

ALABAMA LEGISLATIVE COMMISSION DOCS 00/2

1931

SRES

SB 834

-

SB 835

193

### Legislative Audit's Current Position

The Board agrees that the transfer of the guide licensing function to the Department of Public Safety would enhance public convenience and be cost efficient. The Board believes that legislation will soon be submitted seeking such a transfer.

### Prior Audit Recommendation No. 2

The Guide Licensing and Control Board should seek legislation to have the "transporter laws" repealed.

The purpose of the "transporter laws" [Alaska Statutes 08.54.142, 08.54.144, 08.54.146 and 08.54.170(c)] is to protect the safety of the citizens of the State and better manage and protect the State's resources by licensing persons who transport hunters for hire so that reasonable standards and guidelines would be met and activities affecting the State's game resources would be more accurately monitored and assessed.

In our opinion, the "transporter laws" are not needed to protect the safety of the public or manage the game resources.

Personnel in the Department of Public Safety, Division of Fish and Wildlife Protection, consider the "transporter laws" confusing and difficult to enforce. In addition, we found the information and reports that transporters are required to file are not being used and are not needed to manage the game resources of the State. Furthermore, air transporters' flying safety qualifications and aircraft safety are regulated by the Federal Aviation Administration.

### Legislative Audit's Current Position

The Board has submitted legislation providing that the transporter laws be repealed. The above mentioned statutes are addressed in House Bill 199.

### Prior Audit Recommendation No. 3

The Board should continue its efforts to make the statutes more clear, relevant and workable.

Over the past several years the Board has been adopting regulations to make the statutes more clear, relevant and workable. However, we noted several statutes which need further consideration. For example:

- A. AS 08.54.142, 08.54.144, 08.54.146 and 08.54.170(c). As discussed in Recommendation No. 2, the Board should seek legislation to have the "transporter laws" repealed.
- B. AS 08.54.190(a) requires an annual renewal of guide licenses. This conflicts with AS 08.01.100(a) which requires biennial renewal of occupational licenses. It also creates additional administrative effort for both the Division of Occupational Licensing and the licensee, with no demonstrable benefit to the public.
- C. AS 08.54.110(6) pertaining to moral turpitude is considered to be vague and should be repealed as the regulation (12 AAC 38.180) defining unethical activity provides sufficient public protection in this area.
- D. AS 08.54.200(c)(3) is considered to be unduly restrictive because it requires the Board to revoke a guide's license upon two convictions of Federal or State sport fish, game or guide violations regardless of how minor the violations may have been or how long ago they may have occurred.
- E. AS 08.54.130(2) requiring a Class A assistant guide to be under the supervision of a registered or master guide is considered vague. The term "supervision" should be clarified to indicate exactly what constitutes supervision during the conduct of a hunt.

#### Legislative Audit's Current Position

As a result of the Board's effort, a majority of the statutes listed in the prior audit recommendations are being addressed in pending legislation. However, AS 08.54.110(6) was not addressed and AS 08.54.190(a) was not revised as intended. AS 08.54.190(a) should be revised to require biennial renewal.

We again recommend that the Board should continue its efforts to make the statutes more clear, relevant and workable.

#### Prior Audit Recommendation No. 4

The Department of Revenue should collect fees from guides as required by statute.

Alaska Statute 16.05.340(e) effective January 1, 1977, requires licensed master and registered guides to pay a fee in the following amounts for each caribou, sheep, moose, brown or polar bear taken on a guided hunt over a specified number:

1. Over 5 up to a total of 10 per season - \$20;
2. Over 10 up to a total of 25 per season - \$100;
3. Over 25 per season - \$500.

Executive Order No. 17 requires the Department of Revenue to collect and account for all revenues incidental to the regulation and management of Alaska's fish and game resources. The Department has not developed forms and procedures necessary to collect and account for revenue under AS 16.05.340(e).

#### Legislative Audit's Current Position

The Department of Revenue has developed forms and procedures to collect and account for revenue from guides as required by statute. However, these forms and procedures do not guarantee that all appropriate totals are being reported by the guides. Currently, the Department does not have an efficient means of performing cross checks and follow-up procedures for unreturned forms or forms that are improperly filled out.

We recommend that the Department continue their effort to improve the efficiency and accuracy of the reporting system.

#### Prior Audit Recommendation No. 5

The board should establish formal goals, objectives and quantifiable measures which should be included in the Division of Occupational Licensing's (OL's) budget document.

Objectives describe what an agency or Board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual accomplishments can be compared with stated targets. Without goals and objectives, the Board's performance cannot be adequately evaluated and analyzed.

OL establishes its own budget goals and objectives. The budget documents do not include any goals or measures for individual boards. Without the Board's goals and measures being identified or measured, neither the Governor's Office nor the Legislature can evaluate the Board's performance.

Legislative Audit's Current Position

The Board is in the process of establishing a formal set of specific objectives and related measurement criteria so that its performance can be evaluated. The Division of Occupational Licensing has informed the Board of the need for well formulated objectives to provide a basis for judging the Board's accomplishments.

We again recommend that the Board establish formal goals, objectives and quantifiable measures to be included in the budget documents.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2534

January 18, 1982

RECEIVED

JAN 19 1982

LEGISLATIVE  
AUDIT

Mr. Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit  
Pouch W  
Juneau, Alaska 99811

Dear Mr. Wilkerson:

I would like to reply to your letter of January 15 concerning the audit of the Guide Licensing & Control Board.

Recommendation No. 1, Page 5, proposes to transfer the function of our board to the Department of Public Safety. At the last meeting our board voted unanimously to support this transfer if we had the concurrence of the board of the Alaska Professional Hunters Association. It is my understanding that the APHA board has met with the Department of Public Safety, and concurred in this transfer. Further action now will have to come from the Legislature.

Recommendation No. 2, Page 6, the Guide Board has continually supported repeal of the transporter law. We hope this is included in guide legislation this session.

Recommendation No. 3, Page 6, Nos. A, B, C and D on Page 7, should be addressed in the guide legislation of H.B. 199, this session. We have supported changes in all the above items.

Concerning "E," Page 7, which deals with supervision of Class A guides, the board members have discussed this item a number of times and could not come up with any improved wording. In the discussions it was pointed out that the master or registered guide signing client contracts is responsible for the action of his guides in the field. It was thought that being overrestrictive in wording would hinder normal operations and not really be of any benefit. I would recommend this objection be cancelled.

January 18, 1982

If the Legislature acts on the above items, I am confident that corrections will be made in those listed above.

Recommendation 4, Page 7, I feel that the collection of funds by the Department of Revenue is strictly that department's problem. In my opinion, the requirement is not a good one as it just penalizes a few guides and does not raise any amount of money.

Recommendation No. 5, Page 8, the board should establish formal goals, objectives and quantifiable measures....I am very much in favor of our board being checked and rated as to performance. To establish prior goals and then be rated as to accomplishment is very difficult in our case. The board's yearly objectives and goals are very consistent except in extreme cases. These goals include giving guide tests, ruling on petitions from guides, which include a variety of things, ruling on applications by guides for areas and transfer of areas. Sitting as a jury on violations is also one of our yearly duties. The scope of this workload is not known by the board until we listen and we act on them.

Our guide board is probably different than other state boards because it works on a one-to-one basis with over 300 registered guides and over 500 assistant guides. As chairman I have been on the board since 1973 and have never missed a meeting. Our board is a very hard working board and I want everyone to know it. To give our board some accurate performance rating I would recommend that your audit department get answers to some of the following questions I pose:

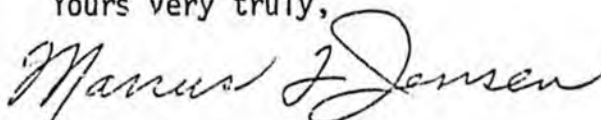
1. Is our mail answered promptly?
2. Does the board attendance show that they start at 8:30 a.m. and work a full day?
3. Does the board work evenings to expedite its workload?
4. Is the yearly workload kept current?
5. Is the board acting responsibly and consistently in judging violation cases?
6. Does the board have the respect of the heads of departments, i.e., Fish & Games Protection (and staff), Director of the Division of Occupational Licensing and staff, Governor's Office and staff, legal staff?
6. Have transcripts of meetings been checked to determine workload?
7. Does the board meet and act on emergencies?

January 18, 1982

As chairman I would like to point out that all board members have been very willing to put in extra hours when problems must be solved. Just recently the federal government passed a marine mammal bill setting forth standards for the State to meet in event of a transfer to the state. I have submitted letters to you indicating the action the board took to handle this unexpected workload and problem. I think somewhere in this audit this should be mentioned. If the board had not moved on this in the middle of the summer it would have been impossible for us to have had the meeting set up and the input from interested parties whereby guiding standards for the Arctic could have been developed. Just yesterday I was called upon by the legal staff of the State Department of Fish and Game to give them a copy of our proposed regulations, as they were needed as part of their overall marine mammal program that must be submitted to the federal government. If we had waited until now to address this problem, we would have been a year behind time.

I trust my answers to your questions will clear up the various points, but will be glad to discuss any of the above with you at your convenience.

Yours very truly,



Marcus F. Jensen, Chairman  
Guide Licensing & Control Board

MFJ/cw#25K1

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH D

JUNEAU, ALASKA 99811

Phone: 465-2500

February 1, 1982

RECEIVED  
FEB 02 1982

LEGISLATIVE  
AUDIT

Mr. Gerald Wilkerson, Director  
Division of Legislative Audit  
Pouch W  
Juneau, Alaska 99811-3100

Dear Mr. Wilkerson:

Thank you for the opportunity to comment on your December 21, 1981, Follow-Up Audit of the Guide Licensing and Control Board. I am pleased to concur with your conclusions that guide licensing is necessary and desirable and that the Guide Licensing and Control Board should be continued.

Before addressing the audit's specific recommendations, I would like to comment on the Board's excellent performance in the recent past. The Board has aggressively and effectively addressed problems resulting from the federal D-2 land withdrawals and the imminent transfer of administrative responsibility for the Marine Mammal Protection Act.

The Board held extensive hearings on the displacement of guides as a result of D-2 land withdrawals. The members conducted a detailed review of assigned exclusive and joint area usage. Areas of nonuse were identified. As a result, 12 previously licensed guides were able to transfer to other areas and 16 new guides were able to have areas.

In anticipation of Marine Mammal Protection Act responsibilities the Board has moved quickly to develop an effective system of licensing for arctic area residents interested in professional marine mammal hunt guiding. With the assistance of the Division of Occupational Licensing the Board secured the necessary monies from the Office of the Governor to have a meeting in Nome on November 28, 1981, to get the local feedback necessary to develop workable regulations and procedures. Assisted in these efforts by Representative Fuller, the Alaska Professional Hunters Association, the Alaska Eskimo Walrus Commission, Kawerak, Inc., the Division of Occupational Licensing, the Department of Law, the Office of the Governor, local officials and Eskimo marine mammal subsistence hunters, the Board has developed a special guide permit system for Arctic Alaska, including draft regulations, special application forms and requirements for licensure.

These efforts are continuing as the Board is focusing on local training needs and on the development of an oral exam for non-English speaking Alaska Natives.

The Board has also distinguished itself in more routine matters. The Board is recognized by the Division of Occupational Licensing as one of the hardest working licensure boards in the State. Their regular meetings often extend into the evening well beyond the scheduled eight hours. Their meetings also show better participation by the general public and the regulated industry than any other licensing board.

Board members have made themselves available to the Legislature as a resource on HB 199 and have worked on an ongoing basis with the Board of Game in the Department of Fish and Game.

The Board's recent record of disciplinary hearings is also worthy of special note. In FY '81 the Board took 35 license violations through the hearing process. Twenty-five of those cases have been totally completed with disciplinary actions taken where indicated.

With the appointment of Ed Shavings of Mekoryuk, the Board assisted in securing its first Native member from Western Alaska.

The following comments address the specific recommendations made in the audit report:

PRIOR AUDIT RECOMMENDATION NO. 1: The Guide Licensing and Control Board should seek legislation to have the guide licensing function transferred to the Department of Public Safety.

Comment: Although the Department of Commerce and Economic Development has enjoyed providing staff support to the Board in the past, and would welcome the opportunity to do so in the future, the Department has no objection to the transfer of full staff responsibilities to the Department of Public Safety.

The Department is concerned that the only substantive information provided in the report to support such a transfer is inaccurate and misleading. The audit report incorrectly indicates that license examiner "spends approximately 2/3 of her time on Guide Board related matters." In the fall of 1978 the auditor was told that the licensing examiner was spending 2/3 of her time on the Guide Board because it was renewal time and because the Guide Board meets frequently in the fall and winter and does not meet in the spring and summer when most guides are working. The auditor was told that over a year period the Guide Board occupied about 1/3 of the license examiner's time then.

At present, the Guide Licensing and Control Board occupies about 1/3 of the examiner's time over a year's period. It is still true that during the winter months and the renewal period a greater proportion of time is spent on the Guide Board. Under the present distribution of workload the License Examiner who staffs with the Guide Board also is responsible for the licensing of Marine Pilots, Concert Promoters, Geologists, Collection Agencies and Collection Agency Operators.

If the license examiner position were transferred with the licensing function to the Department of Public Safety, the other licensing responsibilities could not be redistributed among the existing staff without a significant decrease in service to the public and support to the other licensing boards. Last year the Division of Occupational Licensing was forced to absorb part of the workload of the examiner that was transferred out under similar circumstances with the establishment of the Real Estate Commission.

The Department of Commerce and Economic Development supports any move that enhances public convenience and results in greater cost efficiencies. But the audit report presents no evidence that these would be the results; and, in fact, the opposite will occur if such a move results in a loss of the position from the Division of Occupational Licensing.

PRIOR AUDIT RECOMMENDATION NO. 2: The Guide Licensing and Control Board should seek legislation to have the transporter laws repealed.

Comment: The Department and the Guide Board concur with this recommendation. The department supports the elimination of transporter licensing reflected in HB 199 which is presently under consideration in the Legislature.

PRIOR AUDIT RECOMMENDATION NO. 3: The Board should continue its efforts to make the statutes more clear, relevant and workable.

Comment: The Department concurs with this recommendation. As noted in the audit report, substantial progress is being made in this area.

PRIOR AUDIT RECOMMENDATION NO. 4: The Department of Revenue should collect fees from guides as required.

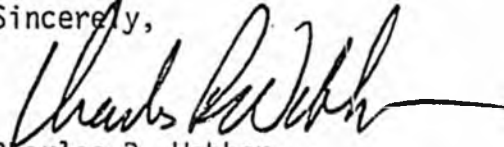
Comment: The Department of Commerce and Economic Development has no objection to this recommendation.

PRIOR AUDIT RECOMMENDATION NO. 5: The Board should establish formal goals, objectives and quantifiable measures which should be included in the Division of Occupational Licensing's (O.L.'s) budget document.

Comment: The Department of Commerce and Economic Development concurs with this recommendation. During FY '81 the Division of Occupational Licensing developed an annual report system to be used by all licensing boards to meet the planning, budgeting and reporting requirements under AS 37 and AS 08. This new procedure was based on in-house research and input from the Division of Budget and Management and the Code Revision Commission. Under this procedure each occupational licensing board will be required to submit one annual report by August. The report will cover the preceding fiscal year and will meet all the statutory planning requirements. The license examiners assigned to the boards are being trained to provide the necessary technical assistance to the boards to assure acceptable quality of the annual report document and basic usefulness of the process. If the Guide Licensing and Control Board remains in the Division of Occupational Licensing, it will participate in this uniform reporting system.

Thank you again for the opportunity to respond to the follow-up audit. If I can be of any assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles R. Webber", with a long horizontal flourish extending to the right.

Charles R. Webber  
Commissioner

CRW/krb 1/1

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF REVENUE

STATE OFFICE BUILDING POUCH SA - JUNEAU 99811

February 2, 1982

RECEIVED

FEB 02 1982

Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

LEGISLATIVE  
AUDIT

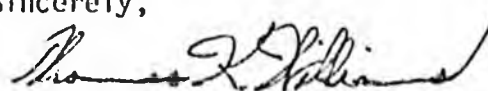
Dear Mr. Wilkerson:

This is written in response to the Preliminary Report entitled: "A Follow-up Review of the Guide Licensing and Control Board" which is dated December 21, 1981. Page 4 of the Report notes that "the Department of Revenue has developed forms and procedures to collect and account for revenue from guides as required by Statute."

However, on page 8, the Report "recommends that the Department continue their effort to improve the efficiency and accuracy of the reporting system." We agree with this recommendation. However, the Report also states on Page 8 that "Currently, the Department does not have an efficient means of performing cross checks and follow-up procedures for unreturned forms and forms that are improperly filled out." We disagree with this comment. The Departments of Public Safety and Fish and Game are contacted often to ascertain if they are applying field controls to Guides which would provide a basis for cross checking with the report content furnished by the guides. No field monitoring program has been established. As for follow-up, contact is attempted with guides who do not report promptly. Should this contact attempt fail, a hold is placed upon issuing the next year's Business License (and the guide is notified of this action) pending receipt and acceptance of the prior year report.

We believe that we are fully administering AS 16.05.340(e). Cross checking with field harvest information data will be applied should it become available.

Sincerely,



Thomas K. Williams  
Commissioner  
Phone (907)465-2300

TKW:PAW:11

# STATE OF ALASKA

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION  
POUCH W—ALASKA OFFICE BUILDING

JUNEAU, ALASKA 99811

February 5, 1982

Members of the  
Legislative Budget and Audit Committee:

We have reviewed the Department of Commerce and Economic Development's and the Department of Revenue's responses to our preliminary report. Our comments follow:

### Prior Audit Recommendation No. 1

It is the position of Legislative Audit that transferring the guide licensing function to the Department of Public Safety would be cost efficient and more convenient for the public. The current system requires unnecessary duplication of effort by the Department of Commerce and Economic Development, Division of Occupational Licensing and the Department of Public Safety, Division of Fish and Wildlife Protection.

The Division of Fish and Wildlife Protection must obtain the guide licensing information to aide in the enforcement of the State laws and regulations governing guiding operations. Thus, it would be economical for them to perform the guide licensing function.

We concur that the current license examiner spends about one-third of her time on Guide Board related matters. Thus, if the license examiner position were transferred it would result in an increased workload for the Division's remaining staff.

### Prior Audit Recommendation No. 4

We believe that the Department of Revenue is currently performing cross checks and follow-up procedures as efficiently as their current system will allow. Under the current system these procedures are performed manually and due to

time constraints some procedures cannot be performed. The Department is currently in the process of obtaining a computer system which will allow all procedures to be performed efficiently.



Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

BILL NUMBER SB 834

IDENTIFICATION:

BILL NAME: "An Act continuing the existence of the Guide Licensing and Control Board; and providing for an effective date."

SPONSOR(S): Resources

RELATED BILLS PENDING:

DATE INTRODUCED: 3/5/82

REFERRALS Resources

INITIAL RESEARCH:

INITIAL BILL SUMMARY COMPLETED

SUMMARY BY LEGAL DIVISION:  
DEPT. OF LAW SUMMARY:

SPONSOR CONTACTED FOR BACKUP MATERIALS:

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/CS DRAFTED:

*Mark Jensen, Chairman - Jordan 9-745<sup>th</sup> 3-26-82*  
*Commerce & Eco. Development (See Audit) Harry Traeger Dir Occupational Licensing*  
*Revenue (See Audit) [unclear]*  
*Public Safety (See Audit)*  
*3-26 Will testify from [unclear] [unclear]*



# Alaska State Legislature

## SENATE Resources Committee

Official Business

BETTYE FAHRENKAMP, Chairman  
VIC FISCHER, Vice-Chairman  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI

POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

TO: Senate Resources Committee  
FROM: Senate Resources Committee Staff  
RE: Committee Hearing, 3/29/82  
DATE: March 26, 1982

-----  
Please find attached background information for Monday's hearing on the following two bills:

- SB 834 Continuing the existence of the Guide Licensing and Control Board.
- SB 840 Special appropriation for payment as a grant to the City of Cordova for a feasibility study of the Bering River coal field port and transportation system.

The hearing will be held at 1:30 p.m. in the Beltz Room.

LEGISLATION SUMMARY

SB 834: "An Act continuing the existence of the Guide Licensing and Control Board; and providing for an effective date."

Sec. 1: Amends existing law regarding the termination of regulatory boards, changing the termination date of the Guide Licensing and Control Board from June 30, 1982 to June 30, 1985.

Sec. 2: Immediate effective date.

SEARCH - QUERY  
0000 '08.03.010'.CITATION.

AS08.03.010 DOCUMENT= 1 OF 1

HEADINGS TITLE 8.  
BUSINESS AND PROFESSIONS.  
CHAPTER 03.  
TERMINATION, CONTINUATION AND REESTABLISHMENT OF REGULATORY BOARDS.

CITATION SEC. 08.03.010.

CATCH LINE

TERMINATION, CONTINUATION AND REESTABLISHMENT OF REGULATORY  
BOARDS.

TEXT (A) BOARDS LISTED IN THIS SUBSECTION HAVE A TERMINATION DATE  
OF JUNE 30, 1979:

- (1) REPEALED BY SEC. 3 CH 36 SLA 1980.
- (2) REPEALED BY SEC. 3 CH 40 SLA 1980.
- (3) REPEALED BY SEC. 3 CH 87 SLA 1980.
- (4) REPEALED BY SEC. 3 CH 74 SLA 1979.
- (5) REPEALED BY SEC. 3 CH 39 SLA 1980.
- (6) REPEALED BY SEC. 3 CH 37 SLA 1980.
- (7) REPEALED BY SEC. 3 CH 38 SLA 1980.
- (8) REPEALED BY SEC. 3 CH 41 SLA 1980.
- (9) REPEALED BY SEC. 3 CH 67 SLA 1980.
- (10) REPEALED BY SEC. 2 CH 43 SLA 1980.
- (11) REPEALED BY SEC. 3 CH 42 SLA 1980.

(B) BOARDS LISTED IN THIS SUBSECTION HAVE A TERMINATION DATE  
OF JUNE 30, 1980:

- (1) REPEALED BY SEC. 15 CH 82 SLA 1980.
- (2) REPEALED BY SEC. 5 CH 159 SLA 1980.
- (3) COLLECTION AGENCY BOARD (AS 08.24.011);
- (4) REPEALED BY SEC. 5 CH 159 SLA 1980.
- (5) REPEALED BY SEC. 11 CH 71 SLA 1980.
- (6) REPEALED BY SEC. 7 CH 72 SLA 1980.
- (7) REPEALED BY SEC. 2 CH 53 SLA 1981.
- (8) REPEALED BY SEC. 8 CH 143 SLA 1980.
- (9) REPEALED BY SEC. 42 CH 167 SLA 1980.
- (10) REPEALED BY SEC. 2 CH 153 SLA 1980.
- (11) REPEALED BY SEC. 13 CH 52 SLA 1981.

(C) THE FOLLOWING BOARDS HAVE THE TERMINATION DATE PROVIDED  
BY THIS SUBSECTION:

- (1) BOARD OF NURSING (AS 08.68.010) - JUNE 30, 1983.
- (2) BOARD OF CHIROPRACTIC EXAMINERS (AS 08.20.010) -  
JUNE 30, 1984.
- (3) BOARD OF EXAMINERS IN OPTOMETRY (AS 08.72.010) -  
JUNE 30, 1984.
- (4) BOARD OF PHARMACY (AS 08.80.010) - JUNE 30, 1984.
- (5) BOARD OF DISPENSING OPTICIANS (AS 08.71.010) JUNE  
30, 1985.
- (6) BOARD OF DENTAL EXAMINERS (AS 08.36.010) JUNE 30,  
1982.
- (7) BOARD OF VETERINARY EXAMINERS (AS 08.98.010) JUNE  
30, 1985.
- (8) STATE PHYSICAL THERAPY BOARD (AS 08.84.010) JUNE  
30, 1986.
- (9) BOARD OF NURSING HOME ADMINISTRATORS (AS 08.70.010)  
- JUNE 30, 1986.

- (10) BOARD OF PSYCHOLOGIST AND PSYCHOLOGICAL ASSOCIATE EXAMINERS (AS 08.86.010) - JUNE 30, 1982.
- (11) STATE MEDICAL BOARD (AS 08.64.010) - JUNE 30, 1983.
- (12) BOARD OF MARINE PILOTS (AS 08.62.010) - JUNE 30, 1983.
- (13) BOARD OF WELDING EXAMINERS (AS 08.99.010) JUNE 30, 1981.
- (14) BOARD OF ELECTRICAL EXAMINERS (AS 08.40.010) - JUNE 30, 1982.
- (15) STATE BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS, AND LAND SURVEYORS (AS 08.48.011) - JUNE 30, 1994.
- (16) BOARD OF BARBERS AND HAIRDRESSERS (AS 08.13.010) - JUNE 30, 1984.
- (17) BOARD OF PUBLIC ACCOUNTANCY (AS 08.04.010) JUNE 30, 1984.
- (18) REAL ESTATE COMMISSION (AS 08.88.011) - JUNE 30, 1982.
- (19) BOARD OF GOVERNORS OF THE ALASKA BAR ASSOCIATION (AS 08.08.040) - JUNE 30, 1985.
- (20) GUIDE LICENSING AND CONTROL BOARD (AS 08.54.010) - JUNE 30, 1982.
- (D) REPEALED BY SEC. 3 CH 74 SLA 1979.
- (E) REPEALED BY SEC. 3 CH 74 SLA 1979.

HISTORY

(SEC. 2 CH 149 SLA 1977; AM SECS. 1, 3 CH 74 SLA 1979; AM SECS. 1, 3 CH 36 SLA 1980; AM SECS. 1, 3 CH 37 SLA 1980; AM SECS. 1, 3 CH 38 SLA 1980; AM SECS. 1, 3 CH 39 SLA 1980; AM SECS. 1, 3 CH 40 SLA 1980; AM SECS. 1, 3 CH 41 SLA 1980; AM SECS. 1, 3 CH 42 SLA 1980; AM SECS. 1, 2 CH 43 SLA 1980; AM SECS. 1, 3 CH 67 SLA 1980; AM SECS. 10, 11 CH 71 SLA 1980; AM SECS. 6, 7 CH 72 SLA 1980; AM SECS. 2, 15 CH 82 SLA 1980; AM SECS. 1, 3 CH 87 SLA 1980; AM SECS. 7, 8 CH 143 SLA 1980; AM SECS. 1, 2 CH 153 SLA 1980; AM SECS. 2, 5 CH 159 SLA 1980; AM SECS. 41, 42 CH 167 SLA 1980; AM SECS. 1, 13 CH 52 SLA 1981; AM SECS. 1, 2 CH 53 SLA 1981)

R0601 \* END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. SB 834 "An Act continuing the existence  
 Title of the Guide Licensing and Control Board; et.al.  
 Requested by Senate Resources Date 3-5-82

II. FISCAL DETAIL  
 Agency Affected Department of Commerce & Economic Development  
 Program Category Affected Public Protection  
 BRU, Program, Or Subprogram(s) Affected Regulation & licensing of professions  
 (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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

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

Funding for the Guide Licensing and Control Board is included in the FY 83 budget request.

IV. DATE March 16, 1982

PREPARED BY Marjorie Odland

AGENCY Division of Occupational Licensing

Original: Legislative Finance  
 cc: Budget and Management

PHONE 465-2535

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. SB 834  
 Title An Act Continuing the Existence of the Guide Licensing and Control Board  
 Requested by the Resources Committee Date 3/15/82

II. FISCAL DETAIL  
 Agency Affected Dept. of Public Safety  
 Program Category Affected NRMEC  
 ERU, Program, Or Subprogram(s) Affected Fish & Wildlife Protection  
 (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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	0	0	0	0	0	0

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY	0	0	0	0	0	0

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

IV. DATE 3/15/82 PREPARED BY Colonel Robert J. Stickles  
 AGENCY Dept. of Public Safety  
 Original: Legislative Finance PHONE 269-5532  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

TO: Billy Berrier  
Director  
Legal Service

DATE: 3/3/83

FROM: Bettye Fahrenkamp  
Chairman

RE: ~~Ensuring~~ the existence  
of the Guide Licensing  
and Control Board

-----  
A Attached is a draft ~~ensuring~~ the existence of the Guide  
Licensing and Control Board.

I would appreciate you having this draft put into a final bill.  
If you have any questions please contact Rasa King at 465-3834.  
Please return the final bill to Senate Resources Committee, Room 211,  
Capitol Building.

Attachment

S

B

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3

5

COMMITTEE REPORT  
SENATE

2/5/82

FURTHER: FINANCE

Date: 2/5/82

Mr. President:

The Committee on RESOURCES has had SB 835

establishing a National Petroleum Reserve, Alaska, trust fund account

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)
- replace with CS for HR 2000  same title
- new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

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[Signature]

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\_\_\_\_\_

CHAIRMAN

NOTE REGARDING THE FOLLOWING FRAME ON MICROFILM:

COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES  
IN ALASKA STATE ARCHIVES. TITLE PAGE ONLY HAS  
BEEN FILMED.

Public Law 96-514  
96th Congress

An Act

Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1981, and for other purposes.

Dec. 12, 1980  
[H.R. 7724]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of the Interior and related agencies for the fiscal year ending September 30, 1981, and for other purposes, namely:

Department of  
the Interior and  
related agencies.  
Appropriations,  
fiscal year 1981.

TITLE I—DEPARTMENT OF THE INTERIOR

LAND AND WATER RESOURCES

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

For expenses necessary for protection, use, improvement, development, disposal, cadastral surveying, classification, and performance of other functions, as authorized by law, in the management of lands and their resources under the jurisdiction of the Bureau of Land Management, \$343,962,000.

ACQUISITION, CONSTRUCTION, AND MAINTENANCE

For acquisition of lands and interests therein, and construction and maintenance of buildings, recreation facilities, roads, trails, and appurtenant facilities, \$14,768,000, to remain available until expended.

PAYMENTS IN LIEU OF TAXES

For expenses necessary to implement the Act of October 20, 1976 (31 U.S.C. 1601), \$103,000,000, of which not to exceed \$400,000 shall be available for administrative expenses: *Provided*, That this appropriation may be used to correct underpayments in the previous fiscal year to achieve equity among all qualified recipients.

OREGON AND CALIFORNIA GRANT LANDS

For expenses necessary for management, protection, and development of resources and for construction, operation, and maintenance of access roads, reforestation, and other improvements on the reversionary Oregon and California Railroad grant lands, on other Federal lands in the Oregon and California and grant counties of Oregon, and on adjacent rights-of-way; and acquisition of lands or interests therein including existing connecting roads on or adjacent to such grant lands; an amount equivalent to 25 per centum of the aggregate of all receipts during the current fiscal year from the

NOTE REGARDING THE FOLLOWING FRAME ON MICROFILM:

COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES  
IN ALASKA STATE ARCHIVES. TITLE PAGE ONLY HAS  
BEEN FILMED.

MAKING APPROPRIATIONS FOR THE DEPARTMENT OF  
THE INTERIOR AND RELATED AGENCIES

NOVEMBER 20, 1980.—Ordered to be printed

Mr. YATES, from the Committee of Conference,  
submitted the following

CONFERENCE REPORT

[To accompany H.R. 7724]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7724) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1981, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 10, 29, 50, 81, 101, 102, 106, 115, 118, 126, 127, and 131.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 5, 11, 14, 18, 21, 28, 33, 38, 39, 40, 41, 47, 59, 63, 76, 77, 79, 89, 90, 92, 97, 98, 104, 114, 117, 120, 121, 122, 125, 129, and 130, and agree to the same.

Amendment numbered 1:

That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment as follows:

In lieu of the sum proposed by said amendment insert *\$343,962,000*; and the Senate agree to the same.

Amendment numbered 3:

That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment as follows:

In lieu of the sum proposed by said amendment insert *\$103,000,000*; and the Senate agree to the same.



# Alaska State Legislature

## SENATE Resources Committee

Official Business

BETTYE FAHRENKAMP, Chairman  
VIC FISCHER, Vice-Chairman  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI

### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Eliason  
Senator Gilman  
Senator Mulcahy  
Senator Sturgulewski

POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 463-3835

April 30, 1982  
1:35 p.m.

Beltz Room  
Capitol - Room 211

---

### Hearing:

- CSHB 637 Relating to the regulation of the taking, purchase, or sale or certain fishery resources; and providing for an effective date.
- SB 831 Establishing a National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account; and providing for an effective date.
- 

### CSHB 637

Tom Sofo, Legal Counsel, Legal Services Division, discussed a proposed amendment that would establish a statutory lien under state law to protect the fisherman if the fish purchaser goes bankrupt. This lien would be given priority right behind judicial liens.

Rodger Painter, Executive Director, United Fishermen of Alaska, supports the concept of the amendment, as fishermen are currently unsecured creditors and at the end of the line to get assets in the event of purchaser bankruptcy, but feels there are some questions that need to be answered. Painter expressed support for CSHB 637, as there are currently no penalties against a buyer for knowingly purchasing fish from someone who doesn't have a Limited Entry permit. He stated that the bill provides good protection for processors who unknowingly purchase from a non-permitted fisherman, and that penalties are heavier on the fisherman than on the processor.

Rick Lauber, Pacific Seafood Processors Association, objects to the concept of CSHB 637, as he thinks it will not discourage illegal fishing. He believes the solution is adequate law enforcement by the Department of Public Safety. Lauber also expressed concern over the proposed amendment, stating that the mere holding of the fish ticket is a lien. The lien established in CSHB 637 might discourage a banker from extending loans beyond the processor's initial line of credit.

Senator Fahrenkamp stated that CSHB 637 would be held in Committee for further work.

SB 835

Senator Fahrenkamp stated that the Attorney General, North Slope officials, and Committee staff worked together and the Committee Substitute is the result of their efforts.

Senator Gilman suggested that a letter be sent with the bill to the Finance Committee asking them to look at the priority uses of the 50% of the funds not going to the communities.

Senator Gilman moved the adoption of the Committee Substitute for SB 835. He then moved CSSB 835, subject to the above mentioned letter, with individual recommendations.

The meeting was adjourned at 2:20 p.m.

# STATE OF ALASKA

JAY S. HARMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K--STATE CAPITOL  
JUNEAU, ALASKA 99811

April 26, 1982

Honorable Bettye Fahrenkamp  
Chairwoman, Senate Resources Committee  
Alaska State Senate  
Twelfth Legislature  
Pouch V  
Juneau, Alaska 99811

Re: SB 835 (National Petroleum Reserve-Alaska  
Trust Fund). Our File No. 366-619-82

Dear Senator Fahrenkamp:

SB 835, which would establish a trust fund account for revenues the state receives from the federal government from federal oil and gas leasing in the National Petroleum Reserve-Alaska, presents a number of serious legal questions in its current form.

The first question is raised under Article IX, Section 7 of the Alaska Constitution, which provides in pertinent part: "The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article or when required by the federal government for state participation in federal programs." The Department of Law and the Legislative Counsel have disagreed over the reach of this prohibition. Our department has construed the prohibition broadly to apply to all "public revenues" (e.g., taxes, license fees, revenues from the sale or disposition of natural resources, etc.); the Legislative Counsel has interpreted it narrowly as reaching only tax and license revenues. On April 23, 1982, the Alaska Supreme Court adopted the Department of Law's broader interpretation in State v. Alex, \_\_\_ P.2d \_\_\_, Op. No. 2488 (Alaska, April 23, 1982). See Slip Op. at p. 20. As a result, we believe the revenues which the bill addresses -- i.e., those that the state would receive from the federal government as the result of federal oil and gas leasing in NPR-A -- are subject to the prohibition.

However, there is an exception to the dedicated fund prohibition "when required by the federal government for state participation in federal programs." The pertinent portion of

Honorable Bettye Fahrenkamp  
Re: SB 835

April 26, 1982  
Page 2

P.L. 96-514, 94 Stat. 2964, which directs payment of the money to the state, attaches certain conditions to the state's receipt of that money: The state may use it "for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: Provided further, That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act." In other words, the funds received from the federal government must be dedicated to planning, construction, maintenance, and operation of essential public facilities, and other necessary provisions of public service. In addition, impacted political subdivisions must be given priority in the allocation of the funds.

We believe the establishment of a trust fund into which all the federal revenues are placed immediately upon receipt from the federal government is both permissible under Article IX, Section 7 of the Alaska Constitution and desirable in that it will ease the administrative task of demonstrating to the federal government that the funds received have been expended for the purposes and in the manner required by the federal Act. However, it also is our opinion that the explicit provisions of the law establishing the trust fund cannot impose conditions on the use of the money which exceed those "required by the federal government for state participation" in the federal program -- i.e., those in the federal Act. Since it is only the federal conditions which exempt the funds from the general dedicated fund prohibition, we believe the only conditions which may be attached to the funds are those required by the federal Act.

As a result, we believe the directive in Section 2(c) of SB 835 to pay a minimum of 50 percent of amounts in the fund to the North Slope Borough violates the dedicated fund prohibition because the federal Act does not require it for state participation. In addition, the directive in Section 2(d) that remaining amounts in the fund may be spent only "in conjunction with the exploration of the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve" also violates the prohibition, again because the federal Act does not require it. The federal Act simply does not impose these restrictions on the use of the funds received by the state.

Another question raised by SB 835 stems from Article II, Section 19 of the Alaska Constitution, which provides in pertinent part: "The legislature shall pass no local or special act if a general act can be made applicable." The problem here is that SB 835 specifically names the North Slope Borough as a recipient of amounts from the fund established. However, nothing in the federal Act requires that the North Slope be named, and it is obvious that a general act can be made applicable and satisfy the terms of the federal Act simply by "giv[ing] priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act." That is the language of the federal Act, so using that language would satisfy that condition of the federal Act. It is language of general applicability to all subdivisions which might be impacted by NPR-A development, and therefore would be a general (not local or special) act within the meaning of the Alaska Constitution. (We also would point out that the North Slope Borough may not be the only political subdivision impacted by oil and gas leasing in NPR-A. In the reserve, Barrow is a first class city and Wainwright and Nuiqsuit are second class cities. Moreover, development in NPR-A may have an impact on other political subdivisions along the pipeline corridor or, it is conceivable, any other route chosen to transport the oil and gas produced -- i.e., Nome, etc. This potential impact on other political subdivisions demonstrates the advisability of couching the bill in terms of a general act, not a local or special act directed only to the North Slope Borough.)

Another problem stems from Article II, Section 13 of the Alaska Constitution, which provides in pertinent part: "Bills for appropriations shall be confined to appropriations." The problem in SB 835 is the Section 2(c) directive to pay money to the affected subdivisions (in the bill's current form, only the North Slope Borough). Specifically, Section 2(d) describes that directive as an appropriation. If it is an appropriation, it is an appropriation in a general act and not in a bill confined to appropriations as required by the Constitution. This conclusion is reinforced by the provision in Section 2(d) that amounts remaining in the fund after the payment to the subdivisions cannot be expended without appropriation by the legislature. To avoid this problem, the bill could be amended simply to require appropriation by the legislature prior to any expenditure of funds in the trust account, giving the legislature discretion to appropriate funds to impacted subdivisions or for other purposes permitted under the federal Act.

Following my testimony on SB 835 at the Senate Resources Committee meeting on April 23, 1982, I met with Tom Smythe and Robert DuPere, representing the North Slope Borough, and Resa King of the Committee staff. We seemed to reach general agreement that some minor modifications to the bill would satisfy the constitutional concerns while remaining true to the basic thrust of the proposed bill. My notes indicate that the following changes were contemplated:

1. Page 1, lines 12-15 should be amended to read (material to be deleted is capitalized and in brackets; new material is underlined): "(1) The United States Congress, by P.L. 96-514 (94 Stat. 2964, December 12, 1980), [APPROPRIATED \$107,001,000 FOR A PROGRAM OF] provided that the state shall receive 50 percent of receipts derived from competitive leasing of oil and gas in the National Petroleum Reserve in Alaska;" This change would eliminate any confusion regarding the \$107,001,000 federal appropriation which is for administration of the leasing program, not an appropriation to the state. The state will only receive money under the federal Act after the program begins generating lease revenues.

2. Page 1, lines 24-26 should be amended to read: "The fund shall consist of funds [APPROPRIATED TO IT BY THE LEGISLATURE EQUAL TO THE AMOUNT OF FUNDS] received by the state from the federal government under P.L. 96-514." This would establish the constitutionally-permissible dedicated fund.

3. Subsection (c) of Section 2, which begins on page 1, line 29, and continues to page 2, line 4, should be deleted in its entirety and replaced with the following:

(c) The commissioner of revenue shall pay to the subdivisions of the state most directly or severely impacted by development of oil and gas leased under the federal Act the amount appropriated by the legislature from the fund for that purpose. It is the intent of the legislature that the amount appropriated for payment to the subdivisions equal 50 percent of the amount received from the federal government under the federal Act, and that this percentage be reviewed every five years following passage of this Act.

This would indicate the legislative intent of sharing the revenues with impacted political subdivisions without violating the dedicated fund prohibition by imposing conditions beyond those required by the federal Act. It also avoids the local and special legislation problem, as well as the problem regarding an appropriation in a bill not confined to appropriations.

4. Page 2, lines 5-10 should be amended to read:  
"(d) Amounts received by the state under (a) of this section [WHICH ARE NOT APPROPRIATED IN ACCORDANCE WITH (c) OF THIS SECTION] shall be used by the state, subject to appropriation by law, for the following activities and services [IN CONJUNCTION WITH THE EXPLORATION OF THE NATIONAL PETROLEUM RESERVE IN ALASKA AND A PROGRAM OF COMPETITIVE LEASING OF OIL AND GAS FROM THAT RESERVE]:" This avoids any dedicated fund problem by eliminating those conditions which exceed those required by the federal Act.

5. Subsection (e) of Section 2, appearing on page 2, lines 15-20, should be deleted in its entirety.

6. Subsection (f), beginning on page 2, line 21, and ending on page 3, line 1, should be amended to read:

"(f) amounts paid to [THE NORTH SLOPE BOROUGH] subdivisions under (c) of this section shall be used by the [NORTH SLOPE BOROUGH] subdivisions only for the following activities and services in conjunction with [THE EXPLORATION] development on the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve:

"(1) planning;

"(2) construction, maintenance, and operation of essential public facilities by the [NORTH SLOPE BOROUGH] subdivisions; and

"(3) other necessary public services provided by the [NORTH SLOPE BOROUGH] subdivisions."

This change is necessary to avoid the local and special legislation problem.

Honorable Bettye Fahrenkamp  
Re: SB 835

April 26, 1982  
Page 6

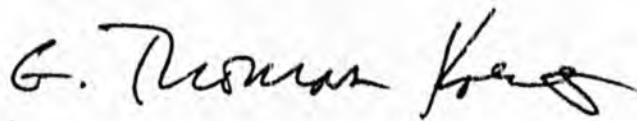
In addition, it was suggested that a committee letter of intent be drafted to the effect that, at the present time, the North Slope Borough is the only political subdivision of the state which will be most directly or severely impacted by oil and gas leasing in NPR-A.

I believe these comments accurately reflect the consensus of our work group. However, the other individuals present may have some further suggestions for change.

Finally, I must indicate that these comments are not intended to represent the Administration's policy position on this bill. Rather, they are provided in the nature of a drafting service to overcome the constitutional and other legal problems which we believe are presented by the bill in its current form. If we can be of further assistance in this regard, please contact us at your earliest convenience.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By:   
G. Thomas Koester  
Assistant Attorney General

GTK:dlm

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

Tom Smythe  
Robert DuPere  
Keith Specking



# Alaska State Legislature

## SENATE Resources Committee

POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

### Official Business

BETTYE FAHRENKAMP, Chairman  
VIC FISCHER, Vice-Chairman  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI

### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer  
Senator Eliason  
Senator Gilman  
Senator Sturgulewski

April 23, 1982  
1:40 p.m.

Beltz Room  
Capitol - Room 211

### Hearing:

SB 835 An Act establishing a National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account: and providing for an effective date.

SB 872 Relating to sanitation, sanitary practices, and quality assurance in the seafood processing industry.

CSHB 47 An Act relating to the prohibition against waste of the meat of big game animals and wild fowl.

### SB 872

Dr. Fred Honsinger, Director, Seafood and Animal Industry Division, Department of Environmental Conservation, suggested that page 3, line 7 of the Committee Substitute be changed from "in conjunction" to "after consultation".

Senator Gilman moved the amendment to page 3, line 7. He then moved the Committee Substitute and asked unanimous consent. Gilman moved the Letter of Intent and asked unanimous consent.

### SB 835

Tom Koester, Attorney General's Office, stated that SB 835 raises some legal questions. It violates the constitutional prohibitions of a dedicated fund, and the enactment of local or special legislation. In addition, it makes an appropriation in an enactment bill, and the wording "minimum of 50%" takes the power of appropriation away from the legislature. Koester concluded by stating that he would provide the Committee with written testimony outlining the legal questions raised by the bill. (See attached.)

Tom Smythe, Consultant, North Slope Borough, provided background on the National Petroleum Reserve, Alaska. He supports SB 835, stating that the funds are needed to continue a program of service in the field and alleviate impacts on the community.

Robert J. DuPere, Consultant, North Slope Borough, explained that the constraint is on the operating budget. Funds are needed for sanitary and solid waste facilities: Search and Rescue: mitigation of environmental impacts: airstrips, roads, and other lines of communication. DuPere then suggested overcoming the constitutional problems outlined by Tom Koester through wording changes that would allow the legislature to make yearly appropriations to impacted communities.

Senator Gilman expressed concern over how impacts will be measured, and how eligibility for funds will be ascertained.

Senator Fischer raised questions about how the 50% that doesn't go to the North Slope Borough will be spent. Also, he suggested that appropriations to the North Slope Borough be subject to legislative review periodically, or that a Letter of Intent be sent with the bill.

Senator Fahrenkamp directed Koester, DuPere, and the Resources Committee Staff to work together after the meeting to find an agreeable solution to the issues raised.

HB 47

Senator Sturgulewski moved CSHB 47 (Jud)(am) with individual recommendations.

The meeting was adjourned at 3:05 p.m.

The Testimony of  
MAYOR EUGENE BROWER

on

SENATE BILL NO. 835

For an Act entitled: "An Act establishing a National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account; and providing for an effective date."

Before the  
SENATE NATURAL RESOURCES COMMITTEE  
Chairwoman Bettye Fahrenkamp

on

April 21, 1982

THE NORTH SLOPE BOROUGH SUPPORTS SPEEDY ENACTMENT OF SENATE BILL NO. 835 ENTITLED "AN ACT ESTABLISHING A NATIONAL PETROLEUM RESERVE, ALASKA, TRUST FUND ACCOUNT AND PROVIDING FOR USES OF THE MONEY PLACED IN THE ACCOUNT; AND PROVIDING FOR AN EFFECTIVE DATE," AS A MEANS FOR MITIGATING FORTHCOMING IMPACTS FROM PETROLEUM DEVELOPMENT WITHIN NPR-A.

THE MOST SUPERFICIAL OBSERVATION OF THE PRUDHOE BAY AND TAPS DEVELOPMENT CANNOT AVOID DETECTING DEVASTATING PHYSICAL, ECONOMIC AND SOCIAL IMPACTS. THERE IS A BELIEF HELD BY SOME PEOPLE THAT MOST IMPACTS ARE BENEFICIAL; THEREFORE, EXPENDITURES IN IMPACTED AREAS ARE SUPERFLUOUS, OR WORSE, COUNTER-PRODUCTIVE IN THE SENSE THAT BASIC INDUSTRY IS DELAYED AND FORCED TO EXPEND MONIES ON NONPRODUCTIVE FUNCTIONS. OUR OBSERVATIONS LEAD US TO A REVERSE CONCLUSION. FAILURE TO ADDRESS FORTHCOMING IMPACTS AT PRUDHOE BAY, FOR EXAMPLE, LED TO EXTREMELY INEFFICIENT USE OF LANDS, A CATS CRADLE ROAD SYSTEM, DUPLICATION OF FACILITIES SUCH AS MAJOR AIRPORTS, INABILITY TO PROVIDE A COMMON UTILITY SYSTEM AND STRUCTURES BUILT TO INACCEPTABLE STANDARDS. THE IRONY OF THIS DEVELOPMENT WAS NOT ONLY THAT IT HAD AN ADVERSE EFFECT UPON THE LOCAL PEOPLE AND ENVIRONMENT, BUT IT WAS AN EXTREMELY COSTLY AND INEFFICIENT DEVELOPMENT SCHEME. HASTY BOROUGH/INDUSTRY SOLID WASTE DISPOSAL AND SANITARY WASTE TREATMENT PROGRAMS PROVIDE COSMETIC TREATMENT, BUT THE BASIC ILLS REMAIN.

DESPITE THE FACT THAT COMMERCIAL PETROLEUM PROSPECTS FOR NPR-A HAVE BEEN SUBSTANTIALLY DOWNGRADED BY THE USGS AND DNR AS

A RESULT OF PAST FEDERALLY SPONSORED DRILLING PROGRAMS, THE POTENTIAL IMPACTS, IN FACT, MAY BE GREATER. PAST DRILLING INDICATES THE POSSIBILITY OF A REASONABLY LARGE NUMBER OF SMALLER FIELDS RATHER THAN THE GIANTS OR SUPER GIANTS FORECAST IN THE PAST. IF THIS IS THE CASE, PRODUCTION WOULD PROBABLY AWAIT THE DEVELOPMENT OF GROUPS OF SMALLER FIELDS WHICH WOULD COLLECTIVELY REPRESENT A COMMERCIAL UNDERTAKING.

COLLECTORS WOULD LINK THESE SMALL FIELDS TO A PIPELINE RUNNING TO TAPS. THE TRACTS RECEIVING BIDS DURING THE JANUARY 27, 1982, NPR-A LEASE SALE AND THEIR PATTERN SUBSTANTIATE THIS BELIEF. THIS TYPE OF DEVELOPMENT SCENARIO NECESSARILY WOULD DISTURB A LARGER AREA AS WELL AS BEING MORE DIFFICULT TO SERVICE.

IN CONTRAST TO PRUDHOE BAY, THE IMPACTS OF NPR-A DEVELOPMENT WILL BE AT THE DOORSTEP OF FOUR OF THE EIGHT PERMANENT BOROUGH COMMUNITIES (BARROW, NUIQSUT, ATKASOOK, AND WAINWRIGHT). THE INDIRECT OR SECONDARY IMPACTS OF THE PRUDHOE BAY DEVELOPMENT, DISCOUNTING PRIMARY IMPACTS, CREATED DRASTIC CULTURAL, SOCIAL AND ECONOMIC DISRUPTIONS FOR THE PERMANENT INUPIAT POPULATION. IMPACTS FORCED CHANGE UPON THE RESIDENT POPULATION, NOT OF THEIR OWN MAKING, AND REQUIRED THEM TO ORGANIZE A LOCAL GOVERNMENTAL UNIT TO REPRESENT THEIR INTERESTS. WITH THE DEVELOPMENT OF NPR-A, THE PRESSURES WILL BE MORE DIRECT AND PERHAPS MORE DEVASTATING UNLESS MITIGATION MEASURES CAN BE TAKEN.

S.B. 835 WILL PROVIDE A PORTION OF THE FUNDING REQUIRED TO

ADDRESS FORTHCOMING IMPACTS. WITH PRUDHOE BAY AND KUPARUK EXPERIENCE, FUTURE BOROUGH APPROACHES TO INDUSTRIAL IMPACTS WILL INVOLVE DIRECT YET COOPERATIVE STATE/INDUSTRY/BOROUGH PLANNING AND PROVISION OF BASIC CONSOLIDATED SERVICES WITHIN THE FIELDS AS WELL AS WITHIN THE COMMUNITIES. THE RESULT OF BOROUGH INVOLVEMENT PROMOTING CONSOLIDATION OF FACILITIES AND SERVICES WILL RESULT IN MORE EFFICIENT, LESS DISRUPTIVE DEVELOPMENT AND THEREFORE LESS DETRIMENTAL IMPACT.

THE FEDERAL LAW, DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT OF 1980, CONTAINING THE FOLLOWING LANGUAGE:

PROVIDED, THAT ... (9) ALL RECEIPTS FROM SALES, RENTALS, BONUSES, AND ROYALTIES ON LEASES ISSUED PURSUANT TO THIS ACT SHALL BE PAID INTO THE TREASURY OF THE UNITED STATES: PROVIDED, THAT 50 PER CENTUM SHALL BE PAID BY THE SECRETARY OF THE TREASURY SEMIANNUALLY, AS SOON AS PRACTICABLE AFTER MARCH 30 AND SEPTEMBER 30 EACH YEAR, TO THE STATE OF ALASKA FOR (A) PLANNING, (B) CONSTRUCTION, MAINTENANCE AND OPERATION OF ESSENTIAL PUBLIC FACILITIES, AND (C) OTHER NECESSARY PROVISIONS OF PUBLIC SERVICE: PROVIDED FURTHER, THAT IN THE ALLOCATION OF SUCH FUNDS THE STATE SHALL GIVE PRIORITY TO USE BY SUBDIVISIONS OF THE STATE MOST DIRECTLY OR SEVERELY IMPACTED BY DEVELOPMENT OF OIL AND GAS LEASED UNDER THIS ACT

WAS IN PART A RESULT OF THE COOPERATIVE EFFORT OF THE STATE AND THE NORTH SLOPE BOROUGH IN WORKING WITH THE ADMINISTRATION AND THE CONGRESS.

SINCE NPR-A IS FEDERAL RESERVE LAND, THERE WAS NO REQUIREMENT FOR FEDERAL REVENUE SHARING. IN FACT, THERE WAS VOCAL OPPOSITION FROM INFLUENTIAL ADMINISTRATIVE AND CONGRESSIONAL OFFICIALS TO SHARING WITH THE STATE. THE

ADMINISTRATION CONSIDERED DRAFT LANGUAGE TO INCLUDE ONLY THE BOROUGH SINCE NPR-A LIES ALMOST TOTALLY WITHIN THE BOROUGH. HOWEVER, GOVERNOR HAMMOND'S OPPOSITION TO DIRECT REVENUE SHARING RATHER THAN A PASS THROUGH AND THE BOROUGH'S BELIEF THAT THE BOROUGH ALONE WOULD BE LIMITED TO THE 25 PERCENT PRECEDENT FOR LOCAL REVENUE SHARING ESTABLISHED IN WILDLIFE RANGE AND REFUGE LAW, PROMPTED THE BOROUGH TO JOINTLY SEEK REVENUE SHARING WITH THE STATE. THE JOINT STATE/BOROUGH EFFORT RESULTED IN THE STATE RECEIVING 50 PER CENT OF THE NET FEDERAL RECEIPTS WITH A PROVISIO THAT THE STATE WOULD PASS THROUGH FUNDS TO DIRECTLY OF SEVERELY IMPACTED LOCAL GOVERNMENTAL UNITS.

ALTHOUGH THE ADMINISTRATION INTRODUCED LEGISLATION IN BOTH THE HOUSE AND THE SENATE, SENATOR STEVENS, IN A SOPHISTICATED LEGISLATIVE MANUEVER, EXTRACTED THE APPROPRIATE NPR-A LEASE SALE LANGUAGE FROM THE ADMINISTRATION BILL AND INCLUDED IT AS A PART OF INTERIOR APPROPRIATIONS. NPR-A LEASING WAS PERMITTED AND THE REVENUE SHARING PRESERVED. HOWEVER, THE REMAINDER OF THE ADMINISTRATION BILL WHICH DEALT IN LARGE PART WITH ENVIRONMENTAL CONSTRAINTS AND ENFORCEMENT PROVISIONS IS DORMANT AND PROBABLY WILL NOT BE RESURRECTED. THIS PLACES A GREATER BURDEN UPON THE STATE AND THE BOROUGH TO ENSURE EFFICIENT, ENVIRONMENTALLY SOUND DEVELOPMENT.

IN SUMMARY, THE NORTH SLOPE BOROUGH URGES THE PROMPT ENACTMENT OF S.B. 835 TO PROVIDE THE BOROUGH WITH THE MEANS OF AMELIORATING IMPACTS OCCASIONED BY THE DEVELOPMENT OF PETROLEUM

LEASES IN NPR-A. IN PROVIDING THIS PASS THROUGH OF FUNDS, THE BOROUGH WILL USE THESE FUNDS FOR THE PLANNING, CONSTRUCTION, MAINTENANCE AND OPERATIONS OF PUBLIC FACILITIES AND OTHER NECESSARY PROVISIONS OF SERVICE RESULTING FROM NPR-A LEASE SALES.

# MEMORANDUM

# State of Alaska

TO:  
Jeff Haynes  
Deputy Commissioner  
Department of Natural Resources

DATE: April 20, 1982

FILE NO:

TELEPHONE NO:

FROM:  
Tom Bergstrom *TJB*  
Director  
Management and Administration

SUBJECT: SB 835

Apparently there is some confusion regarding \$107,001,000 appropriated under P.L. 96-514 for competitive oil and gas leasing in the NPR-A. The State has received no funds under this program.

April 1, 1976

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PUBLIC LAW 94-258 [H.R. 49]; April 5, 1976

# NAVAL PETROLEUM RESERVES PRODUCTION ACT OF 1976

For Legislative History of Act, see p. 492

An Act to authorize the Secretary of the Interior to establish on certain public lands of the United States national petroleum reserves the development of which needs to be regulated in a manner consistent with the total energy needs of the Nation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Naval Petroleum Reserves Production Act of 1976".

## TITLE I—NATIONAL PETROLEUM RESERVE IN ALASKA

### DEFINITION

SEC. 101. As used in this title, the term "petroleum" includes crude oil, gases (including natural gas), natural gasoline, and other related hydrocarbons, oil shale, and the products of any of such resources.

### DESIGNATION OF THE NATIONAL PETROLEUM RESERVE IN ALASKA

SEC. 102. The area known as Naval Petroleum Reserve Numbered 4, Alaska, established by Executive order of the President, dated February 27, 1923, except for tract Numbered 1 as described in Public Land Order 2344, dated April 24, 1961, shall be transferred to and administered by the Secretary of the Interior in accordance with the provisions of this Act. Effective on the date of transfer all lands within such area shall be redesignated as the "National Petroleum Reserve in Alaska" (hereinafter in this title referred to as the "reserve"). Subject to valid existing rights, all lands within the exterior boundaries of such reserve are hereby reserved and withdrawn from all forms of entry and disposition under the public land laws, including the mining and mineral leasing laws, and all other Acts; but the Secretary is authorized to (1) make dispositions of mineral materials pursuant to the Act of July 31, 1947 (61 Stat. 681), as amended (30 U.S.C. 601), for appropriate use by Alaska Natives, (2) make such dispositions of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary to carry out his responsibilities under this Act, and (3) convey the surface of lands properly selected on or before December 18, 1975, by Native village corporations pursuant to the Alaska Native Claims Settlement Act. All other provisions of law heretofore enacted and actions heretofore taken reserving such lands as a Naval Petroleum Reserve shall remain in full force and effect to the extent not inconsistent with this Act.

### TRANSFER OF JURISDICTION

SEC. 103. (a) Jurisdiction over the reserve shall be transferred by the Secretary of the Navy to the Secretary of the Interior on June 1, 1977.

(b) With respect to any activities related to the protection of environmental, fish and wildlife, and historical or scenic values, the Secretary of the Interior shall assume all responsibilities as of the date

Naval  
Petroleum  
Reserves  
Production  
Act of 1976.  
42 USC 6501  
note.

42 USC 6501.

42 USC 6502.

43 CFR app.

43 USC 1601  
note.

42 USC 6503.

Rules and regulations.

of the enactment of this title. As soon as possible, but not later than the effective date of transfer, the Secretary of the Interior may promulgate such rules and regulations as he deems necessary and appropriate for the protection of such values within the reserve.

(c) The Secretary of the Interior shall, upon the effective date of the transfer of the reserve, assume the responsibilities and functions of the Secretary of the Navy under any contracts which may be in effect with respect to activities within the reserve.

(d) On the date of transfer of jurisdiction of the reserve, all equipment, facilities, and other property of the Department of the Navy used in connection with the operation of the reserve, including all records, maps, exhibits, and other informational data held by the Secretary of the Navy in connection with the reserve, shall be transferred without reimbursement from the Secretary of the Navy to the Secretary of the Interior who shall thereafter be authorized to use them to carry out the provisions of this title.

(e) On the date of transfer of jurisdiction of the reserve, the Secretary of the Navy shall transfer to the Secretary of the Interior all unexpended funds previously appropriated for use in connection with the reserve and all civilian personnel ceilings assigned by the Secretary of the Navy to the management and operation of the reserve as of January 1, 1978.

ADMINISTRATION OF THE RESERVE.

Petroleum production, prohibition. 42 USC 6504.

SEC. 104. (a) Except as provided in section (e) of this section, production of petroleum from the reserve is prohibited and no development leading to production of petroleum from the reserve shall be undertaken until authorized by an Act of Congress.

Explorations.

(b) Any exploration within the Utukok River, the Teshekpuk Lake areas, and other areas designated by the Secretary of the Interior containing any significant subsistence, recreational, fish and wildlife or historical or scenic value, shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.

Information, submittal to congressional committee.

(c) The Secretary of the Navy shall continue the ongoing petroleum exploration program within the reserve until the date of the transfer of jurisdiction specified in section 103(a). Prior to the date of such transfer of jurisdiction the Secretary of the Navy shall—

(1) cooperate fully with the Secretary of the Interior providing him access to such facilities and such information as he may request to facilitate the transfer of jurisdiction;

(2) provide to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives copies of any reports, plans, or contracts pertaining to the reserve that are required to be submitted to the Committees on Armed Services of the Senate and the House of Representatives; and

(3) cooperate and consult with the Secretary of the Interior before executing any new contract or amendment to any existing contract pertaining to the reserve and allow him a reasonable opportunity to comment on such contract or amendment, as the case may be.

Contracts.

(d) The Secretary of the Interior shall commence further petroleum exploration of the reserve as of the date of transfer of jurisdiction specified in section 103(a). In conducting this exploration effort, the Secretary of the Interior—

(1) is authorized to enter into contracts for the exploration of the reserve, except that no such contract may be entered into until

April 5

April 5

NAVAL PETROLEUM RESERVES ACT

P.L. 94-258

at least thirty days after the Secretary of the Interior has provided the Attorney General with a copy of the proposed contract and such other information as may be appropriate to determine legal sufficiency and possible violations under, or inconsistencies with, the antitrust laws. If, within such thirty day period, the Attorney General advises the Secretary of the Interior that any such contract would unduly restrict competition or be inconsistent with the antitrust laws, then the Secretary of the Interior may not execute that contract;

(2) shall submit to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives any new plans or substantial amendments to ongoing plans for the exploration of the reserve. All such plans or amendments submitted to such committees pursuant to this section shall contain a report by the Attorney General of the United States with respect to the anticipated effects of such plans or amendments on competition. Such plans or amendments shall not be implemented until sixty days after they have been submitted to such committees; and

(3) shall report annually to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives on the progress of, and future plans for, exploration of the reserve.

(4) Until the reserve is transferred to the jurisdiction of the Secretary of the Interior, the Secretary of the Navy is authorized to develop and continue operation of the South Barrow gas field, or such other fields as may be necessary, to supply gas at reasonable and equitable rates to the native village of Barrow, and other communities and installations at or near Point Barrow, Alaska, and to installations of the Department of Defense and other agencies of the United States located at or near Point Barrow, Alaska. After such transfer, the Secretary of the Interior shall take such actions as may be necessary to continue such service to such village, communities, installations, and agencies at reasonable and equitable rates.

STUDY OF THE RESERVE

Sec. 105. (a) Section 84 of the Energy Policy and Conservation Act (39 Stat. 871, 889) is hereby amended by deleting in the first sentence "to the Congress" and by inserting in lieu thereof "to the Committees on Interior and Insular Affairs of the Senate and House of Representatives".

(b) (1) The President shall direct such Executive departments and/or agencies as he may deem appropriate to conduct a study, in consultation with representatives of the State of Alaska, to determine the best overall procedures to be used in the development, production, transportation, and distribution of petroleum resources in the reserve. Such study shall include, but shall not be limited to, a consideration of—

(A) the alternative procedures for accomplishing the development, production, transportation, and distribution of the petroleum resources from the reserve, and

(B) the economic and environmental consequences of such alternative procedures.

(2) The President shall make semiannual progress reports on the implementation of this subsection to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives beginning not later than six months after the date of the enactment of this Act and shall, not later than one year after the transfer of jurisdiction of the reserve, and annually thereafter, report any findings or

Plans, submitted to congressional committees. Report by Attorney General.

Report to congressional committees.

42 USC 6244.

42 USC 6505.

Report to congressional committees.

PRIME SPONSOR: Finance

LEGISLATION SUMMARY

SB 835: "An Act establishing a National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account; and providing for an effective date."

Sec. 1: The Legislature finds that: the U. S. Congress, by a federal Act, appropriated \$107,001,000 for an oil and gas competitive leasing program for the National Petroleum Reserve in Alaska (NPRA); the petroleum reserve lies virtually entirely within the North Slope Borough; because of the continuing nature of the federal appropriation, a trust fund should be established to comply with the federal Act.

Sec. 2: Establishes the National Petroleum Reserve, Alaska, Trust Fund, consisting of state funds appropriated to the Trust Fund, in amounts equal to those received under the federal Act.

Directs the commissioner of revenue to administer the the Trust Fund according to existing law regarding custody and investment of trust funds. Within 30 days of receipt, the commissioner shall pay a minimum of 50% of the amounts received under the federal act and 50% of the amounts earned from investments of the balance of the Trust Fund to the North Slope Borough.

Directs that the funds received by the state under the federal Act and not appropriated to the North Slope Borough, and amounts from the Trust Fund or the federal Act paid to the North Slope Borough, shall be used for (1) planning, (2) construction, maintenance and operation of public facilities, and (3) other necessary public services in conjunction with the NPRA exploration and competitive oil and gas leasing. When making appropriations of this sort, the Legislature shall give priority to planning, public facilities and public services for communities adjacent to, but not within, the NPRA, and to facilities and services not provided by municipalities.

Sec. 3: Immediate effective date.

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

3/18/82  
JAY S. HAMMOND, GOVERNOR

POUCH 5  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2300

March 17, 1982

The Honorable Bettye Fahrenkamp  
Chairwoman  
Senate Resources Committee  
Room 113 - Capitol Building  
Juneau, Alaska

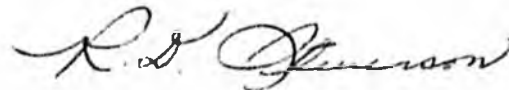
Dear Senator Fahrenkamp:

Re: Senate Bill No. 835

Senate Bill No. 835, an Act establishing a National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account, was introduced in the Senate on March 5, 1982 and was referred to the Senate Resources and Finance Committees.

For the consideration of the Senate Resources Committee, I am enclosing a copy of a Fiscal Note prepared by Mr. Anselm C. Staack, Treasury Comptroller, of the Department of Revenue concerning the proposed legislation.

Sincerely,



R. D. Stevenson  
Special Assistant

Enclosure

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

Joseph K. Donohue  
Deputy Commissioner  
Department of Revenue

Anselm C. Staack  
Treasury Comptroller  
Department of Revenue

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 835 (3/5/82)  
 Title Relating to National Petroleum Reserve, Alaska, Trust Fund Account  
 Requested by Senate Resources Committee Date 3/16/82

II. FISCAL DETAIL

Agency Affected Department of Revenue  
 Program Category Affected Revenue Collection and Management  
 BRU, Program, Or Subprogram(s) Affected Treasury Management  
 (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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		15.7	17.3	19.0		
200 TRAVEL						
300 CONTRACTUAL		48.0	35.2	19.4		
400 COMMODITIES		2.0	1.5	1.0		
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		65.7	54.0	39.4		

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		65.7	54.0	39.4		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME		1/6mm	1/6mm	1/6mm		
TEMPORARY						

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

Establishes National Petroleum Reserve, Alaska, Trust Fund Account. To receive amts. appropriated to it; estimated at \$107.0 million. 50% distribution to North Slope Borough plus 50% of account income. State to utilize balances for purposes indicated in legislation. Account duration within range of 3 years. Above assumes full utilization of corpus by third year.

Personal Services for half-time Accounting Tech. II (R14,G) for accounting/reporting/allocation/distribution. Contractual Services: Comm. \$5.0; Print & Adv. \$5.0; Safekeeping and related reporting/accounting \$25.0; Audit \$10.0; Misc. \$3.0.

*A. Staack*

IV. DATE March 16, 1982 PREPARED BY Anselm C. Staack, Treasury Controller  
 AGENCY Dept. of Revenue, Treasury Division  
 Original: Legislative Finance PHONE 465-2350  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

4/7/82  
POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

MEMORANDUM

April 6, 1982

SUBJECT: National Petroleum Reserve, Alaska, trust  
fund account and providing for uses of the  
money placed in the account -- SB 835  
(Work Order No. 12-2752)

TO: Senator Bettye Fahrenkamp  
Chairman, Senate Resources Committee

FROM: James H. Lear  
Legislative Counsel *JHL*

You have asked whether SB 835 (An Act establishing a National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account; and providing for an effective date) violates the constitutional prohibitions against dedication of funds and local and special acts.

The first part of your request pertains to Article IX, Sec. 7, Constitution of the State of Alaska, which states:

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

It would appear at first glance that even if SB 835 were a dedication to a special purpose, it would be excepted from the prohibition against dedications to a special purpose because the "dedication" is required by the federal government for state participation in a federal program. However, that is not true.

The United States Congress appropriated \$107,001,000 for a program of competitive leasing of oil and gas in the National Petroleum Reserve in Alaska, the majority of which lies in the North Slope Borough. That reserve was created by P.L. 94-258 (Naval Petroleum Reserves Production Act of 1976). Section 107(b) of the Act recognized the need for federal assistance to alleviate the economic impact resulting from exploration and study activities authorized by the Act:

(b) If the Secretary of the Interior determines that there is an immediate and substantial increase in the need for municipal services and facilities in communities located on or near the reserve as a direct result of the exploration and study activities authorized by this title and that an unfair and excessive financial burden will be incurred by such communities as a result of the increased need for such services and facilities, then he is authorized to assist such communities in meeting the costs of providing increased municipal services and facilities. . . .

The appropriation authorized contained in sec. 107 of P.L. 94-258 was implemented by P.L. 96-514 which appropriated the \$107,001,000 referred to above for the administration of P.L. 94-258. That appropriation provided as a condition of the appropriation that:

(9) all receipts from sales, rentals, bonuses, and royalties on leases issued pursuant to this Act shall be paid into the Treasury of the United States: Provided, that 50 per centum thereof shall be paid by the Secretary of the Treasury semiannually, as soon as practicable after March 30 and September 30 each year, to the State of Alaska for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: Provided further, that in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act. (Emphasis supplied)

There is no doubt that the underlined language of this provision imposes as a condition of receipt of the federal

funds the requirement that the State of Alaska give priority to use of the funds by the North Slope Borough. However, that language in no way requires that the state set up a statutory scheme whereby "the commissioner of revenue shall pay to the North Slope Borough a minimum of 50 percent of amounts received from the federal government. . . ." (Sec. 2(c) of SB 835). That is a dedication, but in the opinion of this office, is not violative of Article IX, Sec. 7, Constitution of the State of Alaska.

There is a divergence of opinions as to whether revenue from the lease or sale of state natural resources is contemplated by the language "proceeds of any state tax or license" in Article IX, Sec. 7. The official position of this office is that the revenue from the lease or sale of state natural resources is not contemplated by the prohibition against dedication of funds; therefore, the revenue derived by the state as beneficiary of the \$107,001,000 appropriation under P.L. 96-514 is outside the prohibition -- especially since the revenue is not derived from a "state tax or license" but from receipts by the federal government from sales, rentals, bonuses, and royalties on leases issued under P.L. 96-514.

The opposing viewpoint is embodied in the May 2, 1975, Op. Att'y Gen., which states that:

"It is well settled that constitutions and legislative acts are to be interpreted in accordance with their purpose. Alaska Public Employees Ass'n v. State, 52 P.2d 12 (Alaska 1974). Section 7 of Article IX of the state Constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words 'proceeds of any tax or license' are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues.

"Accordingly, it is our conclusion that the dedication of any public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs."

For the legislature to ignore the above opinion of the Attorney General would be to invite a possible challenge to

the validity of the disbursements that would be made to the North Slope Borough under the the scheme proposed in SB 835.

In addressing the second constitutional issue raised by your request, I would briefly state that SB 835 does not violate the prohibition against local or special acts (Article II, Sec. 19, Constitution of the State of Alaska). The test to be employed in determining whether legislation contravenes this section is substantially the same as that applicable to nonsuspect classifications challenged as violative of equal protection. State v. Lewis, 559 P.2d 630 (Alaska 1977). In this instance the development of the National Petroleum Reserve has a unique impact upon the subdivisions of the state within the area of the reserve. It is a legitimate governmental purpose to appropriate money to aid the impacted areas and the restrictions placed upon the use of that money by the recipient subdivisions ensures that a "fair and substantial relationship" exists between the legislation and the purpose of the legislation.

Although not requested as part of this opinion, it should be brought to the attention of the Senate Resources Committee that SB 835 was not drafted, reviewed, or revised by this office or the Department of Law. For that reason the committee might wish to consider the following deficiencies in the draft not discussed above:

(1) In Sec. 2(c) the commissioner of revenue has the discretionary authority to set the amount to be paid to the North Slope Borough as long as it is not less than 50 percent of the federal funding received at any one time by the state. It seems that the legislature might want to be the judge of the distribution ratio required to be made to accomplish the purposes of the legislation, giving priority to the North Slope Borough.

(2) In Sec. 2(d) reference is made to "Amounts received by the state under (a) of this section which are not appropriated in accordance with (c) of this section . . ." but there is no appropriation under that subsection.

JHL:ljb

PREPARED FOR

SENATOR FRANK R. FERGUSON

BY

MAYOR EUGENE BROWER

NORTH SLOPE BOROUGH

Regarding

SENATE BILL NO. 835

on

April 20, 1982

The North Slope Borough supports speedy enactment of Senate Bill 835 entitled "An Act Establishing a National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account; and providing for an effective date.", as a means for mitigating forthcoming impacts from petroleum development within National Petroleum Reserve, Alaska (NPRA).

The most superficial observation of the Prudhoe Bay and Trans-Alaska Pipeline System (TAPS) development cannot avoid detecting devastating physical, economic and social impacts. There is a belief held by some people that most impacts are beneficial; therefore, expenditures in impacted areas are superfluous, or worse, counterproductive in the sense that basic industry is delayed and forced to expend monies on nonproductive functions. Our observations lead us to a reverse conclusion. Failure to address forthcoming impacts at Prudhoe Bay, for example, led to extremely inefficient use of lands, a cats cradle road system, duplication of facilities such as major airports, inability to provide a common utility system and structures built to unacceptable standards. The irony of this development was not only that it had an adverse effect upon the local people and environment, but it was an extremely costly and inefficient development scheme. Hasty Borough/industry solid waste disposal and sanitary waste treatment programs provide cosmetic treatment, but the basic ills remain.

Despite the fact that commercial petroleum prospects for NPRA have been substantially downgraded by the United States Geological Service and Department of Natural Resources as a result of past Federally sponsored drilling programs the potential impacts, in fact, may be greater. Past drilling indicates the possibility of a reasonably large number of smaller fields rather than the giants or super giants forecast in the past. If this is the case, production would probably await the development of groups of smaller fields which would collectively represent a commercial undertaking. Collectors would link these small fields to a pipeline running to TAPS. The tracts receiving bids during the January 27, 1982, NPRA lease sale and their pattern substantiate this belief. This type of development scenario necessarily would disturb a larger area as well as being more difficult to service.

In contrast to Prudhoe Bay, the impacts of NPRA development will be at the doorstep of four of the eight permanent Borough communities (Barrow, Nuiqsut, Atkasook, and Wainwright). The indirect or secondary impacts of the Prudhoe Bay development, discounting primary impacts, created drastic cultural, social and economic disruptions for the permanent Inupiat population. Impacts forced change upon the resident population, not at their own making, and required them to organize a local governmental unit to represent their interests. With the development of NPRA the

pressures will be more direct and perhaps more devastating unless mitigation measures can be taken.

Senate Bill 835 will provide a portion of the funding required to address forthcoming impacts. With Prudhoe Bay and the Kuparuk experience, future Borough approaches to industrial impacts will involve direct yet cooperative State/industry/Borough planning and provision of basic consolidated services within the fields as well as within the communities. The result of Borough involvement promoting consolidation of facilities and services will result in more efficient, less disruptive development and therefore less detrimental impact.

The Federal law, Department of Interior and Related Agencies Appropriations Act of 1980, contains the following language:

Provided, that . . . (9) all recipients from sales, rentals, bonuses, and royalties on leases issued pursuant to this Act shall be paid into the Treasury of the United States: Provided, that 50 per centum shall be paid by the Secretary of the Treasury semiannually, as soon as practicable after March 30 and September 30 each year, to the State of Alaska for (a) planning, (b) construction, maintenance and operation of essential public facilities, and (c) other necessary provision of public service: Provided further, that in the allocation of such funds the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act.

was in part a result the cooperative effort of the State and

the North Slope Borough in working with the Administration and the Congress.

Since NPRA is Federal reserve lands, there was no requirement for Federal revenue sharing. In fact, there was local opposition from influential Administrative and Congressional officials to sharing with the State. The Administration considered draft language to include only the Borough since NPRA lies almost totally within the Borough. However, Governor Hammond's opposition to direct revenue sharing rather than a pass through and the Borough's belief that the Borough alone would be limited to the 25 percent precedent for local revenue sharing established in worldlife range and refuge law, prompted the Borough to jointly seek revenue sharing with the State. The joint State/Borough effort resulted in the State receiving 50 percent of the net Federal receipts with a proviso that the State would pass through funds to directly or severely impacted local governmental units.

Although the Administration introduced legislation in both the House and the Senate, Senator Stevens, in a sophisticated legislative maneuver, extracted the appropriate NPRA lease sale language from the Administration bill and included it as a part of Interior Appropriations. NPRA leasing was permitted and the revenue sharing preserved. However, the remainder of the Administration bill which dealt in large part with environmental constraints and enforcement provisions is dormant and

probably will not be resurrected. This places a great burden upon the State and the Borough to ensure efficient, environmentally sound development.

In summary, the North Slope Borough urges the prompt enactment of Senate Bill 835 to provide the Borough with the means of ameliorating impacts occasioned by the development of petroleum leases in NPRA. In providing this pass through of funds, the Borough will use these funds for the planning, construction, maintenance and operations of public facilities and other necessary provisions of services resulting from NPRA lease sales.

TO: Billy Berrier  
Director Legal Services

DATE: 4/23/82

FROM: Bettye Fahrenkamp  
Chairman

RE: WORK DRAFT Committee  
Substitute SB 835

-----  
The Committee would like a work draft Committee Substitute for SB 835 incorporating the following changes and additions:

Page 1, line 13:

Delete "appropriated \$107,001,000 for a program of" and insert "provided that the state shall receive 50 percent of receipts derived from" in its place.

Page 1, line 24 and 25:

Delete: "appropriated to it by the Legislature equal to the amount of funds"

Page 1, line 29:

Delete "Within 30 days of receipt" and insert "Subject to appropriation by the legislature," in its place.

Page 2, line 11 - 4:

Delete all of the language <sup>from "Nath" through</sup> ~~from "Nath" through~~ "account."

Page 2, line 1:

After the word "the" insert "subdivisions of the state most directly or severly impacted by development of oil and gas leased under the federal act. It is the intent of the legislature that the amount appropriated from payment to these subdivisions equal 50 percent of the amount received from the federal government under the federal act, and that this percentage be reviewed every five years, by the legislature, following the passage of this Act."

Page 2, line 6:

Delete "inaccordance with" and insert "under" in its place.

Page 2, line 8:

After the word "services" insert a " : "

Page 2, lines 8 - 10:

Delete all of the language from "in" through "reserve:"

Page 2, lines 15 - 20:

Delete all of the language in section "(e)"

Page 2, line 21:

Delete "(f)" and insert "(g)" in its place

Delete "the North Slope Borough" and insert: "subdivisions" in its place.

Page 2, ~~line~~ 22:

Delete "North Slope Borough" and insert "subdivisions" in its place.

Page 23, line 23:

Delete "the exploration" and insert "development" in its place.

Page 2, line 28:

Delete "North Slope Borough" and insert "subdivisions" in its place.

Page 2, line 29:

Delete ~~North~~ and ~~"subdivisions"~~ in its place.

Page 3, line 1:

Delete "Slope Borough"

Introduced: 3/5/82  
Referred: Resources and  
Finance

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 SENATE BILL NO. 835

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a National Petroleum Reserve,  
7 Alaska, trust fund account and providing for uses of  
8 the money placed in the account; and providing for an  
9 effective date."

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

11 \* Section 1. FINDINGS. The legislature finds that:

12 (1) the United States Congress, by P.L. 96-514 (94 Stat. 2964,  
13 December 12, 1980), *provided that the state shall receive 50 percent*  
14 *of receipts of revenues derived from* ~~appropriated \$107,001,000 for a program of com-~~  
15 competitive leasing of oil and gas in the National Petroleum Reserve in  
16 Alaska;

17 (2) virtually all of the National Petroleum Reserve in Alaska  
18 lies within the corporate limits of the North Slope Borough, a home  
19 rule political subdivision of the state; and

20 (3) because of the continuing nature of the congressional appro-  
21 priation a trust fund should be established to comply with the direc-  
22 tive of the federal Act.

23 \* Sec. 2. NATIONAL PETROLEUM RESERVE, ALASKA, TRUST FUND ACCOUNT. (a)  
24 The National Petroleum Reserve, Alaska, trust fund account is established.  
25 The fund shall consist of funds ~~appropriated to it by the Legislature equal~~  
26 ~~to the amount of funds~~ received by the state from the federal government  
27 under P.L. 96-514.

28 (b) The commissioner of revenue shall manage the trust fund  
29 account in accordance with AS 37.14.160 - 37.14.170.

30 (c) *Subject to appropriation by the Legislature,*  
31 ~~Within 30 days of receipt,~~ the commissioner of revenue shall

*a severely*

*subdivisions of the State most directly impacted by*  
pay to the North Slope Borough a minimum of 50 percent of amounts  
(it is the intent of the legislature that the amount  
received from the federal government under (a) of this section and  
~~appropriated for payment to these subdivisions~~  
~~of 50 percent of amounts earned from investments of the balance~~  
~~of the trust fund accounts~~  
*equal 50 percent of the amounts received for the*  
~~of the trust fund accounts~~  
*federal government under the federal act, and act*

*development  
of oil and  
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under the  
federal  
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percentage  
be received  
over five  
years  
following  
passage  
of this  
act.*

(d) Amounts received by the state under (a) of this section which  
are not ~~appropriated~~ *under* in accordance with (c) of this section shall be  
used by the state, subject to appropriation by law, for the following  
activities and services: ~~in conjunction with the exploration of the  
National Petroleum Reserve in Alaska and a program of competitive  
leasing of oil and gas from that reserve:~~

- (1) planning;
- (2) construction, maintenance, and operation of essential public facilities; and
- (3) other necessary public services.

~~a) When making appropriations under (d) of this section, the legislature shall give priority to expenditures for planning, for public facilities, and for public services for communities which are adjacent to, but not within, the boundaries of the National Petroleum Reserve in Alaska and for facilities and services not provided by municipalities.~~

*subdivisions*  
(f) Amounts paid to the North Slope Borough under (c) of this section shall be used by the ~~North Slope Borough~~ *subdivisions* only for the following activities and services in conjunction with ~~the exploration of~~ *development* of the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve:

- (1) planning;
- (2) construction, maintenance, and operation of essential public facilities by the ~~North Slope Borough~~ *subdivisions*; and
- (3) other necessary public services provided by the ~~North~~ *subdivisions.*

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X

~~Slope Borough.~~

\* Sec. 3. This Act takes effect immediately in accordance with AS 01.10-070(c).

TO: Billy Berrier  
Director  
Legal Services

DATE: 4/30/82

Attn: Jim Lear

FROM: Bettye Fahrenkamp  
Chairman

RE: Work Draft CSSB8835(Res)

-----  
Attached is a work draft CSSB 835 that I would like another work  
draft written incorporating the following changes:

Page Pageine 7:

Delete "trust fund account" and insert "special revenue fund"  
in its place.

Page 1, line 19:

Delete "trust fund" and insert "special revenue fund" in  
its place.

Page 1, line 22:

Delete "TRUST FUND ACCOUNT" and insert "SPECIALREVENUEFUND"  
in its place.

Page 1, line 22:

Delete "trust fund account" and insert "special revenue fund"  
in its place.

Page 1, line 27 - 28:

Delete "It is the intent of the legislature that the amount  
appropriated by the legislature from the trust fund for payment"  
and insert "The commissioner of revenue shall pay" in its  
place.

Page 2, line 1:

After the word "Alaska" insert "amount appropriated from the  
fund by the legislature for that purpose."

Page 2, line 1:

Before the word "equal" insert "It is the intent of the legislature  
that these amounts"

Page: 2  
4/29/82  
SB 835

Page 2, line 6:

Delete "appropriated" and insert "paid" in its place.

If you have any questions please contact Resa King at 465-3834. When the work draft is completed please return it to Room 211 Capitol Building.

Attachment

Original sponsor: Finance Committee

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 835 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a National Petroleum Reserve,  
special revenue fund  
7 Alaska, ~~trust fund account~~; and providing for an ec-  
8 tive date."

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

10 \* Section 1. FINDINGS. The legislature finds that

11 (1) the United States Congress, by P.L. 96-514 (94 Stat. 2964,  
12 December 12, 1980), provided that the state shall receive 50 percent of  
13 receipts derived from competitive leasing of oil and gas in the National  
14 Petroleum Reserve in Alaska;

15 (2) virtually all of the National Petroleum Reserve in Alaska lies  
16 within the corporate limits of the North Slope Borough, a home rule political  
17 subdivision of the state; and

18 (3) because of the continuing nature of the congressional appro-  
special revenue fund  
19 priation a ~~trust fund~~ should be established to comply with the directive of  
20 the federal Act. *(caps)*

21 \* Sec. 2. NATIONAL PETROLEUM RESERVE, ALASKA, ~~TRUST FUND ACCOUNT~~. *special revenue fund* (a)  
22 The National Petroleum Reserve, Alaska, ~~trust fund account~~ is established.  
23 The fund shall consist of money received by the state from the federal govern-  
24 ment under P.L. 96-514.

25 (b) The commissioner of revenue shall manage the ~~trust fund account~~ *special revenue fund* in  
26 accordance with AS 37.14.160 - 37.14.170.

27 (c) ~~It is the intent of the legislature that the amount appropriated by~~  
The Commissioner of Revenue shall pay  
28 ~~the legislature from the trust fund for payment~~ to those subdivisions of the  
29 state that are most directly or severely impacted by development of oil and

*\* See Note Below*

amounts appropriated from the fund by the legislature for that purpose. It is the intent of the legislature that these amounts gas in the National Petroleum Reserve in Alaska, equal 50 percent of the amount received from the federal government under the federal Act, and that this percentage be reviewed by the legislature every five years following the passage of this Act.

(d) Amounts received by the state under (a) of this section that are ~~(dispersed? paid?)~~ not appropriated under (c) of this section shall be used by the state, subject to appropriation by law, for the following activities and services:

(1) planning;

(2) construction, maintenance, and operation of essential public facilities; and

(3) other necessary public services.

(e) Amounts paid to subdivisions of the state under (c) of this section shall be used by the subdivisions only for the following activities and services in conjunction with development of the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve:

(1) planning;

(2) construction, maintenance, and operation of essential public facilities by the subdivisions; and

(3) other necessary public services provided by the subdivisions.

\* Sec. 3. This Act takes effect immediately in accordance with AS 01.10-070(c). *Note.\**

Page 1, line 27 through page 2, line 1 should read:

(c) The Commissioner of Revenue shall pay to those subdivisions of the state that are most directly or severely impacted by development of oil and gas in the National Petroleum Reserve in Alaska amounts appropriated from the fund by the legislature for that purpose. It is the intent of the legislature that these amounts equal 50 percent of the amount received from the federal government under the federal Act, and that this percentage be reviewed by the legislature every five years following the passage of this Act.

58835



# Alaska State Legislature

## SENATE Resources Committee

POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

Official Business

BETTYE FAHRENKAMP, Chairman  
VIC FISCHER, Vice-Chairman  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI

TO: Resources Committee Members

DATE: 4/28/82

FROM: Resources Committee Staff

RE: Supreme Court Decision  
Dedication of Funds

-----  
During testimony last week the Assistant Attorney General stated that the Supreme Court had just ruled on clarifying the Constitutional provision on the dedication of funds issue.

For your information attached is a copy of that Supreme Court Decision.

Attachment

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, NORTHERN )  
SOUTHEAST REGIONAL AQUACULTURE )  
ASSOCIATION, and SOUTHERN )  
SOUTHEAST REGIONAL AQUACULTURE )  
ASSOCIATION, )

Appellants, )

v. )

WAYNE ALEX, WILLIAM A. THOMAS, )  
JR., ED MAKI, JOHN C. MARTIN, )  
WARREN S. WESTROM, DICK WORKMAN, )  
MARK W. WHITE, CARL SIMS, BRUCE R. )  
GILBERT, FRED CHAMBERS, DOUGLAS D. )  
KARNS, HAROLD D. BIEKSKI, and )  
LEO R. ALBECKER, JR., )

Appellees. )

File Nos. 5065, 5086, 5142

O P I N I O N

[No. 2488 - April 23, 1982]

Appeal from the Superior Court of the State  
of Alaska, First Judicial District, Juneau,  
Allen T. Compton, Judge.

Appearances: G. Thomas Koester, Assistant  
Attorney General, Avrum M. Gross and Wilson  
L. Condon, Attorneys General, Juneau, for  
Appellant State of Alaska. Fred J. Baxter,  
Baxter & Douglas Law Offices, Juneau, for  
Appellant Northern Southeast Regional Aqua-  
culture Association. Douglas Pope, Wagstaff,  
Middleton & Pope, Anchorage, for Appellant  
Southern Southeast Regional Aquaculture  
Association. M. T. Thomas and W. G. Ruddy,  
Robertson, Monagle, Eastaugh & Bradley,  
Juneau, for Appellees.

Before: Rabinowitz, Chief Justice, Connor, Burke and Matthews, Justices, and Blair, Superior Court Judge.\* (Compton, Justice, not participating.)

BURKE, Justice.

This case involves a suit brought as a class action by several commercial fishermen against two private aquaculture associations and the state. The suit sought a declaratory judgment holding unconstitutional a state statute that authorizes the associations to collect mandatory assessments on the sale of salmon by the plaintiff fishermen. In addition, the complaint sought a refund of all assessments that had been paid by the fishermen and a permanent injunction to restrain future collection of the assessments.

The plaintiffs alleged that the assessment statute was invalid on two grounds. First, they contended that the statute created a state tax dedicated to a special purpose in contravention of the express prohibition of dedicated taxes contained in article IX, section 7 of the Alaska Constitution. Second, they alleged that the delegation of the state's taxing power to private "regional aquaculture associations" was prohibited under article X, section 2 of

---

\* Blair, Superior Court Judge, sitting by assignment made pursuant to article IV, section 16 of the Constitution of Alaska.

the Alaska Constitution, which allows the state to delegate its taxing power to boroughs and cities only: Also, the plaintiffs maintained that the legislature's power to decide to tax is inherently nondelegable, and therefore the decision to implement a tax cannot be made by an administrative official.

The aquaculture associations and the state answered, alleging that the statute was constitutionally valid. In addition, the answers attacked the plaintiffs' status as representatives for the class action. Also, the defendants affirmatively alleged that the claims were barred by laches and a failure to exhaust administrative remedies.

After some discovery, the merits were presented to the trial court by cross-motions for summary judgment. The trial court granted the plaintiffs partial summary judgment. The court held the assessment statute unconstitutional both because it created a dedicated tax and because it was an improper delegation of the legislature's taxing power. Also, the court certified the suit as a class action. The court entered a final judgment as to these issues, pursuant to Civil Rule 54(b).

The associations and the state now appeal, contending that the trial court erred in finding the statute unconstitutional and in certifying the class, and in not dismissing the action on the grounds of laches and failure

to exhaust administrative remedies. We affirm. In order to aid the legislature in devising an aquaculture program consistent with the Alaska Constitution, we discuss each ground on which this scheme is allegedly unconstitutional.<sup>1</sup>

I. THE SALMON ASSESSMENT AND THE FISHERIES ENHANCEMENT LOAN PROGRAM.

AS 16.10.530, the particular section that the trial court found unconstitutional, provides for an assessment on the sale of salmon by commercial fishermen to processors. The amount and conditions of an assessment are first proposed by a "qualified regional association." The assessment must then be approved by a majority of those holding limited entry fishing permits in the association's region. Finally, the Commissioner of Commerce and Economic Development then must determine that all required procedures have been followed and that the assessment is "reasonable." The section notes that the assessments are for the purpose of providing revenue for the associations.

---

1. The legislature has already enacted a new salmon enhancement tax. AS 43.76; Ch. 154 SLA 1980. However, the new legislation did not repeal the tax which is reviewed in this opinion.

The relevant portions of section 530 provide:

Royalty assessment on sale of salmon.

(a) The commissioner, on request of the qualified regional association for the area in which the royalty assessment is to be levied, after consultation with the commissioner of fish and game and after reaching any necessary agreements with local governments, shall establish areas in which a royalty assessment shall be levied on the sale of one or more species of salmon caught by persons holding entry permits under AS 16.43.010-16.43.380, in the area in which the royalty assessment is to be levied. A request by the qualified regional association shall include a description of compliance with (e) of this section. The commissioner shall determine whether the procedural requirements under (e) of this section were followed and whether the proposed assessment is reasonable. A royalty assessment levied under this section shall be for the purpose of providing revenue for the qualified regional association for the area in which the royalty assessment is made. The rate and conditions of royalty assessments, including species to be involved, shall be stated by the appropriate qualified regional association in conjunction with the request to the commissioner under this subsection. The royalty assessment may be equal to either two or three per cent of the fair market value of the fish but may not exceed three per cent of the fair market value of the fish.

.....

(c) The commissioner and the appropriate qualified regional association must agree on a means of collection of the royalty assessment and the commissioner may, by regulation, require its collection by buyers of the salmon

upon the sale of which a royalty assessment is levied.2/

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2. AS 16.10.530(e) and (f) go on to set out in detail the election procedures to be followed in obtaining ratification of an association's proposed assessment by limited permit holders:

(e) Before a royalty assessment is made under this section, the qualified regional association for the area in which the royalty assessment is to be levied shall hold an initial public meeting to explain and discuss the necessity for the royalty assessment and to explain the registration procedure established under (f) of this section. Reasonable public notice of the meeting shall be sent to all limited entry permit holders actively participating in a fishery in the area, posted in at least three centrally located public places in the area, and published in at least one newspaper of general circulation at least one time a week for three consecutive weeks in the area, if one exists. The notice shall briefly state the amount of the royalty assessment and a short general description of the purposes for which the royalty assessment money will be used. A ballot shall be mailed to all limited entry permit holders actively participating in a fishery in the area at least 20 days before the initial public meeting and contain a copy of the notice and ask the question whether a royalty assessment shall be imposed. At the public meeting the returned ballots shall be counted by a special committee appointed by the regional association for that purpose,

(Cont'd)

The "qualified regional association" referred to in section 530 is defined in section 380:

Regional associations. (a) The commissioner shall assist in and encourage the formation of qualified regional associations for the purpose of enhancing salmon production. A regional association is qualified if the commissioner determines that

(1) it is comprised of associations representative of commercial fishermen in the region;

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2. (Cont'd)

and a vote by written ballot shall be taken on the question from among the limited entry permit holders present at the initial public meeting. After the vote is taken at the initial meeting a second public meeting shall be held, upon the limited notice of publication in a newspaper of general circulation, each day for five consecutive days and the mailing of personal notice to all limited entry permit holders who actively participate in a fishery in the area at least 14 days before the second public meeting, to give those who did not vote by written ballot at the initial public meeting an opportunity to vote. These votes shall be counted with the votes counted at the initial meeting. A majority vote for the royalty assessment is required from the combined total of the returned ballots and the votes by ballot cast at both public meetings, before a royalty assessment may be imposed. No person may vote twice.

(f) The qualified regional association shall establish standard registration procedures for voting on royalty assessments under this section.

(2) it includes representatives of other user groups interested in fisheries within the region who wish to belong; and

(3) it possesses a board of directors which includes no less than one representative of each user group that belongs to the association.

(b) In this section "user group" includes, but is not limited to, sport fishermen, processors, commercial fishermen, subsistence fishermen, and representatives of local communities.

The section 530 assessments are an integral part of the Fisheries Enhancement Loan Program Act, AS 16.10.500-.620. The act provides for "fishery enhancement loans" to qualified regional associations for hatchery construction. These loans are to be given based on the ability of an association to establish an equity in the hatchery through the use of the section 530 assessments, or by other means. AS 16.10.520(b). In addition, the loans must be secured by collateral such as the hatchery itself, sale of surplus hatchery fish, and the section 530 assessments. AS 16.10.520(c).

The assessment provisions of section 530 have been implemented in regulations promulgated by the commerce department. 3 AAC 88.010-.900. These regulations set out the required contents of requests by an association for a section 530 assessment. 3 AAC 88.020. The requests must

set out the particulars of the area, conditions, period, rate, procedures for collection, and the species of salmon for the assessment. 3 AAC 88.020(b)(1)(A)-(G). The commissioner then reviews the assessment requests and decides whether the request is consistent with the act, based on factors such as the "reasonableness of the assessment in view of the projected activities of the regional association" and "the likelihood of promoting, through the assessment, the interest of the public in fostering salmon enhancement efforts." 3 AAC 88.030(a).

The assessments are then collected by commercial buyers of salmon and forwarded directly to the particular association's trust account. 3 AAC 88.020(b)(1)(H), 88.040(b), (c), 88.900(2).

II. DO THE ASSESSMENT PROVISIONS OF AS 16.10.530 DEDICATE THE PROCEEDS OF A STATE TAX OR LICENSE TO A SPECIAL PURPOSE IN CONTRAVENTION OF ARTICLE IX, SECTION 7 OF THE ALASKA CONSTITUTION PROHIBITING DEDICATED TAXES?

Article IX, section 7 of the Alaska Constitution states in relevant part: "The proceeds of any state tax or

license shall not be dedicated to any special purpose  
... "3

Plaintiffs contend that section 530 and its implementing regulations create a dedicated tax that violates the above constitutional prohibition. The trial court agreed, concluding that in creating the salmon assessment the state had "dedicate[d] a tax on the harvest of a natural resource of the State to a specific purpose."

The associations and the state contend that the trial court erred in finding a prohibited dedicated tax. First, they maintain that on its face section 530 makes no dedication of revenue. Second, they maintain that the assessments levied under section 530 are not "proceeds of a state tax or license" so as to be subject to the nondedication provision of section 7. Third, even if section 530 does dedicate a tax, they contend that a qualified incorporated regional association is a service area in the unorgan-

---

3. The section goes on to state:

except as provided in section 15 of this article [creating the permanent fund] or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

ized borough and as such is not subject to the nondedication provision. Fourth, the defendants claim that the natural resources provisions of article VIII of the constitution allow dedicated taxes to be used in carrying out the enumerated powers of the article.

Each of the defendants' contentions are examined below. None has merit and, therefore, we affirm the trial court on this issue.

A. Does AS 16.10.530 on its Face Make a Dedication of Revenues to a Special Purpose?

The most relevant sentence of section 530 reads:

A royalty assessment levied under this section shall be for the purpose of providing revenue for the qualified regional association for the area in which the royalty assessment is made.

AS 16.10.530(a). The state contends that this sentence is in effect directory and not mandatory. It contends that it is merely an expression either of the legislature's motivation for enacting the assessment provision, or of the present legislature's policy commitment to appropriate matching monies from the general fund on a continuing basis in the future. Since such an expression of present policy is merely directory, the state argues that the current administration and future legislatures would be free to do

as they please with the assessment funds, subject only to a moral obligation to carry out the policy of the originating legislature. The state's argument continues that since the statement of purposes is not binding, the statute should be construed to allow deposit of the assessments into the general fund, unearmarked, thereby avoiding a conflict with the constitutional prohibition.

This court has previously noted its intention to narrowly construe statutes to avoid constitutional infirmity where that can be done without doing violence to the legislature's intent. Bonjour v. Bonjour, 592 P.2d 1233, 1237-38 (Alaska 1979). However, only a reasonable construction may be placed on a statute in this manner, because giving the statute an unintended meaning "would be stepping over the line of interpretation and engaging in legislation." Gottschalk v. State, 575 P.2d 289, 296 (Alaska 1978).

In the present case, the state's reading of section 530 does not square well with the manifestations of legislative intent contained in other provisions of the Fisheries Enhancement Loan Act. First, the sentence in question uses the verb "shall" in stating the purpose of the assessments. While not itself conclusive, the use of "shall" indicates that the use of the assessments for the funding of the aquaculture associations is mandatory.

Second, the legislative intent to create a dedicated fund under the ownership and control of the associations is indicated by the act's provisions contemplating that the commissioner is to consider an association's rights to the assessments in deciding whether the associations will be able to establish eventually sufficient equity in the hatcheries they build to make the loans secure, AS 16.10.520(b), and allowing the assessments to be pledged as collateral for the state loans, AS 16.10.520(c). These provisions are nonsensical if the assessments are not earmarked in some way so that the association has a "right" to them.

From the above, it appears that the legislature intended to dedicate the proceeds of the assessments to the associations.

B. Are the Assessments "Proceeds of a State Tax or License" Within the Meaning of Section 7?

The associations and the state contend that the salmon assessments are not "proceeds of a state tax or license" so as to be subject to the constitutional prohibition against dedication. They premise their argument on a distinction between "general revenue taxes" and "special

assessments" for services. The basic distinction they set forth is that special assessments are related to the benefits received, while general revenue taxes are related to an ability to pay, regardless of benefit to the taxpayer. They contend that "tax," as used in article IX, section 7 of the state constitution, does not include such "special assessments," but instead refers only to general revenue taxes. The defendants then maintain that the salmon assessment is a "special assessment" not subject to section 7.

The word "tax," like most English words, has several meanings or senses. In its broad sense, the term "tax" includes assessments as a kind of tax; however, in a narrower sense, the term "tax" refers to a general levy without reference to benefits conferred while "assessment" refers to an imposition based on benefits conferred. Black's Law Dictionary 1629 (rev. 4th ed. 1968). (See also the definition of "special assessment": "a specific tax levied on private property to meet the cost of public improvements that enhance the value of the property." Webster's New Collegiate Dictionary 1116 (1974) (emphasis added)). Therefore, the sense in which "tax" is used in article IX, section 7 of the constitution must be determined from its context, both in the text and according to the