

ALASKA LEGISLATURE COMMITTEE FILES 1901-1902

1791 SLC SB 151 - SB 200

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Revenue and Taxation
Title 43

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Sec. 42.05.601. Actions to recover penalties; disposition. (a) Actions to recover penalties under this chapter shall be brought by the attorney general in a court of competent jurisdiction.

(b) All penalties recovered under the provisions of this chapter shall be paid to the commission and deposited by it in the general fund of the state. (§ 6 ch 113 SLA 1970)

Sec. 42.05.611. Penalties cumulative. (a) All penalties imposed under this chapter are cumulative and an action for the recovery of a civil penalty is not a bar to any criminal prosecution; a criminal prosecution is not a bar to an action for the recovery of a civil penalty.

(b) Neither a criminal prosecution nor an action to recover a civil penalty is a bar to an enforcement proceeding to require compliance, or to any other remedy provided by this chapter. (§ 6 ch 113 SLA 1970)

Sec. 42.05.621. Joinder of actions. Under the applicable court rules, appeals from orders of the commission, applications for enforcement of commission orders and actions for recovery of a penalty may be joined. The court may in the interests of justice separate the actions. (§ 6 ch 113 SLA 1970)

Article 9. Miscellaneous Provisions.

Section	Section
601. Eminent domain	671. Public disclosure of information
641. Regulation by municipality	681. Validity of certain certificates
691. Expenses of investigation or hearing	691. Utility classes
701. Application fees	

Recap of former article. — Section 601, 641, 691, 701, 1970 repealed former Article 9 of the "General Provisions." The former article consisted of §§ 42.05.610 — 42.05.650 and derived from ch 100, SLA 1970; ch 150, SLA 1960; ch 95, SLA 1963; ch 70, SLA 1964; and ch 120, SLA 1965.

SS 151

Sec. 42.05.631. Eminent domain. A public utility may exercise the right of eminent domain for public utility uses. This section does not require the use of a declaration of taking. (§ 6 ch 113 SLA 1970)

Sec. 42.05.641. Regulation by municipality. The commission's jurisdiction and authority extend to public utilities operating within a borough, whether home rule or otherwise. In the event of a conflict between a certificate, order, decision or regulation of the commission and a charter, permit, franchise, ordinance, rule or regulation of such a local governmental entity, the certificate, order, decision or regulation of the commission shall prevail. (§ 6 ch 113 SLA 1970)

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Gary W. Anderson
President

February 23, 1981

Mr. Michael Thill
Senate Committee on Labor
& Commerce
Pouch V
Juneau, Alaska 99811

Re: SB 163

Dear Mr. Thill:

The information you have requested is applicable to a governmental department, which CFAB is not. However, I can make the following statements with regard to SB 163 and the additional lending market that it provides to CFAB.

1. Loans to trappers would likely be small in terms of individual loan amount. I would assume that the total of loans would also be relatively limited. We have no figures indicating the size of the trapping business, the number of individual commercial trappers, nor their average incomes.
2. Commercial trapping does not fall within the definition of commercial fishing or agriculture of the Farm Credit System. CFAB would, therefore, not have a leveraging source for these loans.
3. So long as demand for loans was small (below \$500,000) CFAB could handle them without using the Farm Credit System. However, if the portfolio of loans to commercial trappers were to exceed that level, the absence of leveraging ability would negatively impact CFAB's overall lending potential.
4. While CFAB would make every effort to provide a viable loan package to commercial trappers, the individuals would have to meet CFAB's credit standards.

Mike, without detailed information on trapping and the possible loan demands, it is impossible to make a more definitive reply to the legislation. If it fills a definite need and CFAB can provide the service while maintaining the credit risk in its portfolio within established parameters, we would be glad to provide the loans.

Sincerely,


Gary W. Anderson
President

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the bonds, and all assets, income and receipts pledged to pay or secure the payment of the bonds, or interest on them, shall at all times be exempt from taxation by or under the authority of the state, except for inheritance and estate taxes and taxes on transfers by or in contemplation of death. (§ 3 ch 159 SLA 1978)

Sec. 44.81.180. Bonds legal investments for fiduciaries. The bonds of the bank are securities in which all public officers and bodies of the state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, savings associations, including savings and loan associations and building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provisions of law, the bonds of the bank are also securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized. (§ 3 ch 159 SLA 1978)

Sec. 44.81.190. Conflicts of interest. No member of the board of directors may vote on a transaction of the bank under this chapter if he is a party to the transaction. (§ 3 ch 159 SLA 1978)

Sec. 44.81.200. Reports and publications. The board of directors shall publish an annual report to the bank's shareholders. The report shall be made available to the public and shall include financial statements audited by independent outside auditors, a statement of the amount of money received by the bank from each source during the period covered, a statement of the bank's investments, a description of the bank's investment activity during the period covered by the report, an analysis of economic and other effects of investment decisions on the state's commercial fishing and agriculture industries, and any other information the board believes would be of interest to the governor, the legislature and the public. The board may also publish such other reports as it considers desirable to carry out its purposes. (§ 3 ch 159 SLA 1978)

Sec. 44.81.210. Powers of the bank. (a) The bank may

(1) make variable rate or fixed rate loans to individuals who are residents and who are engaged in commercial agriculture or fishing, including harvesters, processors, suppliers and marketers, or to corporations, partnerships or joint ventures engaged in commercial agriculture or fishing, the majority interest of which is beneficially

owned by residents of are residents of the state bank; however, the bank corporation, partnership existing fishing vessel fishing vessel, the primary fishery resources, only is wholly owned and recipient of the loan

(2) make and alter corporate functions;

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(12) acquire by pu of debts, or the for operate, and convey

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residents of the state and a majority of the owners of which are residents of the state, if the recipient of the loan is a member of the bank. However, the bank may make a loan under this paragraph to a corporation, partnership, or joint venture for the purchase of a new or used fishing vessel or for the repair or renovation of an existing fishing vessel, the primary purpose of which is to commercially harvest fish resources, only if the corporation, partnership, or joint venture is wholly owned and controlled by residents of the state and if the recipient of the loan is a member of the bank.

to make and alter bylaws necessary or desirable to carry out its corporate functions;

(3) establish amortization plans for repayment of loans, which may include extensions for poor fishing or farming seasons;

(4) enter into agreements with regional institutions of the federal farm credit system, private lending institutions, and other state agencies or agencies of the federal government, to carry out the purposes of this chapter;

(5) adopt, alter, and use a corporate seal;

(6) sue and be sued in the name of the bank;

(7) issue bonds to carry out any of its corporate purposes and powers;

(8) sell, lease as lessor or lessee, exchange, donate, convey or encumber in any manner by mortgage or by creation of any other security interest, real or personal property owned by it, or in which it has an interest, when, in the judgment of the board of directors, the action is in furtherance of its corporate purposes;

(9) incur secondary liability by guaranty or endorsement of the obligations of another corporation or legal entity when, in the judgment of the board of directors, the action is in furtherance of its corporate purposes;

(10) make loans as provided in (1) of this section in participation with financial institutions, and establish and regulate the terms of the loans;

(11) make contracts and execute instruments necessary or convenient in the exercise of its corporate powers;

(12) acquire by purchase, lease, bequest, devise, gift, the satisfaction of debts, or the foreclosure of mortgages, and hold, maintain, use, operate, and convey real or personal property;

(13) borrow money and issue secured and unsecured evidence of indebtedness for a corporate purpose or to fund, refund, pay, or discharge outstanding obligations, and enter agreements and contracts concerning these obligations;

(14) secure the payment of its obligations by pledge or mortgage or other lien on its contracts, revenues, income, or property;

(15) appoint officers, employees, trustees for certificate holders, and agents, and prescribe their powers and duties;

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owned by residents of the state and a majority of the owners of which are residents of the state, if the recipient of the loan is a member of the bank; however, the bank may make a loan under this paragraph to a corporation, partnership, or joint venture for the purchase of a new or existing fishing vessel or for the repair or renovation of an existing fishing vessel, the primary purpose of which is to commercially harvest fishery resources, only if the corporation, partnership, or joint venture is wholly owned and controlled by residents of the state and if the recipient of the loan is a member of the bank.

- (2) make and alter bylaws necessary or desirable to carry out its corporate functions;
- (3) establish amortization plans for repayment of loans, which may include extensions for poor fishing or farming seasons;
- (4) enter into agreements with regional institutions of the federal farm credit system, private lending institutions, and other state agencies or agencies of the federal government, to carry out the purposes of this chapter;
- (5) adopt, alter, and use a corporate seal;
- (6) sue and be sued in the name of the bank;
- (7) issue bonds to carry out any of its corporate purposes and powers;
- (8) sell, lease as lessor or lessee, exchange, donate, convey or encumber in any manne. by mortgage or by creation of any other security interest, real or personal property owned by it, or in which it has an interest, when, in the judgment of the board of directors, the action is in furtherance of its corporate purposes;
- (9) incur secondary liability by guaranty or endorsement of the obligations of another corporation or legal entity when, in the judgment of the board of directors, the action is in furtherance of its corporate purposes;
- (10) make loans as provided in (1) of this section in participation with financial institutions, and establish and regulate the terms of the loans;
- (11) make contracts and execute instruments necessary or convenient in the exercise of its corporate powers;
- (12) acquire by purchase, lease, bequest, devise, gift, the satisfaction of debts, or the foreclosure of mortgages, and hold, maintain, use, operate, and convey real or personal property;
- (13) borrow money and issue secured and unsecured evidence of indebtedness for a corporate purpose or to fund, refund, pay, or discharge outstanding obligations, and enter agreements and contracts concerning these obligations;
- (14) secure the payment of its obligations by pledge or mortgage or other lien on its contracts, revenues, income, or property;
- (15) appoint officers, employees, trustees for certificate holders, and agents, and prescribe their powers and duties;

(16) provide technical services to members of the bank; for the purposes of this paragraph, "technical services" includes services that will enhance the ability of the member to obtain financial assistance from the bank;

(17) make loans, as provided in (1) of this section, secured by liens subordinate to valid first liens and security agreements granted to a private lending institution;

(18) participate with state departments and agencies in formulating policy and in planning for the development of commercial fishing and agriculture in the state;

(19) do what is necessary or desirable to carry out the corporate purposes and powers expressed or implied in this chapter;

(20) make loans to individual commercial fishermen for limited entry permits; a loan under this paragraph may be made only to an individual commercial fisherman who has been a state resident for a continuous period of five years immediately preceding the date of application for the loan and who has had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who has actively participated in the fishery during that period; loans made under this paragraph are subject to the provisions of AS 44.81.230;

(21) indemnify a director, officer or employee of the bank and his heirs, executors and administrators against all liabilities and related expenses including, but not limited to, court costs and attorney fees, judgments, and the cost of reasonable settlements, incurred by him in connection with or arising out of an action or proceeding brought against him because of an act or omission in the performance of his official duties as director, officer or employee of the bank regardless of whether he is a director, officer or employee at the time the expenses or liabilities are incurred.

(b) The provisions of (a)(21) of this section do not authorize the bank to indemnify a director, officer or employee of the bank who is adjudged liable for negligence or misconduct in the performance of his official duties. AS 3 ch 159 SLA 1978; am § 4 ch 53 SLA 1979; am §§ 7-10 ch 51 SLA 1980

Effect of amendments. — The 1979 amendment added paragraph (20) of subsection (a), inserted "suppliers" following "harvesters, processors" and deleted "primarily" following "or joint venture" near the beginning and

substituted "member" for "shareholder" near the middle and near the end. The amendment also substituted "members of the bank" for "shareholders" and "member" for "shareholder" in paragraph (16) of subsection (a), added paragraph (21) of subsection (a), and added subsection (b).

Sec. 44.81.220. Transition. Upon the repurchase of all the nonvoting, preferred shares initially issued by the bank and purchased by agencies of the state, the provisions of this chapter lapse and the bank may proceed to operate as a private cooperative corporation under

the terms of its 10.15.600. (§

Sec. 44.81.230 permits. (a) limited entry commission the for the permit commission.

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COMMITTEE REPORT
SENATE

FURTHER: Finance

2/9/81

Date: _____

Mr. President:

The Committee on LABOR & COMMERCE has had SB 166

amending qualifications of an electric utility for power production cost assistance payable by the Alaska Power Authority

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

- do pass do not pass
- do pass with attached amendments(s) same
- replace with CS for _____ new
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

John King

2
Bob Mendenhall

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Bob Mendenhall

CHAIRMAN



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

COMMITTEE MINUTES: 2 March 1981

Senator Mulcahy opened the Committee meeting and called for testimony on CSSB 50. Testimony was provided by Art Zillig from the Department of Labor, and he explained that a further review of the proposed bill indicated that two changes were necessary. On page 4, delete the word "regular" (line 21), and on page 5, line 12, include (a) after the statute. The bill was then passed from committee.

The next bill addressed was SB 151, which included discussions by Sen. Rodey (pertaining to the cost of figuring interest), Sen Ziegler about the philosophical issue of the Legislature even addressing required interest to be paid by public utilities, and Sen. Hohman questioning the purpose of having this legislation. SB 151 will be discussed at a later committee meeting.

SB 160 was the final bill to be discussed. Sen. Mulcahy gave a summary of the bill, explaining that the community of Bettles had been inadvertently excluded from the benefit of power production cost assistance and hence a language change was necessary to include them within the original intent of the legislation. The bill was moved without further objections.



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 166- Sackett

"An act amending the eligibility qualifications of an electric utility for power production cost assistance payable by the APA; ED

The present statute stipulates that in order to qualify for power production cost assistance through APA the utility must have at least 15% of its total energy sales to residential units.

Given the conditions of many rural areas, (few residential dwellings) it is often possible for one or two commercial consumers to account for 90% of the total energy sales, thus making the previous stipulation impractical and inequitable. Therefore the amended language should read at least 15% of the units served, thus enabling rural utilities to apply for power production cost assistance.

BETTLES LIGHT & POWER, INC.

BETTLES, ALASKA 99726 • (907) 692-5212

Senator John Sacket
Box 65
Galena, Alaska 99741

8-30-80

Dear John:

I would like to bring to your attention certain inequities which survived to become law as part of HES CSSB (Finance).

This bill established provisions for Power Production Cost Assistance to be administered by the Alaska Power Authority. The apparent intent was to help alliviate the high cost of Electrical Energy to Residential Consumers through state subsidy.

However, one of the two major stipulations for Utility elegibility states that: "The utility must have sold at least 15% of its total energy sales for residential use..."

This stipulation may be practical for Utilities serving large cities where a huge portion of the revenues would come from Residential sales but it does not take into account conditions in rural areas where Residential sales by percent of revenues may not come near equally 15% of many Utilities gross revenues.

It only takes one Air Taxi or Trading Post (i.e. one commercial consumer) in a Bush Village to more than equal 85-90% of Total energy sales.

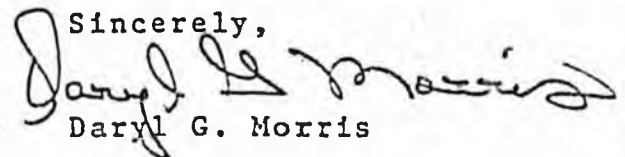
I believe the law should be altered to read: ...The Utility must have at least 15% of its total consumers classified as Residential Consumers to qualify under this program.

If this alteration were made, the intent of the bill would be kept and many bush utilities would be eligible rather than exempt as is now the case.

At this time Bettles Light & Power is not eligible to participate in this program and our residential consumers who are paying some of the highest Electrical rates in the State are not subject to relief.

I urge you to consider the ramifications of the bill as it is now written and work to alter its provisions so that all resident consumers may benefit.

Sincerely,



Daryl G. Morris

cc: "Pappy" H. Moss, Representative
Glenn Hackney, Senator
Carolyn Guess, Commissioner, APUC

DGM/kt

TO: Terry McGuire
Director of Finance

DATE: January 12, 1981

FROM: Lynn Dorrrough
Economist *LD*

SUBJECT: Power Production
Cost Assistance Program

As you requested, the following is a summary of possible modifications to the Power Production Assistance Program which were discussed in a meeting on January 6, 1981. State personnel present included Carolyn Guess, APUC Commissioner; John Farleigh, APUC Director; Terry McGuire, APA Finance Director; and Lynn Dorrrough, APA Economist. David Hutchens, Executive Director of Alaska Rural Electric Cooperative Association also attended the meeting. The possible modifications were discussed with the intent of improving the effectiveness of the program, while decreasing administrative demands on the participating utilities, the APUC, and the APA.

1. In the calculation of Adjusted Power Production Cost, as described in AS 44.56.162(c), it was suggested several modifications should be made. The amount of actual subsidy per KWH is determined by subtracting the adjusted power production costs from the actual power production costs. The existing adjusted power production cost has the effect of escalating the relative percentage subsidy paid in situations where the actual power production costs would exceed 40¢ per KWH. The proposed change has a tempering effect on the subsidy and an incentive to improve efficiency. It is suggested that AS 44.56.162 (c) be revised as follows:

(c) Power production cost assistance shall be paid to an eligible electric utility if the actual power production costs per kwh sold by the utility exceed its adjusted power production costs, as determined by the Commission. The adjusted power production costs of an electric utility are:

- (1) 15 percent of the portion of the actual power production costs which does not exceed 40 cents per kilowatt hour; plus
- (2) 100% of the portion of the actual power production costs which exceeds 40¢/kwh, plus
- (3) the base escalator; the base escalator is 7.65 cents per kilowatt hour adjusted annually by a percentage equal to the percentage change in the Anchorage consumer price index for the year. The consumer price index for all urban consumers for Anchorage is to be obtained from the

Terry McGuire
January 12, 1981
Page 2

U.S. Bureau of Labor Statistics for the first month of each fiscal year. The change in the production cost escalator is to be determined and implemented within 60 days of the availability of the new consumer price information.

2. In the determination of utility eligibility to participate in the Power Production Cost Assistance Program, it was suggested that the requirement that a utility have sold at least 15% of the total electricity sold in the year prior to initial eligibility to residential consumers be eliminated. The justification for this change is that in areas of high electrical cost the purpose of the program is to provide rate relief to the residential consumer. The allocation of other electrical uses in the areas is not directly related to the purpose of this program. Therefore, AS 44.56.162(e)(2) should be eliminated.
3. To determine monthly payments due to the utility, for reimbursement of the assistance provided to participants in this program, certain monthly information is required to be sent to the Alaska Power Authority by the participating utilities. It was suggested that some of the required information is not necessary for the APA to determine the amount of payment due, or forecast future demand on the program. These requirements are listed in AS 44.56.162(g). The ones suggested for elimination pertain to kilowatt hours generated during the preceding month and power production cost per kilowatt hour generated (number 4 & 6). The remaining five monthly reporting requirements would be renumbered in the correct sequence.
4. It was suggested that the section of the legislation related to notifying the participants in the program be modified to allow eligible utilities more flexibility in the placement of notification on billings sent to program participants. The section suggested for changes is AS 44.56.162(1) and the following is the possible new wording:

(1) If an electric utility receives a payment under this section, the utility shall furnish a notice to its electric service customers eligible under this program for each period for which the payment is received. The following notice is the suggested format, any deviation from it must be approved by the Alaska Power Authority and still must be consistent in content with the suggested format:

Terry McGuire
January 12, 1981
Page 3

"Notice to Customer"

For the current billing period the utility will be paid under the State of Alaska's Power Production Assistance Program (AS 44.56.162) to assist the utility and its customers in reducing the high cost of generation of electric energy.

Your total electrical service cost	\$
Less state assistance	\$
Your charge	\$

5. It was suggested that the existing eligibility definitions for participants, listed under AS 44.56.162(k) be revised to more specifically describe eligible participants. The following is the suggested new wording:

(k)(3) "Residential" means any consumer that qualifies to receive a residential tariff for regulated utilities and unregulated utilities (in such cases where unregulated utilities do not have a residential tariff, any customer with a primarily residential use is eligible if the customer account name is not the business associated with the residential units).

(4) "Local community facilities" means all water and sewer facilities, public outdoor lighting, harbor facilities, and those other community buildings whose operations are not paid for by the state, the federal government, or private commercial interests.

cc: Carolyn Guess
John Farleigh
David Hutchens

Also, the automatic repeater should be changed to a sunset review procedure.
DH



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department APUC Commerce & Econ. Development	Sponsor (Principal) Sackett	Bill Number SB No. 166
Department Position		
Division Director	Date	Commissioner <i>[Signature]</i> Carolyn S. Guess
		Date 2/24/81

GOVERNOR'S OFFICE USE

Comments		
<input type="checkbox"/> Position Noted	By	Date

SUMMARY

1. a) Related Bills (Similar or Conflicting)	1. b) Other Agencies Affected by Bill
2. a) Organizational Support for Bill	2. b) Organizational Opposition to Bill
3. Program Effects of Bill	

4. Fiscal Impact: <input type="checkbox"/> None <input type="checkbox"/> Fiscal Note Attached
5. Amendments Proposed:

6. Comments: The intent of this legislation is to allow presently ineligible utilities to become eligible for Power Production Assistance. It is the Commission's recollection that House Bill #758 of the 1980 Legislature which subsequently was amended and included in Chapter 83, SLA 1980 placed a restriction on eligible utilities because the original draft of the legislation allowed all consumer classes to participate in the program. It apparently was the intent of the drafters to exclude utilities that primarily serve commercial users. With the subsequent changes and resultant law, this exclusion was not eliminated when the legislature decided to limit the eligibility of customer classes to residential, charitable and local facilities.

The Commission is aware that under present law Bettles Light & Power, Inc., is ineligible for assistance for its qualifying customers because over 80 percent of its sales are to the FAA and approximately five percent to small commercial users. It thereby fails to meet the threshold that 15 percent of the total energy be sold to residential consumers. There may be other utilities in similar circumstances of which the Commission is unaware. This legislation would remedy what is perceived to be an inequity in the original legislation.

- (D) overhead line expenses;
- (E) underground line expenses;
- (F) transmission of electricity by others;
- (G) miscellaneous transmission expenses;
- (H) rents; and
- (I) maintenance costs for facilities associated with (A) — (E) of this paragraph; and
- (5) fixed costs relating to transmission, consisting of
 - (A) depreciation of transmission lines and equipment;
 - (B) taxes on transmission lines and equipment;
 - (C) insurance on or attributable to transmission lines and equipment; and
 - (D) interest on debt incurred for transmission lines and equipment.

(c) Power production cost assistance shall be paid to an eligible electric utility if the actual power production costs of the utility exceed its adjusted power production costs, as determined annually by the commission. The adjusted power production costs of an electric utility are

- (1) 15 percent of the portion of the actual power production costs which does not exceed 40 cents per kilowatt hour; plus
- (2) the base power production cost escalator; the base power production cost escalator is 7.65 cents per kilowatt hour adjusted annually by a percentage equal to the percentage of change in the Anchorage consumer price index for the year.

(d) An eligible electric utility may include as part of its revenue requirement for the purpose of setting rates charged for residential service, local community facilities service, and service to charitable organizations only the adjusted power production cost per kilowatt-hour sold. However, the utility's approved tariff shall show rates based on the actual cost of providing electric utility service and the state assistance derived from the power production cost assistance program under this section.

(e) The power production cost assistance program shall be administered by the authority based on a determination by the commission of adjusted power production cost of each electric utility eligible for power production cost assistance. An electric utility is eligible for power production cost assistance if

(1) the actual power production costs of the utility exceed the adjusted power production costs, as determined by the commission under (c) of this section;

(2) at least 15 percent of the total energy sold by an electric utility during the calendar year preceding the year in which power production cost assistance may be claimed was for residential use.

(f) The adjusted power production cost shall be calculated annually in the manner prescribed by (c) of this section and shall be based on the actual power production cost filed with the commission by each eligible

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commission within 30 days of receipt of the report by the authority for review before payment. When a report is submitted to the commission for review under this section, payment shall be made by the authority within 30 days after submission. If appropriations are insufficient for payment in full, the amount paid to each electric utility is reduced on a pro-rata basis.

(i) If an electric utility receives a payment under this section, the utility shall furnish the following notice to its electric service customers eligible under this program, for each period for which the payment is received:

NOTICE TO CUSTOMER

For the current billing period the utility has been paid under the State of Alaska's power production cost assistance program (AS 44.83.162) to assist the utility and its customers in reducing the high cost of generation of electric energy.

Your total electrical service cost	\$
Less state assistance	\$
Your charge	\$

(j) For the purpose of this section,

(1) the terms used in (b) (1) — (4) of this section are defined as those items are defined in a recognized system of utility accounts designated by the commission;

(2) actual power production costs are the expenses and costs prescribed in this subsection less any other power production cost assistance provided to the electric utility.

(k) In this section,

(1) "charitable organization" means an organization, not organized for pecuniary profit, which is operated for the relief of poverty, distress, or other condition of public concern in the state; the term includes, but is not limited to, a church or religious organization;

(2) "commission" means the Alaska Public Utilities Commission;

(3) "local community facilities" means water and sewer facilities, public outdoor lighting, and community buildings whose operations are not paid for by the state, the federal government, or private commercial interests. (§ 42 ch 83 SLA 1980)

Section repealed effective July 1, 1985. — Section 51, ch. 83, SLA 1980.

Sec. 44.83.164. Assistance to utilities not regulated by Public Utilities Commission [Repealed effective July 1, 1985]. (a) A utility which is exempt from regulation under AS 42.05.711 may receive power production cost assistance under AS 44.83.162 without becoming subject to the jurisdiction of the Alaska Public Utilities Commission if the utility is otherwise eligible for assistance and if the utility

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Section 170. Power proje

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§ 44.83.164

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§ 44.83.170

STATE GOVERNMENT

§ 44.83.170

(1) files with the commission the audited financial data necessary to determine the adjusted power production cost in the form prescribed in a recognized system of utility accounts;

(2) makes the reports required in AS 44.83.162(g) required of an electric utility with a rate schedule approved by the commission within the time and in the form the Alaska Power Authority designates;

(3) sets rates charged for residential services, local community services, and for services to charitable organizations, by including as part of its revenue requirements for these services only the adjusted power production cost per kilowatt-hour sold;

(4) allows audits which the commission determines are necessary to insure compliance with this section; and

(5) furnishes its electric service customers eligible under this program the "Notice to Customer" specified in AS 44.83.162(i)

(b) The provisions of AS 44.83.162 relating to determination of the amount of power production cost assistance and payment of the assistance apply to assistance under this section. (§ 42 ch 83 SLA 1980)

Section repealed effective July 1, 1985. — Section 51, ch. 83, SLA 1980.

Article 5. Power Project Fund.

Section

170. Power project fund

Sec. 44.83.170. Power project fund. (a) There is established as a separate fund the power project fund which shall be distinct from any other money or funds of the authority, and which includes only money appropriated by the legislature.

(b) The authority may make loans from the power project fund

(1) to electric utilities, regional electric authorities, municipalities, cities, boroughs, regional and village corporations, village councils, and nonprofit marketing cooperatives to pay the costs of

(A) reconnaissance studies, feasibility studies, license and permit applications, preconstruction engineering, and design of power projects;

(B) constructing, equipping, modifying, improving, and expanding small-scale power production facilities, conservation facilities, bulk fuel storage facilities, and transmission and distribution facilities, including energy production, transmission and distribution, and waste energy conservation facilities which depend on fossil fuel, wind power, tidal, geothermal, biomass, hydroelectric, solar or other non-nuclear energy sources; and

(C) reconnaissance studies, preconstruction engineering, design, construction, equipping, modification, and expansion of potable water supply including surface storage and groundwater sources and

firm, association, organization, business trust, or society, as well as a natural person;

(8) "personal property" includes money, goods, chattels, things in action, and evidences of debt;

(9) "property" includes real and personal property;

(10) "real property" is coextensive with land, tenements, and hereditaments;

(11) Repealed by § 2 ch 66 SLA 1965.

(12) "signature" or "subscription" includes mark when the person cannot write, with his name written near the mark by a witness who writes his own name near the person's name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto;

(13) "state" means the State of Alaska unless applied to the different parts of the United States and in the latter case it includes the District of Columbia and the territories;

(14) "writing" includes printing. (§ 4 ch 22 SLA 1962; am § 2 ch 66 SLA 1965; am § 10 ch 117 SLA 1968)

Cross references. — For additional definition of "peace officer," see AS 11.30.100. For further definition of "person," see AS 15.55.250. For additional definitions, see AS 15.60.010.

Effect of amendments. -- The 1965 amendment repealed paragraph (11).

The 1968 amendment substituted "state troopers" for "state police" in paragraph (6).

Quoted in Matanuska-Susitna Borough v. King's Lake Camp, Sup. Ct. Op. No. 472 (File No. 857), 439 P.2d 441 (1968); Stroh v. State Housing Authority, 7 Alas. L.J. No. 9, p. 647 (Sept., 1962); Stroh v. Alaska State Housing Authority, Sup. Ct. Op. No. 496 (File No. 924), 459 P.2d 480 (1969).

Sec. 01.10.065. Certified mail. When the use of registered mail is authorized or required by the laws of the state, certified mail, with return receipt requested, may be used. (§ 1 ch 66 SLA 1965)

Article 3. Effect of Statutes.

Section	Section
70. Time statutes take effect	90. Retrospective statutes
80. Computation of time	100. Effect of repeals or amendments

Sec. 01.10.070. Time statutes take effect. (a) All laws passed by the legislature become effective 90 days after enactment. The legislature may by concurrence of two-thirds of the membership of each house, provide for another effective date.

(b) The actual effective date of a bill having no effective date clause is determined by starting with the day after signature by the governor or the day on which he gives written notice that he is allowing it to become law without his signature, and counting 90 calendar days, the law becoming effective at 12:01 a.m., Pacific Standard time, on the 90th day.

(c) A law having an immediate effective date clause becomes

law at 12:01 or on the day ing the law t

(d) A law effective at 12:01 a.m. on the day it is filed. (§ 5 ch 66 SLA 1965)

Effect of amendments. --

Sec. 01.10.070. Time statutes take effect. (a) All laws passed by the legislature become effective 90 days after enactment. The legislature may by concurrence of two-thirds of the membership of each house, provide for another effective date.

(b) The actual effective date of a bill having no effective date clause is determined by starting with the day after signature by the governor or the day on which he gives written notice that he is allowing it to become law without his signature, and counting 90 calendar days, the law becoming effective at 12:01 a.m., Pacific Standard time, on the 90th day.

(c) A law having an immediate effective date clause becomes

This statute claratory of the law. Turnbull 104 (9th Cir. 1941).

Common law was established which an act fell on a Sunday was excluded tended to the Dworkin, Sup No 603), 407

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law at 12:01 a.m. on the day after it is signed by the governor or on the day after he has given written notice that he is allowing the law to become effective without his approval.

(d) A law which specified a definite effective date becomes effective at 12:01 a.m., Pacific Standard time, on the date specified. (§ 5 ch 62 SLA 1962; am § 8 ch 126 SLA 1966)

Effect of amendment.—The 1966 amendment rewrote this section.

Sec. 01.10.080. Computation of time. The time in which an act provided by law is required to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded. (§ 6 ch 62 SLA 1962)

This section was taken from the laws of Oregon. Mahan v. Sparks, 10 Alaska 292 (1942); Lowe v. Hess, 10 Alaska 174 (1941).

It merely states the common-law rule. Lowe v. Hess, 10 Alaska 174 (1941).

This statutory computation is declaratory of the common-law rule in Alaska. Turnbull v. Bonkowski, 274 F. Supp. 733 (D. Alas. 1967).

Alaska's computation-of-time statute merely expresses the common law. Turnbull v. Bonkowski, 419 F.2d 104 (9th Cir. 1969).

Common law.—A: common law it was established if the last day on which an act was to be performed fell on a Sunday, then that Sunday was excluded and the time was extended to the following day Wade v. Dworkin, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1965).

The common-law rule is that when the period of time within which an act is to be performed exceeds or week, an intervening Sunday is included in the computation. Wade v. Dworkin, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1965).

Legislative intent.—The legislature, by virtue of its enactment of this section, manifested its intent to exclude Sundays in the computation of time only when Sunday falls on the last day of a period in question. Wade v. Dworkin, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1965).

Exception in common law as to computation of person's age.—There exists a well-recognized exception in the common law as to the computation of a person's age. This exception, briefly stated, is that a year must be

counted, not from the day of birth, but from the preceding day when limitation is figured. Turnbull v. Bonkowski, 274 F. Supp. 733 (D. Alas. 1967).

The computation-of-time statute is expressive of only the general common-law rule and does not presume to abrogate the well-established exception thereto governing the computation of a person's age. It follows that the statute has no application in calculating a person's age. Turnbull v. Bonkowski, 419 F.2d 104 (9th Cir. 1969).

The supreme court is enjoined by the legislature to observe the provision of AS 01.10.029, in resolving any issue relating to this section and its applicability to the five-day recount provision of AS 15.20.430. Wade v. Dworkin, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1965).

Computing limitation under AS 15.20.430.—In computing the five-day period of limitation prescribed by AS 15.20.430, an intervening Sunday is to be included Wade v. Dworkin, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1965).

Computation of the limitations period provided by AS 09.10.070 subsequent to the removal of the disability of minority is to be made by excluding the first day and including the last. Turnbull v. Bonkowski, 274 F. Supp. 733 (Alas. 1967).

Filing appeal.—Under this section, the day on which the judgment is entered should be excluded in computing the time within which an application for an appeal must be filed. Mahan v. Sparks, 10 Alaska 292 (1942).

FISCAL NOTE

I. REQUEST

Bill/Resolution No. S. 166 Title: An Act amending the eligibility qualification of an electric utility for power production cost assistance payable by the Alaska Power Authority; and providing for an effective date. Date February 13, 1981

Requested by Sackett

II. FISCAL DETAIL

Agency Affected Alaska Power Authority

Program Category Affected _____

BRU, Program, or Subprogram(s) Affected Alaska Power Authority

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		40,000	100,000			

TOTAL

FUNDING (Thousands of Dollars)

GENERAL FUND		40,000	100,000			
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This includes funding for the remainder of FY 1981. It assumes that even though the change is retroactive to January 1, 1981, no retroactive payments would have to be made to utilities currently not participating. Utility eligibility is determined for utilities by the Alaska Public Utilities Commission and payments would only be due from date of APUC certification for participation.

IV. DATE February 13, 1981 PREPARED BY Lynn Dorrough, Economist

AGENCY Alaska Power Authority

Original: Legislative Finance PHONE 277-7641

cc: Budget and Management
Prime Sponsor (First Legislator Named)

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172



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SUMMARY SB 172

Filing of commercial documents; reflecting changes in filing procedures. Director of the Division of Technical Services (DNR) is responsible for the filing system for commercial documents, the place where commercial documents are to be filed, and he is designated the chief filing officer of the State.

The bill gives the director authority to prescribe uniform fees, and forms for filing documents.

1. A copy of a security agreement may be filed as a financing statement if both parties sign the copies.
2. Prescribes rules on the effect of a continuation statement filed with the district recorder before July 1, 1981.
3. Makes it unnecessary to file a continuation statement for a security agreement made by a common carrier if the financing statement contains the citation to AS45.09.302



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 172 Related History:

SB 172 transfers the responsibility for the filing system, the place where commercial documents are to be filed, and designates the director of the Division of technical services as the chief filing officer of the State.

Several years ago, commercial documents were filed with the court system, however after the consolidation of the superior court and the trial court, Executive order 40 transferred the responsibility for the filing of commercial documents to the Department of Administration. The Department of Administration felt it would be difficult for them to handle, and executive order 47 required a further transfer to DNR as they had just received a large computer. There were problems with the new computer, and temporarily the Department of Commerce was designated the responsibility for commercial filings. In June of 1980, DNR's computer was functioning correctly and the Department of Commerce transferred the responsibility (per EO47) back to the Commissioner of DNR. SB 172 further transfers the commercial document filing to the Division of technical Services, within the Department of Natural Resources.



Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

SB 172

Section by section analysis:

Sec. 1: Establishes the filing of a deed of trust or mortgage with the Division of Technical Services, Dept. of Natural Resources. If the statement contains a citation to this section, it remains effective until terminated without the need for filing a continuation statement. Further provides that assignments, amendments, and partial releases of the instrument may also be filed with the Dir. of the Div. of Technical Services, DNR.

Sec. 2: Addresses the proper place to file security interests if the collateral is farming equipment, farm products, accounts, contract rights, or intangibles resulting from the sale of farm products by a farmer. Security interests shall be filed in the office of the recorder in the debtors district; if the debtor is not a resident, then in the recorders office in the district where the goods are kept; when the collateral is crops, in the office of the recorder in the district where the crops are to be grown.

Sec. 3: Specifies that all commercial documents with the exception of security interests in Sec. 2 are to be filed with the Div of Tech Services, DNR

Sec 4: Technical ammendment addressing the signing of financing statements and providing that the copies be signed by both parties.

Sec.5: Director of the Div. of Technical Services shall prescribe forms and filing fees for filing commercial documents.

Sec 6: A financing Statement or continuation statement for consumer goods filed before July 1, 1981 in the district recorders office is effective until it lapses. Statements filed after 30 June 1981 take effect only if it is filed with the Div of Tech Services, DNR.

Sec 7: Technical ammendment relating to termination statements. If the secured party fails to send the termination statement within 10 days, he is liable to the debtor for \$100, and for any loss incurred

to the debtor by this failure.

Sec 8: Fee for filing and indexing a termination statement is determined by the Dir, Div of Tech Services, DNR.

Sec 9: Technical ammendment for the filing of financing statements.

Sec 10: Technical ammendment addressing the filing of a separate written statement of assignment.

Sec 11: Technical ammendment addressing the release of collateral.

Sec 12: Technical ammendment addressing requests about financing statements presently on file.



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department Natural Resources	Sponsor (Principal) Rules Committee by request of Governor	Bill Number SB 172
Department Position Favor --		
Division Director Claudi M. Hoffman <i>JB</i>	Date 2/18/81	Commissioner Robert E. LeResche
		Date

GOVERNOR'S OFFICE USE		
Comments:		
<input type="checkbox"/> Position Noted	By	Date

SUMMARY	
1. a) Related Bills (Similar or Conflicting) SB 77	1. b) Other Agencies Affected by Bill NONE
2. a) Organizational Support for Bill not documented (verbal) lending & financial institutions	2. b) Organizational Opposition to Bill unknown

3. Program Effects of Bill simplifies statutes for consumer
--

4. Fiscal Impact: <input checked="" type="checkbox"/> None <input type="checkbox"/> Fiscal Note Attached
--

5. Amendments Proposed: NONE

6. Comments: Section AS 45.09.402(a) We question whether or not the first sentence means <u>all</u> debtors and <u>all</u> secured parties are required to sign with <u>all</u> original signatures. Originally this was our intent to clean up the existing statutory language.

FISCAL ANALYSIS

DEPARTMENT Natural Resources	SPONSOR (PRINCIPAL Rules Committee by request. of the Governor	BILL NO. SB 172
DIVISION POSITION Favor	CO-SPONSORS OR COMMITTEE SPONSORS	DATE LAST AMENDED
DIVISION DIRECTOR <i>JCH</i> Claud M. Hoffman	DATE 2/3/81	COMMISSIONER Robert E. LeResche
FISCAL EFFECTS OF BILL		
(1) CHANGES IN PERSONNEL		
NONE		
(2) CHANGES IN GOVERNOR'S PROPOSED BUDGET		
Request Centralized UCC system be program receipts instead of General Fund appropriation.		
(3) CAN COSTS BE ABSORBED		
YES		
(4) REVENUE/EXPENDITURE CLASSIFICATION AND FUND — SOURCE (GENERAL FUND/BUDGET, FEDERAL FUNDS, BONDS, SPECIAL APPROPRIATIONS)		
General Fund		

COMMENTS

Would like to work with Code Revision Commission to resolve differences between this proposed legislation and SB 77.

§ 45.09.302

No. 748 (File No. 971).
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§ 45.09.302

TRADE AND COMMERCE

§ 45.09.302

(e) The requirements of AS 45.09.401(a)(1) and (2), 45.09.403(b), (c), and (e), and 45.09.407 do not apply to a security interest in personal property of any description, created by a deed of trust or mortgage made by a corporation primarily engaged in the business of a common carrier by rail, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipeline, or the production, transmission or distribution of electricity, steam, gas, or water, but this security interest may be perfected under this chapter by filing the deed of trust or mortgage in the office of the commissioner of the Department of Natural Resources. When filed, the instrument remains effective until terminated, without the need for filing a continuation statement. Assignments and releases of the instrument may also be filed in the office of the commissioner of the Department of Natural Resources. This commissioner is a filing officer for the foregoing purposes, and the uniform fee for filing, indexing and furnishing filing data under this subsection is \$10. (§ 9.302 ch 114 SLA 1962; am § 1 ch 65 SLA 1967; am § 1 ch 47 SLA 1976; am Executive Order No. 40 § 4 (1979); am Executive Order No. 47 § 4 (1980))

Effect of amendments. — The 1976 amendment added the language beginning "unless the property is inventory" to the end of paragraph (2) of subsection (c).

Section 4, Executive Order No. 40 (1979) substituted "Department of Commerce and Economic Development" for "Department of Administration" at the end of the first and third sentences of subsection (e).

Section 4, Executive Order No. 47 (1980), substituted "AS 45.09.401(a)(1) and (2), 45.09.403(b), (c) and (e), and 45.09.407" for "secs. 768(a)(1) and (2), 772(b), (c), and (e) and 780 of this chapter" following "The requirements of" near the beginning of subsection (e), substituted "this chapter" for "secs. 690-794 of this chapter" following "be perfected under" near the end of the first sentence in subsection (e), and substituted "Natural Resources" for "Commerce and Economic Development" following "Department of" at the end of the first and third sentences in subsection (e).

Editor's note. — Section 1, Executive Order No. 40 (1979) provides: "Findings. As governor, I find that it would be in the best interests of efficient administration to transfer the receiving function and the Uniform Commercial Code filing function from the Department of Administration to the Department of Commerce and Economic Development."

This section requires filing to perfect a conditional sale agreement. *Blumenstein v. Phillips Ins. Center, Inc.*,

Sup. Ct. Op. No. 748 (File No. 1253), 490 P.2d 1213 (1971).

Surety's right to earned progress payments does not qualify as an interest in personal property subject to the filing provisions of the code since the surety has the right to complete the job it has bonded, and apply any earned funds against its costs. This does not secure the payment or performance of an obligation as a "security interest" as that term is defined in AS 45.01.201 (37). *Alaska State Bank v. General Ins. Co. of America*, Sup. Ct. Op. No. 1564 (File Nos. 2638, 2713), 579 P.2d 1362 (1978).

Quoted in Stanley v. Fabricators, Inc., Sup. Ct. Op. No. 582 (File No. 1061), 459 P.2d 467 (1969).

Cited in Deck v. Aurora Motors, Inc., Sup. Ct. Op. No. 314 (File No. 593), 409 P.2d 603 (1966); *C.Y. Inc. v. Brown*, Sup. Ct. Op. No. 1569 (File No. 2781), 574 P.2d 1275 (1978); *State, Div. of Agriculture v. Fowler*, Sup. Ct. Op. No. 2085 (File No. 4114), 611 P.2d 58 (1980).

ALR references. — What constitutes "security interest" as to which financing statement must be filed under Uniform Commercial Code § 9-302. 11 ALR3d 1231.

Determination of purchase price of farm equipment for purposes of UCC § 9-302(1)(c) excusing filing of financing statement, 85 ALR3d 1037.

Sec. 45.09.401. Place of filing; erroneous filing; removal of collateral. (a) The proper place to file, in order to perfect a security interest, is as follows:

(1) if the collateral is consumer goods, or is equipment used in farming operations or farm products, or accounts, contract rights, or general intangibles arising from or relating to the sale of farm products by a farmer, then in the office of the recorder in the recording district of the debtor's residence or, if the debtor is not a resident of the state, then in the office of the recorder in the recording district where the goods are kept, and in addition when the collateral is crops, in the office of the recorder in the recording district where the land on which the crops are growing or to be grown is located;

(2) if the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(3) in all other cases, in the office of the Department of Natural Resources.

(b) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to collateral as to which the filing complied with the requirements of AS 45.09.101 — 45.09.507, and is also effective with regard to collateral covered by the financing statement against a person who has knowledge of the contents of the financing statement.

(c) A filing which is made in the proper place in the state continues to be effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is later changed.

(d) If collateral is brought into the state from another jurisdiction, the rules stated in AS 45.09.103 determine whether filing is necessary in this state. (§ 9.401 ch 114 SLA 1962; am Executive Order No. 40 § 5 (1979); am Executive Order No. 47 § 5 (1980))

Effect of amendment. — Section 5, Executive Order No. 40 (1979) substituted "Department of Commerce and Economic Development" for "Department of Administration" at the end of paragraph (3) of subsection (a).

Section 5, Executive Order No. 47 (1980), substitutes "Natural Resources" for "Commerce and Economic Development" following "Department of" at the end of paragraph (3) of subsection (a).

Sec. 45.09.402. Formal requisites of financing statement; amendments. (a) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types or describing the items of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. If the financing statement

covers crops grown on real estate fixtures, the state real estate concerned. The financing statement must state that the circumstances; (2) proceeds under original collateral; describe the original property;

(b) A financing statement is sufficient if it is filed to perfect a security interest in collateral in a jurisdiction where the debtor must state that the circumstances; (2) proceeds under original collateral; describe the original property;

(c) A form subsection of this section: Name of debtor Address Name of secured party Address (1) This financing statement covers property:

(Describe) (2) If collateral is to be grown on real estate, describe real estate (3) If collateral is goods described in subsection (a), describe real estate (4) If proceeds are from the sale of products of the collateral, describe products

(d) The term "secured party" in AS 45.09.507 means the holder of a purchase money security interest in the collateral only if the requirements of subsection (a) are met.

(e) A financing statement which does not comply with the requirements of subsection (a) is void.

(f) Failure to file a financing statement under this section renders a purchase money security interest void against a holder of a purchase money security interest in the collateral only if the requirements of subsection (a) are met.

(g) The term "secured party" in AS 45.09.507 means the holder of a purchase money security interest in the collateral only if the requirements of subsection (a) are met.

(h) The term "secured party" in AS 45.09.507 means the holder of a purchase money security interest in the collateral only if the requirements of subsection (a) are met.

(i) The term "secured party" in AS 45.09.507 means the holder of a purchase money security interest in the collateral only if the requirements of subsection (a) are met.

(j) The term "secured party" in AS 45.09.507 means the holder of a purchase money security interest in the collateral only if the requirements of subsection (a) are met.

(k) The term "secured party" in AS 45.09.507 means the holder of a purchase money security interest in the collateral only if the requirements of subsection (a) are met.

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(m) The term "secured party" in AS 45.09.507 means the holder of a purchase money security interest in the collateral only if the requirements of subsection (a) are met.

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(o) The term "secured party" in AS 45.09.507 means the holder of a purchase money security interest in the collateral only if the requirements of subsection (a) are met.

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(q) The term "secured party" in AS 45.09.507 means the holder of a purchase money security interest in the collateral only if the requirements of subsection (a) are met.

(r) The term "secured party" in AS 45.09.507 means the holder of a purchase money security interest in the collateral only if the requirements of subsection (a) are met.

(s) The term "secured party" in AS 45.09.507 means the holder of a purchase money security interest in the collateral only if the requirements of subsection (a) are met.

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covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the information required in this subsection and is signed by both parties.

(b) A financing statement which otherwise complies with (a) of this section is sufficient, although it is signed only by the secured party, if it is filed to perfect a security interest in

(1) collateral already subject to a security interest in another jurisdiction when it is brought into this state; the financing statement must state that the collateral was brought into this state under these circumstances;

(2) proceeds under AS 45.09.306 if the security interest in the original collateral was perfected; the financing statement must describe the original collateral.

(c) A form substantially as follows is sufficient to comply with (a) of this section:

Name of debtor (or assignor)
 Address
 Name of secured party (or assignee)
 Address

(1) This financing statement covers the following types (or items) of property:

(Describe)

(2) (If collateral is crops) The crops described in (1) are growing or are to be grown on:

(Describe real estate)

(3) (If collateral is goods which are or are to become fixtures) The goods described in (1) are affixed or to be affixed to:

(Describe real estate)

(4) (If proceeds or products of collateral are claimed) Proceeds — Products of the collateral are also covered.

Signature of debtor (or assignor)

Signature of secured party (or assignee)

(d) The term "financing statement" as used in AS 45.09.101 — 45.09.507 means the original financing statement and amendments, but if an amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

(e) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. (§ 9.402 ch 114 SLA 1962; am § 1 ch 11 SLA 1963)

Failure to file a financing statement before the security interest attached, under this section, did not deprive the holder of a purchase-money interest in noninventory collateral of the favored status given by AS 45.09.312, where the other secured creditor could have protected itself by inquiring into the

debtor's interest in the collateral before Hotel Supply, Inc. v. United States, 431
accepting his chattel mortgage. Brodie F.2d 1316 (9th Cir. 1970).

Sec. 45.09.403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer. (a) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under AS 45.09.101 — 45.09.507.

(b) A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until the maturity date and afterward for 60 days. Any other filed financing statement is effective for five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 60-day period after a stated maturity date or on the expiration of the five-year period, as the case may be, unless a continuation statement is filed before the lapse. Upon the lapse the security interest becomes unperfected.

(c) A continuation statement may be filed by the secured party (1) within six months before and 60 days after a stated maturity date of five years or less, and (2) otherwise within six months before the expiration of the five-year period specified in (b) of this section. The continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective; it then lapses in the same manner as provided in (b) of this section unless another continuation statement is filed before the lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(d) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(e) The uniform fee for filing, indexing, and furnishing filing data for an original or a continuation statement is as prescribed by the administrative director of courts. (§ 9.403 ch 114 SLA 1962)

Sec. 45.09.404. Termination statement. (a) If there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must, on written demand by the debtor, send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by

a person other accompanied by record that he termination sta assignment or director of cou termination sta liable to the deb debtor by this f

(b) On preser he must note it files, mark "ter financing state assignment, or statement.

(c) The unifo including send prescribed by t SLA 1962)

Quoted in R.A. v. Shinjin Motor S No. 141 (File No.

Sec. 45.09.405. Filing officer; fees. (a) a security inte indication in th by an assignme of the statemen sign this statem officer of this t same as provi indexing, and indicating an director of cour

(b) A secure under a finan statement of a setting out the file number, ar name and add collateral assig statement if it to the filing of mark the sepa shall note the a

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a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement is as prescribed by the administrative director of courts. If the affected secured party fails to send the termination statement within 10 days after proper demand for it, he is liable to the debtor for \$100, and in addition, for any loss caused to the debtor by this failure.

(b) On presentation to the filing officer of the termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated," and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment, or statement of release pertaining to the financing statement.

(c) The uniform fee for filing and indexing a termination statement including sending or delivering the financing statement is as prescribed by the administrative director of courts. (§ 9.404 ch 114 SLA 1962)

Quoted in R.A. Duvenny & Associates (1975); State v. Alaska Int'l Air, Inc., Sup. Ct. Op. No. 1409 (File No. 2808), 562 P.2d No. 1141 (File No. 2411), 533 P.2d 1112 1064 (1977).

Sec. 45.09.405. Assignment of security interest; duties of filing officer; fees. (a) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy of an assignment on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of this financing statement, the filing officer shall mark the same as provided in AS 45.09.403(d). The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment is as prescribed by the administrative director of courts.

(b) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting out the name of the secured party of record and the debtor, the file number, and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of the separate statement, the filing officer shall mark the separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. The

uniform fee for filing, indexing, and furnishing filing data about the separate statement of assignment is as prescribed by the administrative director of courts.

(c) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record. (§ 9.405 ch 114 SLA 1962)

Sec. 45.09.406. Release of collateral; duties of filing officer; fees. A secured party of record may, by his signed statement, release all or a part of collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of the statement to the filing officer, he shall mark the statement with the hour and date of filing and shall note this information upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting the statement of release is as prescribed by the administrative director of courts. (§ 9.406 ch 114 SLA 1962)

Sec. 45.09.407. Information from filing officer. (a) If the person filing a financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy of it, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to the person.

(b) Upon request of a person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated in it, a presently effective financing statement naming a particular debtor and a statement of assignment of it, and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party in it. The uniform fee for the certificate is as prescribed by the administrative director of courts for each financing statement and for each statement of assignment reported therein. Upon request, the filing officer shall furnish a copy of a filed financing statement or statement of assignment for a uniform fee as prescribed by the administrative director of courts. (§ 9.407 ch 114 SLA 1962)

Article 5. Default.

Section	Section
501. Default; procedure when security agreement covers both real and personal property	505. Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation
502. Collection rights of secured party	506. Debtor's right to redeem collateral
503. Secured party's right to take possession after default	507. Secured party's liability for failure to comply
504. Secured party's right to dispose of collateral after default; effect of disposition	

Sec. 45.09.501 covers both real and personal property under a security agreement. Remedies provided by (c) of this section do not reduce his claim against the security interest in the documents, title, or as to the goods in possession held by the debtor. The cumulative effect of §§ 45.09.207, 45.09.208, and 45.09.209 is cumulative.

(b) After default, AS 45.09.501 - 45.09.507 and those provisions apply.

(c) To the extent of the duties on the secured party below may not be compulsory discharge to redemption agreement deterring rights and duties unreasonable.

(1) AS 45.09.501 accounting for

(2) AS 45.09.502 collateral;

(3) AS 45.09.503 discharge of obligation

(4) AS 45.09.504

(5) AS 45.09.505 failure to comply

(d) If the secured party is the secured party the personal property of the real property of the real property 45.09.507 do not

(e) If a security agreement is a levy which is upon the judgment security interest is a foreclosure meaning of the and afterward 45.09.501 - 45.09.507

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STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D

JUNEAU, ALASKA 99811

Phone: 465-2500

February 25, 1981

The Honorable Bob Mulcahy, Chairman
Senate Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Mulcahy:

Re: SB 179

Thank you for your request concerning our position on SB 179. It represents the work product of the Workers Compensation Study Commission. The Division of Insurance has been working closely with the Workers Compensation Study Commission on a number of the items covered by this legislation. We are in favor of the bill.

The bill transfers the function of regulating workers compensation self-insurance from the Alaska Workers Compensation Board to the Division of Insurance in this department. We are not overly enthralled with the prospect of acquiring this responsibility, but recognize that it is more akin to our operations than those of the board or the Department of Labor. The bill does provide the necessary tools to properly perform this function and section 2 of the bill is based substantially on work done by the Division of Insurance at the request of the Study Commission.

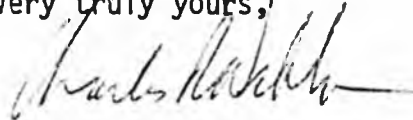
The bill revises the insurance fictitious group statute to permit workers compensation insurance groups to form with greater ease.

The bill revises the insurance rating law to encourage competitive rating in workers compensation insurance. This is a substantial departure from the current system which tends to fix rates by all insurers at the same level regardless of the individual insurer's experience or expenses. This new approach moves in the direction of a recent model by the National Association of Insurance Commissioners.

February 25, 1931

We have noted a number of corrections that need to be made. These appear in the enclosed section by section commentary. The commentary is confined to sections 1, 2, 4, 5, 6, 7, 13, 14, 15, 19, 20, 25, 26, 28, 29, 46, 64 and 70.

Very truly yours,



Charles R. Webber
Commissioner

CRW/mh3/15

Enclosure

SB 179
Section by Section Commentary

Section 1. This section is a purpose section for section 2 of the bill.

Section 2. This section adds a new chapter to the insurance code dealing with workers compensation self-insurers. It transfers the function from the Workers Compensation Board to the Division of Insurance. It newly provides for self-insurer groups. The chapter outlines requirements intended to aid in determining the ability of the self-insurer to meet its obligations under AS 23.30. These functions are totally new to the Division of Insurance and will require expertise not presently housed there. The functions are more akin to the functions of the Division of Insurance than they are to the Workers Compensation Board functions.

On page 7, line 24, a stay of revocation provision is included which provides a stay "until the hearing process is completed." This language is ambiguous since no definition provides when the process is completed.

* Proposed Amendment. On page 7, line 24, remove the phrase "hearing process is completed" and add "the time noted in the order issued by the director following the hearing but not sooner than five days following the order."

Section 4. This section modifies the fictitious group statute to facilitate the formation of workers compensation safety groups. Groups do not have standing under the rate law to make rate or rating plan filings. Insurance companies have standing. A minor revision will correct the problem.

* Proposed Amendment. On page 9, line 5, following the word "has" insert the phrase "through an insurer."

Sections 5-6. These sections modify the Alaska insurance rate law for workers compensation from its present prior approval approach to a file and use approach. Under the present system, a single rating organization files rates for all insurers and the insurers are required to adhere to that schedule of rates. This results in little or no rate competition. This proposal would change the role of the rating organization in a way that would result in a wide selection of insurance rates. Under the proposed change

\$100 for each day the insurer fails or refuses to pay a final award or judgement (excluding the period permitted for appeal) made against it, or its insured, or it fails or refuses to comply with a provision of this chapter."

Section 15. This section is similar in some respects to HB 94. It changes the formula for payments to the second injury fund from 8% on permanent partial disabilities to 6% on permanent total, permanent partial, temporary total, and temporary partial injuries. This formula will improve the cash flow to the second injury fund. The actuaries of the rating organization have estimated the impact on workers compensation insurance rates to be an increase of 1%.

Sections 19, 20, 25, 26, 28, 29, and 64. The changes in these sections relate to the change in section 2 whereby the regulation of self-insurers is transferred from the Workers Compensation Board to the Division of Insurance.

Sections 25, 26 28 and 64. These sections change "board" to "director of insurance" and also change "compensation" to "benefit." The transfer of the regulation of self-insurance has too quick an effective date to avoid problems. Time is needed to staff, to develop regulations to implement the changes and to work out the bugs. The transfer should be implemented on July 1, 1982. This necessitates a splitting of these sections to reflect that certain changes occur at later dates.

*

Proposed Amendment. Split section 25 on page 23, lines 12-24, into 2 sections, 25A and 25B, to read as follows:

Sec. 25A. AS 23.30.075(a) is amended to read:

(a) An employer under this chapter, unless exempted, shall either [,] insure and keep insured for his liability under this chapter in an insurance company or association duly authorized to transact the business of workers compensation insurance in this state, or shall furnish the board satisfactory proof of his financial ability to pay directly the benefits [COMPENSATION] provided for. If an employer elects to pay directly, the board may, in his [ITS] discretion, require

(1) the deposit of an acceptable security, indemnity or bond to secure the payment of benefit [COMPENSATION] liabilities as they are incurred; and

the rates for each insurer for a particular classification would be different. Insurers would be competing in areas that they do not typically compete in now, including expenses and investment income.

Section 7. This section modifies the deviation section of the insurance rate law to make clear that a rate filing under sections 5 and 6 are not deviations and that a deductible or loss reimbursement plan is not considered a deviation.

Section 13. This section is intended to encourage the use of deductible provisions in a workers compensation insurance policy. It provides that the insurer is liable for the full benefit required under the law but permits recovery by the insurer from the insured employer of the amount they have agreed upon.

Section 14. AS 23.30.030(7) is a required provision in a workers compensation policy. Unfortunately, it is not workable. Form filings are made by a rating organization on behalf of all its member and subscriber companies, so that it is not possible to disapprove the form in the manner outlined. The director of insurance does not presently accept or receive proofs of insurance from any insurer so this language is meaningless. The approach here would penalize all other insured employers of the insurance company and could leave them uninsured. Its akin to killing a gnat with a baseball bat. A better approach would be to allow specific penalty to be determined on the basis of the severity of the specific situation. This could range from a fine to a suspension of authority.

*

Proposed Amendment. On page 16, lines 22-29 and page 17, line 1, amend AS 23.30.030(7) to read:

"(7) If the insurer fails or refuses to pay a final award or judgement (except during the pendency of an appeal) made against it, or its insured, or if it fails or refuses to comply with a provision of this chapter, the director of insurance [COMMISSIONER SHALL REVOKE THE APPROVAL OF THE POLICY FORM, AND MAY NOT ACCEPT FURTHER PROOFS OF INSURANCE FROM IT UNTIL IT HAS PAID THE AWARD OR JUDGEMENT OR HAS COMPLIED WITH THE VIOLATED PROVISION OF THIS CHAPTER, AND HAS RESUBMITTED ITS POLICY FORM AND RECEIVED THE APPROVAL OF THE FORM BY THE INSURANCE COMMISSIONER] may suspend or revoke the insurer's Certificate of Authority pursuant to AS 21.09.150 or impose a fine upon the insurer of not less than \$25 and not more than

(2) proof of excess insurance.

Sec. 25B. AS 23.30.075(a) is amended to read:

(1) An employer under this chapter, unless exempted, shall either insure and keep insured for his liability under this chapter in an insurance company or association duly authorized to transact the business of workers compensation insurance in this state, or shall furnish the director of insurance [BOARD] satisfactory proof of his financial ability to pay directly the benefits provided for. If an employer elects to pay directly, the director of insurance [BOARD] may in his [ITS] discretion, require

(1) the deposit of an acceptable security, indemnity or bond to secure the payment of benefit liabilities as they are incurred; and

(2) proof of excess insurance.

* Proposed Amendment. Split section 26 on page 23, lines 25-29, and page 24, lines 1-9, into two sections, 26A and 26B to read as follows:

Sec. 26A. AS 23.30.075(b) is amended to read:

(b) An employer who fails to insure and keep insured employees subject to this chapter or fails to obtain a certificate of self-insurance from the board, upon conviction, is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the [SAID] corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the [SUCH] corporation shall be subject to the penalties prescribed herein and shall be personally, jointly and severally liable together with the corporation for the payment of all [COMPENSATION OR OTHER] benefits for which the corporation is liable under this chapter if the [SAID] corporation at such time is not insured or qualified as a self-insurer.

The above section is unchanged from the bill since need for a further change to page 23, line 28, was overlooked. That change is incorporated in section 26B.

Sec. 26B. AS 23.30.075(b) is amended to read:

(b) An employer who fails to insure and keep insured employees subject to the chapter or fails to obtain a certificate of self-insurance from the director of insurance

[BOARD], upon conviction, is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the corporation shall be subject to the penalties prescribed herein and shall be personally, jointly and severally liable together with the corporation for the payment of all benefits for which the corporation is liable under this chapter if the corporation at such time is not insured or qualified as a self-insurer.

* Proposed Amendment. Split section 28 on page 24, lines 19-27 into two sections, 28A and 28B to read as follows:

Sec. 28A. AS 23.30.085(a) is amended to read:

(a) An employer subject to this chapter, unless exempted, shall initially file evidence of his compliance with the insurance provisions of this chapter with the board, in the form prescribed by it. The employer shall also give evidence of compliance within 10 days after the termination of his insurance by expiration or cancellation. These requirements do not apply to an employer who has certification from the board of his financial ability to pay benefits [COMPENSATION] directly without insurance.

Sec. 28B. AS 23.30.085(a) is amended to read:

(a) An employer subject to this chapter, unless exempted, shall initially file evidence of his compliance with the insurance provisions of this chapter with the board, in the form prescribed by it. The employer shall also give evidence of compliance within 10 days after the termination of his insurance by expiration or cancellation. These requirements do not apply to an employer who has certification from the director of insurance [BOARD] of his financial ability to pay benefits directly without insurance.

* Proposed Amendment. Split section 64 on page 46, lines 16-22 into two sections, 64A and 64B to read as follows:

Sec. 64A. AS 23.30.265(19) is amended to read:

(19) "self-insurer" means an employer who, instead of insuring his liability under this chapter as it provides elects to pay directly the benefits [COMPENSATION] provided for, and who has furnished to the board satisfactory proof of his financial ability to make the direct payments and has been issued a self-insurance certificate;

Sec. 64B. AS 23.30.265(19) is amended to read:

(19) "self-insurer" means an employer who, instead of insuring his liability under this chapter as it provides, elects to pay directly the benefits provided for, and who has furnished to the director of insurance [BOARD] satisfactory proof of his financial ability to make the direct payments and has been issued a self-insurance certificate;

Section 29. The language on page 25, lines 4-9, conflicts with sec. 21.62.160 on page 7. It is not needed.

* Proposed Amendment. On page 25 remove the sentences starting on line 4 and ending on line 9.

The new language on page 25 starting on line 9 and ending on line 13 poses a problem since the director will not necessarily know to whom notices must be sent.

* Proposed Amendment. On page 25, line 13, following the word "state," add "provided that the contracting agency has obtained proof of self-insurance from the employer designating the contracting agency as a person to receive notice under this section."

Section 46. No comment generally on this section except to say that the use of a draft on page 38, line 21, is in conflict with a barrier to drafts found in AS 21.89.030 adopted in 1968.

* Proposed Amendment. On page 38, line 21, remove the words "or draft."

Section 70. This is the effective date section calling for an effective date of July 1, 1981. See comments on section 25.

* Proposed Amendment. This section should be split into two sections, 70A and 70B to read as follows.

Sec. 70A. Sections 3, 4-18, 19A, 21-24, 25A, 26A, 27, 28A, 30-53, 64A and 65-69 of this Act take effect on July 1, 1981.

Sec. 70B. Sections 1, 2, 19B, 20, 25B, 26B, 28B, 29 and 64B of this Act take effect on July 1, 1982.

Bill No. Senate Bill 179

Date March 2, 1981

Title "An Act relating to workers' compensation; providing for an effective date."

Contact: *JK* Judy Knight and
465-2700
Jacquelyn McClintock
465-2790

This legislation reflects the work accomplished by the workers' compensation study commission and is the result of considerable testimony at commission hearings from workers, labor groups, employers, insurance companies, attorneys, and state agency personnel.

The Workers' Compensation Board and Division have worked very closely with the study commission in recommending amendments that are aimed towards reducing litigation and administrative delays in processing claims. The amendments to AS 23.30 will clarify inconsistencies and ambiguities in the language of the Act and will bring that language into harmony with interpretations set forth in existing court decisions and with the current practice of the Alaska Workers' Compensation Board.

The Department of Labor supports the bill with minor amendments to Sections 15 and 46 and feels it will be a significant factor in reducing the costs of workers' compensation to the employer without jeopardizing benefits to the injured worker.

A Fiscal Note and section by section analysis of the changes affecting the Workers' Compensation Board and Division have been prepared.

WCCA

POSITION PAPER

ADDENDUM I

GLOSSARY OF TERMS:

DISABILITY: INCAPACITY DUE TO AN INJURY TO EARN THE WAGES WHICH THE EMPLOYEE WAS RECEIVING AT THE TIME OF THE INJURY

PERMANENT TOTAL DISABILITY: A DETERMINATION THAT DUE TO AN INJURY THE EMPLOYEE IS SUFFERING FROM AN IMPAIRMENT WHICH WILL KEEP HIM FROM BEING ABLE TO WORK AGAIN AT REGULAR EMPLOYMENT

PERMANENT PARTIAL DISABILITY: A DETERMINATION MADE AFTER THE CONDITION STABILIZES OF THE EXTENT OF DISABILITY ARISING FROM THE INJURY, USUALLY A SCHEDULED BENEFIT

TEMPORARY TOTAL DISABILITY: INDEMNITY PAYMENTS MADE TO AN INJURED EMPLOYEE FOR THE AMOUNT OF TIME OUT OF WORK DUE TO AN INJURY UNTIL THE CONDITION STABILIZES

COMPROMISE AND RELEASE AGREEMENT: AGREEMENT REACHED BETWEEN INJURED PARTY AND EMPLOYER OVER EXTENT AND DOLLAR VALUE OF THE INJURY, WHICH MUST BE APPROVED BY THE WORKER'S COMPENSATION BOARD, AND CAN RESULT IN A LUMP SUM PAYMENT CLOSING OUT THE INDEMNITY PORTION OF THE CLAIM

AVERAGE WEEKLY WAGE: COMPUTATION OF ALL WAGES EARNED OVER A PREDETERMINED AMOUNT OF TIME, DIVIDED BY THAT NUMBER OF WEEKS

SELF-INSURER: AN EMPLOYER WHO, RATHER THAN PURCHASING INSURANCE, HAS ELECTED TO PAY DIRECTLY THE COMPENSATION REQUIRED AND HAS PROVIDED SUBSTANTIAL PROOF OF HIS ABILITY TO MAKE THE PAYMENTS

SECOND INJURY FUND: FUND SET UP TO COVER DISABILITY AND REHABILITATION COSTS IN CASES WHERE INJURIES OCCUR TO INDIVIDUALS ALREADY DOCUMENTED AS HAVING A PREEXISTING INJURY

NOTE: ON PAGE 4 OF THE WCCA POSITION PAPER, UNDER OFFSETS WORKER'S COMPENSATION BENEFITS, SECTION 2, WCCA POSITION, THE FOLLOWING CORRECTION SHOULD BE MADE: THAT THE SUM OF THESE WEEKLY PAYMENTS BE LIMITED TO 100% OF THE WORKER'S TAKE HOME WAGE, WITH THE WORKER'S COMPENSATION BENEFIT BEING PAID FIRST.

Worker's Compensation Committee of Alaska (WCCA)
P. O. Box 1647
Anchorage, Alaska 99501

Mr. Tim Kelly
283 Muldoon Road
Stn. Box 76
Anchorage, Alaska 99504

Dear Senator Kelly:

The Worker's Compensation Committee of Alaska (WCCA) is a political action committee. The committee was formed by a group of Alaskan employers concerned about the economic impact on business of the workers' compensation system in Alaska.

The committee does not want to deprive workers of legitimate benefits. Our objectives are to establish a mechanism for the handling of disputed claims, to encourage a well structured rehabilitation program, and to establish an awareness of the fact the workers' compensation costs are passed on directly to the consumer.

To these ends, we have been actively working with and communicating with employers and employer groups all over the State. We have encouraged these employers and groups to appear at hearings on Workers' Compensation offering input based on a wide range of experiences, and showing the broad base of employer concerns with the problems in the current system.

At this time, we are enclosing an information booklet on the status of the present Workers' Compensation law and our Position Paper outlining our recommendations for legislative and administrative changes in the Workers' Compensation system in the State of Alaska. If you desire any further clarification of our position, WCCA will be happy to provide you with additional information.

Very truly yours,

Richard Cattanch
at

Board of Directors
Worker's Compensation Committee of Alaska

Howard Addison, Tesoro Alaska Petroleum Co.
Richard Cattanch, Unit Company, Alaska Chapter, AGC
Ann Cox, DHL Worldwide Express
Howard Cutter, Alyeska Pipeline Service Co.
Ken Kleker, J.B. Gottstein and Co.
Bud Obermeyer, INA/Alpac
Don Scott, NANA Regional Corp.
Jan Sloan, Clary Insurance Agency
Tom Tierney, Corroon & Black/ Dawson & Co.
Jack Thompson, Air Van Lines
Ike Waldrop, Alaska Chapter, NECA
David Wilkes, American Federation of Business

349-4568

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LABOR

BOX 1149
JUNEAU, ALASKA 99811

Ph: 465-2790

March 3, 1981

The Honorable Bob Mulcahy, Chairman
Senate Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Mulcahy:

Re: SB 179

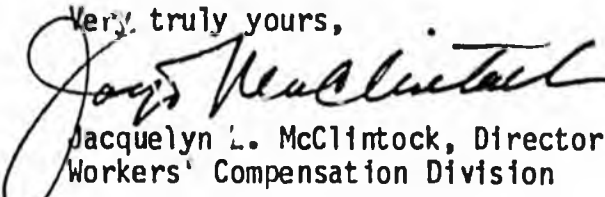
Thank you for your request concerning our position on SB 179.

This bill reflects the work accomplished by the Workers' Compensation Study Commission and is the result of considerable testimony at commission hearings from workers, labor groups, employers, insurance companies, attorneys and state agency personnel. Our agency has worked very closely with the Workers' Compensation Study Commission in recommending amendments that are aimed towards reducing litigation and administrative delays in processing claims. The amendments to AS 23.30 will clarify inconsistencies and ambiguities in the language of the Act and will bring that language into harmony with interpretations set forth in existing court decisions and with the current practice of the Alaska Workers' Compensation Board.

We feel the legislation proposed in SB 197 will be a significant factor in reducing the costs of workers' compensation to the employer without jeopardizing benefits to the injured worker and we strongly support the bill.

We have noted minor corrections that should be made to sections 15 and 46 and have enclosed a section by section discussion of the changes that effect the Workers' Compensation Board and Division.

Very truly yours,


Jacquelyn L. McClintock, Director
Workers' Compensation Division

JLM/mjs

Enclosure

PROPOSED AMENDMENTS

- 1) Sec. 15. AS 23.30.040(b), page 17, lines 13-15:

The amended section requires clarification on subsequent contributions to the Fund if the employee's claim exceeds one year from the date of injury. We suggest the bill be revised to read:

The first contribution must be made by one year from the date of the injury or on termination of the employee's claim, whichever is sooner. Subsequent contributions must be made yearly or on termination of the employee's claim, whichever is sooner.

- 2) Sec. 46. AS 23.30.155(d), page 36, lines 18-26:

This amendment was intended to clarify when the employer should file notice of controversion both initially and midstream on an employee's right to benefits. The word OR following the word death was omitted and should be corrected to read:

If the employer controverts the right to benefits, [COMPENSATION] he shall file with the board on or before the 14th day after he has knowled of the alleged injury or death or on or before an installment of compensation payable without an award is due, a notice of controversion on [, IN ACCORDANCE WITH] a form prescribed by the board [, STATING THAT THE RIGHT TO COMPENSATION IS CONTROVERTED, THE NAME OF THE CLAIMANT, THE NAME OF THE EMPLOYER, THE DATE OF THE ALLEGED INJURY OR DEATH, AND THE GROUNDS UPON WHICH THE RIGHT TO COMPENSATION IS CONTROVERTED].

3. AS 23.30.155(o), page 38, line 29 and page 39, lines 1-5:

The purpose of this amendment was to require the employer to report the total amount of all benefits, legal fees and penalties paid during the year or upon termination of a claim, whichever is sooner. Section requires correction to delete the word quarter and clarification on subsequent reports if the employee's claim exceeds one year from the date of injury. We suggest the bill be revised to read:

An employer shall file on or before the date one year from the date of injury or upon termination of the claim, whichever is sooner, a report on a form prescribed by the board, showing the total amount of all benefits, legal fees, and penalties paid during that period [THE QUARTER including the name of the claimant, the date of injury, and the claim number. Subsequent reports must be made yearly or upon termination of the claim, whichever is sooner.

HB 159/SB 179
Section by Section Analysis

Section 1-2. Section analysis by the Department of Commerce and Economic Development, Division of Insurance.

Section 3. This section prevents discriminatory employment practices on the part of employers towards employees who have filed a claim for workers' compensation benefits. The same prohibition is cross-referenced in AS 23.30.263 under Section 61.

Section 4-7. Section analysis by the Department of Commerce and Economic Development, Division of Insurance.

Section 8. This section adds an additional panel to the Alaska Workers' Compensation Board which may sit in any judicial district in the event regular panel members are unable to attend scheduled hearings. Members of the board, except the Chairman or his designees, are citizens appointed, pursuant to AS 23.30.005 and at times have scheduling conflicts with their own occupational duties. The amendment will insure that disputed claims are heard expeditiously by a full board panel and will provide the resources to conduct additional board hearings when the workload requires.

Section 9-12. The term "benefits" is substituted for "compensation" to achieve consistency throughout AS 23.30 in conformity with court and board interpretations. The term "benefits" is defined in AS 23.30.265(28) under Section 66 to mean "compensation and medical and related benefits." The definitions for "compensation" and "medical and related benefits" already exist under AS 23.30.265(8) and (16). This amendment will clarify current misunderstandings in interpreting these terms.

Section 13-14. Section analysis by the Department of Commerce and Economic Development, Division of Insurance. Section 14 also includes substitution of "benefits" for "compensation" where applicable.

Section 15. The repeal and reenactment of AS 23.30.040 is necessary if the second injury fund is to continue to meet its statutory obligations to rehabilitate the injured and disabled worker and to reimburse employers/carriers on subsequent injury claims.

This section expands the base for contributions to the second injury fund and incorporates a contribution schedule which will insure the solvency of the fund. It changes the base for payments to the fund from permanent partial disability to permanent total, permanent partial, temporary

total and temporary partial disabilities. Under Section 69, an initial contribution rate of 6 percent is established which will build reserves before a sliding rate scale takes effect in 1983. It also allows a more realistic maintenance allowance of \$200 a month and total maximum expenditures for retraining to \$10,000 in order to adequately cover the inflationary rise in expenses encountered for rehabilitation or retraining. The section also transfers the administrative expenses of the state from the resource of the second injury fund to the general fund.

Section 16-17. Substitution of "benefits" for "compensation" where applicable.

Section 18. This section allows placement of disabled employees who are being rehabilitated for gainful employment into work situations where the employer is willing to pay some wages to the trainee but does not want the risk of new injury to the handicapped person and the consequent increase in employer's insurance premiums; or if no other employees, having to obtain workers' compensation insurance just for the trainee. Successful rehabilitation will result in getting the handicapped employee back to a self-sustaining tax-paying citizen of the state and is worth the investment by the state in accepting the risk of his being re-injured while learning a new occupation. This amendment will also encourage employers to pay wages to the trainee and reduce costs to the rehabilitation agency sponsoring the trainee.

The section also permits the Department of Labor to place eligible persons in rehabilitation programs with an employer in the event a request is not made through the office of vocational rehabilitation.

Section 19-20. Section analysis by the Department of Commerce and Economic Development, Division of Insurance.

Section 21-26. Sections include substitution of "benefits" for "compensation" where applicable and analysis by the Department of Commerce and Economic Development, Division of Insurance.

Section 27. Adds a subsection which stiffens the penalties to employer who fail to insure or provide security for workers' compensation liability to their employees and provides the Board with the means to enforce that statutory requirement through stop order authority. Failure to enforce the requirement that all employers secure liability for worker compensation results in a disparity to the employer who does insure and must figure the costs of insurance into his costs of doing business and forces the injured worker to rely on medical care and funds from public assistance programs.

Section 28-30. Section analysis by the Department of Commerce and Economic Development, Division of Insurance. Also includes substitution of "benefits" for "compensation" where applicable.

Section 31. This section deletes wording which makes it necessary for an injured employee to appeal to the Alaska Workers' Compensation Board if the need for medical treatment due to work injury extends beyond two years. The board has repeatedly held that if continued medical treatment is required due to the injury, the costs should be paid by the employer's insurance carrier regardless of whether the need for medical treatment has lasted for over two years yet, some adjusters continue to stop medical costs and advise the employer the law provides for only two years of medical coverage. The employee then either hires an attorney or petitions the board for help and often the matter must be heard and ruled on by the board before the carrier will pay additional medical costs. As a result the board is required to hold unnecessary hearings, the carrier incurs unnecessary attorney fees and the general costs of the workers' compensation program is unnecessarily increased.

The section also deletes wording that requires an employee if he wishes to change doctors, to do so "in accordance with rules prescribed by the board." The board is adverse to setting out rules, which would in any way, hamper the recovery process or the employee's right to the selection of the treating physician. If the employee abuses this right, the employer/carrier may seek relief through board hearing.

Section 32. This section encourages prompt reporting of treatment by doctors treating injured workers. Some doctors now file a report on first treatment but fail to notify the carrier of follow-up treatment. When the doctor gets around to billing some months later, the bill is considerable. Some doctors have continued to treat an employee after sending a first report indicating further care was not necessary or would be minimal. By the time the carrier gets a bill and a follow-up report, the bill is for many hundreds of dollars. This change will also provide the board and employer/carrier with the current medical status on the employee so that his progress can be better monitored.

Section 33. This section deletes language left over in the Act from the days when the employer selected the physician. Experience has shown that the employee never exercises this right except upon the urging of his doctor or attorney. This situation delays resolution of disputed claims and allows some doctors to unnecessarily increase the costs of workers' compensation while they stand around watching another doctor perform an examination of an injured worker. This process is duplicative, involves at least 4 parties and wastes time. Section also includes substitution of "benefits" for "compensation" where applicable.

Section 34-36. Substitutes "benefits" for "compensation" where applicable

Section 37. This section deletes ambiguous language which is the result of incomplete amending in 1962 to the statute of limitations provision for filing a claim.

In W. R. Grasle Co. v. Alaska Workmen's Compensation Board, 517 p.2d 999 (Alaska 1974), the Supreme Court found no time frame in which the four-year statute may operate subsequent to the 1962 amendment.

The section also includes substitution of "benefits" for "compensation" where applicable.

Section 38-40. Substitutes "benefits" for "compensation" where applicable

Section 41. This section provides realistic time frames in the board hearing process and rids the statute of board authorization to rule on a claim without benefit of the parties to be heard. The change from 10 to 20 days for service of notice of hearing will allow sufficient time for the parties to properly prepare the case for board hearing, thereby reducing the number of continuances or further hearings, and will enable conformance with 8 AAC 45.070(b). Due to the time required for the board to adequately research the difficult legal issues involved in many cases and the geographic separation of some members, the board has consistently been unable to comply with the statutory requirement of 20 days for issuance of its written decision and order. The change from 20 to 30 days is proposed to grant sufficient research time for the board to set forth its findings and conclusions according to proper statutory criteria, thereby reducing the number of hearings resulting from remands or requests for modification of award, and to allow additional time for the order to be sent to the board members for their review and signature.

The section also deletes the portion of the provision authorizing the board to rule on a claim without benefit of hearing. This portion has never been used by the board as it precludes the right of the parties to be heard or the opportunity for cross-examination on the issues of the claim.

Includes substitution of benefits for compensation where applicable.

Section 42-45. Substitutes "benefits" for "compensation" where applicable

Section 46.

The amendments in AS 23.30.155 are essentially "house-keeping" changes and are aimed primarily towards reducing litigation and administrative delays in processing claims. These changes address serious problems or gaps in the Act which mislead or confuse employees, employers, and insurance carriers and which result in needless litigation. This section 1) clarifies a controverted claim and the requirement under which a notice of controversion must be filed; 2) requires notice be filed with the board whenever payment of compensation has begun, terminated or changed and provides penalties for failure to file such notice; 3) includes substitution of "benefits" for "compensation" where applicable; 4) requires board approval for reimbursement of advance payments or overpayments of compensation from unpaid installments; 5) requires that compensation be paid by a check or draft which may be immediately cashed; 6) authorizes the board to order lump sum payments for both scheduled and unscheduled permanent partial disabilities under AS 23.30.190, whenever it is in the interest of the injured employee and will not cause substantial hardship to the employer (the board currently is authorized to order lump sum settlements for unscheduled permanent partial disability under AS 23.30.190(20)); and 7) requires periodic reporting of all payments made on claims which will be used to provide the public and private sectors with current and accurate injury statistical data.

Section 47-49. Substitutes "benefits" for "compensation" where applicable.

Section 50. This section changes the method by which the average weekly wage is determined in all jurisdictions for purposes of computing compensation and provides for a consistent and equitable means to adjust compensation rates for claims being paid to out-of-state recipients.

Section 51. This section clarifies the rules under which compensation rates are adjusted for recipients not residing in Alaska consistent with legislative intent and regulations, insure adequate benefit levels for those recipients and provide for an annual adjustment in the compensation rate commensurate with changes in average weekly wages.

Section 52. This section deletes language now provided for in AS 23.30.155(n) under Section 46.

Section 53.

This section provides for payment of compensation to an injured worker at his temporary total disability rate while undergoing rehabilitation or retraining. This change is consistent with interpretations set forth in Supreme Court decisions and with current board practice.

AS 23.30.191 was enacted in 1963 when there was a limit of compensation paid for both temporary and permanent partial disabilities. It was often the case that an injured worker would be paid the maximum, but required rehabilitation to return to the work force. To provide rehabilitation to those no longer entitled to temporary disability compensation, payment of one-half the rate was paid under Section 191. For injuries after May 22, 1975, there is no maximum limit for payment of temporary disability and such compensation should be continued while undergoing rehabilitation if the worker is incapacitated from earning the wages as before injury.

In Phillips Petroleum Company v. Alaska Industrial Board, 17 Alaska (1958), the Supreme Court stated:

"The period of temporary total disability is defined as: the healing period or the time during which the workman is wholly disabled and unable by reason of his injury to work."

Our statute defines "disability as the incapacity because of injury to earn the wages which the employee was receiving at the time of injury. When such a condition is temporary, AS 23.30.185 requires the payment of temporary total disability compensation during the continuance of the disability.

The intent of the Act is to encourage injured workers who are totally or partially incapacitated for their normal occupation, to undergo vocational rehabilitation efforts aimed toward return to gainful employment. This not only benefits the worker, but reduces the future liability of the employer for payment of permanent partial or permanent total disabilities. To reduce the compensation rate by one-half when the worker does undertake such a program discourages rather than encourages participation in retraining.

Section 54. This section provides for the modification of a compromise and release agreement to the degree that a board order can be modified.

AS 23.30.210(b) grants the employee and the employer the right to enter into an agreement to resolve a disputed claim. The board must approve the compromise and release for the agreement to be valid and, if approved, the agreement is enforceable the same as an order of the board. If the language of the Act is strictly construed however, the agreement cannot be modified within one year for a mistake of fact or a change in condition as is allowed in the board's orders. Fraud, actual or constructive is the only ground for modification. The board, based on its experience with hardships and harsh results in cases involving change of condition, latent injury or mistake of fact in cases where compromise and release agreements have been approved, believes an agreement should be modifiable at least to the degree that an order can be modified.

Section also includes substitution of "benefits" for "compensation" where applicable.

Section 55. This section provides for inflationary increases in funeral expenses on death claims. The current limit for reasonable and necessary funeral expenses are not adequate and result in a hardship to the family of the deceased or the employer for payment of the additional costs.

Section 56-57. Sections substitute "benefits" for "compensation" where applicable.

Section 58. This section provides stiffer penalties for employees who wilfully misrepresent a claim to collect benefits.

Section 59-60. Sections substitute "benefits" for "compensation" where applicable.

Section 61. See Section 3.

Section 62. Section substitutes "benefits" for "compensation" where applicable.

Section 63. Section amends definition of "medical and related benefits" to include pain clinic services.

Section 64. Section analysis by the Department of Commerce and Economic Development, Division of Insurance. Also includes substitution of benefits for Compensation where applicable.

- Section 65. This section clarifies the definition of "wages" for purposes of computing an employee's average weekly wage. The deletion of "in force at the time of the injury" is necessary to make the definition consistent with the method by which the average weekly wage is determined under AS 23.30.220 as a result of the 1977 amendments.
- Section 66. This section is amended to include a definition for "benefit" as explained in Section 9-12, and defines the term "reservation rate" as used in Section 15.
- Section 67. Section deletes inconsistent and ambiguous language in the Act and those provisions that are repealed by the proposed legislation.
- Section 68. This section clarifies that the amount of payment to the second injury fund and the conditions under which payment is required, is in accordance with the version of AS 23.30.040(b) that was in effect on the date of injury to the employee.
- Section 69. See Section 15.
- Section 70. This section provides for an effective date for the bill of July 1, 1981.



Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

Definitions (in the context of SB 179):

BENEFITS: Compensation and related medical benefits

SECOND INJURY FUND: Fund established to cover disability and Rehabilitation costs in cases where injuries occur to individuals already documented as having a pre-existing injury.

Permanent Total Disability: A determination that due to an injury the employee is suffering from an impairment which will keep him from being able to work again at his regular employment.

PERMANENT PARTIAL DISABILITY: A determination made after the condition stabilizes to the extent of disability arising from the injury, usually a scheduled benefit.

TEMPORARY TOTAL DISABILITY: Indemnity payments made to an injured employee for the amount of time out of work due to an injury until the condition stabilizes.

COMPROMISE AND RELEASE AGREEMENT: Agreement reached between the injured party and employer over the extent and dollar value of the injury which must be approved by the Workers Compensation Board, and can result in a lump sum payment closing out the indemnity portion of the claim.

AVERAGE WEEKLY WAGE: Computation of all wages earned over a pre-determined amount of time, divided by that number of weeks.

SELF INSURER: An employer who, rather than purchasing insurance, has elected to pay directly the compensation required and has provided substantial proof of his ability to make payments.

WAGES: Wages means the money rate which the services rendered is recompensed under the contract of hiring, and includes the reasonable value to the employee of board, rent, lodging, or similar advantage received from the employer, and gratuities received in the course of employment.

RESERVE RATE: Means the unencumbered second injury fund balance on October 31st of each year as a percentage of disbursements from the Second Injury Fund during the 12 month period ending June 30th of the same calendar year.

Medical Benefits to include pain clinic services.

FEATURES OF SB 179:

1. SB 179 increases the Workmans Comp board from 7 members to 9.
2. Provides for 3 additional staff for Div. of Insurance
3. Introduced to reduce costs to employers, yet retain protection for the injured employee
 - A. Provides for self insurers to form (less expensive)
 - B. Extends benefits of the Second injury fund to assist in rehabilitating injured worker and returning him to the work force. Expands the base for contributions
4. Through out the bill language substitutions are made between "benefits" and "compensation"; clarifies current misunderstandings
5. Defines classes of disabilities:
 - a. Permanent total
 - b. Permanent Partial
 - Temporary Total
 - d. Defines Reserve Rate, Compromise and Release Agreement, Average weekly Wages.
6. Allows medical benefits to extend to Pain Clinics
7. Prevents discriminatory employment practices towards employees who have filed for Compensation
8. Insures claims (disputed) are heard expeditiously
9. Establishes solvency minimums for self insurers
10. Stiffens penalties to employers who fail to insure
11. Transfers Authority from Workmans Comp. Brd. to Div. of insurance for regulating insurance related matters
12. An employer subject to this chapter must file evidence of his insurance compliance
13. Allows the placement of a disabled employee who is being rehabilitated into a work situation where the employer is paying some wages to the trainee, but does not want the risk of further injury to the employee or the increase of employers insurance premiums.
14. Permits the Dept. of Labor to place eligible persons in rehab programs with an employer in the event a request is not made through the Div. of Vocational Rehabilitation.

SB 179 continued:

15. Provides that if additional treatment is necessary due to the injury, the cost should be paid by the employers insurance carrier. Regardless of whether the treatment has lasted over 2 years.
16. Outlines the employees right to the selection of physicians; If the employee abuses this right, the employer/carrier may seek relief through a Board hearing.
17. Encourages prompt reporting by physicians. Provides the Board and employer/carrier with current medical status on the employee so they may monitor recovery.
18. Provides a time frame of 20 days notice (currently 10 days) of hearing to allow more sufficient time for the parties to prepare their cases.
19. In the case of written decisions/orders the period of time is extended from 20 to 30 days to allow the board adequate time for research. Should reduce the number of hearings resulting from a request for the modification of an award.
20. Deletes the portion of the provision authorizing the Board to rule on a claim without the benefit of a hearing.
21. Changes the method by which the average weekly wage is determined; The average weekly wage for Alaska is determined by dividing the total wages paid by all the employers covered by the Alaska Employment Security Act, by the average monthly employment reported by these employers for the same period and dividing by 52.
22. For those employees who reside outside Alaska, the average weekly comp shall be calculated by using the employees average weekly wage times the ratio of the average weekly wage of the area in which the recipient resides to the average weekly wage of Alaska.
23. Provides for Payment of compensation to an injured worker at his temporary total disability rate while under going rehabilitation or retraining.
24. Defined disability as the incapacity of the injured worker to earn the wages which he was receiving at the time of his injury.
25. When an injury condition is temporary, the statute requires the payment of temporary total disability compensation during the continuance of the disability. The intent of this is to provide the injured worker with the added initiative to retrain thru Vocational Rehab to return to gainful employment.

26. Grants the employee and the employer the right to enter into an agreement to resolve disputed claims. The board must approve the compromise and Release agreement for the agreement to be valid, and if approved the agreement is enforceable the same as an order of the Board.
27. Provides for inflationary increases in the funeral expenses on death benefits.
28. Stiffer penalties for employees who will-fully mis-represent a claim to collect benefits.
29. Clarifies the amount of payment to the second injury fund, and the conditions under which such payment is required.

5. AMENDMENTS PROPOSED

- A. On page 7, line 24, a stay of revocation provision is included which provides the stay "until the hearing process is completed." This is ambiguous language since no definition provides when the process is completed. We would suggest removing the words "hearing process is completed" and add "the time noted in the order issued by the director following the hearing but not sooner than five days following the order."
- B. On page 9, line 5, a requirement for workers compensation insurance groups is the filing and approval of a rating program. Safety groups do not have standing to make such filings, but insurers do. A minor insertion would clarify the situation. Following the word "has," insert the words "through an insurer."
- C. On page 16, lines 22-29 and page 17, line 1, AS 23.30.030(7) is revised to change "insurance commissioner" to "director of insurance." The section is however not workable. Form filings are made by a rating organization on behalf of all its member and subscriber companies, so that it is not possible to disapprove the form in the manner outlined. The director of insurance does not presently accept or receive proofs of insurance from any insurer so this language is meaningless. The approach here would penalize all other insured employers of the insurance company and could leave them uninsured. A better approach would be to allow specific penalty to be determined on the basis of the severity of the specific situation. This could range from a fine to suspension of authority. We would suggest the following language:

"(7) If the insurer fails or refuses to pay a final award or judgement (except during the pendency of an appeal) made against it, or its insured, or if it fails or refuses to comply with a provision of this chapter, the director of insurance [COMMISSIONER SHALL REVOKE THE APPROVAL OF THE POLICY FORM, AND MAY NOT ACCEPT FURTHER PROOFS OF INSURANCE FROM IT UNTIL IT HAS PAID THE AWARD OR JUDGEMENT OR HAS COMPLIED WITH THE VIOLATED PROVISION OF THIS CHAPTER, AND HAS RESUBMITTED ITS POLICY FORM AND RECEIVED THE APPROVAL OF THE FORM BY THE INSURANCE COMMISSIONER] may suspend or revoke the insurer's Certificate of Authority pursuant to AS 21.09.150 or impose a fine upon the insurer of not less than \$25 and not more than \$100 for each day the insurer fails or refuses to pay a final award or judgement (excluding the period permitted for appeal) made against it, or its insured, or it fails or refuses to comply with a provision of this chapter."

- D. On page 23, line 28, omit the word "board" and insert the words "director of insurance."
- E. On page 25, line 13, following the word "State," add "provided that the contracting agency has obtained proof of self-insurance from the employer designating the contracting agency as a person to receive notice under this section."

5. AMENDMENTS PROPOSED (continued)

- F. On page 38, line 21, remove the words "or draft."
- G. Provide a different effective date for sections 1, 2, 19, 20, part of 25, ~~part of~~ 26, 29, and part of 64. The effective date for these sections should be July 1, 1982.

The change on page 23, lines 14, 18, 20, 22, 23 and 24 should be effective July 1, 1981.

The change on page 23, lines 17 and 19 should be effective on July 1, 1982.

The change on page 46, lines 19, 21 and 22 should be effective on July 1, 1981.

The change on page 46, line 20 should be effective on July 1, 1982.

THE CHANGE ON PAGE 24, LINES 2, 4, 7 AND 8 SHOULD BE EFFECTIVE ON JULY 1, 1981.

THE CHANGE ON PAGE 23 LINE 28 (SEE PROPOSED AMENDMENT D) SHOULD BE EFFECTIVE ON JULY 1, 1982.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill 179

Title "An Act Relating to Workers' Compensation and providing for an effective date."

Requested by Senate Labor and Commerce Committee Date 3/4/81

II. FISCAL DETAIL

Agency Affected Workers' Compensation Division, Department of Labor

Program Category Affected Worker Protection

BRU, Program, or Subprogram(s) Affected Workers' Compensation

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		83.9	90.6	97.8	105.6	114.0
200 TRAVEL		7.3	7.9	8.5	9.2	9.9
300 CONTRACTUAL		17.6	19.0	20.5	22.1	23.9
400 COMMODITIES		1.5	1.6	1.7	1.8	1.9
500 EQUIPMENT		3.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		113.3	119.1	128.5	138.7	149.7

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND		113.3	119.1	128.5	138.7	149.7
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME		3	3	3	3	3
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

- 1.) Personal Services Cost at current salary and benefit cost (1/1/81).
- 2.) Travel Statewide - Workers' Compensation Officer II.
- 3.) Contractual Services - includes Indirect Cost (Administrative Services), rental space and other.
- 4.) Equipment - one time items to set up the new employees with desk, chair, cabinets and partitions.
- 5.) Assumes effective date July 1, 1981.
- 6.) Inflation factor used 8%, all items.

IV. DATE 3/4/81

PREPARED BY Nico Bus
AGENCY Labor
PHONE 465-2720

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

1.	Position Title Workers' Compensation Officer II			Range/Step 18 A	Barg. Unit G	Location Anchorage	Gov.	Approv.	Disapp.
2.	Type of Position PFT	Staff Months 12	RP No.	PCN No.	Priority	Form 12 page/line	Leg.		
3.	Type of Expenditure			Amount					
	1	2	3						
4.	Personal Services:								
5.	Salary 2640 x 12		31,680						
6.	Benefits 15.87		5,028						
7.	FICA .0613		1,942						
8.	Health Ins. 150 x 12		1,800						
9.	Total Personal Services 01		40,450						
10.	Travel 02		7,300						
11.	Contractual 03		7,789						
12.	Commodities 04		500						
13.	Equipment 05		1,600						
14.	Other								
15.	Total Cost		57,639						
	CODE	FUNDING SOURCE							
15.		FED RECPT. 1002							
16.		GF MATCH. 1003							
17.		GEN. FUND 1004		57,639					
18.		I-A RCPTS. 1005							
19.		PGM RCPTS 1028							
20.		OTHER							
21.	CONTINUATION								
22.	ADDITION								

FOR B&M USE ONLY

4A KEY NUMBER _____ COLUMN NO. _____

The 7.3 travel includes 4.5 transportation and 3.0 per diem for statewide travel to conduct investigations. The 7.8 contractual is 2.0 phone and postage, 2.7 space rental and 3.1 indirect (Administrative Services). The .5 commodities is for office supplies. The 1.6 equipment is .7 for a desk and chair and .9 for partitions.

This position will investigate businesses statewide to assure that employers subject to AS 23.30 have insured or provided security for Workers' Compensation liability as required under AS 23.30.075 and will testify and present evidence at Board hearings concerning issuance to stop orders and assessment of penalties under AS 23.30.080(d).

Addresses BRU objectives 1, 3 and 4 and provides the means to enforce the provisions of the Act that an employer insure or provide security for workers' compensation liability to their employees.

AGENCY Labor

PROGRAM Worker Protection

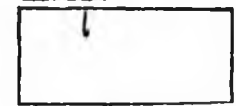
REVISED DATE _____

BRU Workers' Compensation

PAGE 1 OF 3 **FY 82**

COMPONENT Workers' Compensation

13 REQUEST FOR NEW POSITION.



1.	Position Title Clerk I			Range/Step 6 A	Barg. Unit G	Location Juneau	Approv. Gov.	Disapp.																																													
2.	Type of Position PFT	Staff Months 12	RP No.	PCN No.	Priority	Form 12 page/line	Leg.																																														
3.	Type of Expenditure			Amount																																																	
	1		2		3																																																
Personal Services:																																																					
4.	Salary	1249 x 12	14,988																																																		
5.	Benefits	15.87	2,379																																																		
6.	FICA	.0613	919																																																		
7.	Health Ins.		1,800																																																		
8.	Total Personal Services		01	20,086																																																	
9.	Travel		02																																																		
10.	Contractual		03	4,161																																																	
11.	Commodities		04	500																																																	
12.	Equipment		05	700																																																	
13.	Other																																																				
14.	Total Cost			25,447																																																	
<table border="1"> <thead> <tr> <th></th> <th>CODE</th> <th colspan="2">FUNDING SOURCE</th> <th></th> </tr> </thead> <tbody> <tr> <td>15.</td> <td></td> <td colspan="2">FED RECPT. 1002</td> <td></td> </tr> <tr> <td>16.</td> <td></td> <td colspan="2">GF MATCH. 1003</td> <td></td> </tr> <tr> <td>17.</td> <td></td> <td colspan="2">GEN. FUND 1004</td> <td>25,447</td> </tr> <tr> <td>18.</td> <td></td> <td colspan="2">I-A RCPTS. 1005</td> <td></td> </tr> <tr> <td>19.</td> <td></td> <td colspan="2">PGM RCPTS 1028</td> <td></td> </tr> <tr> <td>20.</td> <td></td> <td colspan="2">OTHER</td> <td></td> </tr> <tr> <td>21.</td> <td colspan="2">CONTINUATION</td> <td></td> <td></td> </tr> <tr> <td>22.</td> <td colspan="2">ADDITION</td> <td></td> <td></td> </tr> </tbody> </table>										CODE	FUNDING SOURCE			15.		FED RECPT. 1002			16.		GF MATCH. 1003			17.		GEN. FUND 1004		25,447	18.		I-A RCPTS. 1005			19.		PGM RCPTS 1028			20.		OTHER			21.	CONTINUATION				22.	ADDITION			
	CODE	FUNDING SOURCE																																																			
15.		FED RECPT. 1002																																																			
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FOR B&M USE ONLY																																																					
4A KEY NUMBER _____ COLUMN NO. _____																																																					

The 4.2 contractual consists of 2.7 space rental and 1.5 indirect (Administrative Services). The .5 commodities is for office supplies; the .7 equipment is a desk and chair.

This position will provide full-time filing and general clerical assistance to the Division. The additional reports required of employers insurance carriers will be distributed and filed by this position. A full-time filing position will allow the filing to be kept current and avoid delays in searching for unfilled reports.

AGENCY Labor

PROGRAM Worker Protection

REVISED DATE _____

BRU Workers' Compensation

PAGE 2 OF FY 82

COMPONENT Workers' Compensation

13 REQUEST FOR NEW POSITION.

1

1.	Position Title Data Control Clerk I			Range/Step 9 A	Barg. Unit G	Location neau	Gov.	Approv.	Disapp.
2.	Type of Position PFT	Staff Months 12	RP No.	PCN No.	Priority	Form 12 page/line	Leg.		

3.	Type of Expenditure		Amount
	1	2	3
4.	Personal Services:		
	Salary	1475 x 12	17,700
5.	Benefits	15.87	2,809
6.	FICA	.0613	1,085
7.	Health Ins.		1,800
8.	Total Personal Services 01		23,394
9.	Travel	02	-0-
10.	Contractual	03	5,626
11.	Commodities	04	500
12.	Equipment	05	700
13.	Other		
14.	Total Cost		30,220

The 5.6 contractual consists of 2.7 space rental, 1.7 indirect (Administrative Services) and 1.2 for computer terminal leasing. The .5 commodities is for office supplies. The .7 equipment is a desk and chair.

This position will handle part of the increased workload in the filing and coding units due to the increased reporting requirements of employers' insurance carriers. The information from the additional reports will be entered via computer terminal into our new information handling system. This data will give the Division accurate statistics on all costs of every claim as well as precise computations as to the carrier's change in any claimant payment.

	CODE	FUNDING SOURCE	
15.		FED RECPT. 1002	
16.		GF MATCH. 1003	
17.		GEN. FUND 1004	30,220
18.		I-A RCPTS. 1005	
19.		PGM RCPTS 1028	
20.		OTHER	
21.	CONTINUATION		
22.	ADDITION		

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4A KEY NUMBER _____ COLUMN NO. _____

AGENCY Labor

PROGRAM Worker Protection

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DATE _____

BRU Workers' Compensation

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COMPONENT Workers' Compensation

13 REQUEST FOR NEW
POSITION.



THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 179

Title "An Act relating to Second Injury Fund & providing for an effective date."

Requested by Senate Labor & Commerce Committee

Date 3-3-81

II. FISCAL DETAIL

Agency Affected Labor

Program Category Affected Worker Protection, Public Protection

BRU, Program, or Subprogram(s) Affected Second Injury Fund

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						

TOTAL

FUNDING (Thousands of Dollars)

GENERAL FUND		199.4	215.4	232.6	251.2	271.3
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
Second Injury Fund		(199.4)	(215.4)	(232.6)	(251.2)	(271.3)

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

- 1) Request a funding change for the administrative cost of the program from Second Injury Fund to General Fund.
- 2) Assumes an inflation factor of 8%, all items.
- 3) Assumes an effective date of July 1, 1981.

IV. DATE March 4, 1981

PREPARED BY *Nico Bus*

AGENCY Labor

Original: Legislative Finance

PHONE 465-2720

cc: Budget and Management

Prime Sponsor (First Legislator Named)

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB-179

Title An act relating to Workers Compensation

Requested by Legislative Council

Date 2-10-81

II. FISCAL DETAIL

Agency Affected Department of Commerce

Program Category Affected Public Protection

BRU, Program, or Subprogram(s) Affected Division of Insurance

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		115.0	127.6	140.00	154.0	169.4
200 TRAVEL		5.0	6.0	6.0	7.0	8.0
300 CONTRACTUAL		23.7	23.7	25.5	26.0	27.7
400 COMMODITIES		2.0	2.0	2.5	2.5	3.0
500 EQUIPMENT		5.0	0	0	0	0
600 LAND & STRUCTURES		0	0	0	0	0
700 GRANTS, CLAIMS, ETC.		0	0	0	0	0
TOTAL		150.7	158.7	174.0	189.5	207.4

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND		150.7	158.7	174.0	189.5	207.4
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME		3	3	3	3	3
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Range 21 Chief Workers Compensation Surveillance (self Insurer)
 Range 18 Workers' Compensation Analyst
 Range 10 Document Processing Clerk

Travel to interview self insureds, administrators ect.	114,675
Contractual Services for accounting card statistical review & Office space	5,000
Misc. Supplys	23,700
Equipment 3 each Desks, Chairs, Calaulators ect.	2,000
	5,000
	<u>\$150,375</u>

(See Attachments)

IV. DATE 2/23/81

PREPARED BY Kenneth C. Moore, Director
 AGENCY Department of Commerce: Division of Insurance
 PHONE 465-2515

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

1	POSITION TITLE Chief Self Insurer WC Surveillance			RANGE/STEP 21A	BARG. UNIT. G	LOCATION	GOV.	APPROV.	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12	PAGE/LINE	LEG.	
3	TYPE OF EXPENDITURE			AMOUNT		JUSTIFICATION:			
	1	2	3						
	PERSONAL SERVICES:								
	SALARY		38520.00						
	BENEFITS		8593.00						
6	FICA								
7	HEALTH INS.		1800.00						
8	TOTAL PERSONAL SERVICES		01	48913.00					
9	TRAVEL		02						
10	CONTRACTUAL		03						
11	COMMODITIES		04						
12	EQUIPMENT		05						
13	OTHER								
14	TOTAL COST								
	CODE	FUNDING SOURCE							
15		FED RCPTS. 1002							
16		GF MATCH. 1003							
		GEN. FUND 1004							
18		I-A RCPTS. 1005							
19		PGM RCPTS 1028							
20		OTHER							
21	CONTINUATION		FOR B&M USE ONLY						
22	ADDITION								
4A KEY NUMBER				COLUMN NO.					

AGENCY Commerce & Economic Development PROGRAM Consumer Protection

BRU Insurance

13 REQUEST FOR NEW POSITION.

COMPONENT _____

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1	POSITION TITLE Workers Compensation Analyst			RANGE/STEP 18A	BARG. UNIT. S	LOCATION	GDV	APPROV	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG		

3	TYPE OF EXPENDITURE	AMOUNT
	1	2
4	PERSONAL SERVICES:	
	SALARY	31680.00
5	BENEFITS	6930.00
6	FICA	
7	HEALTH INS.	1800.00
8	TOTAL PERSONAL SERVICES	40410.00
9	TRAVEL	02
10	CONTRACTUAL	03
11	COMMODITIES	04
12	EQUIPMENT	05
13	OTHER	
14	TOTAL COST	

JUSTIFICATION:

	CODE	FUNDING SOURCE
15		FED RCPTS. 1002
16		GF MATCH. 1003
17		GEN. FUND 1004
18		I-A RCPTS. 1005
19		PGM RCPTS 1028
20		OTHER

21	CONTINUATION	FOR B&M USE ONLY
22	ADDITION	

AA KEY NUMBER _____ COLUMN NO. _____

AGENCY Commerce & Economic Development PROGRAM Consumer Protection

BRU Insurance

13 REQUEST FOR NEW POSITION.

COMPONENT _____

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REVISED DATE _____

FY 82

1	POSITION TITLE Document Processing Clerk			RANGE/STEP 10B	BARG. UNIT.	LOCATION	GOV	APPROV.	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG		
3	TYPE OF EXPENDITURE			AMOUNT		JUSTIFICATION:			
	1	2	3						
4	PERSONAL SERVICES: SALARY		19356.00						
5	BENEFITS		4796.00						
6	FICA								
7	HEALTH INS.		1800.00						
8	TOTAL PERSONAL SERVICES		01	25352.00					
9	TRAVEL		02						
10	CONTRACTUAL		03						
11	COMMODITIES		04						
12	EQUIPMENT		05						
13	OTHER								
14	TOTAL COST								
	CODE	FUNDING SOURCE							
15		FED RCPTS. 1002							
16		GF MATCH. 1003							
17		GEN. FUND 1004							
18		I-A RCPTS. 1005							
19		PGM RCPTS 1028							
20		OTHER							
21	CONTINUATION			FOR B&M USE ONLY					
22	ADDITION								
7A KEY NUMBER		COLUMN NO.							

AGENCY Commerce & Economic Development PROGRAM Consumer Protection

BRU Insurance

13 REQUEST FOR NEW POSITION.

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FY 82

S

B

2

00

SUMMARY SB 200:

PROBLEM: Certain fisherman who freeze and glaze fish aboard their boats, yet are not processors, are taxed under the fisheries business tax law.

Section 1: A person who buys fish from a fisherman exempted under Sec 2, must pay the tax, so that the tax is not lost to the State.

Section 2: Exempts fisherman who freeze and glaze fish aboard their boats from the Raw fish tax. A person is not processing fish (within the Tax Statute) if he operates a commercial fishing vessel with a valid commercial license, does no more than head, gut, clean, freeze, and glaze those fish which he has caught himself.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH 5
JUNEAU, ALASKA 99811

March 11, 1981

The Honorable Bob Mulcahy
Chairman
Senate Labor and Commerce Committee
Room 207 - Capitol Building
Juneau, Alaska

Dear Senator Mulcahy:

Re: Senate Bill No. 200

Senate Bill No. 200, an Act relating to the fisheries business tax (AS 43.75.015) was introduced in the Senate on February 23, 1981 and was referred to the Senate Labor and Commerce and Finance Committees.

For the consideration of the Senate Labor and Commerce Committee, I am enclosing copies of Fiscal Notes prepared by Mr. Gary L. Jenkins, Director, Audit Division and Mr. Robert W. Elliott, Research Section of the Department of Revenue concerning the proposed legislation.

Sincerely,



R. D. Stevenson
Special Assistant

RDS/rdh

cc: The Honorable Don Bennett
The Honorable M. E. Dankworth
Co-Chairmen
Senate Finance Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Gary L. Jenkins, Director
Audit Division
Department of Revenue

Robert W. Elliott
Research Section
Department of Revenue

MEMORANDUM

State of Alaska

TO: R. D. Stevenson
Legislative Assistant

DATE: March 9, 1981

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: SB 200

This bill would provide an exemption from the Fisheries Business Tax for those fishermen who catch and freeze salmon aboard the catching vessel. This provision is being proposed to exempt a group of trollers who have installed freezing equipment on their vessels in order to maximize the quality of their salmon by freezing it immediately after it is caught.

The proposed legislation will cause some potentially serious administrative problems in that if one of the exempted fishermen sells his catch to a buyer who is not a licensed processor, then the buyer will be liable for the tax. Under the current law, a buyer is not liable for the tax unless he performs some processing function. Thus, if a buyer acquires salmon from an exempted fisherman, we will have to attempt to keep track of these buyers to insure that the tax is paid. Since the only record we have of a buyer is a business license, if one was obtained, and the name and business description may not identify him as a buyer at all, we will have very little information available to use as we attempt to insure that the tax is paid on these transactions. It is impossible to estimate to potential revenue loss which might result from these transactions since we do not know the dollar volume of sales which an excluded fisherman might make to a buyer.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 20, 1981

SUBJECT: Analysis of bill amending fisheries business
tax (Work Order Number 12-0461) *SB 200*

TO: Senator Richard I. Eliason

FROM: *LHA* Linn H. Asper
Legislative Counsel

You have asked for a brief analysis of the bill which I drafted to exempt certain fishing operations from the fisheries business tax (AS 43.75). The problem addressed was that certain commercial fishermen who freeze and glaze fish aboard their boats, but who are not really fish "processors" are being taxed under the fisheries business tax law as "persons engaging in a fisheries business who first process a fisheries resource".

Section 2 of the bill exempts the fishermen described above from the fisheries business tax by stating that a person is not processing fish within the meaning of the tax statute if he operates a commercial fishing vessel under a valid commercial fishing license, does no more to process fish than heading, gutting, cleaning, freezing and glazing and only freezes fish that he has caught himself.

Section 1 is in the bill to insure that a person who buys frozen fish from a fisherman exempted under Sec. 2 will pay the tax, so that the tax revenue is not lost to the state. This result is fair in that the purchaser of the frozen fish is actually getting processed or partially processed fish.

As it reads now, the bill applies only to the salmon fishery.

LHA:ljb

back-up material
for SB 200
November 14, 1980

Richard Eliason
1513 Halibut Point Road
Box 143
Sitka, Alaska 99835

Dear Dick;

Greetings! I hope things are going well for you this winter. We are enjoying a rather prolonged fall here in Haines-- so far no snow.

Well, I am faced with kind of a problem. You have probably seen by now the little stack of paper from the Department of Revenue that I have enclosed. It seems that the State is now considering those fishermen who freeze their catch aboard to be "floating" processors and liable for the "processing tax" (five percent of the gross). It looks like we are supposed to file and pay for both the 1979 and 1980 seasons. The "real" processors have always paid this in the past and of course this new interpretation was not anticipated by us or the fish buyers. There was not any adjustment figured into the prices for either of these years. H.P.C. will return to us the 3% tax that they paid on these fish which the State returned to them (us "floating" processors pay the higher rate of 5%) but I am not sure what the other buyers will do. We will have to readjust our 1979 income taxes if, indeed, we are required to pay this tax.

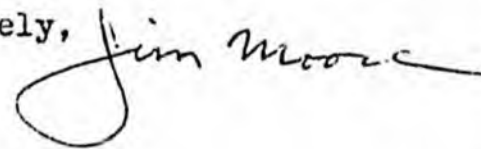
Since it was all so new and hit us so hard, I decided not to pay initially. I sent the forms back with the reply (on page 3 of 4) requesting a copy of the law and appeals procedure.

I suspect our only hope of relief will be legislation clarifying the law or exempting freezer boats.

What do you think? Is this worth looking into? I feel a very awkward and painful situation has developed here with this new interpretation.

Looking forward to hearing from you.

Sincerely,



Jim Moore
F/V Aljac
Box 655
Haines, Alaska 99827

phone: 766-2534

STATE OF ALASKA
DEPARTMENT OF REVENUE

SCHEDULE _____

TAX TYPE Fisheries Business	EXPLANATION OF ITEMS	S.S.N./EIN
NAME OF TAXPAYER James Moore		YEAR/PERIOD ENDED 7912

CONCLUSION:

Conclusion is that taxpayer was the person who first actually and physically processed the fishery resource and is liable for the tax under A.S. 43.75.015(a)(3) at a rate of five per cent for resource frozen aboard fishing vessel and later sold to Sitka Sound Seafoods.

TAXPAYER'S POSITION: It is the taxpayer's position that he is not the taxpayer. Freezing of fish aboard the vessel is more in the line of preserving the catch than processing for market and it is in fact and has been for years considered "normal commercial fishing activities". There is a distinction between a fishing operation and what is meant by "fisheries business" under A.S. 43.75.015. and the tax levied in this case is not in line with the intent of the law. I don't believe that we are any more liable for this tax than is my crew member (who "first actually and physically" processed the catch). Quite clearly HPC is the licensed processor - we are the licensed fishing boat. Preparation of the product for marketing or processing begins when the fish is stunned in the water and brought aboard the fishing vessel. The degree to which the fish is brought to final marketing condition varies with different commercial fishing operations- some are sold in the round- some dressed- some fresh- some iced- some frozen, but the final stages of processing are done by or under contract by the processor (in this case HPC). Sea frozen fish should not be considered fully processed. Often it has to be reglazed. Frozen fish must now be landed "heads-on" and the head must be taken off and the fish glazed again or reportedly in some instances stripped of its protective sea-frozen glaze and completely re-glazed. The new interpretation of the law and the new position of the State is impractical. It seems much more reasonable that the tax should be levied at the HPC level rather than at the fishing fleet

(continuation of TAXPAYER'S POSITION)

level. One tax levied to HPC would certainly be more easily implimented than to "onehundred and one" individual fishermen. Ex vessel prices for sea-frozen fish did not reflect this new position and the hardship to the fishermen caused by this is considerable especially since the 1979 season was unusually good and the 1980 season unusually poor. IN the case of HPC, since it is a cooperative, I am paying this tax at any rate. The HPC board of directors will most likely pass on the refunded 3% tax to offset a 5% tax in this case, however what policy the other processors will adapt is unknown. Federal and State Income Tax returns would all have to be adjusted as would crew shares. In all I see mountain of paperwork and considerable hardship and expense to both the State and the taxpayers. I'm not convinced that this is the intent of the law. Please send me a copy of the legislation and inform me as to the appeals proceedure.

Sincerely,

James Moore

Box 655

Haines, Alaska

99827

*The Honorable Dick Eliason
State Senate Building
Juneau, Alaska 99811*

P. O. Box 127
La Conner, Washington
January 22, 1981

Dear Senator Eliason

I am writing concerning the recent reinterpretation of an Alaska law to classify salmon trollers who freeze their own catch as processors. I oppose this reinterpretation and am asking that legislative action be taken to exempt salmon trollers from being declared processors if they freeze their own catch.

My wife and I operate a 44' trolling boat on which salmon have been preserved by both icing and freezing. When icing, the fish are cleaned immediately after being caught and then are stored on ice for up to ten days before being delivered to a cold storage. At the cold storage they are headed, cleaned further and frozen. When I am freezing, the initial cleaning is much more thorough and within 6 to 8 hours, after all the blood has been removed from the fish by washing and cleaning several more times, the fish are frozen. Within several days of freezing the fish are glazed and then stored. Throughout the entire handling process special care is taken to maintain the highest quality. In many cases the fish are eventually unloaded to the same cold storages as the iced fish.

I do not believe I should be classified as a processor because I preserve my fish by freezing instead of icing. I do not buy fish from other fishermen. I do not hire a crew. The main difference between my operation when I freeze rather than ice is quality. Sea frozen troll salmon are the highest quality salmon produced anywhere. Considering the bad publicity that some Alaska fish products have received in the past few years one would expect the state to encourage quality. Classification of sea freeze trollers as processors, however, will result in many of these boats abandoning freezing and returning to icing.

Under the new ruling, these trollers will have to obtain permits from and/or be inspected by the Department of Labor, Department of Revenue, Department of Environment and Department of Fish and Game. A 5% gross receipts tax will have to be paid on the total value of the catch. At present the cold storages pay a 3% tax on these fish. An estimate of this tax will have to be paid prior to the start of the season or a bond posted for the amount. Out-of-state boats will have to