ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672
1779 HLC SB 19 - SB 84

January 16, 1981

Mr. Roger D. Moore, President
SECURITY NATIONAL BANK
Pouch 7-777
Anchorage, Alaska 99510

Dear Mr. Moore:

RE: Interest rates applicable under Depository Institutions Deregulation and Monetary Control Act of 1980

I am enclosing a copy of an Attorney General's Opinion #J-66-452-81, dated January 2, 1981, for your information and comment. You will note that the text of this opinion is specifically directed to state-chartered credit unions. However, this division has had further contact with Ms. Leslie Ludtke, and she has informed me that this opinion is applicable to all insured despository institutions. 3672

This opinion effectively establishes three loan categories which are as follows:

1. Loans under $25,000 which the maximum interest rate allowable is 8 percentage points above the Federal Reserve Discount Rate as calculated on the first of the month proceeding the end of the calendar quarter.

2. Loans from $25,000 to $100,000 which the maximum interest rate allowable is 5 percentage points above the Federal Reserve Discount Rate as calculated on the 25th of the month proceeding the end of the calendar quarter.

3. Loans in excess of $100,000 which have negotiable interest rates.

If there are any questions, please contact this division at 465-2521.

Sincerely,

Willis F. Kirkpatrick
Director

WK/kkk5/3

Enclosure

MEMORANDUM State of Alaska

TO: Julius Brecht
Banking & Securities
Dept. of Commerce and Economic Development

DATE: January 2, 1981

FILE NO: J-66-452-81

TELEPHONE NO: 465-3675

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Depository Institutions Deregulation and Monetary Act of 1980.

By: Leslie J. Ludtke
Leslie J. Ludtke
Assistant Attorney General

You have requested this department's opinion regarding interest rates applicable to state chartered credit unions under the Depository Institutions Deregulation and Monetary Control Act of 1980. (Public Law 96-221) You have asked whether 12 U.S.C. §1757(5)(A)(vi) (1980 Deregulation and Monetary Control Act §310) applies to state chartered credit unions. We conclude that it does not.

Section 1757 of the federal Credit Union Act applies only to federally chartered credit unions. 12 U.S.C. § 1757 states that "A federal credit union . . . shall have power." The term "federal credit union" is defined under 12 U.S.C.. § 1752 as "a cooperative association organized in accordance with the provisions of this chapter . . ." Therefore, the provisions of 12 U.S.C. § 1757 do not apply to state chartered credit unions. 12 U.S.C. § 1757(5)(A)(vi) provides in part:

> (vi) the rate of interest may not exceed 15 per centum per annum on the unpaid balance inclusive of all finance charges, except that the Board may establish
> (I) after consultation with the appropriate committees of the Congress, the Department of Treasury, and the Federal financial institution regulatory agencies, an interest rate ceiling exceeding such 15 per centum per annum rate, for periods not to exceed 18 months, if it determines that money market interest rates have risen over the preceding six-month period and that prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth;

Recently, the National Credit Union Administration (NCUA) Board raised the interest rates under this section to 21 percent. This rate supercedes the otherwise applicable rate established in 12 U.S.C. § 1785(g)(1) (1980 Deregulation and Monetary Control Act § 523). In relevant part, this section states:

> (g)(1) If the applicable rate prescribed in this subsection exceeds the rate an insured credit union would be permitted to charge in the absence of this subsection, such credit union may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this subsection, take, receive, reserve, and charge on any loan, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such insured credit union is located or at the rate allowed by the laws of the State, territory, or district where such credit union is located, whichever may be greater.

Additionally § 528 of the 1980 Deregulation and Monetary Control Act provides that if one or more provision of the Act, or of any other law, applies to the same loan, the loan may be made at the highest applicable interest rate. The issue raised is therefore whether state chartered credit unions may charge 21 percent interest as authorized by 12 U.S.C. §1757(5)(A)(vi) or whether state chartered credit unions are limited to the rate set by 12 U.S.C. § 1785 when federally chartered credit unions are permitted to charge a higher rate under 12 U.S.C. § 1757(5)(A)(vi). Our conclusion that state chartered credit unions are not permitted to charge the higher rate established by the NCUA Board under 12 U.S.C. § 1757(5)(A)(vi) is based on three factors.

First, 12 U.S.C. § 1757 is not directly applicable to state chartered credit unions. This section sets out the powers which a federal credit union may exercise. The NCUA regulates the activities of federal credit unions by adopting rules to carry out this section. The activities of state chartered credit unions are not regulated by the NCUA and state chartered credit unions are not subject to the limitations nor are they granted the powers of federal credit unions under 12 U.S.C. § 1757. The conference report on the 1980 Deregulation and Monetary Control Act reinforces the conclusion that state chartered credit unions are not subject to 12 U.S.C. §1757.

The report states in part:

> The conferees adopted a provision which would allow federal credit unions to raise their loan rates up to an annual rate of 15 percent subject to rules issued by the National Credit Union Administration. The legislation would also permit the National Credit Union Administration to raise the loan ceiling above 15 percent for periods not to exceed 18 months, after consultation with appropriate Congressional committees, the Department of Treasury, and the other federal financial regulator agencies. 1980 Deregulation and Monetary Control Act. CCH Reports, paragraph 2036, pg. 211.

State chartered credit unions are, however, subject to regulation under 12 U.S.C. § 1785 which sets out the requirements governing federally insured credit unions. State chartered credit unions are federally insured. The Conference Report on 12 U.S.C. § 1785, 1980 Deregulation and Monetary Control Act § 523, states in part:

> State usury ce[illegible]gs on all loans made by Federally in[illegible]ed depository institutions (except national banks), and small business investment companies will be permanently preempted...

Because state chartered credit unions are federally insured depository institutions, the preemptive interest rate set out in 12 U.S.C. § 1785(g)(1) applies.

Secondly, 12 U.S.C. § 1785(g)(1) permits state chartered credit unions to charge interest at a rate of "not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such insured credit union is located or at the rate allowed by the laws of the State...where such union is located..." The phrase "at the rate allowed by the laws of the State" has been interpreted to mean at the highest rate allowed by the state to be charged by any lender for a particular type of loan.

For example, small loan licensees are permitted to charge a higher rate of interest under AS 06.20 for loans under $25,000 than other financial institutions may charge for these same loans.

Therefore, 12 U.S.C. § 1785(g)(1) would permit a federally insured state chartered credit union to charge the same rate as the small loan licensee for a loan under $25,000. 1/

The phrase "at the rate allowed by the laws of the State" is derived from the National Bank Act, 12 U.S.C. § 85, and is commonly referred to as the "most favored lender" doctrine. This doctrine originally was established to ensure parity between national banks and state chartered financial institutions. It allows a national bank, or in this instance a federally insured, state chartered credit union, to charge the same interest rate as any state chartered or licensed financial institution would be permitted to charge on a particular type of loan. 2/ The national bank, or state chartered credit institution, is granted parity by being permitted to charge the highest rate allowed for the state's most favored lender. The doctrine therefore focuses on the type of loan offered rather than establishing parity with the same type of financial institution. 12 U.S.C. § 1785(g)(i) incorporates this concept of most favored lender. It does not, however, establish a state chartered credit union's right to parity with a federally chartered credit union.

1/ The fact that a credit union is not licensed under AS 06.20 would not alter this result. See n.2, below.

2/ In Marquette Nat'l Bank v. First of Omaha Corp., 439 U.S. 299, 314 (1978) the Court stated that the "most favored lender" doctrine had "been interpreted for over a century to 'give advantages to National banks over their state competitors'." 12 C.F.R. § 7.7310 incorporates the "most favored lender doctrine", as expressed by case law, into the regulations of the Comptroller of the Currency. 12 C.F.R. § 7.7310 reads:

> §7.7310 Charging interest at rates permitted competing institutions . . .
>
> (a) A national bank may charge interest at the maximum rate permitted by State law to any competing State-chartered or licensed lending institution. If State law permits a higher interest rate on a specified class of loans, a national bank making such loans at such higher rate is subject only to the provisions of State law relating to such class of loans that are material to the determination of the interest rate. For example, a national bank may lawfully charge the highest rate permitted to be charged by a State-licensed small loan company or morris plan bank, without being so licensed.

The "most favored lender" doctrine refers to the highest permissible rate under state law. The authority to charge 21 percent on loans, under 12. u.s.c. § 1757(5)(A)(vi) is not a right granted by state law, but a right given by federal law. No law of Alaska specifically allows any financial institution to charge on a loan. Nor does state law incorporate any maximum rates set under federal law in establishing allowable state maximums. Therefore, although the concept of most favored lender is incorporated into 12 U.S.C. § 1785(g)(i), state chartered credit unions are not granted parity with federal credit unions. To construe the phrase "at the rate allowed by the laws of the State" to include the rate permitted by 12 U.S.C. 1757(5)(A)(vi) would constitute a misapplication of the "most favored lender" doctrine.

Third, Section 528 of the 1980 Deregulation and Monetary Control Act does not authorize state chartered credit unions to charge the rate set by the NCUA Board under 12 U.S.C. § 1757 (5)(A)(vi). This section reads:

> Sec. 528. In any case in which one or more provisions of, or amendments made by, this title, section 529 of the National Housing Act, or any other provision of law, including section 5197 of the Revised Statutes (12 U.S.C. 85) apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate.

This section permits financial institutions to charge interest at the "highest applicable rate". Because we have concluded that 12 U.S.C. §1757(5)(A)(vi) does not apply to state chartered credit unions, Section 528 does not by its terms permit state chartered credit unions to charge a higher rate of interest than what would otherwise be permitted by 12 U.S.C. § 1785(g)(1). Section 528 authorizes the lender to charge the higher rate only when "one or more provisions. . .apply with respect to the same loan". 12 U.S.C. § 1757(5)(A)(vi) does not apply to loans made by state chartered credit unions.

It is our conclusion that state chartered credit unions are limited to charging the maximum interest rate established by 12 U.S.C. § 1785(g)(1). Although this provision incorporates the "most favored lender" doctrine, it does not grant state chartered credit unions most favored lender status with regard to interest rates set by federal law.

Additionally, it should be noted that the reference to state interest ceilings in 12 U.S.C. § 1785(g)(1) incorporates the relevant state law as to how interest may be computed and what charges are considered interest. 3/

LJL:wjp

3/ See First National Bank in Mena v. Nowlin, 509 F.2d 872 (8th Cir. 1975)

SB
50

COMMITTEE REPORT

HOUSE

4/7/81

(5)

FURTHER: JUDICIARY
(Added 4/.1/81)

Date: _____

Mr. Speaker:

The Committee on LABOR & COMMERCE has had CSSB 50(L&C)

"An Act relating to unemployment insurance; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____.

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

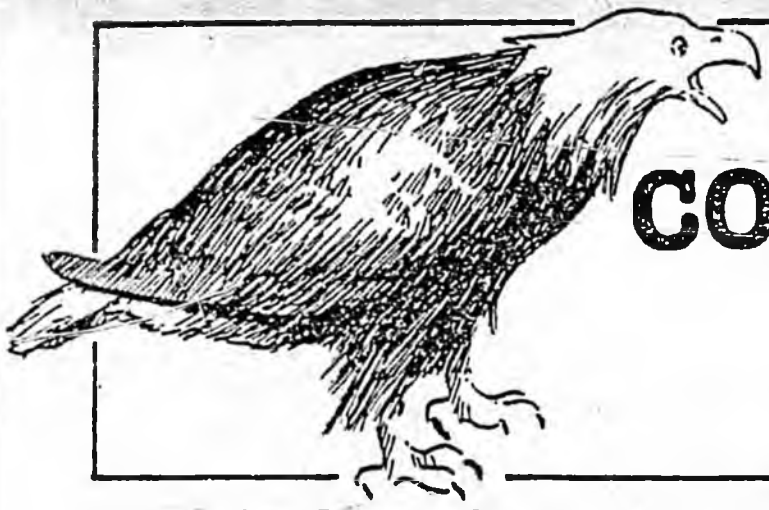
_____

_____

_____

CHAIRMAN

H 60 (Rev. 3/81)



ISSUES & COMMENTARY

ALASKA DEPARTMENT OF LABOR, RESEARCH AND ANALYSIS SECTION APRIL 1981

SHOULD ALASKA OPT OUT OF THE FEDERAL/STATE UNEMPLOYMENT INSURANCE SYSTEM?

By Scott T. Hannigan

The Social Security Act of 1935 established an Unemployment Insurance (UI) program in the United States under joint federal/state management. The major role of the federal partner was administration of a uniform employer tax to fund the program. States were encouraged by the Act to pass local UI legislation with the reserved right to set qualifications and standards for the payment of unemployment compensation. The Act contained provisions for employers to receive credit against the federal tax for contributions to a state UI plan and for states to receive grants to administer their programs. The availability of employer tax credits and state administrative grants were made contingent upon states' compliance with certain features in the Social Security Act. These features were generally found acceptable to the states and a nationwide federal/state UI program was in full effect by 1937. Over the ensuing years, however, numerous amendments to the Act and additional UI legislation by Congress (requiring conforming state legislation) has led to conflicts in the federal/state partnership. The federal government has generally held the upper hand in these conflicts by virtue of the enormous financial clout provided by the tax credits and administrative grants provisions of the Social Security Act. This paper will review the historical beginnings of the federal/state UI program, some of the conformity issues facing the states, and the possibility of future changes including complete separation of the federal and state systems.

Prior to 1935, states had no programs to provide assistance to the unemployed, with the notable exception of Wisconsin, which legislated a comprehensive UI law in 1934. The major obstacle to enactment of UI laws at the state level was directly related to taxes. Specifically, it was felt that a new tax burden on employers would have a detrimental effect on interstate competition. Congress eliminated this obstacle by passing (as part of the Social Security Act) Title IX, which levied a uniform tax on all employers in the country. Title IX allowed employers a 90 percent credit against the tax if they contributed to an approved state UI program. The remaining ten percent of the tax assessment was returned to the states in the form of administrative grants. These financial incentives in Title IX plus the deepening crisis of the 1930's depression strongly encouraged enactment of state UI laws and all states had unemployment insurance programs in operation by 1937. Provisions of Title IX were removed from the Social Security Act and were placed in the Internal Revenue Code by the Federal Unemployment Tax Act of 1939 (FUTA).

Original proponents of the Social Security Act vigorously debated the type of UI program to be recommended--a wholly federal system or a federal/state plan. Arguments for a national system included, among others, that a national system would provide uniform protection from the risks of unemployment, protect the interests of multi-state employers and workers, provide for a national pooling of reserves, and streamline reporting requirements and the payment of taxes. Those who favored a federal/state program argued that a national system would be cumbersome to operate, that centralization would tend to paralyze action, that controversial issues would not receive proper debate and discussion by the states, and that a federal/state system would allow states to tailor the program to fit their needs and would allow wide latitude for experimentation by the states and so aid in producing a better system.[1/] The federal/state plan was the one that finally emerged.

The issues of conformity have existed since the very start of the unemployment insurance program. The Social Security Act contained several provisions that the states were to comply with. Titles III and IX of the Act required state UI laws to include the following major provisions: (1) payment of UI benefits solely through public employment offices or other approved agencies, (2) opportunity for a fair hearing on denied claims, (3) payment of all tax monies collected to the U.S. Treasury (Unemployment Trust Fund), (4) expenditure of all money requisitioned from the Trust Fund for UI benefits only, (5) no benefits to be paid until two years after commencement of tax collections, and (6) several provisions protecting conditions of work acceptance by claimants. Other provisions refer to administrative and reporting requirements. To enforce state conformity to these provisions, the Social Security Act allows for the denial of all employer tax credits and the suspension of state administrative grants. On numerous occasions since the inception of unemployment insurance, Congress has passed amendments to the Act necessitating conforming legislation at the state level. A major example has been amendments that have extensively increased UI coverage to such worker groups as state and local government employees and employees of non-profit institutes.

More recent conformity issues have included pension offset provisions (P.L. 96-364) and provisions of the 1980 Omnibus Reconciliation Act (P.L. 96-499). The pension offset provision requires a reduction of a claimant's weekly benefit by the amount of any pension (attributable to a base period employer) received by the claimant. The Reconciliation Act requires conforming state legislation to deny the payment of extended benefits for voluntary quits and discharges for misconduct regardless of applicable state law for regular benefits (i.e., if state law reinstates benefit entitlement for regular benefits after a penalty period, the entitlement would be cancelled for extended benefits). Failure to accept suitable work (as defined by federal law) or failure to seek work also results in denial of extended benefits.

Even further encroachment by the federal government will occur if recent proposals of the Reagan Administration are adopted. These include (1) changes in the extended benefits program to eliminate the national trigger and to revise the methods of calculating state triggers (both of which determine when extended benefits are to be paid); (2) requirements that unemployed workers who have collected 13 weeks of state UI accept any job that meets minimum wage and safety standards if the wages are equal to or greater than their UI benefits; and (3) eliminate UI for those who leave the military voluntarily.

The rising spectre of federalism in unemployment insurance has caused concern in

---

1/ William Haber and Merril G. Murray, Unemployment Insurance in the American Economy, Richard D. Irwin, Inc. 1966.

Alaska and many other states. In most conformity issues, the states have grudgingly complied with federal legislation because they fear to lose tax credits for their employers and administrative grants for their programs. The mere threat of sanctions has kept states in line and the sanctions have never been fully applied. A specific instance where Alaska has run headlong against the federal government has been on the issue of interstate benefits. In 1955 and again 1960 Alaska reduced the maximum weekly benefit amount to out-of-state claimants in order to curtail the amount of UI dollars leaving the state.* The state was required to retreat from this position in 1972 when Congress decided the practice was discriminatory to the rights of workers to move from state to state seeking employment. This interstate question has become a point of concern in recent years as Alaska has seen one-third of all its UI dollars pouring out of the state, aiding the economies of other states instead of our own. An even larger problem looms in the future amid talk of federal benefit standards requiring a maximum benefit equal to 2/3 of a state's average weekly wages. Alaska traditionally pays more benefits per dollar of total wages than any other state. This standard would put employer costs through the ceiling and could possibly drain the state's trust fund.

Potential solutions to the partnership problem are varied and complex. Many people over the years have advocated complete federalization of unemployment insurance. Most states, however, take a dim view of this type of encroachment on their rights. Another course would be to maintain the present system with some sort of systematic court review of conformity sanctions.2/ The most extreme solution would be for a state to permanently refuse to comply with federal legislation.

The remainder of this paper discusses ramifications if Alaska chooses to remove itself from the federal/state system. The most direct effect would be monetary. Shown below are cost estimates for Alaska's UI program in 1982 comparing an out of conformity situation with a conforming one.

	Estimated Costs for 1982	
	In Conformity	Out of Conformity
State Taxes	$63.6 million	$63.6 million
FUTA Taxes	7.0 million	34.0 million
UI Administration	Federal Grants (From FUTA Taxes)	11.5 million
ES Administration	Federal Grants (From FUTA Taxes)	7.9 million
Extended Benefits (50% Federal)	Federal Reimbursements (From FUTA Taxes)	4.5 million
TOTAL	$70.6 million	$121.5 million

*Ch. 5, ESLA 1955 and Ch. 60, SLA 1960.

2/ Ibid.

The comparison shows that operating the current program while failing to conform to federal requirements would result in additional costs of $50.9 million. Most of the cost ($27 million) would be levied on employers as a result of lost FUTA tax credits. Employers might also be expected to pay administrative costs as well as funding full benefit outlays. If that were the case, employer costs would increase by approximately seventy percent. This burden could be reduced if employee contributions were increased and/or the state absorbed administrative costs.

One major question of the conformity issue concerns federal responsibility if employers opt to pay the full FUTA tax. The system was designed to pay benefits equal to 2.7 percent of taxable wages. Of the three percent FUTA tax, this 2.7 percent was to be dropped if employers contributed to the benefit fund of an approved state program. The implication is clearly that the 2.7 percent was to be used for paying benefits. Further, if employers opt to pay the full FUTA tax, the implication is that no state taxes would be necessary because the federal partner should be responsible for benefits.

The system was not--at least, should not have been--designed to coerce states into setting up their own unemployment insurance programs. Since costs would be three percent of taxable wages under a state or federal system, states would obviously find it attractive to design systems to fit their own social and economic conditions rather than accept standards determined in Washington. This "logical interpretation" does not coincide with the "legal interpretation." According to an unofficial opinion of the Solicitor General, the federal government has no power to implement an unemployment insurance program in any state. In other words, the system was designed to force states to implement unemployment insurance programs via making them pay for one whether they have one or not.

Failure to maintain an approved program would result in the 2.7 percent "credit" flowing into the federal administrative account rather than a benefit account, with the state receiving no funds in return. No state has informed the federal partner that it intends to drop its own program in favor of federalization and so the position remains unchallenged. It is conceivable that the "back door" federalization now in progress will change this situation in the future. The issue is not a simple one and raises a host of questions about the federal/state relationship. Some alternative relationships that might be considered for the operation of an unemployment insurance program in Alaska are discussed below.

The discussion centers on estimates of the average employer cost per worker (with annual earnings at or above the taxable wage base of $13,[illegible] and includes the current system for comparison purposes.

CURRENT SYSTEM		
FUTA Tax (0.7% of first $6,000)†	=	$ 42
State Tax (3.3% of first $13,300)	=	439
TOTAL TAX	=	$481

One (untested) alternative is to drop the state system in favor of a federal program funded from the maximum FUTA tax. Employers would then pay the full FUTA tax of $204 per employee and all program provisions would be determined in Washington.

FEDERAL SYSTEM		
FUTA Tax (3.4% of first $6,000)†	=	$204
TOTAL TAX	=	$204

A second alternative would supplement a federal system with a separate state system. Costs would be dependent on the level of benefits the state wishes to provide. The state system would also require administrative funds of approximately $19 million.

An independent state program is a third alternative. The cost figures below assume that the full FUTA tax is paid and that the state receives no funds in return. Obviously the combined cost of running a state system and paying penalty FUTA taxes could exceed the capabilities of many employers to pay. Some form of state assistance may be necessary (especially in light of expected increases in the taxable wage base for FUTA which will probably become effective in 1983 or 1984). The most plausible forms of state assistance are assumption of the liability for FUTA taxes and/or administrative costs and state support of benefits through appropriations to the UI Trust Fund.

INDEPENDENT STATE SYSTEM		
State Tax (3.3% of first $13,300)	=	$439
FUTA Tax (3.4% of first $6,000)	=	$204
Administrative Costs		$120
TOTAL TAX	=	$703

There are a number of areas where Alaska could effect some cost savings if the state were running an independent UI program. Some cost saving areas and approximate dollar amounts are listed below:

†The FUTA tax is set at 3.0 percent of the first $6,000 of each employees wages. The rate was temporarily increased to 3.4% to reduce the national debt in the FUTA account. If a state's UI law is in conformity with federal law, then employers receive a 90 percent credit on their FUTA taxes and pay in effect 0.7 percent (10% of 3.0% = 0.3 + 0.4 added tax = 0.7%).

Discussion of opting out is often the result of frustration with the expanding role of the federal partner and of a realization that this expansion cannot be successfully countered by piecemeal resistance to individual intrusions on state prerogatives.

Before taking a radical step, alternatives should be considered. The level of interference by the federal partner has increased substantially since the unemployment insurance trust funds were placed in the federal unified budget in 1969. In attempts to reduce budget deficits, Congress has enacted several changes to the UI system. Although the changes may have been proposed primarily for their budgetary effect, they have had profound impact on the program and on the nature of the federal/state cooperative arrangement. The key to a return to true partnership may lie in removal of state trust funds from the federal unified budget. Alleviating budgetary pressure may accomplish many of the desirable goals of opting out without some of the negative aspects. That is, removal of the trust funds from the budget could reverse the tendency toward federal intervention and would not carry the potential to destroy the existing federal/state partnership.

Briefing Paper: CSSB50
Conformity Amendments to Unemployment Insurance Law (AS 23.20)
April 28, 1981

Replacing current law with a benefit schedule that pays no extended benefits but pays 32 weeks of regular benefits is expected to cost about $16 million in 1982. Claimants would receive approximately $6 million of this additional cost. The cost analysis is easier understood if broken into three parts. These are explained in the following discussion and summarized in the table below.

Eliminating variable duration and adopting a fixed 26 week duration would give an additional $12.1 million to claimants. Naturally, employers must pay this cost, but additional costs would be incurred when some claimants shift from extended benefits (for which the state and feds pays equal shares) to regular weeks (for which the state pays the full amount). This cost would be approximately $2.7 million in 1982 and brings employer costs to $14.8 million.

In going from a 26 week program (still paying EB) to the 32 week proposal with no EB, benefit amounts would be unaffected but contributions would have to be increased to cover the federal share of weeks 27 through 32. This amounts to half of the $8.2 million payable to that group, or $4.1 million. Elimination of weeks 33 through 39 would save the trust fund $3 million, but claimants would lose $6 million of combined state and federal funds.

Effect of Replacing Current Law with a Program
Paying 32 Weeks of Regular Benefits and No EB
(Estimates for 1982)

	Employer Cost/(Savings)	Claimant Gain/(loss)
Elimination of variable duration	$14.8 million	$12.1 million
Federal share of weeks 27-32	4.1	0
Nonpayment of weeks 33-39	(3.0)	(6.0)
TOTAL	$15.9 million	$ 6.1 million

In considering this proposal, several other points should be discussed. Some of these are listed below.

1. The work search and acceptance requirements in CSSB50 are federal conformity issues. Alaska will be out of conformity if we fail to pass all of CSSB50, even if Alaska adopts a 32 week program and does not pay extended benefits. Whether we are out of conformity by a little or a lot makes no difference -- the penalty is the same. The impact of failure to conform is massive and was communicated in the latest "Issues and Commentary".

2. There are three variables which affect benefit outlays in the unemployment insurance program -- benefit amount, duration of benefits, and eligiblility. These variables were balanced in the law adopted last year and altering only one of the three will throw the system out of balance.

3. Interstate benefits would be payable for 32 weeks rather than the 21 week average payable (under the revisions included in CSSB50) to claimants in states not triggered on to the extended benefits program. This factor is not included in the estimates above, and would add about $1 million to costs.

4. The 32 week proposal would reduce potential duration for the 42 percent of claimants who presently qualify for more than 32 weeks.

5. With duration fixed at 32 weeks and no EB, people with strong attachment to the labor force would get 7 weeks less entitlement than today while claimants with very weak attachment would get 8 weeks longer duration than today. Some claimants could be entitled to more than they earned: e.g. claimants with earning of $1,000 would be entitled to ($34 x 32 =) $1,088 instead of $816 ($34 x 24) as today.

6. Coupled with the current benefit schedule, fixed duration provides a disincentive to work, particularly for claimants with weak attachment to the labor force. This increases the potential for abuse and causes additional costs which are hard to measure and have been omitted from the estimates.

Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 20, 1981

Mr. John Quinn
Naval Security Group
Adak, Alaska 99695

Dear John:

Thank you for your comments on CSSB 50.

The bill was not referred to the Judiciary Committee before it passed the Senate. The bill is now in the House Labor and Commerce Committee, chaired by Representative Hurlbert. I have taken the liberty of forwarding a copy of your remarkes to him for his information.

I appreciate your thoughts on the matter.

Sincerely,

Senator Patrick M. Rodey
Chairman

cc: Representative Hurlbert, Chairman
House Labor & Commerce Committee

April 12 Th

NAVAL SECURITY GROUP ACTIVITY
ADAK ALASKA
WESTERNMOST LINK

NAVAL SECURITY GROUP
ADAK, ALASKA

RECEIVED
APR 16 1981

Dear Pat

I would like to know if CSSB50 which you opposed has been put through the judiciary committee to determine the bills constitutionality. It is very logical that a person would move to a state with very low unemployment inorder to seek meaningful work. Under this bill if I relocate to a high unemployment state, then I can be eligible for benefits. I would like to hear from you and wish your associates in the House will see the contradiction in the Bill outlined above.

Best Wishes

John Quinn

Bill No. Senate Joint Resolution No.

Date April 20, 1981

Title Relating to exclusion of state unemployment insurance trust funds from the federal unified budget.

Contact: Judy Knight JK 465-2700

Funds used for unemployment compensation are generated by payroll taxes enacted by State Legislatures. These funds can be used only to pay unemployment compensation in the state in which they were collected and are held in trust by the federal government and drawn as needed to pay benefits. Since 1969, these funds have been included in the unified budget. The "bottom line" impact of inclusion of state trust funds in the unified budget is that all unemployment compensation--including benefits paid completely from dedicated state funds--appear as federal outlays. This makes unemployment insurance programs the target for budget-balancing proposals such as taxation of benefits, pension offsets, removal of extended benefit claimants from the computation of unemployment rates, and other cost-cutting proposals like those included in the Omnibus Reconciliation Act of December 5, 1980.

In addition to those set out in the Resolution itself, there are a number of other reasons unemployment compensation trust funds should not be included in the unified budget, as follows:

1. The majority of the federal payroll tax is not collected from employers, but is credited if employers participate in an approved state program and are subject to contribution rates set by the state.

2. The operations of the U.S. Treasury do not require that the accounts be included in the unified budget. The Treasury currently handles accounts for several "off-budget" agencies.

3. Basic program decisions--level and duration of benefits, contribution mechanisms, eligibility, and many administrative functions--are almost entirely in the hands of state legislators.

Policy calling for removal of funds has been adopted by the National Governors' Association, the Interstate Conference of Employment Security Agencies, the Federal Advisory Council on Unemployment Insurance, and the National Commission on Unemployment Compensation. These policy positions were adopted recently and the issue is not yet well-known in Congress. One way to speed consideration of this important issue is to ensure that states' Congressional delegations recognize the impact of inclusion of state unemployment trust funds in the unified budget and are aware of the states' strong desire to remove the funds from the budget. The proposed resolution could be used to convey Alaska's sentiment on this issue to rational policy-makers.

Position: The Department of Labor supports the proposed resolution and recommends immediate approval.

POSITION PAPER/Department of Labor

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 50
SECTION BY SECTION ANALYSIS

Section 1: AS 23.20.362

This section repeals and re-enacts AS 23.20.362 with the following changes:

1) The pension deduction provision required by Sec 3304(a)(15), FUTA, is amended to conform with Public Law 96-364. Under this amendment, a pension would be deductible from benefits otherwise due only if the pension is provided under a plan maintained or contributed to by a base period employer, and the claimant's service in his base period increased the amount of, or affected his eligibility for, the pension or other retirement pay. In addition, that portion of the pension attributable to the claimant's own contributions will not be deducted from his benefit amount. Public Law 96-364 does not require these changes to state pension deduction provisions; rather, it allows the state this option of liberalizing the required provisions. However, the changes are equitable and would benefit Alaskan workers. For example, the previous provision required a 100% deduction even if part or all of the pension was based on employee contributions. This, in effect, penalized individuals for saving some of their wages by deducting amounts which had actually been earned long before the unemployment insurance claim was filed.

2) The proposed amendment also distinguishes between pension payments and payments received for dismissal pay, accrued vacation and sick leave, or holidays. The previous provision had the effect of prohibiting deductions for dismissal pay, vacation pay, or holiday pay unless the week <u>began</u> in a period for which such payment was made. The proposed amendment provides simply that any such payment attributable to a week will be deducted from benefits payable for that week. Sick leave has been added to the list of deductible payments. The rationale for deducting vacation pay, holidays, etc., applies to sick leave as well.

Section 2: AS 23.20.375(b)

This section repeals and re-enacts AS 23.20.375(b) to require a waiting week on all claims. The current provision waives the waiting week requirement on transitional claims. However, Public Law 96-499 now requires that any state which provides for payment "(at any time or under any circumstances) of regular compensation to an individual for his first week of otherwise compensable employment" will not be reimbursed for the federal share of the first week of extended benefits paid in the state. This requirement is not a standard for certification of state laws. The requirement must be met, however, if the state is to receive the 50% reimbursement of the federal share of the first week of extended benefits. This amendment conforms to Public Law 96-499.

Section 3: AS 23.20.390(b)

This section makes <u>both</u> "good faith" and "hardship" a requirement for waiver

of overpayments. The current provision allows an individual who has not acted in good faith to nevertheless be absolved from liability for repayment if he can show that great hardship would result from charging him with repayment.

Section 4: AS 23.20.406

This section amends AS 23.20.406 by adding new eligibi requirements for receipt of extended benefits. These requirements are c formity standards established by Public Law 96-499 and must be included in a state's law for weeks beginning after March 31, 1981, in order for the law to be certified by the Secretary of Labor on October 31, 1981, and thereafter.

The amendments require the following:

1) Denial of extended benefits to an individual who has been disqualified for regular UI benefits for voluntary quit, discharge for misconduct, or job refusal, unless the disqualification was terminated by subsequent employment.

2) Denial of extended benefits to an individual who does not actively seek, apply for, or accept suitable work when referred to such work. Suitable work is specifically defined in the provisions. The disqualification can be terminated only by new employment of at least four weeks and earnings of four times the weekly benefit amount.

Section 5: AS 23.20.408

This section amends AS 23.20.408 to specify that only the first two weeks of extended benefits are payable to an individual who files on an interstate basis from a state in which an extended benefit period is not in effect. This change is required, for certification of all state laws, by Public Law 96-364.

This amendment was requested by Alaska and introduced by Senator Stevens. House Joint Resolution No. 59 passed by Alaska's Legislature last year supported this change.

The provisions of Sections 1, 2, 4, and 5 are conformity issues to comply with federal law.

SB

84

COMMITTEE REPORT

HOUSE

(5) FURTHER:

1/11/82

Date: Feb 17 '82

Mr. Speaker: (Taken from calendar 1/11/82)

The Committee on LABOR & COMMERCE has had HCS SB 84(2d Rules)amH

"An Act relating to the granting of land use authorizations by state agents."

under consideration and ~~(a majority of the committee)~~ (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[X] do pass with attached amendments(s)

[X] replace 2d House with CS for CS FOR SENATE BILL 84 (L&C) [ ] same title [X] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Terry Martin

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Terry Martin Do Not Pass until 1 Amended

Terry Martin
CHAIRMAN

H 60 (Rev. 12/78)

2nd Reader. [illegible]

HCS-SB 84 H. Labor & Commerce 1981-

Date Filed 1-11-82
Date Rec'd. 1-14-82
Referral
Comm. Hearing 2-12-82 - held over to SB 84
Comm. action 2/19/82 - Passed out of Comm. with amendments
Joan to type amendments - She sent to Legal Affairs to have drafted
2/22/82 sent to chief Clerks' office.

2-8-82
Rec'd new version
- House CS.
Gov's office notified
Atty [illegible]'s office "
John Telling [illegible] to be
in attendance. & get
Dept of [illegible]
F/N & etc. Mary Holloran
She will bring (6) copies
of ea. Her testimony will
be depending of position
paper.
Fish & Game - McWeeks - position paper
Mary [illegible] out. & F/N
Environmental Cons. John Holtan
[illegible] dept [illegible] be back in [illegible] A.M. they
to supply FN & position paper
Glenn [illegible]
STRAUB } SOHIO
BARNETT }
O.K. GILBREATH-HOGA

Public Officials notified of Hearing 7-8-2

Jonathan K. Tillinghast - (atty generals office)

Jerry Lenwood - Gov's Office

John Katz - Dept of Natural Resources

Ernest Mueller - Dept of Environmental Conservation

Konrad Skoog - Dept. Fish & Game

James Sandy - Div. of Policy Development & Planning.

MEMORANDUM State of Alaska

TO: The Honorable Terry Gardiner
Representative

DATE: February 26, 1982

FILE NO:

TELEPHONE NO:

FROM: Mary Halloran MHalloran
Special Assistant to
the Commissioner
Department of Natural Resources

SUBJECT: Impact of Proposed Budget Reductions on DNR's Permitting Procedures

Per your request, this memorandum identifies the Department of Natural Resources' projects eliminated or reduced at the proposed $35.0 million funding level which would impact the agency's ability to issue permits.

The definition of "permit" under SB 84 (both the 2nd rules and the latest draft versions) includes all agency authorizations and approvals, including those in conjunction with disposals of an interest in land. Thus, the legislation is more encompassing than might be evident at first glance.

PERMIT-RELATED PROJECTS IMPACTED BY $35.0 MILLION FUNDING LEVEL

Priority	Original Request	Revised Request	Positions Eliminated	Projected Name & Consequences of Reduced Funding
20	1283.2	1184.2	2.0	Water Rights Admin.
	This revision would reduce number of water rights adjudicated particularly in placer mining area, reduce from 5 to 4 the number of basin wide adjudications, and will increase backlog in water permitting.			
48	31.0	-0-	0.5	Geothermal Lease Sales
	This revision would eliminate a proposed geothermal lease sale for FY 83 and will eliminate the issuance of 15 anticipated non-competitive permits and leases.			
69	374.3	-0-	7.7	Preference Rights
	This deletion would eliminate processing of preference rights applications. Consequently, claims would be resolved by lawsuit.			
83	59.7	-0-	1.0	Interagency Water
	This deletion would reduce coordinated reviews with ADF&G and DEC regarding water permits and projects which affect water use and quality; where reviews are done separately, they may require more time.			

Also affected indirectly would be another project:

91	203.6	60.6	4.0	Public Information

This revision would reduce the number of public information officers from 5 to 1 and would drastically reduce public responses and referrals and information dissemination by DNR. Public Information Officers serve as the Department's "intake" personnel for permits.

98	2[illegible].6	-0-	2.0	Water Mgmt. Plans

This deletion would eliminate computerizing water data for use in adjudication, increasing the time necessary for adjusication.

The above-listed figures do not include additional costs that will be incurred as the specific result of the adoption of SB 84. Those costs will be covered in a fiscal note to be submitted by the Department.

We hope this information is of help to you as the Legislature continues its deliberation of this legislation.

cc: Rep. Martin
Members of House Labor & Commerce

Please keep for Governor's Lunch
Fri 2/12/82
After session break.
Terry Martin

2nd HOUSE CS FOR CS FOR SB NO. 84 (L&C)

PROPOSED ADMINISTRATION AMENDMENTS

AMENDMENT 1

Page 2,1.12..

application [.] ,unless a public hearing is held on the application, in which case a final decision must be issued within 85 days after the date of receipt.

75 days. Power.

1st - 30 days.
Obj by Adm ⇒ 65 days.

~~They have don't have to~~
It encourages the agency to not wait until the 29th day to decide if hearing necessary.

AMENDMENT 2

Page 2, ls. 26-28.

under the Appellate Rules of Procedure. Unless the applicant and the agency otherwise agree, [T]the time period may not be extended more than 120 days beyond the time period specified in AS 44.62.632(a).

Passed

AMENDMENT 3

Page 4, lines 6 -- 29

Delete all of sec. 44.62.635(a) and (b) and insert the following in its place:

(a) There are established lead agencies which are solely responsible for issuing coastal management consistency determinations under AS 46.40 and for preparing and submitting state comments on federal permit applications for all projects which include the conveyance of an interest in state land or water or at least one class II permit decision. The lead agency may vary for classes of activities, but shall be that agency that has principal responsibility for authorizing the overall activity. For classes of activities for which no agency with principal responsibility exists the governor shall designate a lead agency by administrative order no later than October 1, 1982. In performing its functions under this section the lead agency shall consult with other resource agencies and with coastal resource districts under AS 46.40. The lead agency shall balance competing factors in reaching its decision. Substantive consideration shall be given to the comments of resource agencies within their primary areas of expertise.

(b) If a coastal resource district with an approved and applicable district coastal management program appeals the lead agency's consistency determination, AS 44.62.560--44.62.570 govern judicial review. However, notwithstanding

4640.100

AS 44.62.570(c), abuse of discretion is established if the reviewing court determines that the consistency determination is not supported by a preponderance of the evidence in the administrative record.

AMENDMENT 4

Page 5, ls. 1-2.

(c) Except as otherwise required by federal law, [N]no state agency other than the lead agency may comment to a federal permittingaagency.

AMENDMENT 5

Page 5, ls. 3-5.

Delete existing subsection (d) and insert the following:

(d) For activities involving both a disposal of interest in land, or plan of operations approval under a previous disposal, and a certification under sec. 401 of the Clean Water Act (33 U.S.C. sec. 1341), the lead agency shall be the Department of Natural Resources.

AMENDMENT 6

Page 5, lines 22 - 23.

Administrative appeals [EXCEPT AS PROVIDED IN THIS SECTION THE PROCEDURE IS] conducted under this section need not comply with AS 44.62.330 - 44.62.630.

AMENDMENT 7

Page 5, line 24.

(b) Except when applicable due process rights may require more formal administrative proceedings, the [THE] adminstrative appeal must be resolved within 45 days

Page 6, ls. 12-13.

Procedure. [THE RIGHT TO APPEAL IS NOT AFFECTED BY THE FAILURE TO SEEK FURTHER REVIEW UNDER AS 44.62.637.] The review is governed by the

AMENDMENT 9

Page 6, ls. 15-17.

(b) An appeal taken under this section [HAS] should have preference on the calendar of civil actions before the court and [SHALL] should be decided without unnecessary delay.

AMENDMENT 10

Page 5, 1s. 16-17.

extend the time period specified in this section. [FOR UP TO AN ADDITIONAL 30 DAYS.]

AMENDMENT 11

Page 7, line 12

Resources, the Department of Enviromental Conservation, the Alaska Coastal Policy Council, and the Depart-

CHANGES TO PROPOSED ADMINISTRATION ADMENDMENTS TO SB 84
(2nd House CS for CS for SB 84 Labor & Commerce)

AMENDMENT 1 - No Change.

AMENDMENT 2 - No Change.

AMENDMENT 3 - See Attached.

AMENDMENT 4 - No Change.

AMENDMENT 5 - No Change.

AMENDMENT 6 - Replace with the following:

Page 5, ls. 16=17

extend the time period specified in this section. (FOR UP TO AN ADDITIONAL 30 DAYS.) However, comments submitted under this subsection shall be submitted no later than 30 days prior to the date on which the lead agency must issue a final decision.

AMENDMENT 7 - Revise as follows:

Page 5, ls 22 - 23

Administrative appeals (EXCEPT AS PROVIDED IN THIS SECTION THE PROCEDURE IS) conducted under this section are not subject to the procedures in AS 44.62.330-44.62.630.

AMENDMENT 8 - No Change.

AMENDMENT 9 - Revise as follows:

Page 6, ls. 12 - 13

Procedure. The right to appeal is not affected by the failure to seek further review under AS 44.62.637 if either solely a question of law is at issue or in those instances in which an administrative appeal would be futile. The review is governed by the

AMENDMENT 10 - No Change.

AMENDMENT 11 - No Change.

AMENDMENT 3 - Replace with the following:

Page 4, ls. 6 - 29

Delete all of sec. 44.62.635(a) and (b) and insert following in its place:

(a) There are established lead agencies which are solely responsible for issuing coastal management consistency determinations under AS 46.40 and for preparing and submitting state comments on federal permit applications for all projects which involve the disposal of an interest in state land or water or at least one class II permit. The lead agency may vary for classes of activities, but shall be that agency which has principal responsibility for authorizing the overall activity. For classes of activities for which no agency with principal responsibility exists the governor shall designate a lead agency by administrative order no later than October 1, 1982.

(b) In performing its function under this section, the lead agency shall consult with other resource agencies and with coastal resource districts under AS 46.40. The lead agency shall consider facts, data, opinion, conclusions or recommendations submitted by the commenting agency and the coastal resource districts within their areas of expertise. The lead agency shall then balance competing factors in reaching its final decision. No resource agency other than the lead agency has primary expertise on the balancing of competing factors.

(c) In its consideration of the comments of other resource agencies, the lead agency shall give substantive consideration to the facts and data, and to the (opinions, conclusions or recommendations substantiated by said facts and data) which are submitted by commenting agencies within their primary areas of expertise. An opinion, conclusion or recommendation is adequately substantiated under this subsection if it is based on facts or data reasonably relied upon by experts in the field.

(d) If a coastal resource district with an approved and applicable district coastal management program appeals the lead agency's consistency determination, AS 44.62.560 -- 44.62.570 govern judicial review. However, notwithstanding AS 44.62.570(c), abuse of discretion is established if the reviewing court determines that the consistency determination is not supported by a preponderance of evidence in the administrative record.

CHANGES TO PROPOSED ADMINISTRATION ADMENDMENTS TO SB 84
(2nd House CS for CS for SB 84 Labor & Commerce)

AMENDMENT 1 - No Change.

AMENDMENT 2 - No Change.

AMENDMENT 3 - See Attached.

AMENDMENT 4 - No Change.

AMENDMENT 5 - No Change.

AMENDMENT 6 - Replace with the following:

Page 5, ls. 16-17 Passed.

extend the time period specified in this section. (FOR UP TO AN ADDITIONAL 30 DAYS.) However, comments submitted under this subsection shall be submitted no later than 30 days prior to the date on which the lead agency must issue a final decision.

AMENDMENT 7 - Revise as follows:

Page 5, ls 22 - 23

Administrative appeals (EXCEPT AS PROVIDED IN THIS SECTION THE PROCEDURE IS) conducted under this section are not subject to the procedures in AS 44.62.330-44.62.630.

AMENDMENT 8 - No Change.

AMENDMENT 9 - Revise as follows:

Page 6, ls. 12 - 13

Procedure. The right to appeal is not affected by the failure to seek further review under AS 44.62.637 if either solely a question of law is at issue or in those instances in which an administrative appeal would be futile. The review is governed by the

AMENDMENT 10 - No Change.

AMENDMENT 11 - No Change.

AMENDMENT 3 - Replace with the following:

Page 4, ls. 6 - 29

Delete all of sec. 44.62.635(a) and (b) and insert following in its place:

(a) There are established lead agencies which are solely responsible for issuing coastal management consistency determinations under AS 46.40 and for preparing and submitting state comments on federal permit applications for all projects which involve the disposal of an interest in state land or water or at least one class II permit. The lead agency may vary for classes of activities, but shall be that agency which has principal responsibility for authorizing the overall activity. For classes of activities for which no agency with principal responsibility exists the governor shall designate a lead agency by administrative order no later than October 1, 1982.

(b) In performing its function under this section, the lead agency shall consult with other resource agencies and with coastal resource districts under AS 46.40. The lead agency shall consider facts, data, opinion, conclusions or recommendations submitted by the commenting agency and the coastal resource districts within their areas of expertise. The lead agency shall then balance competing factors in reaching its final decision. No resource agency other than the lead agency has primary expertise on the balancing of competing factors.

(c) In its consideration of the comments of other resource agencies, the lead agency shall give substantive consideration to the facts and data, and to the (opinions, conclusions or recommendations substantiated by said facts and data) which are submitted by commenting agencies within their primary areas of expertise. An opinion, conclusion or recommendation is adequately substantiated under this subsection if it is based on facts or data reasonably relied upon by experts in the field.

(d) If a coastal resource district with an approved and applicable district coastal management program appeals the lead agency's consistency determination, AS 44.62.560 -- 44.62.570 govern judicial review. However, notwithstanding AS 44.62.570(c), abuse of discretion is established if the reviewing court determines that the consistency determination is not supported by a preponderance of evidence in the administrative record.

Alaska Oil and Gas Association

AOGA

505 W. Northern Lights Boulevard
Suite 219
Anchorage, Alaska 99503
(907) 272-1481

June 4, 1981

The Honorable Jack Fuller
Chairman
Administrative Regulation Review Committee
Pouch V, State Capitol
Juneau, Alaska 99811

Re: Analysis of Uniform Permit Procedures Regulations

Dear Representative Fuller:

As promised in our letter of May 29, we are pleased to submit our detailed analysis of the Uniform Permit Procedures Regulations which are being adopted by the Administration.

Regulatory Reform History in Alaska

In early 1979, Governor Hammond initiated efforts within his Administration toward specific regulatory reform objectives. Wide public appeals were made for assistance in identifying troublesome and onerous regulations. AOGA was also concerned about unnecessary regulations and established a Regulatory Reform Coordinating Committee (RRCC) to work with the Administration.

During the past two years, AOGA's RRCC analyzed regulations and procedures which have a significant impact on our industry. It found a pattern of duplication, layering, unnecessary time delays and unreasonable operating requirements.

During the same period, Bill McConkey first undertook an analysis for the Administration and later for the Legislature and reached similar conclusions. In his December 1980 report to the Legislature, he recommended extensive revision of the regulatory process, including in particular the adoption of legislation establishing permitting time limits such as contained in CSSB 84.

In response to the effort of Mr. McConkey and others, and the support for SB 548 in last year's session, the Administration has proposed Uniform Permit Procedures Regulations (22 AAC 10) as an alternative to legislation. At a press conference on December 5, 1980, Governor Hammond stated that the permit regulations were being written to establish firm reasonable deadlines by which permit decisions must be reached in order that individuals and businesses do not waste time as a result of procedural delays. It is our judgment that these regulations are the antithesis of regulatory reform and do not meet the objectives of regulatory reform.

Regulatory Reform Objectives:

True regulatory reform should accomplish the following:

1. Streamline the coastal management consistency approval process.

2. Decrease permit processing time.

3. Provide certainty in the timely processing of permits to facilitate project planning.

4. Reduce duplication and redundancy.

5. Decrease permit processing costs to both applicants and government.

6. Simplify the permit process to require fewer state employees, and

7. Establish a lead agency.

Failure to meet Regulatory Reform Objectives:

In contrast to the above objectives, the regulations only succeed in accomplishing the direct opposite. The regulations fail to meet these objectives as follows:

1. The coastal zone consistency determination procedures are not streamlined. The regulations grant ultimate control to local districts over resource development projects on state land. This jeopardizes the freedom the state needs to encourage development of its natural resources in the coastal zone. The regulations undermine the objective of obtaining a single consistency determination for projects. The existing problems with joint state/federal permits

are perpetuated and intensified.

2. According to a memo from a Division in the Department of Natural Resources dated January 2, 1981, permit processing time will be increased. In fact, the Division estimates the new regulations will almost double the processing time. Although the estimate was made on an earlier draft, the Division indicates the estimates would not be changed significantly for the final regulations.

3. Substantially new and complex procedures are established which create uncertainty through the provisions for public hearing and appeals. In addition, the new regulations provides numerous opportunities for litigation by third parties. The regulations are so complicated that procedural errors are inevitable, hence creating the basis for legal challenges. Special interest groups are given extraordinary access to the day to day decisions of duly authorized agencies responsible for regulating development of the state's resources. They invite individuals to file capricious appeals, thereby blocking approval of development permits.

4. The new regulations institutionalize and expand existing duplication. The inter-agency review section and the relevant definitions are unduly complicated. Under these regulations, the same agency may review the same project in order to (a) issue a permit under its own authority; (b) comment on an application in the inter-agency review coditied by the regulations; and (c) comment on a federal permit application. Further, the regulations give the agency authority to create law by stipulation, a procedure not endorsed by state statute.

5. The permit processing costs to both industry and the state will be increased. One division of the Department of Natural Resources has estimated it will cost an additional $200,000 per year to implement the regulations affecting oil and gas operations. Since this estimate involves the regulation of only one industry by one division of one of the agencies, it seems likely that the total cost of implementation will be substantial. The increased complexity will require dedication of more people by industry to the permitting process. Delay in the permitting process will result in less efficient utilization of people and equipment on the project. Legal costs to both industry and government will be increased because of the appeals process. Increased lead times will add to the costs of projects as materials and equipment are held on a standby or non-productive basis while waiting on permit approval. The resulting

increased cost will ultimately be borne by the public.

6. More, rather than fewer, state employees will be required to implement these provisions. One division has estimated that four additional employees will be required to process permits and it seems reasonable to assume that other divisions and agencies will also require additional employees.

7. Although the regulations purport to establish the "lead agency" concept of handling permit applications, in fact no true lead agency is created. The lead agency is required to give "great weight" to the comments of other agencies. The definition of "great weight" requires the lead agency to prove by a preponderance of the evidence that a proposed stipulation is not justified. This definition is so onerous that a lead agency may elect to accept the stipulation rather than contest its merits. Unless the lead agency is given reasonable discretion to reject proposed stipulations by commenting agencies, it cannot be fairly alleged that a lead agency concept has been adopted.

The Administration claims that these regulations constitute genuine progress in ending some of the regulatory abuses which most annoy the public. We do not agree. The regulations are unworkable and should not be implemented.

Detailed Analysis

Our members have made an extensive and careful analysis of each draft of the regulations and have submitted comments to the Administration at every opportunity. Copies of some of these statements are attached. For the most part these comments have been ignored.

Our article by article comments follow:

ARTICLE I. GENERAL PROVISIONS

22 AAC 10.010 Scope of Chapter

This section requires each of the four departments adopting the regulations to modify its own regulations by classifying its permits and appeals. If these procedural regulations become effective before the individual agencies have revised their current regulations, the entire permitting process may very well come to a halt. Apparently there has been little effort to coordinate the promulgation of the procedural regulations

with the revision of individual agency regulations. These regulations should not be adopted until the substance of individual agency regulations is known.

22 AAC 10.020 Deadline on Permit Issuance:

Under subsection (a)(1), action on permit applications can be postponed for an unspecified period of time by finding that "unusual complex issues" exist. Although the Governor stated in his letter to you that major changes had been made in these regulations as a result of public comment, this open-ended provision has remained in the proposed regulations.

Also under subsection (a)(3), the deadline can be extended if the applicant agrees to "a more lengthy review period". Since the applicant needs the approval to conduct his business, he may have no choice but to agree to a longer period for permit review.

To summarize, there is no enforceable deadline for timely action on permit applications. Certainty in the timely processing should be a major objective of regulatory reform.

22 AAC 10.030 Additional Information

This section establishes two different time periods, depending on class, for agency assessment of the need for additional information. Upon receipt of an application for either a class I or class II permit the agency should immediately assess whether additional information is necessary in order to process the permit. Assessment should not require more time for class II permits than for class I permits. We believe that a 15 day period is adequate for both classes of permits.

This section allows an agency to delay action on a permit application by asserting that "additional information" is required of the applicant. Only one request for information should be allowed by an agency and the additional information required should be clearly specified. This section is another example of the Administration's unwillingness to put teeth in its regulatory reform regulations.

22 AAC 10.040 Signing of Applications

Even this seemingly innocuous provision lends itself to the snarling of the permitting process. Since there is no clear definition of who should be qualified to sign the permit application, the agency can arbitrarily assert that the applicant's representative is not "duly authorized" to sign the application.

This has not been a problem in the past. There is no need to formalize requirements for the signing of applications.

22 AAC 10.050 Oral Public Hearings

Public hearing rights are created by these regulations where none are required by statute. The regulations thus allow an agency to override an implicit finding of the Legislature that no hearings should be required.

A plan of operations for a lease never has required public notice. The new regulations require public notice. These activities are approved pursuant to leases already issued by the state, and are subject to the inter-agency review process set up by MOU's between the deciding agency and the commenting agencies. Plans of operations should not be subject to these regulations.

Under this section, new and complex requirements for public notice and hearings are created. These requirements will complicate and lengthen the permitting process and the approval of the lease plan of operations rather than simplify these procedures. We also point out that additional bureaucrats will have to be placed on the public payroll since the agencies will argue that the requirements for public hearings are a new and additional aspect of its work. Again, these requirements are fundamentally at odds with any genuine effort for regulatory reform.

22 AAC 10.060 Decision on Applications

There is no reason why the agency's decision should contain an invitation to contest the decision. Also, serving a decision on any person requesting a copy or who has made comments on the application is a burdensome requirement.

22 AAC 10.070 Permit Conditions

Delay is not the only problem an applicant faces. He also faces the prospect of having virtually any condition, however ill-conceived or contradictory, imposed on the permit approval. The proposed regulations fail to address this important reform. Under questionable statutory authority or regulations written by the agency, virtually any requirement or condition may be imposed unilaterally on the applicant. Meaningful reform of the regulatory process must place some limits on the conditions which can be placed on the permittee.

The state statutes do not authorize the deciding officer to attach design and operating stipulations to a permit.

22 AAC 10.080 Permit Limitations

Operations in Alaska often require changes from planned activities. Under this section, any minor deviation from the plan described in the application would require the applicant to cease operations under the old permit and go back to the agency for a new or amended permit.

The requirement for the agency to determine if a change in plans will result in "significant adverse impacts" brings in a whole new procedure. An affirmative finding would require a new permit. In the past, changes have been reviewed but not under these criteria. A prudent operator would have to shut down operations until such a finding has been made and a new permit issued in the event of an affirmative determination. Any deviation from the approved permit should only require an amendment to the original permit and not require a new permit.

22 AAC 10.085 Memoranda of Understanding

The regulations do not make clear that existing MOU's as well as subsequent MOU's must comply with the requirements of this chapter. All existing MOU's between agencies should either be revised to comply with the chapter or be withdrawn.

Rather than encouraging joint processing of permit applications, the regulatory reform effort should attempt to limit federal participation in the permitting process where possible. This section provides that such agreements, which extend any deadline, are authorized only where "procedural burdens on the applicant" are reduced. However, it will be the agency, without provisions for applicant imput, that decides whether or not such agreements are "good" for the applicant.

ARTICLE 2. CLASS I PERMIT

It is difficult to visualize any oil and gas activity which would be classed as Class I permit. DNR personnel have indicated an intent to designate oil and gas plans of operations as Class I but because of the numerous exceptions which they intend to apply to that classification, virtually all oil and gas plans of operations will be Class II.

If the applicant is aggrieved by a decision, his only recourse is the elaborate Class A or Class B appeals machinery under

Articles 6, 7 and 8. These are excessive measures for what should be a simplified process as discussed later on page 10.

ARTICLE 3. CLASS II PERMITS

Nearly every permit covering activities on oil and gas leases will fall into the Class II category. Although an agency decision on a permit application is due within 65 days, the regulations provide multiple methods for extending that period almost indefinitely. Public notice must be given when a Class II permit is received and the public is given a 30 day comment period. Oil and gas exploration and development in Alaska, until recently, has proceeded in a satisfactory manner without a public notice requirement.

Despite the history of environmentally safe oil and gas operations, the state administration now considers public notices to be necessary. It is difficult to understand what benefits the public can derive from these elaborate, time consuming measures. Public notices provide unlimited opportunity for protests, comments and demands from activist groups, whose objectives include stopping any development or progress.

The regulations make no provision for a specified time in which public notice must be given following receipt of a permit application.

These regulations would allow an expanded opportunity for commenting agencies to interfere with the legitimate right granted by an oil and gas lease. Such leases require the payment of rentals and place an obligation on the leaseholder to diligently explore for oil and gas during the lease term. If a leaseholder is proposing to conduct safe and prudent operations under a lease issued by a state agency, a commenting agency should not be able to deny the lessee the opportunity to exercise those rights.

Section 140 requires exhaustive and formal records and transcripts to be maintained during the public hearing and comment period. Section 150 requires that all oral communications on any "matters of substance" between the applicant and the agency must be reduced to writing. The regulations do not indicate any criteria for determining what are "matters of substance." Many more state employees must be added to the payroll to maintain a process which has no recognizable benefits.

ARTICLE 5.
COASTAL MANAGEMENT CONSISTENCY DETERMINATIONS

22 AAC 10.500 Single Determination Required for Certain Projects:

The regulations attempt to designate a lead agency. We endorse the concept of the lead agency being one with expertise in the matter. For oil and gas operations this would be DNR. We also endorse one consistency determination for state and federal purposes. There is currently a duplication of jurisdiction, and no method is provided in the new regulations to settle disputes between agencies. The following ambiguous language opens the door for an interpretation that the consistency determination is not in fact conclusive:

> "The determination made under sections 520-540 is conclusive to the extent of its coverage, but does not affect the jurisdiction of any agency over a proposed project under its own statutes and regulations. Nothing in sections 500-580 of this chapter may be construed as limiting local government jurisdiction over any project."

Other agencies and local governments may seek to impose consistency determination-type conditions on a project that has already received the "single consistency determination".

Any regulation must firmly establish that once a single consistency determination is made, other agencies or local governments having jurisdiction are bound by that determination, and may not seek to abrogate that determination under their own permitting or regulatory authorities.

22 AAC 10.510, 520 and 530

The OCS consistency determination should be a responsibility of DNR, the agency with the expertise, and not DPDP. These regulations do not give DNR the authority to make the consistency determination for all oil and gas activities including the OCS but splits the responsibility among three state agencies.

22 AAC 10.540 and 550

Section 540 states that consistency determinations on "other direct state and federal activities will be made by the appropriate state agency." This section opens the door for further confusion between the state agencies as to the appropriate agency for purposes of making a consistency determination.

While we do not express an opinion as to what NOAA's position will be on this matter, we would point out that these consistency determination regulations do not comply with Section 306 (c)(5) of the Federal Coastal Zone Management Act and its implementing regulations which require a designated agency for state consistency determinations. We believe that the split agency concept as well as all other consistency provisions of these regulations will require NOAA approval, and in view of the substantial deviation from NOAA's designated agency requirements, the state risks not receiving that approval.

22 AAC 10.570 Procedure for Consistency Determinations:

Local coastal resource districts should not be accorded the status of a state "resource agency".

Section 570(b) when read in conjuction section 130(c), requires a deciding agency to give "great weight" to the comments of Coastal Resource Districts with an approved coastal plan. This effectively grants local coastal districts a veto power over projects proposed in their district. Local agencies should not be allowed to block projects of statewide or national importance. The Uniform procedures do not comply with section 306(c)(8) of the Federal CZM Act, which requires the national interest to be accorded full consideration by an approved program, nor section 306(e)(2), which requires that approved programs have a mechanism for assuring that local regulations do not unduly restrict or exclude uses which are in the state and national interest.

22 AAC 10.580 Applicant Responsibility in Multiple Permit Cases:

The effect of this section is to condition the approval of one permit on the approval of another permit. Each permit should stand on its own merits.

ARTICLES 6, 7 & 8. APPEALS

Far from avoiding litigation, the appeals procedure invites protracted litigation on the part of any interested individual. Moreover, these procedures will impede orderly administration by the agencies.

Problems arising primarily from these areas are: (1) no limitation on the eligibility of those who can file appeals ("standing"); (2) the length of the appeals process; (3) complexity of the appeals process; (4) burden on permit applicants; and (5) conflicting appeal procedures.

1. Standing:

Section 060(b) of the regulations requires a copy of the permitting decision to be served upon any person who has commented on the permit application. Section 620 allows any person to serve notice of appeal. Section 640 specifies that a person has standing to appeal if (i) he would be injured in fact by the agency's decision; (ii) he has raised material issues; (iii) the specific issues presented on appeal were raised by the appellant in comment or hearing testimony; and (iv) the requirements of Section 620 have otherwise been met.

This standing requirement is so broad that it might allow state agencies to appeal the issuance of a permit. It is AOGA's position that state agencies ought not be permitted to appeal such decisions.

The test for standing for an individual challenge of an agency decision appears to be similar to that used by courts in allowing an individual to challenge agency actions by judicial means. Under that test, courts have gone so far as to allow individuals to challenge federally permitted hunting and capturing of wild horses simply on the basis that the individual had seen wild horses before and would like to continue seeing them. This test, if applied under the regulations, would allow virtually anyone to claim "injury in fact" and thereby gain standing to file an appeal. If thus interpreted, the regulations provide for an excessively broad spectrum of potential appellants.

Section 640(b) also allows individuals not served with the initial decision to petition for intervention in the appeal. AOGA firmly believes that no provision for intervention should be included in the regulations. While the agency should consider any portion of the prior record that it wishes, intervention should not be permitted during the agency appellate review.

2. Length of Appeals Process:

The appeal processes are excessively long. (See flow chart attached). A Class A appeal can take as long as 95 days without a hearing, and 125 days with a hearing, not including any extension of the allotted time periods. The Class B appeals can take as long as 175 days, and perhaps longer, depending upon the length of time required for the agency to certify the record. The length of the permit process, when combined with the length of the appeals process, establishes an impermissibly long period between the time the application is submitted and the time of final resolution. This, of

course, does not include any time which may be spent in the Superior Court and the Supreme Court in further appeals.

3. Complexity:

The appellate process is extremely complex and difficult to administer. Many of the provisions would require the best skills of an experienced trial judge to properly implement.

The sheer number of steps which the agency is required to follow is mind-boggling. In fact, the steps are not even set out in a logical sequence. Section 160 requires that three different sorts of findings be appended to every decision on a permit issued by any of the four agencies. Each of these findings is subject to attack on appeal. Copies of the decisions must be furnished to anyone who has requested it. The pre-hearing conference required by Section 810 will require the specialized services of an attorney. These are only a few of the many intricate legal steps which are beyond the capabilities of existing departmental personnel. More legal help will be required by each of the Departments. It is difficult to understand how such elaborate appeals procedures grew out of an effort to simplify the process.

4. Burden on Permit Applicants:

Section 640(a) requires the applicant to become a part of the appeals procedure even if he doesn't wish to.

The Class B appeal process is almost identical with a trial in the Superior Court. It includes publication of notice of appeal, intervention by third parties, discovery proceedings, pre-hearing conference and pre-hearing order, de novo hearing, formal evidence rules, full records certification, etc. These extraordinary requirements are beyond the appeals procedures outlined in the APA. They are a burdensome requirement to impose on the applicant.

All permit applicants will be required, as a practical matter, to hire additional legal help.

5. Conflicting Appeal Procedures:

These appeal procedures are certainly in conflict with existing agency regulations for administrative appeal. Existing regulations must be substantially reviewed and revised to eliminate conflicts with the new regulations. This will further complicate the efforts of the agency to bring its procedures into conformance with the new regulations within any reasonable time frame.

The regulations may conflict with the Administrative Procedures Act. Under that Act, the initiation of a hearing to determine whether a right, license, or other privilege should be granted, issued or renewed is made by filing a statement of issues, rather than a notice of appeal. A notice of hearing must be issued at least 10 days prior to the hearing. Finally, adjudicatory hearings are to be presided over by a hearings officer. The regulations may not be in agreement with the above provisions.

We thank you for the opportunity to comment. We urge your efforts to prevent implementation of these counter-productive regulations which nearly totally miss the mark of their intended objective of regulatory reform.

Anytime at your convenience we stand ready to discuss this matter and lend whatever assistance we can.

Very truly yours,

WILLIAM W. HOPKINS
Executive Director

WWH:km

Attachment

Enclosures

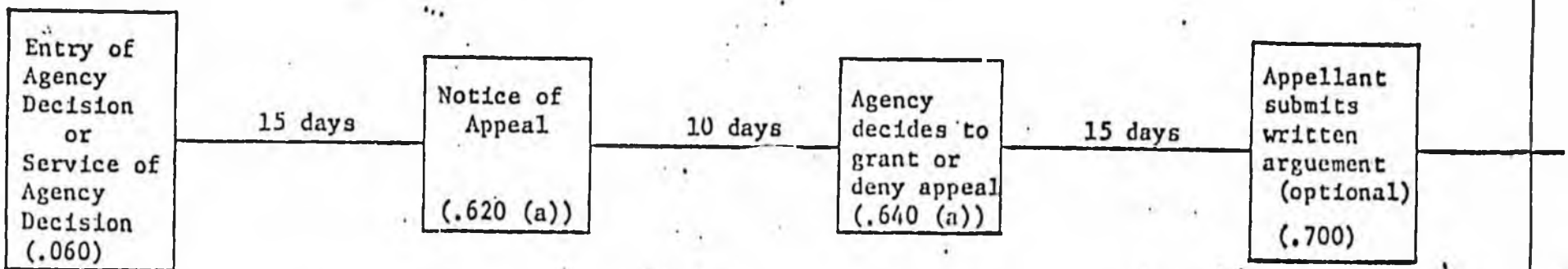
cc: Governor Jay S. Hammond

UNIFORM PERMIT PROCEDURES REGULATIONS (22 AAC 10)

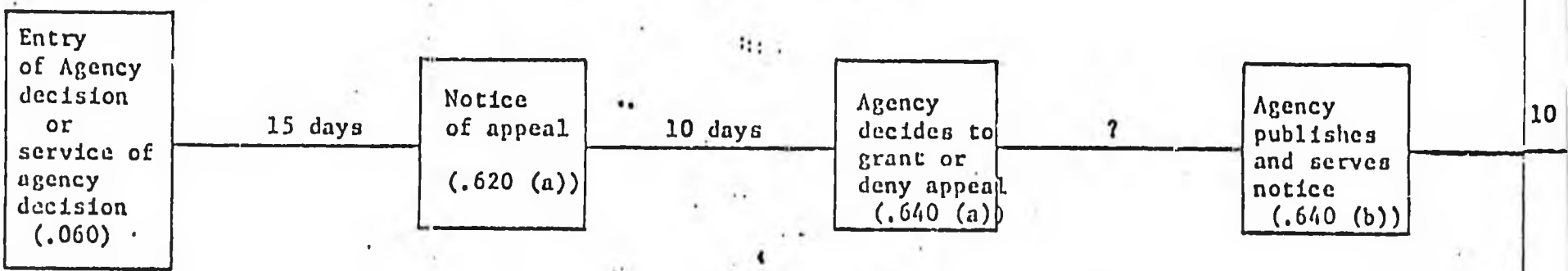
APPEALS PROCEDURES

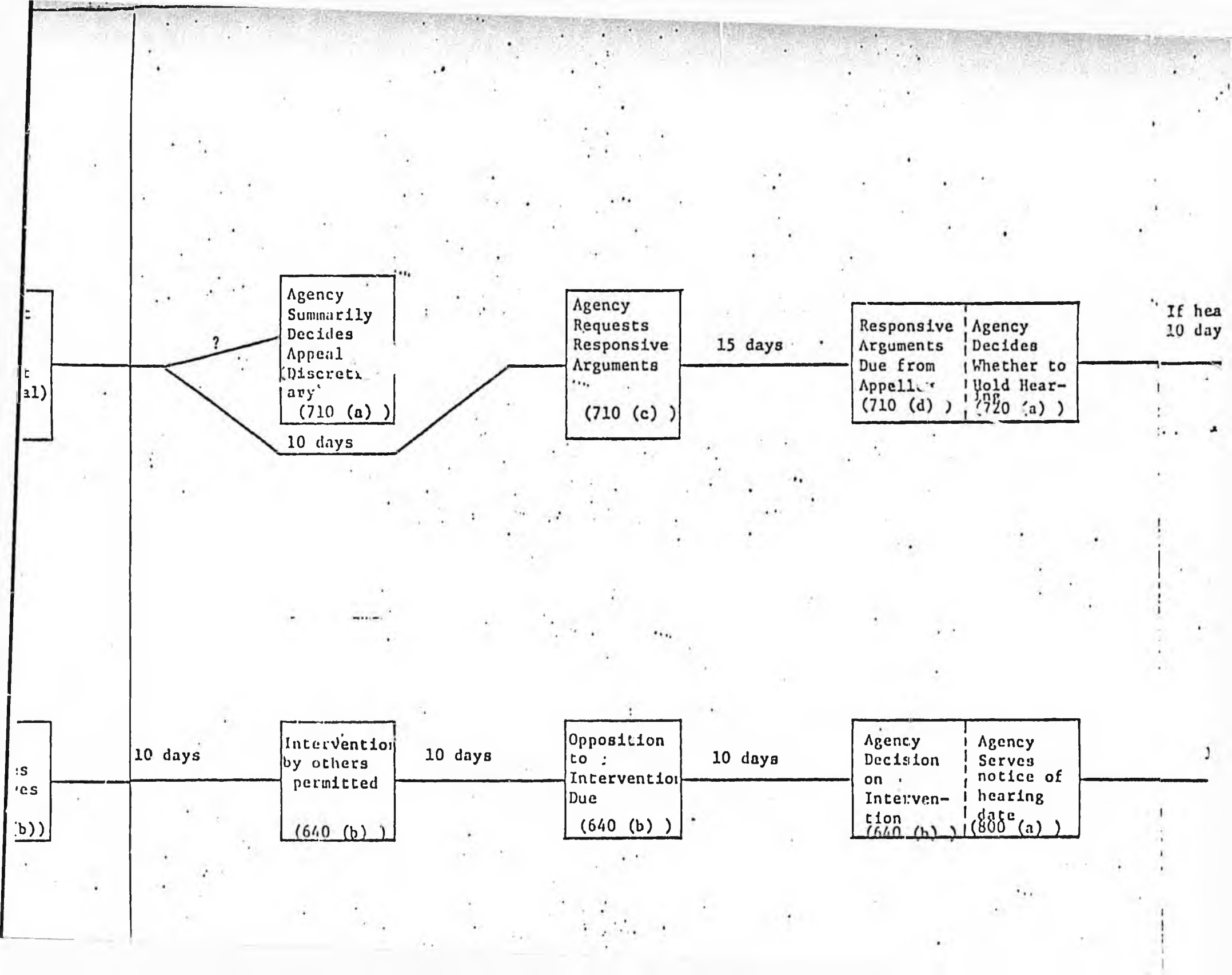
ARCTICLES 6,7 and 8 ...

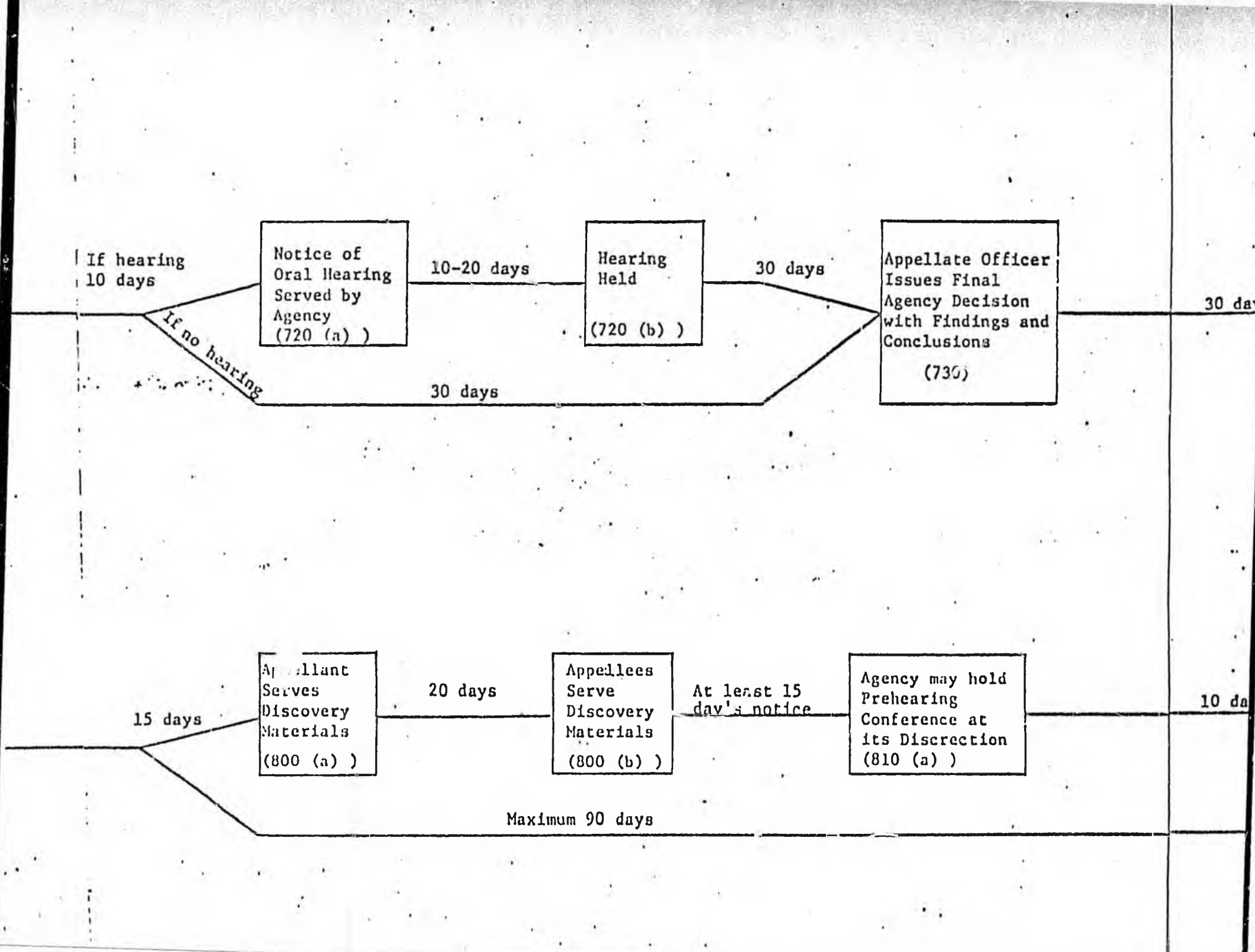
"CLASS A" APPEALS

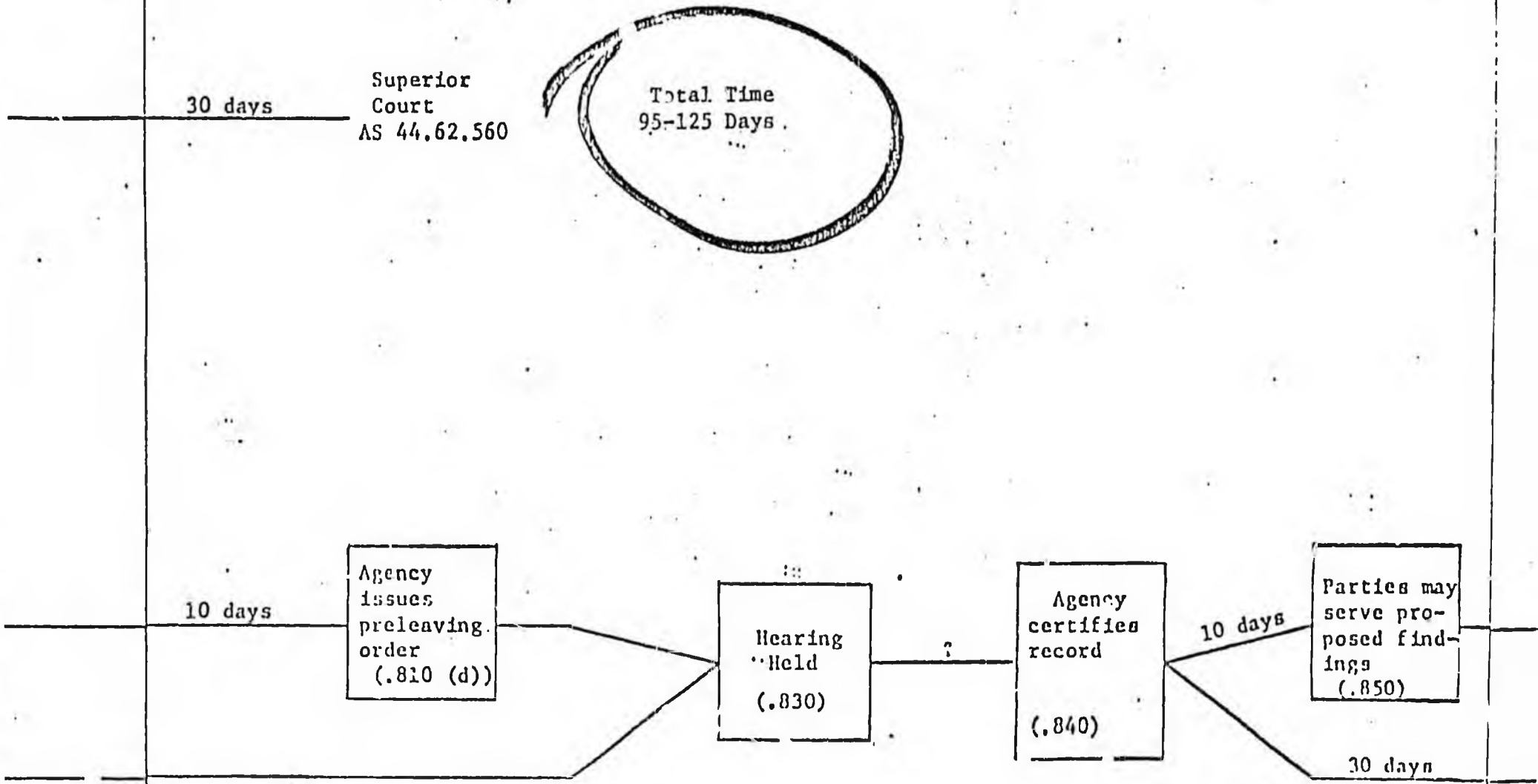


"CLASS B" APPEALS




Agency Summarily Decides Appeal (Discretionary (710 (a))
?
10 days
Agency Requests Responsive Arguments (710 (c))
15 days
Responsive Arguments Due from Appell (710 (d))
Agency Decides Whether to Hold Hearing (720 (a))
If hea
10 day
10 days
Intervention by others permitted (640 (b))
10 days
Opposition to Intervention Due (640 (b))
10 days
Agency Decision on Intervention (640 (b))
Agency Serves notice of hearing date (800 (a))


If hearing
10 days
Notice of Oral Hearing Served by Agency (720 (a))
10-20 days
Hearing Held
(720 (b))
30 days
Appellate Officer Issues Final Agency Decision with Findings and Conclusions
(730)
30 day
If no hearing
30 days
15 days
Appellant Serves Discovery Materials
(800 (a))
20 days
Appellees Serve Discovery Materials
(800 (b))
At least 15 day's notice
Agency may hold Prehearing Conference at its Discretion
(810 (a))
10 da
Maximum 90 days


30 days
Superior Court AS 44.62.560
Total Time 95-125 Days
10 days
Agency issues preleaving order (.810 (d))
Hearing Held (.830)
Agency certifies record (.840)
10 days
Parties may serve proposed findings (.850)
30 days

Norpac Exploration Services, Inc.

ALASKA DIVISION
P.O. BOX 599
ANCHORAGE, ALASKA 99510

MILE-HI EXPLORATION CO., INC. PACIFIC WEST EXPLORATION CO.

2-18-82

Norpac Exploration Services fully supports Senate Bill 84 concerning the processing of permits by state agencies. It has become abundantly clear in the last few years that the particular mechanisms now in place are used to delay and in some cases kill programs that might have been planned. The permitting process is entirely too lengthy and too broad. It would facilitate matters immeasurably if the process could be streamlined to reflect earlier days. During the 60's, only one permit was required for onshore seismic work and this could usually be obtained in a maximum time frame of 2 weeks, often the permit would be issued in 2 or 3 days. Now the review process must clear 3 or 4 agencies, both federal and state, before the permit is issued. Of particular importance in the subject Bill, is the time limits imposed upon the agencies to respond to exploration requests. Alaska exploration work requires more intricate forward planning than comparable work in the South 48 and a timely permit will mean the difference between go, or no go, on a project.

Charles J. Dubman

TESTIMONY FOR SB 84

MY NAME IS VAL MOLYNEAUX. I AM REPRESENTING VECO, INC., AN ALASKAN CORPORATION, PROVIDING OIL FIELD SERVICES BOTH IN THE PRUDHOE BAY, BEAUFORT SEA AREA AND THE KENAI AREA IN ALASKA.

OUR WORK IS BECOMING PROGRESSIVELY MORE INVOLVED IN THE REGULATORY PERMIT SYSTEM IMPOSED UPON ALL NEW DEVELOPMENTS BY FEDERAL, STATE, AND MUNICIPALITY GOVERNMENT. NOT THAT WE CONSIDER PERMITTING UNNECESSARY, BUT WE FEEL THE CUMBERSOME DOCUMENTATION AND DUPLICATION OF PERMITS IS WITHOUT JUSTIFICATION, THE NUMBER OF AGENCIES AND THE TIME INVOLVED TO OBTAIN THE PERMITS IS EXCESSIVE, ALL OF WHICH RESULT IN HIGHER COSTS TO THE CLIENT AND ULTIMATELY THE CONSUMER.

IN THE DEVELOPMENT AND PLANNING STAGES OF A NEW PROJECT IT IS AT FIRST NECESSARY TO IDENTIFY THE PERMIT REQUIREMENT AND THE RESPECTIVE AGENCIES FOR THE SUBMITTAL OF PERMITS. IN SOME CASES VOLUMES OF PAPERS ARE REQUIRED WHICH NECESSITATE MANY MAN HOURS TO COMPILE, RESULTING IN EVEN MORE MAN HOURS OF DELAYS RESEARCHING GOVERNMENTAL AGENCY INQUIRIES.

IT APPEARS THAT THE GOVERNMENTAL AGENCIES GIVE NO CONSIDERATION FOR THE CONTROLLING COSTS RESULTING FROM THESE OVERBURDENSOME REQUIREMENTS.

PERMIT REQUIREMENTS HAVE IN SOME CASES CAUSED YEARS OF DELAY AND, IN OTHER CASES, CHANGE OF THE LOCATION OF LABOR PROJECTS. IT HAS RESULTED IN SPIRALING COSTS. WE MUST GIVE MORE CONSIDERATION TO THE COSTS OF THESE BENEFITS WHICH THE PERMITTING SYSTEM IS MEANT TO PROVIDE US WITH.

IT IS TO THIS END THAT WE SUPPORT THE SECOND HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SYSTEM FOR THE SENATE BILL 84 LABOR AND COMMERCE.

NORTHERN DRILLING SERVICES, INC.
Anchorage, Alaska

3216 Iliamna Avenue
Anchorage, AK 99502
907 243-6389

February 18, 1982

To Whom it May Concern:

My name is Ronald Jordan, President of Northern Drilling Services in Anchorage, Alaska.

We provide weather, radio, medical and labor services to the oil companies. We also lease and rent equipment to these oil companies.

This testimony is in favor of the Second House Committee Substitute for Committee Substitute for Senate Bill #84, Labor and Commerce.

A subcontractor usually knows of an upcoming contract from an oil company and therefore plans for it. Therefore, because of the regulatory agencies method of issuing permits to the oil companies, we, the subcontractors find it very difficult to plan the courses of action in dealing with these contracts. We have our obligations to fulfill, and planning ahead, as we do, costs us money when we have to shelf an item because of a delay in a permit that is not issued to an oil company.

It is very difficult to even think about a full time crew for each contract as we can not afford to pay for a crew to be on stand by while waiting for a contract which is depending on a permit.

I believe this Bill would eliminate duplication and speed up the processing of permits.

Sincerely,

Ronald L. Jordan

Ronald L. Jordan
Northern Drilling Services, Inc.

RLJ:kh

ALASKA
SUPPORT INDUSTRY
ALLIANCE
P.O. Box 100, Anchorage, Alaska 99510

TESTIMONY BEFORE THE HOUSE LABOR AND COMMERCE COMMITTEE

ON SENATE BILL 84

BY

JOE MATHIS, PRESIDENT, ALASKA SUPPORT INDUSTRY ALLIANCE

FEBRUARY 19, 1982

MR. CHAIRMAN AND MEMBERS OF THE HOUSE LABOR AND COMMERCE COMMITTEE. MY NAME IS JOE MATHIS. I AM OFFERING THIS TESTIMONY ON BEHALF OF THE ALASKA SUPPORT INDUSTRY ALLIANCE.

THE ALLIANCE IS A NON-PROFIT ORGANIZATION REPRESENTING INDIVIDUALS AND SUPPORT COMPANIES INVOLVED IN THE MINING, CONSTRUCTION AND PETROLEUM INDUSTRIES. THE PURPOSE OF OUR ORGANIZATION IS TO FOSTER AND PROMOTE THE INTERESTS OF THE SUPPORT INDUSTRY AND MORE PARTICULARLY TO IMPROVE PUBLIC UNDERSTANDING OF THE INTER-RELATIONSHIP OF POLITICAL DECISIONS, INDUSTRY ACTIVITIES AND THE ECONOMIC HEALTH OF ALASKA.

THIS BRINGS ME TO WHY THIS TESTIMONY IS BEING OFFERED. WE OF THE SUPPORT INDUSTRY HAVE SUFFERED--ALMOST UNNOTICED BY GOVERNMENT. OUR SUFFERING COMES NOT IN A DIRECT WAY, BUT AN INDIRECT--ALTHOUGH VERY REAL--WAY. EACH TIME BUREAUCRACY DELAYS THE PROGRESS OF MAJOR INDUSTRY BY OVER-REGULATING AND DUPLICATING OF PERMITTING REQUIREMENTS, IT IS CREATING A REAL HARDSHIP ON THE SUPPORT INDUSTRY AS WELL. THERE IS AN APPARENT LACK OF AWARENESS

ALASKA
SUPPORT INDUSTRY
ALLIANCE
P.O. Box 100, Anchorage, Alaska 99510

BY SOME REGULATORY AGENCIES AS TO THIS CHAIN OF EVENTS OF INDUSTRY ACTIVITY AND WHAT IMPACT THEIR INEFFICIENCY AND FOOT-DRAGGING HAS ON IT. THIS IS WHAT REGULATORY REFORM SHOULD SEEK TO HELP.

WE OF THE SUPPORT INDUSTRY NEED THE 2ND HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 84 AS MUCH AS, IF NOT MORE THAN, THE MAJOR INDUSTRIES OF THIS STATE.

SUPPORT INDUSTRY SURVIVES BY BEING EFFICIENT AND ABLE TO RESPOND TO THE NEEDS OF MAJOR INDUSTRY. AS SUBCONTRACTORS WE MAY NOT BE REQUIRED TO HAVE THE PERMITS, BUT WE MUST WAIT ALL THE SAME UNTIL THEY ARE GRANTED. UNNECESSARY DELAYS HAVE A REAL AND SUBSTANTIAL IMPACT ON THE SUPPORT INDUSTRY. THE IMPACT COMES IN THE FORM OF LOST TIME, HIGHER UNEMPLOYMENT, AND JUST PLAIN OLD ANXIETY AND WORRY DUE TO EQUIPMENT SITTING IDLE AND CREDITORS KNOCKING AT THE DOOR. THIS INABILITY TO PLAN, BUDGET, AND OPERATE EFFICIENTLY IS VERY MUCH A PROBLEM IN OUR INDUSTRY.

THIS PROBLEM IS CARRIED STILL FURTHER DOWN THE CHAIN. OUR EMPLOYEES HAVE CAR PAYMENTS, HOUSE PAYMENTS, AND FAMILIES TO CARE FOR AND ARE FACED WITH THESE SAME UNCERTAINTIES AND WORRIES ON AN INDIVIDUAL LEVEL.

AS YOU CAN SEE, LACK OF A COMPREHENSIVE AND EFFICIENT REGULATORY SYSTEM REACHES ALL THE WAY DOWN TO THE WAGE-EARNER.

ALASKA
SUPPORT INDUSTRY
ALLIANCE
P.O. Box 100, Anchorage, Alaska 99510

INDIFFERENCE BY REGULATORY AGENCIES NOT ONLY DOES INJUSTICE TO PRIVATE INDUSTRY, BUT IT ALSO AFFECTS THE ALASKAN WORKING PEOPLE.

WE AGREE THERE IS A NEED FOR REGULATION. WE FEEL THE BILL BEFORE YOU NOW WILL MORE THAN ADEQUATELY PROTECT THE INTERESTS OF THE PEOPLE OF ALASKA, AS WELL AS ASSIST MAJOR INDUSTRY AND THEREBY GREATLY AID THE SUPPORT INDUSTRY. THEREFORE, I URGE YOU TO SUPPORT THIS LEGISLATION WITHOUT DELAY OR AMENDMENT.

THANK YOU FOR YOUR TIME.

HOUSE LABOR AND COMMERCE COMMITTEE
REGARDING 2 HCS CSSB-84 (L&C)

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS ETHEL H. NELSON, AND I AM AN EXPLORATION LAND REPRESENTATIVE FOR TEXACO INC., AND AM REPRESENTING THEM HERE TODAY.

WE APPRECIATE THE OPPORTUNITY TO COMMENT TO YOU ON THE PROVISIONS OF HCS CSSB 84. AS YOU KNOW, THE MATTER OF REGULATORYREFORM AND SPECIFICALLY PERMITTING REGULATORY REFORM HAS BEEN THE SUBJECT OF MANY PUBLIC HEARINGS DURING THE PAST THREE YEARS. THESE HEARINGS HAVE BEEN CONDUCTED ON THE UNIFORM PERMIT REGULATIONS PROPOSED BY THE ADMINISTRATION (22 AAC 10) AS WELL AS SB 84.

THERE HAS BEEN, IN THE PAST, A STALEMATE WITHIN INDUSTRY REGARDING SOME PORTIONS OF EARLIER DRAFTS OF THE BILL. HOWEVER, THE AREAS OF DISAGREEMENT BETWEEN COMPANIES HAVE BEEN SOLVED AND THERE IS NOW UNITED SUPPORT BY AOGA MEMBER COMPANIES OF THIS BILL.

INDUSTRY HAS MADE EXTENSIVE AND CAREFUL ANALYSES OF EACH DRAFT OF THE REGULATIONS,AND THE BILL, AND HAS SUBMITTED CONSTRUCTIVE COMMENTS, MADE IN GOOD FAITH, TO THE ADMINISTRATION AND TO VARIOUS LEGISLATIVE COMMITTEES AT EVERY OPPORTUNITY. THESE COMMENTS HAVE BEEN SELECTIVELY IGNORED BY THE ADMINISTRATION.

HEARING BY THIS COMMITTEE LAST WEEK.

THE ADMINISTRATION, HOWEVER, HAS REQUESTED SEVERAL AMENDMENTS TO THE BILL, SOME OF WHICH WE SUPPORT AND SOME OF WHICH WE FEEL ARE NOT IN THE BEST INTEREST OF THE STATE OR THE PUBLIC BECAUSE THEY DO NOT PROMOTE ORDERLY DEVELOPMENT OF THE STATE'S RESOURCES. IN THE INTEREST OF TIME, I WILL NOT DISCUSS THESE AMENDMENTS EXCEPT TO SAY THAT DESPITE THE FACT THAT THERE IS A GREAT DEAL OF COMPROMISE ALREADY REFLECTED IN THE VERSION BEFORE YOU, WE ARE, IN GOOD FAITH AND IN THE SPIRIT OF FURTHER COMPROMISE, WILLING TO JOIN WITH OTHERS IN ACCEPTING THIS BILL AS DRAFTED EVEN WITH THESE PROBLEM AREAS, AND THAT WE ARE IN FULL AGREEMENT WITH TESTIMONY WHICH WILL BE GIVEN BY MARC BOND ON BEHALF OF AOGA A LITTLE LATER.

SPECIFICALLY, I WOULD LIKE TO COMMENT ON SOME OF THE BENEFITS OF THIS BILL TO ALASKA AND ITS CITIZENS.

NUMBER ONE, ASSUMING WE CAN START ALL OVER WITH THE DRAFTING OF REGULATIONS TO IMPLEMENT THE BILL, IT GIVES THE STATE THE OPPORTUNITY TO IMPLEMENT UNIFORM PERMIT PROCEDURES AND GIVES SOME MEANINGFUL REGULATORY REFORM.

ALSO, FOR THE FIRST TIME IN THE HISTORY OF STATEHOOD, THIS BILL GIVES LOCAL RESOURCE AGENCIES THE <u>STATUTORY RIGHT</u> TO BE HEARD REGARDING PERMIT ACTIVITIES IN THEIR COMMUNITY AND THE RIGHT FOR SUBSTANTIVE CONSIDERATION BY THE STATE OF THEIR DOCUMENTED

AGAIN, ASSUMING REASONABLE TIME FRAMES ARE INCLUDED IN THE REGULATIONS IMPLEMENTING THIS BILL, THE PERMIT PROCESS TIME AND THE NUMBER OF STATE EMPLOYEES NECESSARY TO CARRY OUT THE PROCESS WILL BE CONSIDERABLY LESS THAN IT WOULD BE UNDER THE PROVISIONS OF EARLIER DRAFTS OF THE BILL AND THE PENDING UNIFORM PERMIT REGULATIONS.

MR. CHAIRMAN, THE PROBLEMS THIS LEGISLATION IS DESIGNED TO CURE ARE REAL PROBLEMS. THEY MAY SOMETIMES BE SIMPLE, BUT THEY ARE ALL PART OF THE COMPLEX BUSINESS WHICH IS REPRESENTED BY THE PETROLEUM INDUSTRY IN PARTICULAR AND OTHER MINERAL EXTRACTING INDUSTRIES IN GENERAL.

ALASKA'S WEALTH IS ALMOST ENTIRELY DEPENDENT ON THE PRODUCTION OF ITS MINERAL RESOURCES; THAT PRODUCTION IS, UNDER THE PRESENT PERMITTING PROCEDURES, TIME CONSUMING AT BEST AND COSTLY TO BOTH THE STATE AND THE INDUSTRY IT SHOULD BE SERVING.

I WOULD LIKE TO REITERATE THAT WE STRONGLY SUPPORT THE BILL AND ASK THIS COMMITTEE TO APPROVE IT.

AGAIN, WE THANK YOU FOR THE OPPORTUNITY TO DISCUSS THIS VERY IMPORTANT LEGISLATION WITH YOU.

THANK YOU.

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.
ATTORNEYS AT LAW
SUITE 400
1007 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE 279-3581
TELECOPIER 279-3587
AREA CODE 907

JAMES J. DELANEY
EUGENE F. WILES
GEORGE N. HAYES
STANLEY H. REITMAN
JOHN K. BRUBAKER
RAYMOND E. PLUMMER, JR.
DANIEL A. GERETY
ROBERT L. EASTAUGH
STEPHEN M. ELLIS

CLAY A. YOUNG
KAREN L. HUNT
FRANK S. KOZIOL, JR.
WILLIAM E. MOSELEY
MARC D. BOND
JACQUELINE CARR-AGNI
J. MICHAEL MOXNESS
J. D. CELLARS
GREGORY J. MOTYKA

February 24, 1982

Mr. Jeff Barry
House Labor & Commerce Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: 2nd HCS CSSB 84(L&C)

Dear Jeff:

As promised, enclosed is a copy of the testimony which I had prepared for presentation to the committee last week. As you will note, this testimony deals exclusively with the amendments which the administration, via Attorney General Condon, had proposed to the Labor & Commerce Committee Substitute for SB 84.

Should you have any questions regarding these comments, please do not hesitate to contact me.

Very truly yours,

DELANEY, WILES, HAYES,
REITMAN & BRUBAKER, INC.

Marc D. Bond

Marc D. Bond

MDB/cs
Encl.

AOGA COMMENTS ON PROPOSED ADMINISTRATION
AMENDMENTS TO HCS CSSB 84 (L&C)

Presented by Marc D. Bond,
Counsel for Chevron U.S.A. Inc.

2-19-82

The bill that we support is "2nd House Committee Substitute for Committee Substitute for Senate Bill No. 84 (Labor & Commerce)". I will discuss amendments to that bill that have been proposed by Attorney General Wilson Condon. These comments are concurred in by all the members of AOGA who have worked on this issue.

1. Amendment #1.

This amendment would allow 85 days for the processing of a Class II permit, if a public hearing were held on the application. Initially it should be noted that this appears to be a replacement in the bill of the provision allowing for a 20-day extension for all classes of permit applications if a hearing was held. That provision was contained in § 633(c) of the 2nd Rules substitute which has not been superseded.

It is industry's position that this provision is unnecessary and unwarranted. When SB 84 was originally introduced, a 30-day maximum handling time was applied to all permit applications. Bowing to administrative persuasion, it was agreed that hearings, which are mandated by statute,

could not be held in the 30-day period. Accordingly, the bill was rewritten as it is now: § 632(a)(2) allows 65 days for applications upon which public notice on interagency review is mandated.

Since an additional 35 days were included expressly for the purpose of accommodating public hearings, the extra 20 days are unnecessary and a contradiction of the purpose behind the Class I, Class II permit distinction.

For these reasons we oppose this amendment.

2. Amendment #2.

This amendment would allow the applicant and the agency to agree to an extension of the application period beyond the 120 days (4 mos.) already permitted by § 633(a). This amendment is very similar to a provision in the 2nd Rules version which would have allowed the time period to be extended in all cases by mutual agreement.

What appears to be an innocuous provision is actually probably unnecessary and an express invitation to further delay. It appears that even without this provision, an applicant may be able to authorize an extension of the time limits if he felt it was in his best interests. On the other hand, stating this expressly in the bill provides the agency with a potential fulcrum to buy additional time. We therefore oppose Amendment #2.

3. Amendment #3.

This amendment rewrites all of § 635(a) and (b). This section is one of the key provisions of the bill insofar as it establishes the lead agency principle for coastal management consistency determinations and comments on federal permits. Before discussing the proposed amendments, it is important to set forth the objectives of this section.

Under current law, any permit that affects the coastal zone cannot be approved unless it is found to be consistent with the coastal management program. If more than one permit is required for the project, each permit involves a redundant CZM consistency determination. Contrary determinations can be reached by different agencies on the same project. In the same vein, any project that requires a water quality certification by the U.S. Army Corps of Engineers is subject to comment by all state agencies.

It is industry's view that the state should speak with one voice in both cases. In each case, the agency which has the principal responsibility for dealing with the overall activity should be the lead agency. In order to function as a true lead agency, the agency must have the discretion, after due consideration, to accept, reject or modify the comments made by other agencies. In order to assure that the state speaks with one voice, non-lead agencies must be prohibited from making separate comments to federal agencies.

The proposed amendment changes the bill in several significant and adverse ways:

a. It limits the lead agency concept to projects involving the conveyance of an interest in state land or water, or at least one Class II permit decision. There is no reason to so confine this idea. Only one decision on consistency and only one comment on federal permit applications should be made regardless of the class or number of permits needed for the project.

b. The proposed amendment does not specify that the lead agency must be a "resource agency" as defined in AS 44.62.640(c)(4). In permitting the use of land or water, no agency other than the "resource agencies" should become the lead agency, because no other agency has the necessary expertise.

c. The proposed amendment requires the lead agency to give "substantive consideration" to the "comments" of other resource agencies. Neither term is defined, and it appears that the administration would probably define "substantive consideration" by regulation in the same way it defined the term "great weight" in the proposed Uniform Permit Procedure Regulations, 22 AAC 10.920(7) - i.e., shifting the burden of proof to the deciding agency to reach a contrary conclusion.

The deciding agency should have this burden, if at all, only as to the documented factual statements and data produced by the commenting agency. The administration amendment would impose this burden on the deciding agency as to factual statements, comments, opinions and recommendations, since the term "comment" is not defined.

d. The proposed amendment places a heavier burden on the lead agency with respect to an appeal by a coastal resource district of a consistency determination. This section is burdensome, unnecessary and conflicts with the provisions of AS 46.40.100 of the Alaska Coastal Management Program:

i. No reason exists to give greater emphasis to the comments of coastal resource districts than to those of other state agencies. In effect this provision constitutes the districts as the lead agency for consistency review - a result not intended by the legislation and not in the best interests of the state.

It should be pointed out that the bill as drafted requires the lead agency to consider documented facts produced by coastal districts. This is not a requirement under current law, and thus gives more emphasis to the comments of local districts.

ii. The appeal right implicitly granted to districts by subsection (b) conflicts with the enforcement provisions

of AS 46.40.100. That section specifies how complaints concerning perceived violations of the district plan are to be handled. It allows a district, a citizen of the district or a state agency to petition the Alaska Coastal Policy Council for a hearing on the matter. The Council can then order an offending district or agency to comply with the plan in question. In addition, the section provides that such orders may be enforced by the superior court. No justification for circumventing this procedure is given by the administration. The bill as drafted would leave the enforcement provisions in AS 46.40.100 intact.

We believe the bill as drafted encompasses the concerns raised by the administration, and the agreement reached last fall concerning the relationship between local districts, state agencies and the lead agency.

For these reasons we oppose the proposed amendment.

4. Amendment #4.

This amendment would allow a state agency other than the lead agency to comment on a federal permit application where federal law so requires. Federal law sometimes requires that comments be solicited from a particular state agency concerning a project which is undertaken by a federal agency

or which requires a federal permit. An example is the Fish and Wildlife Coordination Act, which requires consultation with the head of the agency exercising administration over the wildlife resources of the state. 16 USC § 622(a). Cf. 42 USC § 4334.

We believe that federal law requiring the solicitation of comments from specific state agencies would override the section as written. Nevertheless, we support the proposed amendment in order to make the exception explicit.

5. Amendment #5.

The proposed amendment would specify DNR as the lead agency in certain instances. The amendment does not accomplish the intended result.

The amendment is confusing and difficult to understand. The provision could be interpreted to require DNR to complete § 401 certifications; DNR does not presently have the expertise to do this.

Our language is clear: the completion of § 401 certification by an agency does not alone constitute that agency as the lead agency.

6. Amendment #6 (Condon #7).

This proposed amendment attempts to state that appeals of permitting decisions are not subject to the normal

APA procedures. The proposed language states the appeals "need not comply with" the APA procedures. While we support the intent of the change, we propose that the amendment be modified to read as follows:

> "Administrative appeals [EXCEPT AS PROVIDED IN THIS SECTION THE PROCEDURE IS] conducted under this section are not subject to the procedures outlined in AS 44.62.330 - 44.62.630."

With this change, we support the amendment.

7. Amendment #7 (Condon #8).

The proposed amendment would allow the administrative appeals time limits to be extended "when applicable due process rights may require more formal administrative proceedings." We object to this amendment.

a. No agency or individual is set forth whose responsibility it is to determine when "applicable due process rights" require more time.

b. This undefined catch-phrase may become a vehicle by which administrative appeals may take longer than the specified time period as a matter of course, rather than exception.

c. "Due process" in the constitutional sense requires notice of an action affecting a person and an oppor-

tunity to be heard thereon. Kodiak-Aleutian Chapter of Alaska Conservation Soc. v. Kleppe, 423 F.Supp. 544 (D. Alaska 1976). No one has a vested right in any particular mode of procedure such that legislative change is prohibited. Arctic Structures, Inc. v. Wedmore, 605 P.2d 426, 436 (Alaska 1979). Due process requires only that a substantial and efficient remedy remain available. Id. There appears to be no reason why a constitutionally permissible appeal procedure could not be outlined by regulation and completed within 45 or 65 days.

d. If there are statutes which require a longer period of time, the phrase "Except as otherwise required by federal law," could be inserted in front of subsection (b).

8. Amendment #8 (Condon #9).

This proposed amendment would require every appellant of a permitting decision to seek an administrative appeal prior to initiating a court appeal. It would require the "exhaustion of administrative remedies."

We believe that the potential appellant should have the option to decide whether the administrative record is sufficient for a court appeal. In many cases, further administrative appeal will result only in a rubber stamp of the initial permitting decision. In other cases, a question of law may be raised that should be resolved with dispatch by a

court. In such cases, a mandatory administrative appeal only serves to waste time.

9. Amendment #9 (Condon #10).

This proposed amendment would effectively eliminate the preference right of a permit appeal on the civil calendar. The stated purpose of the amendment is to avoid the amendment of court rules in violation of Alaska Const. Art. IV, § 15. This section requires a two-thirds vote of the legislature to change court rules.

This section as contained in the draft bill does not change court rules. No court rule (with the possible exception of the "speedy trial" rule in criminal cases, Criminal Rule 45) establishes a preference for court cases. This has traditionally been done by legislation, and is a matter of substantive, rather than procedural law. Cf. lien foreclosure proceedings which are granted preference by statute. AS 34.35.005(c).

Aside from the non-amendment of court rules, the directory language "should have" has no defined legal meaning. It is technically inartful and legally meaningless.

10. Amendment #10 (Condon #6).

This proposed amendment would eliminate the time

limit on extensions by the requesting agency for commenting agencies to submit comments. We oppose this amendment.

This amendment would permit commenting agencies to submit comments on the day before a permitting decision is required, thus allowing the deciding agency, the applicant and others no time to respond to the comment. Some definite time limit must be set. It is submitted that 30 days, in addition to the 30 days initially given, is more than sufficient within which to generate a comment.

11. Amendment #11.

The proposed amendment would include the Alaska Coastal Policy Council as a "resource agency". This addition is unnecessary and duplicative. We oppose the amendment.

The Alaska Coastal Policy Council has no permitting responsibility and therefore should not be included in the permit reform bill.

Furthermore, the Council already has jurisdiction to review consistency determinations when petitioned to do so under AS 46.40.100. The Council should not have the function of being the lead agency on a consistency review, and then be called upon to review its own decision pursuant to AS 46.40.100.