles isn't comfortable with Umphenour's style. That's his choice. But he should recognize the importance of having an Interior voice on the board.

Salmon allocations and limits have created great controversy along Interior rivers for the past several years. The board needs someone who carries the background and perspective of people from this area.

Umphenour, the owner of Interior Alaska Fish Processors in Fairbanks, has supplied that. However, he sits in an awkward spot. He was nominated last spring for a three-year term by former Gov. Walter Hickel. He replaced Kay Andrew of Ketchikan, an earlier nominee who the Legislature rejected. But the Legislature never confirmed Umphenour's appointment. He has participated in board meetings, as is accepted practice, but the appointment process was not complete.

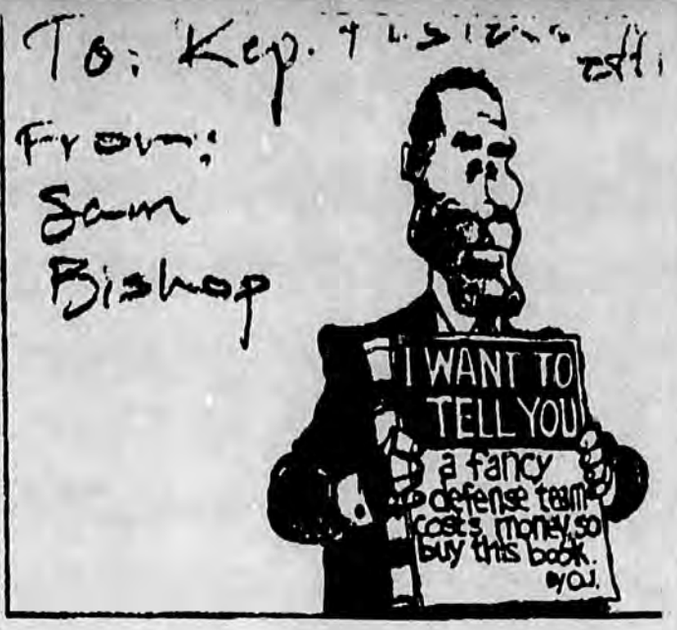
Now Knowles will submit a new list of nominees, for two seats that are scheduled to open, as well as for Umphenour's seat.

Fish issues are not easy to understand or resolve. Interior residents deserve to have someone studying the questions from their perspective.

For example, argument has raged for years over whether chum salmon catches off the Alaska Peninsula have hit Interior salmon stocks too hard. It appeared that the shrinking chum salmon runs in Interior and western Alaska rivers could be blamed in part on "by-catch" at False Pass off the Alaska Peninsula. Boats there pick up large numbers of chum salmon while looking for other salmon species.

The board each year has set a limit on the number of chum caught, but it refused to drop the by-catch limit below 700,000 fish even when chum stocks continued to decline. A majority of board members concluded that there wasn't enough evidence to show that the by-catch was causing a problem. Genetic studies are due next month that should shed more light on the subject.

We need a fish board member to take a close look at these studies and other issues from an Interior viewpoint. People here may not catch as many fish as coastal residents, but what fish we do have are critical for maintaining both subsistence lifestyles and sportfishing opportunities.



Aeronautic four to feature leadi

Let's not miss this one, Friday evening, Jan. 27, at the Westmark Gold Room. This is the 12th banquet for the Interior and Arctic Alaska Aeronautical Foundation, and what a series it has been!

The annual dinner occasion since 1984 has featured:

- Sen. Ted Stevens recalling his World War II experience as a fighter pilot flying the India-Burma-China "Over the Hump Route."
- Gregory "Pappy" Boyington, the famed and flamboyant U.S. Marine fighter pilot credited with 28 "kills," who commanded the somewhat unruly, unpredictable but highly successful "Black Sheep Squadron" during the dark days of ferocious fighting in the South Pacific.
- Adm. James Russell who flew the PBYs in the Aleutians as bombers, fighters, and reconnaissance craft out of Kodiak—every flight an improbable mission.
- The memorable Donald "Deke" Slayton, one of the original nine astronauts of the Apollo space project; and, Masajiro "Mike" Kawato, a Japanese Zero pilot who at age 18 had shot down "Pappy" Boyington. Both survived combat to write books about their daring exploits—one for Japan, one for America.

Here was a great beginning for the IAAAF's annual fund-raiser. Recognition and support followed for the efforts of Randy Acord, a handful of dedicated founding members, and a few others.

Their hard work and persistence made possible the Pioneer Air

The IAAAF Stevens, Ala Bush pilot, c and Delta ai "Alaska Avia tailed and re and machine



W

area, who flew 237 c against Japanese ar was shot down twic to write about his "China Through th ger." After World came a test pilot, a air racer, and hos radio talk show in S nia, "Aviation Show mic speaker.

In the early '90s, land, civilian test heed, who holds s and speed records, Fairbanks audienc sonic Age. And G well-known U.S. media talk show actor, and humori

Alaska State Legislature

Official Business

State Capitol
Juneau, AK 99801-1182

January 17, 1995

Governor Tony Knowles
PO Box 110001
Juneau, Alaska 99811-0001

Dear Governor Knowles:

For quite some time the Interior delegation has worked to place on the Board of Fisheries an individual who is knowledgeable of Alaska's inland fisheries.

The recent Yukon River chum salmon collapse may have been more effectively mitigated had someone with experience and understanding of Interior fisheries been in place on the Board at that time. The 1994 appointment of Virgil Umphenour succeeded in shaping the make-up of the Board of Fisheries in such a manner.

We find it disconcerting that in less than a year Mr. Umphenour faces being removed from the Board of Fisheries and replaced by an individual from another area of Alaska. Before Mr. Umphenour's appointment, the Interior was not represented. The prospect of our region now being returned to that condition is unacceptable in our view.

Alaska's Interior fisheries are an important resource to large Native populations, to small commercial fish processing concerns, as well as to the sportfishing public. The issues are significant enough to warrant representation on the Board of Fisheries. We urge you to consider these constituencies with respect to Mr. Umphenour's tenure on the Board. He can meet and understand these needs. His appointment was and is appropriate.

Sincerely,

Senator Steve Frank | Rep. Tom Brice | Rep. Pete Kelly

Senator Mike Miller | Rep. John Davies | Rep. Gene Therriault

Senator Bert Sharp | Rep. Jeanette James | Rep. Al Vezey

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM January 20, 1995

SUBJECT: Removal of Board of Fisheries Member (Work Order No. 9-LS0468)

TO: Representative Richard Foster
Attn: Bryce Edgmon

FROM: Gerald P. Luckhaupt
Legislative Counsel

QUESTIONS PRESENTED:

I. May Governor Knowles remove Virgil Umphenour as a member of the Board of Fisheries, effective January 6, 1995, without cause, and appoint someone else to Mr. Umphenour's position?

ANSWER: No. A member of the Board of Fisheries may only be removed from office by the governor for "inefficiency, neglect of duty, or misconduct in office, or because the member while serving on the board is convicted of a misdemeanor for violating a statute or regulation related to fish and game or of a felony. An interim appointee, as is Mr. Umphenour, may only be removed by the governor for the "cause" cited or, if the legislature should fail to confirm Mr. Umphenour, Mr. Umphenour would be removed from his position by operation of law - by the failure of the legislature to confirm. See discussion I.

II. What can the legislature do concerning the appointment of Mr. Umphenour to the Board of Fisheries if the governor does not forward Mr. Umphenour's name to the legislature or forwards someone else's name to the legislature for confirmation?

ANSWER: The legislature can confirm or reject Mr. Umphenour's appointment or do nothing concerning Mr. Umphenour's appointment. If the legislature fails to take any action regarding Mr. Umphenour's appointment then by operation of law, AS 39.05.080(3), Mr. Umphenour would be removed from his membership on the Board of Fisheries as of the last day of the legislative session. If the legislature rejects Mr. Umphenour's appointment by affirmatively voting in joint session not to confirm him, then by operation of law (AS 39.05.080(3)), Mr. Umphenour will be removed from his membership on the Board of Fisheries as of that day and the governor will be free to appoint someone else at that time. If the governor attempts to appoint someone else to Mr. Umphenour's position and forwards that new name to the legislature for confirmation and that person is confirmed without Mr.

Umphenour being rejected, a court could rule that Mr. Umphenour is entitled to the office until the last day of the session (as Mr. Umphenour was not confirmed by the legislature) or could decide that the new appointee's confirmation was an implicit rejection of Mr. Umphenour, thereby entitling the new appointee to the office. See Discussion II.

FACTUAL BACKGROUND

The facts as presented to me by Bryce Edgmon of your office are that Governor Hickel appointed Virgil Umphenour to the Board of Fisheries on July 22, 1994 to the position on the board that became vacant when Kay Andrew's appointment to the position was rejected by the legislature when the legislature failed to confirm Ms. Andrew. See 18th Alaska Legislature, Senate Journal, at 4662; House Journal, at 4324. On January 6, 1995, Mr. Umphenour was informed by a phone call from Jim Ayers, Chief of Staff for Governor Knowles, that Mr. Umphenour was being removed from position on the Board of Fisheries. To date Mr. Umphenour has not received any written notification that he has been removed from his position on the Board of Fisheries.

DISCUSSION

I

In answer to your first question, it is my opinion that Governor Hickel's appointment of Virgil Umphenour to the Board of Fisheries is valid and binding on Governor Knowles and Mr. Umphenour cannot be removed from office by the Governor absent a finding by the Governor that there is cause for Mr. Umphenour's removal from office as provided in AS 16.05.280.

Article III, § 26 of the Alaska Constitution provides:

> Section 26. Boards and Commissions. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, **and may be removed as provided by law**. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor. [Emphasis supplied].

This provision clearly delineates the respective powers of the governor and the legislature regarding the appointment of members of boards and commissions. The governor has the

exclusive power to appoint and the legislature has the exclusive power to confirm and to provide how a member of a board or commission may be removed from office.[1]

AS 16.05.221(b) provides that the Board of Game is "composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session."[2] AS 16.05.280 provides:

> The governor may only remove a board member for inefficiency, neglect of duty, or misconduct in office, or because the member while serving on the board is convicted of a misdemeanor for violating a statute or regulation related to fish or game or of a felony, and shall do so by delivering to the member a written copy of the charges and giving the member an opportunity to be heard in person or through counsel at a public hearing before the governor or a designee upon at least 10 days' notice by registered mail. The member may confront and cross-examine adverse witnesses. Upon removal, the governor or a designee shall file in the proper state office the findings and a complete statement of all charges made against the member.[3]

The governor may appoint members of boards and commission, such as the Board of Fisheries, to fill vacancies that occur while the legislature is not in session pursuant to art. III, § 27 of the Alaska Constitution.

Further, AS 39.05.080(4) provides that

> Pending confirmation or rejection of appointment by the legislature, persons appointed shall exercise the functions, and have the powers and be charged with the duties prescribed by law for the appointive positions or membership.

Based upon the facts as presented there was a vacancy on the Board of Fisheries and Governor Hickel, pursuant to statutory and constitutional authority appointed Mr. Umphenour to that vacant position. Mr Umphenour entered upon and was vested with all the duties of his office at that time. But is this interim appointment binding on Governor Knowles or may Governor Knowles withdraw Mr. Umphenour's appointment because he has not been confirmed by the legislature or otherwise remove Mr. Umphenour from office? It

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[1] Article III, § 26 of the Alaska Constitution only applies to boards and commissions that are "at the head of a principal department or a regulatory or quasi-judicial agency." The Board of Game is, I believe, clearly a regulatory board subject to art. III, § 26.

[2] AS 16.05.221 was amended by the legislature in section 1, chapter 121, SLA 1992. The quoted language was not affected.

[3] This section, as amended by section 3, chapter 121, SLA 1992, took effect September 20, 1992. The entire section is made applicable to all members of the Board as of September 20, 1992, by section 6, chapter 121, SLA 1992.

is my opinion that Mr. Umphenour's appointment is binding on Governor Knowles and that Mr. Umphenour may not be removed from office absent the legislature's failure to confirm Mr. Umphenour or Governor Knowles' compliance with the procedure provided in AS 16.05.280 by removing Mr. Umphenour for cause.

Support for this conclusion is found in the plain language of the Constitution and in the court decisions. The Constitution recites in art. III, sec. 26 that the members of those boards or commissions shall be "appointed" by the governor. To determine the meaning of "appointed" we can look to other provisions of the Constitution for assistance. Article II, sec. 5 of the Constitution refers to the terms "nominated," "elected," or "appointed" as exclusive alternatives which are "clearly intended to catalogue the routes by which one may attain an office or position of profit." Begich v. Jefferson, 441 P.2d 27, 32 (Alaska 1968). In Alaska, "appointed" clearly does not mean "nominated."

That "nominated" and "appointed" are not synonymous terms in this state is further supported by the proceedings of the framers of our constitution. Art. III, § 26 of our constitution, as originally proposed in Committee Proposal No. 10a, by the Executive Branch Committee of the Alaska Constitutional Convention stated:

> Whenever a board or commission is at the head of a principal department or of a regulatory or quasi-judicial body, the members thereof shall be **nominated and appointed** by the governor, with the advice and consent of the senate. . . . [Emphasis supplied].

This "nomination" language and reasoning was specifically rejected by the framers of our constitution as it was finally enacted.

The distinction between "nominated" and "appointed" is significant. In the federal system, the president "nominates" persons to the senate for confirmation. A federal "nominee" does not take office pending confirmation. In that situation:

> There is no appointment within the meaning of vesting final title to the office until acted upon affirmatively by the legislative branch of government. Justice Marshall states that until the legislature acts, the president is free to choose whom he will.

Munson v. Territory of Alaska, 16 Alaska 580 (1956). But, an "appointee" takes office and is vested with all the duties, powers, and responsibilities of the office subject only to the legislature's authority to fail to confirm the appointment. When a person is "appointed" and takes office and exercises the powers of the office, the governor has performed the "last act" necessary to vest the person with the powers of the office. The governor may not later withdraw or revoke the appointment except that he may remove the appointee as provided by law.

In Division of Elections v. Johnstone, 669 P.2d 537, 539-540 (Alaska 1983) the supreme court held that the term appointment as used in the Constitution means "to designate for office." The court also found that the appointment of a superior court judge was effective on the completion of the "last act" of the appointing authority, in that case, the letter of appointment issued to the judge by the governor.

The Alaska Supreme Court, in Johnstone, cited McChesney v. Sampson, 232 Ky. 395, 23 S.W.2d 584 (1930) in support of this proposition. McChesney is strikingly similar to the present case. In McChesney, the Kentucky Supreme Court was confronted with a situation where the governor, having the authority to appoint members of a board subject to confirmation by the Senate, appointed in the interim (between sessions of the legislature), McChesney who entered upon and performed the functions of the office. Several months later, before the legislature had again convened, the governor removed McChesney without cause and appointed another person. McChesney sued to retain his office. The court held that the governor's purported removal of McChesney was illegal. The court stated that the governor by naming and appointing McChesney had exhausted his power to appoint and performed the "last act" necessary to vest McChesney with his office, subject only to the state senate's authority to confirm or fail to confirm and to the governor's authority to remove McChesney for cause as provided by law. The court further contrasted the situation where an officer is "appointed" subject to confirmation by the legislature (as exists in Alaska by art. III, sec. 26 of the Constitution) with the situation where an officer is "nominated" subject to confirmation (as exists for federal appointments) and said:

> Furthermore, in cases where the nomination must be confirmed before the officer can take the office or exercise any of its functions, the power of removal is not involved and nominations may be changed at the will of the executive until title to the office is vested. But under our system the appointee of the Governor takes the office, enters upon the performance of its duties, and is charged with responsibility. He holds then subject alone to the action of the Senate. His status is not that of a nominee awaiting confirmation, but that of an officer invested with the powers, privileges, and responsibilities of the position until the Senate acts. A recall of his designation would operate as a removal from office. It is argued that appointment to the office consists of two separate acts, one by the Governor and one by the Senate, and until both have acted there is no appointment such as to bring the incumbent within the protection of the law. Even so, the two powers do not act concurrently, but consecutively, and action once taken and completed by the executive is not subject to reconsideration or recall . . . What, then, constitutes an appointment insofar as the chief executive has to do with it? Appointment to an office by one possessing the appointing power is the designation of another person to discharge the duties of the office. [Citation.] It is completed when the appointing authority has performed the acts incumbent upon him to accomplish the purpose. [Citations.] The fact that the title to the office, and the tenure of the officer, are yet subject to the

> action of the Senate, does not render incompiete the act of the chief executive in making the appointment. The appointment alone confers upon the appointee for the time being the right to take and hold the office, and constitutes the last act respecting the matter to be performed by the executive power. [Emphasis supplied].

McChesney, supra, at 587.

The court concluded by stating: "Such power as flows from the act of the Governor in making the appointment is invested by the statute in the appointee, and may not thereafter be recalled or bestowed upon another unless the consent of the Senate is withheld." See also Barrett v. Duff, 114 Kan. 244, 217 P. 918 (1923).

The rule discussed in McChesney v. Sampson has been variously stated by courts and commentators to be the "majority rule," the "general rule," and to be "universally held." See e.g., Barrett v. Duff, supra; State v. Essling, 128 N.W. 2d 307, 311 (Minn. 1964) ("well settled"); State v. Brewster, supra; 89 ALR 135 ("general rule").

McChesney and the rule discussed in it are based upon Marbury v. Madison, 1 Cranch 137, 5 U.S. 137, 159-60, 2 L.Ed 60, 68-69 (1803) in which Justice Marshall stated:

> [W]hen the officer is not removable at the will of the executive, the appointment is not revocable, and cannot be annulled. It has conferred legal rights which cannot be resumed. The discretion of the executive is to be exercised until the appointment has been made. But having once made the appointment, his power over the office is terminated in all cases, where by law the officer is not removable by him.

While the principle of a strong executive is embraced by our Constitution and recognized by our courts, Bradner v. Hammond, 553 P.2d 1, 3, n.3 (Alaska 1976), that principle does not mandate a different conclusion than that reached by the United States Supreme Court, the McChesney court and their progeny. To state that a subsequent governor has the authority to recall the appointments of a previous governor, absent constitutional or statutory authority, would render appointments to office personal to the particular governor and his term. This is contrary to our Constitution which establishes an office of governor and provides for succession to that office. Under our Constitution there is a governor and a governor there will always be, though the individuals occupying that office may come and go. See e.g., People v. Shawver, 30 Wyo. 366, 222 P. 11 (1924); Barrett v. Duff, supra; State v. Brewster, 84 S.E.2d 231, 246 (W. Va. 1954); Tappy v. State, 82 So.2d 161, 169 (1955).

When Governor Hickel appointed Mr. Umphenour, that is, named him to the office in the letter of appointment, there was a present vacancy on the Board of Fisheries due to the legislature's failure to confirm Ms. Andrew. Under the rationale of the Alaska Supreme Court in Johnstone, supra, Mr. Umphenour was appointed at that time. If there is a present vacancy

in office and when the governor performs that "last act," in this case the letter of appointment, then the appointment is effective and binding upon the executive branch, subject only to the legislature's power to confirm or not to confirm and the statutory authority of the governor to remove the appointee "as provided by law." If Governor Hickel had attempted to appoint Mr. Umphenour to a position where a vacancy did not then exist, but for which a vacancy was anticipated in the future (for example, a seat on the board that was currently occupied but the occupant's term was due to expire, say on January 1, 1995), then I would conclude that a purported appointment by Governor Hickel to take effect in the future, after Governor Hickel had left office, would not be binding on the subsequent administration.[4]

This distinction was recognized in an Alaska Attorney General's opinion from Rodger Pegues to Vicki Clayman on December 10, 1979. (Copy attached). In that opinion the attorney general opined that appointments by an outgoing governor to take effect beyond the governor's term are not binding upon and may be withdrawn by the new administration. That opinion, though, recognizes that if "the appointments can be accomplished in their entirety before the expiration of the appointing authority's own term of office, midnight appointments make some sense." Presumable, if they make some sense, then they are also effective and binding upon the new administration. If there is a present vacancy in an office when the governor performs that "last act," in this case the letter of appointment of Mr. Umphenour in July of 1994, then the appointment is effective and binding on the new administration, subject only to the legislature's power to confirm or not to confirm and the statutory authority of the new governor to remove the appointee "as provided by law."

Support for this conclusion is found in the settlement of a lawsuit brought by a former member of the Alaska Commercial Fisheries Entry Commission, Michael Whitehead against the state. Mr. Whitehead was appointed to a position on the commission on October 16, 1982, by then Governor Hammond. Governor Sheffield took office in December, 1982, and on February 28, 1983, Governor Sheffield appointed another person to fill the position occupied by Mr. Whitehead. AS 16.43.030(a) provided that the members of the commission could only be removed for cause. Governor Sheffield contended that he had the authority to withdraw Mr. Whitehead's appointment as Mr. Whitehead had not as yet been confirmed by the legislature.[5] Mr. Whitehead then sued to retain his position on the commission. The state settled the lawsuit by paying Mr. Whitehead his salary and benefits as a member of the commission up to June 16, 1983, and an additional $75,000.

The Whitehead case seems identical to the present case. The settlement by the state seems to support a conclusion that a subsequent administration may not withdraw or revoke the

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[4] A purported "appointment" to take effect at some date in the future is in actuality a "nomination" because the purported "appointee" is not then, at the time of "appointment," vested with all the duties, powers, and responsibilities of the office.

[5] It was apparently the state's position that Mr. Whitehead was a "nominee" and that the "last act" necessary to make his appointment effective was confirmation by the legislature.

valid, effective appointments of a previous administration, or replace an appointee except "as provided by law," where the appointee has taken office and is exercising the powers, duties, and responsibilities of the office.

Further support for this position is found in Governor Hickel's purported removal of Peter Sokolov as a member of the Alaska Public Utilities Commission in 1991. Mr. Sokolov had been appointment by Governor Cowper in November, 1990, to begin a new term after the expiration of Mr. Sokolov's previous term. In January 1991, Governor Hickel notified Mr. Sokolov that his appointment was being "withdrawn." The legislature that year took up Mr. Sokolov's appointment, even though the governor failed to send Mr. Sokolov's name to the legislature for confirmation. The legislature then failed to confirm Mr. Sokolov's appointment.

Just last session the Alaska Legislature revisited this issue when Governor Hickel appointed Jack Didrickson to the Board of Game after the governor's previous appointment to the position was rejected by the legislature. Mr. Didrickson took office and performed the duties of that office until he was notified by the governor's office that his "nomination" was being withdrawn, he was being removed from office, and the governor was forwarding the name of a different person to the legislature for confirmation to the seat that had been held by Mr. Didrickson. Absent any communication from the governor the legislature took up the confirmation of Mr. Didrickson and rejected his appointment to the Board of Game.

Be advised that the Alaska Attorney General in an opinion from James L. Baldwin to Kevin Bruce, dated February 3, 1983 (copy attached) advised the Sheffield administration that the governor had the authority to withdraw an appointment made by a previous governor. The opinion does not cite any authority for this position other than another Department of Law opinion from Rodger Pegues to Vicki Clayman issued on December 10, 1979, discussed earlier. That opinion also does not cite any authority other than Marbury v. Madison, discussed herein.

II

You have asked what the legislature can do with reference the Umphenour matter. I see the legislature as having two options: (A) hold confirmation proceedings for Mr. Umphenour and treat Governor Knowles' purported removal of Mr. Umphenour as ineffective; and (B) do nothing. I will discuss these options each in turn.

A

If the legislature decides that Governor Knowles's purported removal of Mr. Umphenour is ineffective then I believe the legislature can consider Mr. Umphenour for confirmation in the absence of a communication from the governor requesting the confirmation.

Art. III, sec. 26 provides:

> When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.[6]

This provision provides that the governor has the authority to appoint the members of each board or commission that "is at the head of a principal department or a regulatory or quasi-judicial agency." These appointees are subject to the legislature's constitutional authority to confirm or reject them.[7]

In Bradner v. Hammond, 553 P.2d 1, 7 (1976), the Alaska Supreme Court described the authority of the legislature to confirm the appointees described in sections 25 and 26 as:

> not a distinct legislative power, but rather a part of the executive power of appointment which has in turn been delegated in some specific instances by constitution to the legislative branch of government.

Therefore, the power of confirmation of the governor's appointees to the "head of each principal department" and to membership on each board or commission that "is at the head of a principal department or a regulatory or quasi-judicial agency," though normally an executive branch function, has been exclusively delegated to the legislature by the Alaska Constitution.

To implement this confirmation power granted by the constitution the legislature has enacted AS 39.05.080. This section provides that the governor:

> shall, within 30 days of the convening of the legislature in regular session, present to the legislature the names of the following persons: (A) persons appointed to a position or membership who have not previously been confirmed by the legislature or either house of it; (B) persons appointed subject to confirmation to fill an existing position or membership vacancy; (C) persons to be appointed subject to confirmation to fill a position or

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[6] Art. III, § 25 provides that the governor may appoint the "head of each principal department" of the state.

[7] Other appointments subject to legislative confirmation include certain military officers, art. III, §19; the non-attorney members of the judicial council, art. IV, §8, members of the Commission on Judicial Qualifications, art. IV, §10, and members of the University of Alaska Board of Regents, art. VII, §3.

> membership the term of which shall expire before July 2, following the session of the legislature. If an appointment is made after the deadline but while the legislature is in session, the appointing authority shall, within five calendar days after the appointment is made, present to the legislature for confirmation the name of the person appointed. The deadline may be extended by the legislature by the approval of a concurrent resolution. . . .

But what if the governor fails or refuses to transmit the names of his appointments, or a particular appointment, to the legislature? Is the legislature without authority to confirm or reject the appointment if the governor does not commence the confirmation process by transmitting the name? The Alaska Supreme Court has never considered this issue but the courts of several other states have. The leading case on the subject of the legislature's authority to confirm or reject a gubernatorial appointment in the absence of a communication by the governor appears to be People v. Shawver, 30 Wyo. 366, 222 P.2d 11 (1924). Shawver was cited by the Alaska Supreme Court in Bradner for the proposition that confirmation is actually a portion of the executive's appointment power that has been delegated to the legislature by the constitution. Bradner, supra, at 7, n. 19. In Shawver, the Wyoming Supreme Court after reaching this conclusion addressed the next part of the issue presented by that case: Whether the Wyoming Senate (granted the power to confirm the appointees of the governor by the Wyoming Constitution) could act to confirm or reject an appointee when the governor did not transmit the appointee's name to the Senate and did not ask that the appointee be confirmed? The case involved the appointment of an individual to a state office by a governor who was then succeeded by another governor. The new governor failed to submit the appointment to the Senate for confirmation. The court said:

> But why may not the Senate act upon an appointment of which it has knowledge, if the Governor should refuse or neglect to ask for such action especially where the appointee is known to have entered upon the duties of the office? A provision for an appointment by the Governor with the consent of or to be confirmed by the Senate directs not only what shall be done, but also in effect what shall not be done. The affirmative act of the two governmental agencies is required to confer title to an office under such a provision. A completed appointment cannot be made in any other way than as so provided. [Citations omitted] While the Governor's act in selecting the person to be considered for an office may be the principal and perhaps the more important one of the two, it is not alone sufficient. A construction of such provision denying the right of the Senate to act in any case unless directly requested to do so by the Governor or by a communication from his office would obviously provide him the power to ignore the coordinate right of the Senate, and might mean the abolition of that right, and certainly would make it entirely dependent upon the Governor's pleasure.

Shawver, supra, at 23 - 24. The court then held that the Wyoming Senate properly confirmed an appointee, though the governor had not requested the confirmation.

The Kansas Supreme Court reached a similar conclusion in Barrett v. Duff, 114 Kan. 220, 217 P. 918 (1923). That case involved the appointments to state offices by a governor during a recess of the legislature. The appointees entered upon the duties of their offices. A new governor took office and attempted to appoint others to the offices and removed the previous governor's appointees. By constitution, the Kansas Senate had the authority to confirm the appointees of the governor and the governor could not remove the state officers involved here except as provided by law, for cause. The court said:

> The plaintiffs deny any force or validity to the action of the Senate in considering and confirming the appointments of defendants because of the failure of the executive to directly transmit the names of defendants. No good reason is advanced why the Senate would not consider such recess appointments without such direct word from the executive. Judicial notice or knowledge is the cognizance of certain facts which judges and jurors may properly take and act upon without proof because they already know them. Judicial notice means that the court will bring to its aid and consider, without proof of the facts, its own knowledge of those matters of public concern which are known to all well-informed persons. Legislative notice is far broader than judicial notice. 23 C.J. 58. The legislative department is equipped to deal with any condition, general or special, however manifested or brought to the knowledge of the law-making power. The mass of individual legislation found among the statutes of all the states demonstrates this legislative attribute. [Citation omitted].
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> The offices in controversy are all located in the capitol building, in which the Senate holds its deliberations. They are important departments of the state government. The Senate may, and often does, have official business with them. It receives reports from them. It considers the service which the departments are, by law, required to perform. It considers the extent of such service and its requirements. It considers and passes appropriations in order that they may lawfully and properly function. Under all the circumstances, the Senate cannot shut its eyes to the facts as to whether their respective offices are filled; whether they are functioning under the law, or whether there is a vacancy therein. . . . The Senate, which has official knowledge of all of the acts of another state department, may not close its eyes to an existing fact merely because the executive has failed to transmit a communication giving it the advice. The fact that the Senate is called upon to consent to or confirm appointments presupposes an investigation upon which to base its judgment as to whether or not it should confirm or reject the named appointee. It is a matter of common knowledge that the Senate of Kansas, likewise the Senate of the United States, may, and frequently does, investigate the character, fitness, and ability of the appointee submitted for its consideration. The Senate must be permitted to investigate on its own initiative, and without communication from the Governor, the status of offices; otherwise the

> Governor could fill and refill them at his pleasure by simply failing to advise the Senate. . . . We conclude that the Senate did not go beyond its powers in making the investigation concerning the offices held by the defendants, and, having satisfied itself, that it could properly exercise its judgment thereon. While it is the usual and customary courtesy of the executive to transmit such facts to the Senate, we believe it the better view to hold that the Senate may, on its own initiative, if it so desires, ascertain the facts upon which to base its deliberative and final judgment in confirming or rejecting appointees of the Governor.

Barrett, supra, 925-926. The Kentucky Supreme Court in McChesney, supra, discussed in Discussion I also reaches the same conclusion.

In fact, virtually all other courts that have considered this issue have reached the same conclusion. See, e.g., Bell v. Sampson, 232 Ky. 376, 23 S.W.2d 575 (1930); State v. Halladay, 219 N.W. 125 (S.D. 1928); State v. Brewster, 84 S.E.2d 231, 248 (W.Va. 1954); Commonwealth v. Stewart, 286 Pa. 511, 134 A. 392 (1926). Our research has disclosed only two court decisions that have reached an opposite conclusion, Attorney General v. Warner, 299 Mich. 172, 300 N.W. 63 (1941 and Burke v. Schmidt, 191 N.W. 2d 281 (S.D. 1971)). In Warner, the court though, held that under the Michigan Constitution and that State's court decisions that the confirmation power of the legislature is a legislative power, not a delegation of the executive's appointment power. As such, its reasoning is contrary to the Alaska Supreme Court's decision in Bradner and is distinguishable on that ground. In Burke, it appears the court held that the board members involved were not entitled to succeed to their offices and perform the duties thereof until they were confirmed. Burke, Supra, at 285. This is contrary to the procedure that is provided here in Alaska by constitutional provision and statute and is clearly distinguishable on that ground. See Art. I, § 27 of the Alaska Constitution and AS 39.05.080(4).

Therefore, I conclude that the legislature may properly consider the confirmation or rejection of Mr. Umphenour as an art. III, § 26 appointee of the governor. While it is hoped that the governor will comply with the reasonable procedure for communication of appointments the legislature has provided in AS 39 05.080, if the governor fails or refuses to request the confirmation of an appointee (as apparently is the case with Mr. Umphenour), the legislature may take notice of previous appointments and of the persons occupying the constitutional offices listed in section 26. To hold otherwise would allow the governor to prevent the legislature from exercising its constitutional confirmation power at his whim, caprice, or neglect and would render the confirmation function a nullity. Shawver, supra. Such an absurd result was not intended by the framers of our constitution and would not, I believe, be embraced by our courts.