

2893

SRES

HB

163

-

HB

258

2

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
BOB MULCAHY  
ARLISS STURGULEWSKI



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

## Senate Committee on Resources

### MINUTES

May 13, 1983  
3:09 p.m.

Beltz Room  
Room 211, Capitol

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### MEMBERS PRESENT

Senator Fahrenkamp, Chair	Senator V. Fischer
Senator Eliason	Senator Mulcahy
Senator P. Fischer	Senator Sturgulewski

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### CALENDAR

- HB 163 An Act relating to harassment of persons lawfully engaged in hunting, fishing, camping, or trapping.
- SB 272 An Act making a special appropriation for payment as a grant to the Municipality of Anchorage for expansion of the Ship Creek Treatment Plant and phase II design and construction of the Eklutna Water Project; and providing for an effective date.
- SB 279 An Act relating to wholesale prices for canned salmon; and providing for an effective date.

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### HB 163

Representative Shultz said the purpose of the bill was to afford people the opportunity of legal recourse if they are harassed. Senator Sturgulewski questioned the need for the bill. Senator Vic Fischer questioned exactly what types of circumstances would apply. Senator Eliason questioned whether the state had authority to regulate privately owned land. Representative Shultz said language regarding private land had been included because of Native land claims. There was discussion.

Dennis Kelso, acting Deputy Commissioner of the Department of Fish and Game, suggested looking closely at whether the bill

would cause difficulties with constitutional guarantees. There was discussion.

Ron Somerville, Legislative Committee Chairman of the Alaska Sportsmen's Council, strongly supported the legislation.

Senator Sturgulewski moved to report the bill out of committee with individual recommendations. The motion passed without objection.

#### SB 272

Senator Jan Faiks, addressing the proposed committee substitute, explained the importance of the three appropriations in the bill. There was discussion of how water rates would be affected, and comparison of Anchorage's water rates to those in other communities.

Senator Vic Fischer moved to adopt the committee substitute. The motion passed without objection.

Bob Smith, general manager of the Water and Wastewater Utility of the Municipality of Anchorage, explained how the money appropriated in the bill would be used, and that additional funding to complete the projects would be provided by the municipality. This was discussed.

#### SB 279

Senator Fahrenkamp moved to adopt the proposed sponsor substitute as a committee substitute. The motion passed without objection.

Norman Staton, assistant to the Commissioner of Revenue, said the Department has a neutral position on the bill. He agreed with the proposed amendments adopted by the House, and recommended further amendments regarding can and case size. Mr. Staton explained the fiscal note.

Richard B. Lauber, Pacific Seafood Processors Association, said he did not wholeheartedly support the bill, but could live with it. He supported the amendments proposed. He explained historical pricing patterns, and proposed a further amendment allowing for an exemption to the wholesale price for a promotional allowance.

Mitch Kink, general manager of Alaska Independent Fishermen's Marketing Association, explained the formula by which the price paid fishermen for canned salmon is calculated. He opposed the promotional allowance exemption, as it would reduce the price

paid fishermen. There was discussion of whether the proposed legislation would affect the negotiated contract.

Cass Parsons of United Fishermen of Alaska said the contract states the wholesale price is less discounts, so adding a promotional discount would lower the wholesale price, thus lowering the profit to the fishermen. Senator Sturgulewski proposed changing the effective date so that the law would not affect existing contracts. There was discussion.

William H. Beardsley, Department of Commerce, left written testimony with the committee, that clarified the Department's role in implementing SB 279.

Paul Taylor, Audit Division, Department of Revenue, agreed with Mr. Staton's testimony, and clarified that wholesale price reporting under this bill would be mandatory, not voluntary, and specified how reporting was done.

Mr. Lauber argued that since promotional allowances have historically been deducted from the wholesale price, keeping the promotional allowance out of SB 279 would increase the fishermen's profit. There was discussion of past and current statutes, and why the promotional allowance was not negotiated into the contracts.

Senator Sturgulewski requested further information on the impact of the bill before taking action.

The meeting was adjourned at 4:58 p.m.

Pass to ...  
Halford reconsider

HB 163 RELATING TO HARRASSMENT OF PERSONS LAWFULLY ENGAGED  
IN HUNTING, FISHING, CAMPING OR TRAPPING.

The House-passed version of the bill also passed out of  
Senate Resources Committee.

THERE IS A JUDICIARY COMMITTEE SUBSTITUTE.

The bill is intended to protect hunters, fishers, campers  
and trappers from harassment. Interfering with a person  
legally engaged in hunting, or disturbing wildlife or habitat  
with the intent to hinder a hunter, would be punishable  
by a fine of up to \$500 and/or 30 days in jail. Civil  
remedies, including recovery of damages, are allowed. The  
bill is patterned after legislation being adopted in other  
states where anti-hunting groups have "taken to the field"  
in attempts to "warn" wildlife of hunters or deter hunters  
from killing wildlife.

The Judiciary committee substitute deletes commercial fishing  
as one of the activities protected under this bill.

Also removes reference to hunting on private land, which is  
an improvement over the version Resources passed. (Remember  
the discussion on just what the State could control or not  
control on private land?)

HB

187

SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: *Regulation, licensing, fee for farming*

BILL NAME: *HB 187*

SPONSOR(S): *Ringstad*

RELATED BILLS PENDING:

DATE INTRODUCED: *4-7-83*

REFERRALS: *Resources*

INITIAL RESEARCH:

BILL SUMMARY COMPLETED:

SUMMARY BY LEGAL DIVISION:

SPONSOR CONTACTED FOR  
BACKUP MATERIALS:

DEPT. OF LAW SUMMARY:

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR  
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS/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/COMMITTEE  
SUBSTITUTES DRAFTED:

*✓ Dave Stancliffe / John Ringstad  
DNR  
DEC*

*notify: Richard Carda 488-3079  
Pres. Fur Ranchers Assoc.  
Box 4553, Eilson AFB 99702*

CSHB 187 - REGULATION OF FUR FARMING

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
POSITION PAPER

BEFORE THE HOUSE RESOURCES COMMITTEE  
March 18, 1983

In line with my letter to Representative Ringstad of March 14, 1983 regarding this legislation, this department has agreed to a two-year waiver permitting release from inspection and permits for fur farm animals so that the existing requirements pertaining to fur farming can be evaluated with a view toward eliminating nonessential requirements.

The proposed new definition, "fur farming" means the raising and caring of animals for the purpose of marketing their fur, or animals themselves for breeding stock, raises no objections within ADEC.

It should be understood that this waiver is not intended to waive the authority to quarantine should that become necessary to protect the public health.



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Richard A. Neve  
Commissioner

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
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ARLISS STURGULEWSKI



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## Senate

### Committee on Resources

#### MINUTES

Bettye Fahrenkamp  
Chairman

April 13, 1983  
3:05 p.m.

Beltz Room  
Room 211, Capitol

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#### MEMBERS PRESENT

Senator Fahrenkamp, Chair  
Senator Ziegler, Vice Chair  
Senator Sturgulewski

Senator Eliason  
Senator Mulcahy  
Senator Vic Fischer

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#### CALENDAR

- |        |   |
|--------|---|
| SJR 21 | Relating to the use of Lake Grace, an area within the Misty Fjords National Monument, for the generation of hydroelectric power for the Ketchikan area. |
| SB 2   | Providing for a license exemption for commercial fishing vessels 24 feet or less.   |
| SB 52  | Relating to the licensing of commercial fishing.  |
| HB 187 | Relating to regulation, licensing and fee for fur farming.  |
| HB 267 | Relating to herring stripping.  |

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#### HB 187

Representative Ringstad reviewed the provisions of the bill: (Sec 1) fur farming is redefined; (Sec 2) eliminates fee; (Sec 3) requires Fish and Game to authorize trapping for breedstock without a permit, and; (Sec 4) streamlines importation regulations and permitting.

In response to a question, Rep. Ringstad stated that federal regulations would still be in effect to control importation of diseased animal.

Bob Hinman, of the Department of Fish and Game, said that the department supports CS HB 187 (Res). They approved of Sec. 3, although it reduces fees, because of the small number issued. In response to a question on Sec. 4, Hinman explained that it ended a conflict between Title 16 and Title 3 over control of import permitting.

Commissioner Richard Neve', Department of Environmental Conservation, submitted a statement in support of the bill and announcing a suspension of regulations to study transfer to DNR of this authority.

Senator Sturgulewski moved that CS HB 187 (Res) be reported out of committee with individual recommendations. There was no objection.

#### SJR 21

Senator Ziegler reviewed the history of the proposed hydro site and the purpose of the resolution. In answer to a question about the authority for approval of the development, he said the resolution is addressed to Congress and the President, for approval of the transmission line along with the hydro development.

The US Forest Service submitted a letter stating that administrative authority to accommodate the development was possible. Senator Ziegler moved that SJR 21 be reported out of committee with individual recommendations. There was no objection.

#### HB 267

Senator Mulcahy reported on the testimony heard in the Fisheries Subcommittee hearing on HB 267, which supported the extension of the date from July 1, 1982 to July 1, 1986.

Senator Mulcahy moved that HB 267 be reported out of committee with individual recommendations. There was no objection.

#### SB 2

Senator Mulcahy moved that a committee substitute for SB 2 be adopted. There was no objection.

Senator Mulcahy said the purpose of the bill is to exempt from licensing the small boat fleet because of the short season for salmon and herring fishing from skiffs. Currently all boats are licensed.

Sgt. Buell Kussall, Department of Public Safety, Fish and Wildlife Protection Division, testified that the department had no problem with the bill.

Senator Mulcahy moved CSSB 2 from committee with individual recommendations. There was no objections.

SB 52

Senator Mulcahy moved the committee substitute for SB 52. There was no objection. Senator Mulcahy referred to the sectional analysis and said the bill is basically technical changes. In response to concerns on residency requirement, Senator Mulcahy said that the requirement could be made to conform to other legislation or court decisions if necessary.

Senator Fahrenkamp agreed that the bill was housekeeping changes.

Senator Mulcahy moved CSSB 169 (Res) from committee with individual recommendations. There were no objections.

The meeting adjourned at 3:40 p.m.

# Alaska State Legislature



BETTYE FAHRENKAMP, Chairman  
ROBERT J. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
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STATE CAPITAL  
JUNEAU, ALASKA 99811  
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## Senate

### Committee on Resources

TO: Senate Resources Committee Members

FROM: Senate Resources Committee Staff

RE: Hearing, 4/13/83

DATE: April 12, 1983

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The following 3 bills have been heard by the Resources Subcommittee on Fisheries and will be addressed by Senator Mulcahy at the Wednesday hearing:

SB 2 PROVIDING FOR A LICENSE EXEMPTION FOR COMMERCIAL FISHING VESSELS 24 FEET OR LESS.

The Subcommittee recommends adoption of a Committee Substitute that would exempt all vessels used for the commercial harvesting of salmon in the administrative area know as Arctic-Yukon-Kuskokwim from the licensing requirement.

SB 52 RELATING TO THE LICENSING OF COMMERCIAL FISHING.

The Subcommittee recommends adoption of a Committee Substitute that would require that every person engaged in commercial fishing hold a commercial fisheries license which could be purchased either as a crewmember license or as an entry permit. A portion of the fees from this commercial fisheries license would go to the Fisherman's Fund.

HB 267 RELATING TO HERRING STRIPPING.

HB 267 would extend the time that herring stripping (the process by which herring roe is extracted from the carcass) is allowed to take place in the Bering Sea until 1986. The Board of Fisheries does have a regulation in place that will govern carcass disposal in the Bering Sea.

Also scheduled for the Wednesday hearing are:

SJR 21 RELATING TO THE USE OF LAKE GRACE, AN AREA WITHIN THE MISTY FJORDS NATIONAL MONUMENT, FOR THE GENERATION OF HYDROELECTRIC POWER FOR THE KETCHIKAN AREA.

SJR 21 would urge Congress to adopt legislation either eliminating the Lake Grace area from the Misty Fjords National Monument or permitting the development of the Lake Grace area for its hydro potential.

Lake Grace was determined to be of substantial potential value for a damsite before its designation as part of Misty Fjords National Monument. The nearby community of Ketchikan wishes to pursue its development to meet future power needs.

HB 187 RELATING TO REGULATION, LICENSING AND FEE FOR FUR FARMING.

HB 187 relieves the current permitting burden on fur farmers by eliminating the \$100 fee for a fur farming license, reducing the fee from \$100 to \$3 for collecting animals for fur farming purposes, and eliminating the requirement for a permit for importing and exporting mink and fox for fur farming. In addition, Commissioner Neve of DEC has committed to administrative changes in the current permitting procedures to more accurately reflect the needs of fur farmers and the types of activities they engage in.

The meeting is scheduled for Wednesday, April 13 at 3:00 pm in the Beltz Room. It is hoped that final committee action could be taken on these bills at this time.

# STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

BILL SHEFFIELD, GOVERNOR

POUCH 0 - JUNEAU 93311

March 14, 1983

The Honorable John Ringstad  
State House of Representatives  
Pouch V  
Juneau, AK 99811

Dear Representative Ringstad:

Following our conversation of Saturday morning, March 12, 1983 with you and Sharon Barton of the Department of Natural Resources, I propose the following solution to alleviate some of the problems with regard to fur farming. I propose a waiver permitting release from inspection and permits for fur farm animals for the period required to assess the position of fur farming and to agricultural inspection currently existing, within the scope of DEC's regulatory authority. All existing regulations pertaining to fur farming will be evaluated with the intention to eliminate non-essential regulations. This waiver will be effective for a period not to exceed two years.

Sincerely,



Richard A. Neve'  
Commissioner

cc: Sharon Barton

No. 1

I. REQUEST

Bill/Resolution No.: CSHB 187 (Res)  
 Title: Fur farming  
 Sponsor: Kingstad by request  
 Requestor: House Resources

II. FISCAL DETAIL

Agency Affected: DEC  
 Program Category Affected: Consumer Protect  
 BRU, Program or Subprogram(s) Affected: Seafood and Animal Industries

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Billie Trent Phone: 465-2600  
 Division: for Seafood and Animal Industries Date: 3/25/83  
 Approved by Commissioner: Richard A. Nove Date: 3/25/83  
 Department: Environmental Conservation

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor

*oe*

STATE OF ALASKA  
PRELIMINARY STATEMENT OF FISCAL IMPACT

*no 21*

Bill No: CSHB 187 (Rev) Date on Bill: 3/21/83  
Title: Regulation, licensing and fee for fur farming  
Sponsor: Ringstad  
Requestor: Finance Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital	-0-	-0-	-0-	-0-
Operating	-0-	-0-	-0-	-0-
Total	-0-	-0-	-0-	-0-

b. Revenues:

Revenue	-0-	-0-	-0-
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2. Source of funds to offset fiscal impact of bill:

Not applicable.

3. Assumptions:

Does not affect Department.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Ned Farquhar  
Division: Commissioner's

Phone: 465-2400  
Date: 28 March 1983

Approved by Commissioner: *M. D. ...*  
Department: Natural Resources

Date: 28 March 1983

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor

Analysis & Summary

CS HB 187

Section 1 The term fur farming is redefined under the regulatory authority of the Dept. of Environmental Conservation.

*F&G did issue permits  
16.05.340(b)*

Section 2 The statute requiring a \$100 fee for a fish, fur, or game farming license is amended to exclude fur farming. According to the Attorney General's office, in 1974, the \$100 fee was eliminated but the change had never been reflected in the statutes.

Section 3 The Commissioner of Fish & Game retains his authority to issue, without cost, a permit to collect fish and game, including fur animals subject to scientific, propagative, or educational purposes that are appropriate.

In addition, the Commissioner shall make permits available for the collecting of wild fur animals; however, he retains his statutory charge to manage the permitting process in accordance with standard maintained yield practices.

Establishes an annual fee for collecting fur farm animals that will be the same as that paid by an Alaskan resident trapper. (currently \$3)

Section 4 The statute requiring an import permit for wild animals is amended to exempt mink and fox when they are imported for fur farming purposes.

Section 5 Provides for an immediate effective date.

Beth's Floor Statement

pass 6-2-83

CSHB 187 RELATING TO REGULATION, LICENSING, AND FEE FOR FUR FARMING.  
SPONSOR: RINGSTAD BY REQUEST.  
PASSED OUT OF SENATE RESOURCES 4/13/83. YOU WERE A DO PASS.

THIS BILL MAKES LARGELY TECHNICAL, BUT HELPFUL CHANGES IN THE  
REGULATION OF FUR FARMING AND FUR FARMING ACTIVITIES. NAMELY,

- ELIMINATES THE \$100 FEE FOR A FUR FARMING LICENSE
- REDUCES THE FEE FROM \$100 TO \$3 FOR COLLECTING ANIMALS FOR BREEDSTOCK
- STREAMLINES IMPORTATION REGULATIONS AND PERMITTING
- REDEFINES FUR FARMING TO MEAN THE CARING OF ANIMALS FOR THE PURPOSE OF MARKETING THEIR FUR, OR ANIMALS THEMSELVES FOR BREEDING STOCK

IN ADDITION, COMMISSIONER NEVE OF DEC HAS COMMITTED TO ADMINISTRATIVE  
CHANGES IN THE CURRENT PERMITTING PROCEDURES TO MORE ACCURATELY  
REFLECT THE NEEDS OF FUR FARMERS AND THE TYPES OF ACTIVITIES THEY  
ENGAGE IN.

H B

1888

## Bill Analysis

### HB 188

Under current law, blood relatives of resident Alaskans can hunt brown bear, grizzly bear, polar bear, or sheep without a guide if they are within and including second degree of kindred and are personally accompanied by their Alaska relative.

HB 188 would allow the same criteria to also apply to persons related by marriage.

Example: Your brother comes to Alaska to hunt Dall Sheep. You may legally take him without a guide.

However, you cannot legally take your brother-in-law on the same hunt.

HB 188: Under the changes proposed in this law, your brother-in-law would legally be able to participate in the hunt.

Second Degree of kindred includes, under present law:

- 1) Son, Daughter
- 2) Father, Mother
- 3) Grandfather, Grandmother
- 4) Grandchildren
- 5) Brother, Sister

In addition, under HB 188, the following relatives would be included:

- 1) Son, Daughter of Spouse
- 2) Father-in-law, Mother-in-law
- 3) Grandfather, Grandmother of Spouse
- 4) Grandchildren of Spouse
- 5) Brother-in-law, Sister-in-law

Offered: 4/10/84  
Referred: Rules

Original sponsor: Ringstad

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 188 (Finance) am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to big game hunting by nonresi-  
7 dents."

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

9 \* Section 1. AS 16.05.407 is repealed and reenacted to read:

10 Sec. 16.05.407. NONRESIDENT HUNTING BIG GAME ANIMALS MUST BE  
11 ACCOMPANIED. (a) It is unlawful for a nonresident to hunt, pursue or  
12 take brown bear, grizzly bear, polar bear, or sheep in this state,  
13 unless personally accompanied by

14 (1) a person who is licensed as a master guide, registered  
15 guide, or assistant guide by the Guide Licensing and Control Board; or

16 (2) a resident over 19 years of age who is

17 (A) the spouse of the nonresident; or

18 (B) is related to the nonresident, within and includ-  
19 ing the second degree of kindred, by marriage or blood.

20 (b) An applicant for a nonresident big game tag for the taking  
21 of an animal specified in (a) of this section shall first furnish to  
22 the state, on a form provided by the state, an affidavit showing that  
23 the applicant will be personally accompanied while hunting by a person  
24 who is qualified under the terms of (a) of this section. A person who  
25 falsifies the required affidavit is guilty of perjury under AS 11.-  
26 56.200.

27 (c) It is unlawful for a nonresident to import polar bear hides  
28 or parts into this state unless personally accompanied by a person who  
29 is licensed as a master guide, registered guide, or assistant guide by

*Already covered  
elsewhere in  
Statute*

1 the Guide Licensing and Control Board.

2 (d) A nonresident who violates (a) or (c) of this section, or  
3 who fails to furnish an affidavit under (b) of this section, is guilty  
4 of a misdemeanor and upon conviction is punishable by imprisonment for  
5 not more than one year, or by a fine of not more than \$5,000, or by  
6 both. 2500

HB 188 TITLE & SPONSOR SUMMARY 16:55 5/22/84 PAGE 1 OF 3  
 AMENDED TITLE: CSHB 188(FIN)AM  
 AN ACT RELATING TO BIG GAME HUNTING BY NONRESIDENTS  
 GENERAL DOLLARS: \$0 (F. NOTE)

PRIME SPONSOR: RINGSTAD.

OTHER DOLLARS: \$0

CO-SPONSORS:  
 CURRENT STATUS: 5/15/84 IN (S) RULES

HB 188 HOUSE ACTION 16:55 5/22/84 PAGE 2 OF 3  
 DATE SEQ PAGE LEGISLATIVE ACTION

02/11/83 01 0227 FIRST READING -- COMMITTEE REPORTS  
 03/09/83 02 0431 RES -- DP06, NR01  
 03/09/83 03 0431 RES F/NOTES EQUAL ZERO  
 04/18/83 04 0895 JUD -- DP05, NR01  
 04/18/83 05 0895 JUD F/NOTE EQUALS ZERO  
 04/10/84 06 3264 FIN -- CS03, NR05  
 04/10/84 07 3264 FIN F/NOTE EQUALS ZERO  
 05/05/84 08 3672 SECOND READING  
 05/05/84 09 3672 FIN CS ADOPTED BY UNAN CONSENT  
 05/05/84 10 3673 AM01 ADOPTED BY UNAN CONSENT  
 05/05/84 11 3673 ADVANCED TO 3RD READING BY UNAN CONSENT  
 05/05/84 14 3673 AM02 ADOPTED BY UNAN CONSENT  
 05/05/84 12 3673 THIRD READING  
 05/05/84 13 3673 RETURNED TO 2ND READING BY UNAN CONSENT  
 05/05/84 15 3674 PASSED BY DIV 31-05-04  
 05/05/84 13 3674 NOTICE OF RECONSIDERATION GIVEN  
 05/06/84 17 3713 RECONSIDERATION NOT TAKEN UP

\*\*\* \*\*

HB 188 SENATE ACTION 16:55 5/22/84 PAGE 3 OF 3  
 DATE SEQ PAGE LEGISLATIVE ACTION

05/07/84 18 2946 FIRST READING -- COMMITTEE REPORTS  
 05/15/84 19 3093 RES -- DP05  
 RULES

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# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
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## Senate

### Committee on Resources

#### MINUTES

May 14, 1984  
3:13 pm

Beltz Room  
Room 211, Capitol

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#### MEMBERS PRESENT

Senator Fahrenkamp, Chairman  
Senator Ziegler, Vice-chairman  
Senator Eliason  
Senator Paul Fischer  
Senator Vic Fischer  
Senator Mulcahy  
Senator Sturgulewski

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#### CALENDAR

HB 188, An Act relating to big game hunting by nonresidents.

HB 458, An Act relating to agricultural rights to land.

HE 546, An Act relating to harassment of persons lawfully engaged in hunting, fishing, or trapping.

HB 709, An Act relating to fees for guided tours through historical sites.

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#### HB 188

Dave Stancliff, Aide to the House Resources Committee, explained that this bill would allow nonresident hunters of big game to be accompanied by Alaska residents of the second degree of kindred, including "marriage relations". It would also increase the fine for violation of this provision from \$2500 to \$5000.

Paddy McGuire, Alaska Department of Fish and Game, spoke in support of the bill.

Senator Mulcahy moved CS HE 188 (Finance)am from committee with individual recommendations. There was no objection.

HB 709

Carol Wilson, Special Assistant to the Commissioner, Department of Natural Resources, spoke in support of the bill, which would authorize DNR to establish and collect fees for guided tours through historical sites.

Senator Mulcahy moved CS HB 709 (State Affairs) from committee with individual recommendations. There was no objection.

HB 546

Dave Stancliff, Aide to the House Resources Committee, spoke in support of the bill and explained that the problems with HB 163, a similar bill that was vetoed by the Governor last year, have been solved in HB 546.

Lisa Nelson, Criminal Division, Department of Law, testified that there is no Constitutional problem with the bill as currently written.

Ron Sommerville, Alaska Outdoor Council, spoke in support of the bill.

Senator Mulcahy moved CS HB 546 (Resources) am from committee with individual recommendations. Senator Sturgulewski objected and then withdrew her objection.

HB 458

Representative Bob Bettisworth, sponsor of the bill, explained that the bill was intended to help those purchasers of "agricultural rights" land who are having difficulty obtaining financing for home construction by issuing a fee simple conditional title to those purchasers.

Senator Kerttula reviewed the history of federal homesteading, the problems of diminishing farm land in other states, and the importance of preserving agricultural land in Alaska.

Betty Cook, Alaska Housing Finance Corporation, Anchorage, testified that even if fee simple title were issued, AHFC's regulations would prohibit loans being made on land that produces significant income, and prohibit refinancing of loans. There would be additional problems if there were other liens on the property and because of AHFC's lack of experience with agricultural loans.

Ralph Bennett, Aide to Representative Bettisworth, testified that his research indicated that banks were willing to make loans on land for which fee simple conditional title was held.

The meeting adjourned at 3:58 pm.

(B) Subunit 26(B) — that portion of Unit 26 lying east of Subunit 26(A) and west of the west banks of the Canning River and Marsh Fork of the Canning River between the Arctic Ocean and Carter Pass;

(C) Subunit 26(C) — that portion of Unit 26 lying east of Subunit 26(B). (In effect before 1980; am 7/4/80, Reg. 75; am 4/5/81, Reg. 78; am 9/3/81 — 9/12/81, Reg. 80; am 9/30/81, Reg. 79)

Authority: AS 16.05.255(a)(1),(2) and (7)

5 AAC 90.020. DEFINITIONS. In 5 AAC 81 — 5 AAC 90

(1) "airport" means an Alaska airport listed in the Federal Aviation Agency Alaska Airman's Guide and chart supplement;

(2) "bag limit" means the greatest number of game species permitted to be taken by any one person in the unit or portion of a unit in which the taking occurs; however, additional numbers of a species may be taken in another designated open unit or portion of a unit where a greater limit on that species is prescribed; in no case may the total or cumulative bag for one person exceed the limit set for the unit or portion of a unit in which the additional game was taken;

(3) "big game animals" includes black bear, brown and grizzly bear, polar bear, bison, caribou, Sitka blacktail deer, elk, mountain goat, moose, muskoxen, mountain or Dall sheep, wolf and wolverine;

(4) "camp" means a structure erected for the purpose of providing overnight shelter and equipped with bedding and eating facilities for occupants;

(5) "closed season" means the time during which game may not be taken;

(6) repealed 7/2/75;

(7) "cub bear" means a brown, grizzly or polar bear in its first or second year of life, or a black bear (including the cinnamon and blue color phases) in its first year of life;

(8) "fur animals" includes beaver, coyote, arctic fox, red fox, lynx, marten, mink and weasel, muskrat, land otter, sea otter, raccoon,

red squirrel, flying squirrel, ground squirrel and marmot, wolf and wolverine, excepting domestically raised fur animals;

(9) "highway" means the driveable surface of any constructed road;

(10) repealed 7/2/75;

(11) "motorized vehicle" means a motor-driven land, water or air conveyance;

(12) "open season" means the time during which game may lawfully be taken; each period of time prescribed as an open season includes the first and last days of the period prescribed;

(13) "poison" means any substance which is toxic or poisonous upon contact or ingestion;

(14) "raw ivory" means a walrus tusk (upper canine tooth) which has not been endowed with functional, cultural or aesthetic qualities by altering its natural form or surface through carving, drilling, cutting, filing, or engraving; raw ivory is not altered, in the connotation of this definition, by surface polishing or for a head mount; the latter consisting of ivory (tusks) in a skull or part of a skull;

(15) "regulatory year" means July 1 to June 30, inclusive;

(16) "seal pup" means a seal that weighs less than 50 pounds;

(17) "second degree of kindred" means the relatives who are parents, grandparents, children, grandchildren and sisters or brothers of the person acting as a guide;

(18) "small game" means all species of grouse, hares, rabbits, ptarmigan and waterfowl, and Wilson or jacksnipe;

(19) "three-quarter curl horn" means the horn of a mature mountain sheep, the tip of which has grown through three-quarters of a circle (270°) described by the outer surface of the horn, as viewed from the side;

(20) "transport" means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export;



# Alaska

## Professional Hunters Association, Inc.

P. O. BOX 4-1932  
ANCHORAGE, ALASKA 99509

Phone (907) 562-2639

### MEMORANDUM

TO: MEMBERS HOUSE FINANCE COMMITTEE & REP. JOHN RINGSTAD

FROM: ALASKA PROFESSIONAL HUNTERS ASSO.

DATE: March 28, 1984

Re: HB 188

As this piece of legislation may have some impact upon our profession, we feel it warrants some consideration and comment on our part.

For the record, we are not opposed to HB 188. In our opinion, this is a positive piece of legislation which will resolve an inequity which currently exists under the present statute.

This bill will allow a person to accompany a spouse's non-resident in-law with-in certain limits, (second degree of kindred), on hunts for sheep, brown bear and grizzly bear. That is a reasonable proposition as far as we are concerned; however, we would oppose any further liberalization in this area, as it could negatively effect prudent game management in Alaska.

PLEGGED FAIR CHASE



# Alaska State Legislature

HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES

JOHN RINGSTAD, CO-CHAIRMAN  
RICHARD SHULTZ, CO-CHAIRMAN  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3115

## M E M O R A N U M

To: Members House Finance Committee  
From: Rep. John Ringstad  
Date: March 20, 1984  
Re: HB 188 Spouses Relatives

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To save time and confusion please note that HB 188 makes only one change in present statutes.

That change is a broadening of the definition of second degree of kindred for the purposes of being able to hunt certain big game species in Alaska with your relatives.

As it now stands big game guides are required of non-residents to hunt dall sheep, brown and grizzly bear, however there is an exemption for blood relatives if they are within the second degree of kindred. The question then arises what about in-laws?

Keep in mind a typical guided sheep hunt costs several thousand dollars on top of travel, licenses, and tag fees, and as the law now reads your in-laws must pay these prices to retain a guide even if they are going to hunt with you for sheep or bear in Alaska.

As best can be determined, Public Safety has not aggressively enforced this technicality, however in-laws who are in the field hunting sheep or bear with their Alaskan relatives are in violation of the law under present statutes and could be heavily fined. In addition, you as an Alaskan, hunting with your in-laws for sheep or bear could be considered in violation of the present guide statutes and subject to stiff fines and possible imprisonment.

It's important to note that no other changes are being made to the statutes or present law, and that legal services merely redrafted the format of the appropriate section in statute to read more clearly and logically and incorporate my request into law.

The whole idea of this bill is to create a reasonable and equitable means for family members to enjoy Alaska with their relatives. With due respect, I ask my colleagues in their considerations not to stray beyond the original purposes of this bill.

Thank you.

CSHB 188 (Finance) am - AN ACT RELATING TO BIG GAME HUNTING BY  
NON-RESIDENTS

---

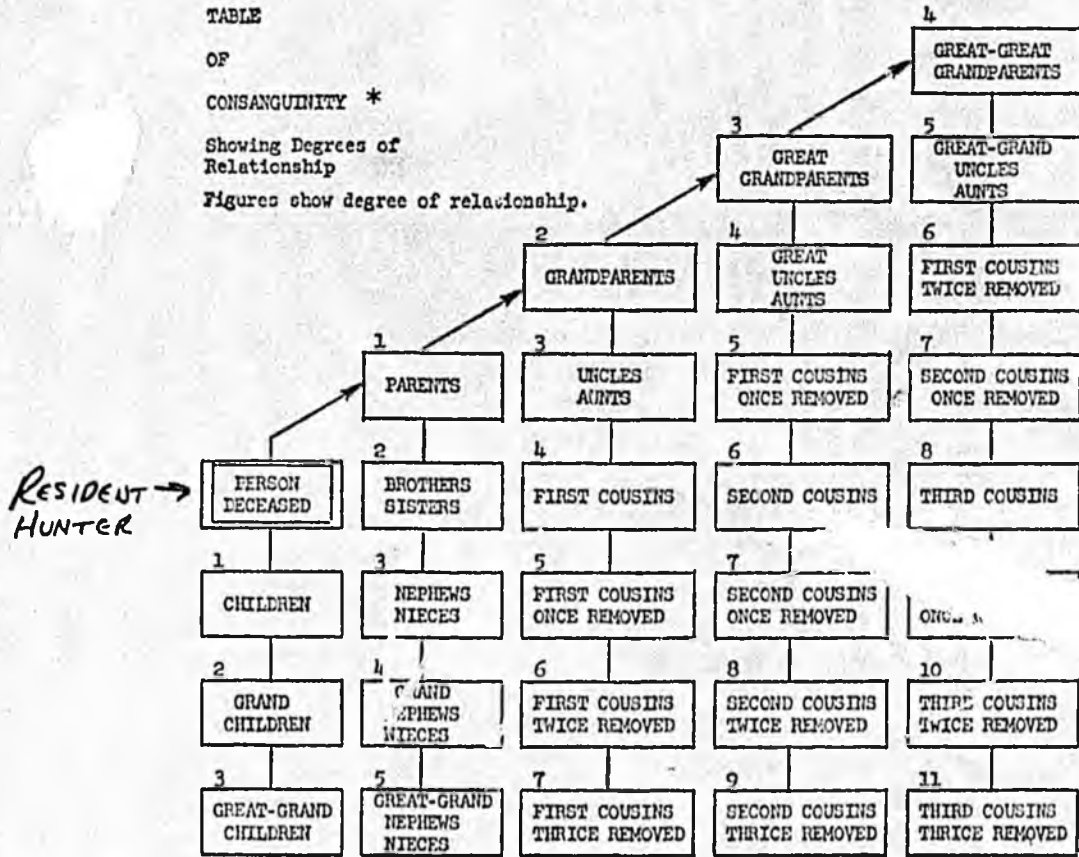
HB 188 repeals and reenacts AS 16.05.407. The bill allows an Alaska resident over 19 years of age to accompany his or her nonresident in-laws without a guide while hunting brown bear, grizzly bear, polar bear or sheep. Under existing law, the nonresident must be related to the resident by blood within the second degree in order to hunt without a guide. In this bill, the nonresident must be related in the second degree but not, by blood.

*↳ necessarily*  
The difference between the original and current versions are:

1) In reference to importing polar bear, the latest version refers specifically to "polar hides or other part's" while the original simply refers to polar bears.

2) With respect to violations, the latest version cites *those in* violation of (a) or (c) guilty of a fine of not more than \$5,000. The original omits reference to violation of (c) and sets the fine limit to \$2,500.

TABLE  
OF  
CONSANGUINITY \*  
Showing Degrees of  
Relationship  
Figures show degree of relationship.



\*applicable by degree to affines as well (those connected by marriage as opposed to those connected by blood.

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 188

Title An Act relating to big game hunting by nonresidents

Requested by Ringstad

Date 2/25/83

II. FISCAL DETAIL

Agency affected Department of Fish and Game

Program Category affected \_\_\_\_\_

ERU, Program, Or Subprogram(s) affected Game

(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 83	FY 84	FY 85	FY 86	FY 87	FY 88
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 2/25/83

PREPARED BY

*Robert A. Hinman*  
Robert A. Hinman

AGENCY

Department of Fish and Game

Original: Legislative Finance

PHONE 465-4190

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

H B

2 5 6

SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: *CS HB 256 (Res)*

BILL NAME: *Permits for development of resources affecting  
salmon spawning streams*

SPONSOR(S): *H. Res (Flood)*

RELATED BILLS PENDING:

DATE INTRODUCED: *1-26-84*

REFERRALS: *Resources*

INITIAL RESEARCH:

BILL SUMMARY COMPLETED: *draft*

SUMMARY BY LEGAL DIVISION:

SPONSOR CONTACTED FOR  
BACKUP MATERIALS:

DEPT. OF LAW SUMMARY:

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR  
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS/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/COMMITTEE  
SUBSTITUTES DRAFTED:

*Joe Geldhof, AG  
Randy Bayliss, DEC*

*Rep Flood*

*Bruce Baker ADT-5*

Offered: 4/19/83  
Referred: Rules

Original sponsors: Flood, Uehling  
and Grussendorf

1 IN THE HOUSE BY THE RESOURCES COMMITTEE  
2 CS FOR HOUSE BILL NO. 256 (Resources)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to permits for the development of  
natural resources affecting salmon spawning streams  
and waters."

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

10 \* Section 1. AS 16.10.010(3) is amended to read:

11 (3) render the waters inaccessible or uninhabitable for  
12 salmon for that purpose without first applying for and obtaining a  
13 permit or license from the Department of <sup>AS 16.05.870</sup> Fish and Game [ENVIRONMENTAL  
14 CONSERVATION]. The application shall set out the name and style of  
15 the person or concern, describe the waters and location and state in  
16 particular the plans, purpose and intention for which the application  
17 is made.

18 \* Sec. 2. AS 16.10.020 is amended to read:

19 Sec. 16.10.020. GROUNDS FOR PERMIT OR LICENSE If, in the  
20 judgment of the Department of Fish and Game [HEALTH AND SOCIAL SERVI-  
21 CES], the purpose of the applicant for the permit or license is to  
22 develop power, obtain water for civic, domestic, irrigation, manufac-  
23 turing, mining or other purposes tending to develop the natural re-  
24 sources of the state, the department may grant the permit or license  
25 and may require the applicant to construct and maintain adequate fish  
26 ladders, fishways or other means by which fish may pass over, around  
27 or through the dam, obstruction or diversion in the pursuit of the  
28 propagation or spawning process.

*Call Bayless 7/26/83  
back-up H. Res*

*OK*

when Dept. created

used to be H<sub>2</sub>O-SS

DEC never implemented

Title 16 authorities

Scope much wider -  
could be tributaries, intertidal areas  
not just anadromous streams.

Scope of activities may also be wider.

---

permit authority F&G has now is  
anadromous streams only

where does authority stop?

where fish stop? how do you know?

# STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

465-2600

APR 4 1983  
BILL SHEFFIELD, GOVERNOR

POUCH 0 - JUNEAU 99811

April 4, 1983

The Honorable Richard Shultz  
House of Representatives  
Co-Chairman House Resources  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Shultz:

Please accept this letter as a reiteration of DEC's position on HB 256 (attached). This department objects to proposed legislation to amend AS 16.10.020 to read DEC instead of DHSS. The permitting responsibility contained in .020 more appropriately belongs to the Department of Fish and Game and could easily blend into their current Title 16 permitting activities.

Accordingly this department supports amending AS 16.10.010 to read Department of Fish and Game instead of DEC and amending AS 16.10.020 to read Department of Fish and Game instead of DHSS. This would support the intent of Title 16.

Please feel free to call me or Randy Bayliss of my staff (465-2653) with any questions you may have on this position. Thank you for your attention to this matter.

Sincerely,



Richard A. Neve  
Commissioner

cc: Bruce Baker, DFG  
Paddy McGuire, DFG  
Randy Bayliss

commercial purposes and by the Alaska Constitution, art. VIII, § 15, providing that "no exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the state." They were further modified by the enactment by the first state legislature of a law making it unlawful to erect, moor or maintain fish traps (SLA 1959, ch. 17), and by a later

enactment (SLA 1959, ch. 95) making it unlawful to operate fish traps and prescribing penalties therefor. (See AS 16.10.070 — 16.10.110). Metlakatla Indian Community, Annette Island Reserve v. Egan, Sup. Ct. Op. No. 42 (File Nos. 21—23), 362 P.2d 901 (1961), vacated and remanded on other grounds, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962).

**Chapter 10. Fisheries and Fishing Regulations.**

**Article**

1. Interference with Streams and Waters (§§ 16.10.010 — 16.10.055)
2. Fish Traps and Other Illegal Fishing Devices (§§ 16.10.060 — 16.10.130)
3. Herring Spawn (§§ 16.10.140 — 16.10.173)
4. Migratory Fish and Shellfish (§§ 16.10.180 — 16.10.230)
5. Transportation of Fish and Shellfish (§§ 16.10.240 — 16.10.250)
6. Purchase of Fish (§§ 16.10.270 — 16.10.296)
7. Commercial Fishing Loan Act (§§ 16.10.300 — 16.10.370)
8. Salmon Hatcheries (§§ 16.10.375 — 16.10.475)
9. Fisheries Enhancement Loan Program (§§ 16.10.500 — 16.10.620)

**Article 1. Interference with Streams and Waters.**

**Section**

10. Interference with salmon spawning streams and waters
20. Grounds for permit or license
30. Violation of §§ 10 — 55 of this chapter a misdemeanor
40. Disposition of money received for fines and penalties

**Section**

50. Construction of §§ 10 — 50 of this chapter
55. Interference with commercial fishing gear

**Sec. 16.10.010. Interference with salmon spawning streams and waters. It is unlawful for a person to**

(1) obstruct, divert or pollute waters of the state, either fresh or salt, utilized by salmon in the propagation of the species, by felling trees or timber in those waters, casting, passing, throwing or dumping any tree limbs or foliage, underbrush, stumps, rubbish, earth, stones, rock or other debris, or passing or dumping sawdust, planer shavings, or other waste or refuse of any kind in those waters;

(2) erect a dam, barricade or obstruction to retard, conserve, impound or divert these waters to prevent, retard or interfere with the free ingress or egress of salmon into these waters in the natural spawning or propagation process;

(3) render the waters inaccessible or uninhabitable for salmon for that purpose without first applying for and obtaining a permit or license from the Department of Environmental Conservation. The application shall set out the name and style of the person or concern, describe the waters and location and state in particular the plans, purpose and intention for which the application is made. (§ 39-2-31 ACLA 1949; am § 12 ch 117 SLA 1949; am § 6 ch 104 SLA 1971; am § 12 ch 208 SLA 1975)

Effect of amendment. — The 1975 amendemnt substituted "Department of Environmental Conservation" for "Department of Health and Social Services" at the end of the first sentence of

paragraph (3) and substituted "set out" for "set forth" near the beginning of the second sentence of that paragraph. Am. Jur. reference. — 22 Am. Jur., Fish and Fisheries, § 34 et seq.

**Sec. 16.10.020. Grounds for permit or license.** If in the judgment of the Department of Health and Social Services, the purpose of the applicant for the permit or license is to develop power, obtain water for civic, domestic, irrigation, manufacturing, mining or other purposes tending to develop the natural resources of the state, the department may grant the permit or license and may require the applicant to construct and maintain adequate fish ladders, fishways or other means by which fish may pass over, around or through the dam, obstruction or diversion in the pursuit of the propagation or spawning process. (§ 39-2-32 ACLA 1949; am § 12 ch 117 SLA 1949; am § 6 ch 104 SLA 1971)

Revisors's note (1962). — Under AS 16.05.840 the commissioner of fish and game determines when a fishway or other similar device should be constructed.

**Sec. 16.10.030. Violation of §§ 10 — 55 of this chapter a misdemeanor.** A person who violates §§ 10 — 55 of this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$100 nor more than \$500. (§ 39-2-33 ACLA 1949; am § 13 ch 208 SLA 1975)

Effect of amendment. — The 1975 amendment substituted "§§ 10 — 55" for "§§ 10 — 50."

**Sec. 16.10.040. Disposition of money received for fines and penalties.** The proceeds of all fines and penalties imposed under §§ 10 — 50 of this chapter shall be paid into the general fund and they shall be immediately available for expenditure by the Department of Fish and Game. (§ 39-2-34 ACLA 1949)

**Sec. 16.10.050. Construction of §§ 10 — 50 of this chapter.** Sections 10 — 50 of this chapter do not affect the vested rights or privileges granted by federal statute to any person. (§ 39-2-35 ACLA 1949)

**Sec. 16.10.055. Interference with commercial fishing gear.** A person who wilfully or with reckless disregard of the consequences of his activity, interferes with or damages the commercial fishing gear of another person is guilty of a misdemeanor. For the purposes of this section "interference" means the physical disturbance of gear which results in economic loss or loss of fishing time, and "reckless disregard of the consequences" means a lack of consideration for the consequences of one's acts in a manner that is reasonably likely to damage the property of another. (§ 1 ch 55 SLA 1974)

Article

- Section
- 60. [Repealed]
- 70. Fish traps up waters in
- 80. Federal comp
- 90. Penalties for chapter
- 100. Fish traps or waters

Sec. 16.10. Repealed b

Editor's note derived from §

**Sec. 16.10.** state. It is u floating, pile lands, tidela prevent the ordinarily us operated in o

Purpose. — 16.10.070 — measure. Its of relief of ec fishermen, to supply of a competition in had every righ applicable to unless its pol Natives while curtailed. Met Annette Island Op. No. 42 (Fil (1961), vacate grounds, 369 L 2d 562 (1962). Fish trap. principally of across or partl

Sec. 16.1 chapter sha Stat. 339, v Alaska, un other prop be held by l

HB 256 - RELATING TO PERMITS FOR  
DEVELOPMENT OF SALMON STREAMS

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
POSITION PAPER

BEFORE THE HOUSE RESOURCES COMMITTEE  
March 23, 1983

This department objects to proposed legislation to amend AS 16.10.020 to read DEC instead of DHSS, based upon the following reasoning:

1. Passage would result in duplication of existing permit functions in the Department of Fish and Game (AS 16.05.840-870).
2. This section is more habitat or enhancement-oriented than water quality.
3. DF&G staff agree that the permitting responsibilities contained in these two sections could be easily blended into DF&G's current Title 16 permitting activities.

The department does support amending AS 16.10.010 to read Department of Fish and Game instead of DEC and amending AS 16.10.020 to read Department of Fish and Game instead of DHSS. This would support the intent of Title 16 and minimize implementation costs.

*Richard A. Neve*

Richard A. Neve  
Commissioner

*Concerns  
mitigated  
in H Res. 25*



STATE OF ALASKA 1984 LEGISLATIVE SESSION  
 HOUSE RESOURCES COMMITTEE FISCAL NOTE

Revision Date: November 30, 1983

JAN 14 REC'D

I. REQUEST

Bill/Resolution No.: CSHB 256  
 Title: Permits for Development of Streams  
 Sponsor: House Resources Committee  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected: Fish and Game  
 Program Category Affected: NRMEC  
 BRU, Program of Subprogram(s) Affected: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
TOTAL						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

OFFICE OF  
 MANAGEMENT & BUDGET

NOV 30 1983

BUDGET REVIEW

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Beverly Reaume Phone: 463-4120  
 Division: Administration Date: \_\_\_\_\_  
 Approved by Commissioner: [Signature] Date: 11/29/83  
 Department: Fish and Game

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

9/14/83

## BILL SUMMARY

CS HB 256 (Resources) - AN ACT RELATING TO PERMITS FOR THE DEVELOPMENT OF NATURAL RESOURCES AFFECTING SALMON SPAWNING STREAMS AND WATERS.

Sponsor: Flood, Uehling, Grussendorf

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Section 1: Application and obtaining a permit, which allows for the interference of the spawning or propagation process of salmon in state waters, is transferred from the Department of Environmental Conservation to the Department of Fish and Game.

Section 2: Judgements made in determining if the applicant's use of the permit or license conforms with the exceptions allowed by law is transferred from the Department of Health and Social Services to the Department of Fish and Game.

For the purposes of simplifying the permitting process, the original bill transferred authority under sections 1 and 2 to the Department of Environmental Conservation. During the hearing process, DEC took the position that the functions would be more appropriately handled by Fish and Game. Fish and Game agreed.

In Section 2, Fish and Game have, for the past ten years or so, been performing the conformity evaluations without direct legal authorization. This section legalizes the responsibility they've been assuming for the Department of Health and Social Services.

Sec. 16.10.010. Interference with salmon spawning streams and waters. A person may not

(1) obstruct, divert or pollute waters of the state, either fresh or salt, utilized by salmon in the propagation of the species, by felling trees or timber in those waters, casting, passing, throwing or dumping any tree limbs or foliage, underbrush, stumps, rubbish, earth, stones, rock or other debris, or passing or dumping sawdust, planer shavings, or other waste or refuse of any kind in those waters;

(2) erect a dam, barricade or obstruction to retard, conserve, impound or divert these waters to prevent, retard or interfere with the free ingress or egress of salmon into these waters in the natural spawning or propagation process;

(3) render the waters inaccessible or uninhabitable for salmon for that purpose without first applying for and obtaining a permit or license from the Department of Environmental Conservation. The application shall set out the name and style of the person or concern, describe the waters and location, and state in particular the plans, purpose and intention for which the application is made. (§ 39-2-31 ACLA 1949; am § 12 ch 117 SLA 1949; am § 6 ch 104 SLA 1971; am § 12 ch 208 SLA 1975)

Opinions of attorney general. — There is no conflict between AS 16.05.870 and this section. March 4, 1982. Op. Att'y Gen.  
Collateral references. — 35 Am.Jur.2d, Fish and Game, §§ 29-37. 36A C.J.S., Fish, §§ 6-46.

Sec. 16.10.020. Grounds for permit or license. If in the judgment of the Department of Health and Social Services, the purpose of the applicant for the permit or license is to develop power, obtain water for civic, domestic, irrigation, manufacturing, mining or other purposes tending to develop the natural resources of the state, the department may grant the permit or license and may require the applicant to construct and maintain adequate fish ladders, fishways or other means by which fish may pass over, around or through the dam, obstruction or diversion in the pursuit of the propagation or spawning process. (§ 39-2-32 ACLA 1949; am § 12 ch 117 SLA 1949; am § 6 ch 104 SLA 1971)

Cross references. — For power of commissioner of fish and game to determine when a fishway or other similar device should be constructed, see AS 16.05.840.

Sec. 16.10.030. Violation of AS 16.10.010 — 16.10.055. A person who violates AS 16.10.010 — 16.10.055 is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$100 nor more than \$500. (§ 39-2-33 ACLA 1949; am § 13 ch 208 SLA 1975)

Collateral references. — Entrapment with respect to violation of fishing laws, 75 ALR2d 709.

Sec. 16.10.040. Disposition of money received for fines and penalties. The proceeds of all fines and penalties imposed under AS 16.10.010 — 16.10.050 shall be paid into the general fund and they shall be immediately available for expenditure by the Department of Fish and Game. (§ 39-2-34 ACLA 1949)

Sec. 16.10.050. Construction of AS 16.10.010 — 16.10.050. AS 16.10.010 — 16.10.050 do not affect the vested rights or privileges granted by federal statute to any person. (§ 39-2-35 ACLA 1949)

Sec. 16.10.055. Interference with commercial fishing gear. A person who wilfully or with reckless disregard of the consequences, interferes with or damages the commercial fishing gear of another person is guilty of a misdemeanor. For the purposes of this section "interference" means the physical disturbance of gear which results in economic loss or loss of fishing time, and "reckless disregard of the consequences" means a lack of consideration for the consequences of one's acts in a manner that is reasonably likely to damage the property of another. (§ 1 ch 55 SLA 1974)

Article 2. Fish Traps and Other Illegal Fishing Devices.

Section	Section
70. Operation of fish traps	120. Use of drum or reel in operation of purse seine
80. Federal compact exempted	125. Use of termination device on shellfish and bottom fish pot required
90. Penalties for violation of AS 16.10.070	130. Penalties for violation of AS 16.10.120 — 16.10.125
100. Erection of fish traps prohibited on land or water owned by state	
110. Penalties for violation of AS 16.10.100	

Sec. 16.10.060. Prohibition against use of fish traps. [Repealed, § 27 ch 127 SLA 1974.]

Sec. 16.10.070. Operation of fish traps. Fish traps, including but not limited to floating, pile-driven or hand-driven fish traps, may not be operated in the state on or over state land, tideland, submerged land, or water. This section does not prevent the operation of small hand-driven fish traps of the type ordinarily used on rivers of the state which are otherwise legally operated in or above the mouth of a stream or river. (§ 1 ch 95 SLA 1959)

as a trophy for monetary gain, including the receiving of the fish or game or parts of fish or game for such purposes;

(26) "trapping" means the taking of mammals declared by regulation to be fur bearers;

(27) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state, but for the purposes of this chapter does not include aircraft;

(28) "visitor" means a nonresident or alien temporarily sojourning in the state as a visitor or tourist. (§ 2 art I ch 95 SLA 1959; am §§ 1 — 4 ch 131 SLA 1960; am § 1 ch 21 SLA 1961; am §§ 1, 2 ch 102 SLA 1961; § 9 art III ch 94 SLA 1959; am § 23 ch 131 SLA 1960; am § 1 ch 160 SLA 1962; am §§ 13, 14 ch 31 SLA 1963; am § 2 ch 32 SLA 1968; am § 3 ch 73 SLA 1970; am § 1 ch 91 SLA 1970; am § 4 ch 110 SLA 1970; am § 1 ch 90 SLA 1972; am § 5 ch 82 SLA 1974; am §§ 26, 82 ch 127 SLA 1974; am §§ 18 — 20 ch 206 SLA 1975; am § 12 ch 105 SLA 1977; am §§ 14, 15 ch 151 SLA 1978; am § 1 ch 78 SLA 1979; am § 1 ch 24 SLA 1980; § 4 ch 74 SLA 1982)

Revisor's note. — Reorganized in 1983 to alphabetize the defined terms.

Effect of amendments. — The 1979 amendment added "but for the purposes of this chapter does not include aircraft" to the end of present paragraph (27).

The 1980 amendment added present paragraph (8).

The 1982 amendment added present paragraph (17).

Legislative history reports. — For report on ch. 32, SLA 1968 (HCSCSSB 50 am), see 1968 House Journal, p. 169. For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Opinions of attorney general. — Paragraph (14) does not grant special resident privileges to military personnel. 1964 Op. Att'y Gen., No. 2.

Term "customary trade" as used in definition of "subsistence uses" allows for limited exchanges for cash other than for purely personal or family consumption. 1981 Op. Att'y Gen., No. 11.

Definition of "subsistence uses" in terms of "customary and traditional uses" of wild, renewable resources reflects the equating of "subsistence use" with use by rural residents. 1981 Op. Att'y Gen., No. 11.

NOTES TO DECISIONS

For construction of "commercial fisherman" under former law, see *Martinsen v. Mallaney*, 12 Alaska 455, 85 F. Supp. 76 (D. Alaska 1949).

Cited in *Starry v. Horace Mann Ins. Co.*, Sup. Ct. Op. No. 2548 (File No. 6472), 649 P.2d 937 (1982).

Sec. 16.05.950. Title of the chapter. This chapter may be cited as the Fish and Game Code. (§ 1 art I ch 94 SLA 1959)

NOTES TO DECISIONS

Chapter supersedes federal law. — When the various articles of the state law providing for the administration, management and conservation of fish and

wildlife became effective, acts of Congress on the same subject were no longer of any force. *Metlakatla Indian Community v. Egan*, Sup. Ct. Op. No. 42 (File No. 21 —

23), 362 P.2d 901 (1961), vacated and remanded on other grounds, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962).

There is no intimation in the Alaska Statehood Act of an intent that any United States administration under the commercial fishery laws be carried out after the state had been certified as capable of its own management. *Metlakatla Indian Community, Annette Island Reserve v. Egan*, Sup. Ct. Op. No. 42 (File Nos. 21 — 23), 362 P.2d 901 (1961), vacated and remanded on other grounds, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962).

Upon Alaska's admission on January 3, 1959, the Alaska game laws and acts regulating commercial fisheries as "territorial laws," continued in force, but were modified by Ordinance No. 3 of the state constitution prohibiting the use of fish

traps for the taking of salmon for commercial purposes and by the Alaska Constitution, art. VIII, § 15, providing that "no exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the state." They were further modified by the enactment by the first state legislature of a law making it unlawful to erect, moor or maintain fish traps (SLA 1959, ch. 17), and by a later enactment (SLA 1959, ch. 95) making it unlawful to operate fish traps and prescribing penalties therefor. (See AS 16.10.070 — 16.10.110). *Metlakatla Indian Community, Annette Island Reserve v. Egan*, Sup. Ct. Op. No. 42 (File Nos. 21 — 23), 362 P.2d 901 (1961), vacated and remanded on other grounds, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962).

Chapter 10. Fisheries and Fishing Regulations.

Article

1. Interference with Streams and Waters (§§ 16.10.010 — 16.10.055)
2. Fish Traps and Other Illegal Fishing Devices (§§ 16.10.070 — 16.10.130)
3. Herring Spawn (§§ 16.10.172 — 16.10.175)
4. Migratory Fish and Shellfish (§§ 16.10.180 — 16.10.230)
5. Transportation of Fish and Shellfish (§§ 16.10.240 — 16.10.250)
6. Purchase of Fish (§§ 16.10.265 — 16.10.296)
7. Commercial Fishing Loan Act (§§ 16.10.300 — 16.10.370)
8. Salmon Hatcheries (§§ 16.10.375 — 16.10.475)
9. Fisheries Enhancement Loan Program (§§ 16.10.500 — 16.10.620)

NOTES TO DECISIONS

Cited in *State, N.S.E. Regional Aquaculture Ass'n v. Alex*, Sup. Ct. Op. No. 2488 (File Nos. 5065, 5086, 5142), 646 P.2d 203 (1982).

Collateral references. — 36 C.J.S., Fish, §§ 13 et seq., 26 et seq.

Article 1. Interference with Streams and Waters.

Section	Section
10. Interference with salmon spawning streams and waters	50. Construction of AS 16.10.010 — 16.10.050
20. Grounds for permit or license	55. Interference with commercial fishing gear
30. Violation of AS 16.10.010 — 16.10.055	
40. Disposition of money received for fines and penalties	

H B

2588

INTRODUCED:  
REFERRED:

Original sponsors: Hayes and Szymanski

IN THE HOUSE

BY THE FINANCE COMMITTEE

2d CS FOR SS FOR HOUSE BILL NO. 258 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing a special investment tax credit;  
and providing for an effective date."

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

\* Section 1. LEGISLATIVE FINDINGS AND INTENT. The legislature finds and declares that

(1) there exist areas of the state south of the Arctic Circle in which the factors of established population centers, established infrastructure, access to ice-free ports, and substantial uncommitted reserves of natural gas combine to provide an optimum basis for gas processing development for an export market;

(2) development of gas processing facilities in the areas will minimize adverse population and environmental impacts on the other areas of the state;

(3) development of gas processing facilities in the areas will promote full and stable employment, promote the creation of export markets for the natural energy resources of the state, and promote the long-term development of other natural resources in the state;

(4) it is in the statewide public interest, and is declared to be a public purpose, to promote the prosperity and general welfare of all citizens of the state by stimulating the development of gas processing facilities in such areas;

(5) it is further in the statewide public interest, and is declared to be a public purpose, to promote the exploration, drilling of wells, development, and mining of minerals and other natural deposits (other than oil and gas) in the state, to assist the state by diversifying its economy, to make it less dependent on oil and gas, provide increased employment opportunities and provide an incentive for investment in the state; and

(6) the establishment of a special investment tax credit is necessary in order to promote and accomplish the objectives listed in (1) - (5) of this section.

\* Sec. 2. AS 43.20.021(d) is amended to read:

(d) Where a credit allowed under the Internal Revenue Code is also allowed in computing Alaska income tax, it is limited to 18 percent for corporations of the amount of credit determined for federal income tax purposes which is attributable to Alaska. This limitation shall not apply to the credits allowed by AS 43.20.036(j) and (k).

\* Sec. 3. AS 43.20.036 is amended by adding new subsections to read:

(j) For purposes of calculating income tax payable under this chapter the taxpayer may apply as a credit against a tax liability 100 percent of the investment credit allowed as to federal taxes under § 38 of the Internal Revenue Code (26 U.S.C. § 38) on the full amount of qualified investment put into use south of the Arctic Circle in the state for each taxable year for gas processing facilities; for the purposes of this para-

graph, "gas processing facilities" means plants and facilities for processing any product, other than crude oil, of an oil or gas well, to produce liquefied natural gas, methanol or urea, excluding any pipelines from oil and gas wells to any plants and facilities. The amount of credit allowed under this subsection shall be subject to the limitations imposed by (b) of this section, except that the amount of qualified investment will not be limited to the first \$20,000,000 of qualified investment. Any credit which is allowed under this subsection shall not also be allowed under (b) of this section. No credit shall be allowed under this subsection for any investment credit which is allowed as to federal taxes for leased property by reason of § 168(f)(8) of the Internal Revenue Code (26 U.S.C. § 168(f)(8)).

(k) For purposes of calculating income tax payable under this chapter the taxpayer may apply as a credit against a tax liability 100 percent of the investment credit allowed as to federal taxes under § 38 of the Internal Revenue Code (26 U.S.C. § 38) on the full amount of qualified investment put into use in the state for each taxable year for exploration, drilling of wells, development, or mining of asbestos, bauxite, block steatite talc, celestite, chromite, coal, corundum, fluorspar, graphite, ilmenite, kyanite, mica, olivine, peat, quartz crystals (radio grade), rutile, sulphur, uranium, zircon, or the ores of the following metals: antimony, beryllium, bismuth, cadmium, cobalt, columbium, copper, gold, iron, lead, lithium, manganese, mercury, molybdenum, nickel, platinum and platinum group metals, silver, tantalum, thorium, tin, titanium, tungsten, vanadium, and zinc; for the purpose of this subsection, "mining" has the meaning given in § 613(c)(2) of the Internal Revenue Code (26 U.S.C.

§ 613(c)(2)). The amount of credit allowed under this subsection shall be subject to the limitations imposed by (b) of this section, except that the amount of qualified investment will not be limited to the first \$20,000,000 of qualified investment. Any credit which is allowed under this subsection shall not also be allowed under (b) of this section. Credit shall not be allowed under this subsection for any investment credit which is allowed as to federal taxes for leased property by reason of § 168(f)(8) of the Internal Revenue Code (26 U.S.C. § 168(f)(8)).

\* Sec. 4. This Act applies to qualified investments made after December 31, 1983 and before January 1, 1990.

\* Sec. 5. This Act takes effect immediately in accordance with AS 01.10.070(c).

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
BOB MULCAHY  
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## Senate

### Committee on Resources

#### MEMO

To: Senate Resources Committee  
From: Senate Resources Staff  
Date: May 15, 1983  
Subject: HB 258

Attached is a proposed Senate Resources Committee Substitute for HB 258 which establishes a special investment tax credit.

The main provisions of the proposed committee substitute are:

- (1) A special state investment tax credit is allowed for gas processing projects. This special credit will be equal to 100% (currently 18%) of the federal investment tax credit. This credit will be allowed on the first \$250 million of qualified investment in the state.
- (2) A special state investment tax credit is allowed for exploration, drilling of wells, development and mining of mineral resources. This special credit will also be equal to 100% of the investment tax credit. The credit will be allowed on the first \$250 million of qualified investment in the state.
- (3) The full special investment tax credit will be allowed on the first one million dollars of state liability. On amounts in excess of one million dollars in state tax liability, 50% of the credit can be used to offset state corporate tax liability.

DRAFT

For an Act entitled: "An Act establishing a special investment tax credit; and providing for an effective date."

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

\* Section 1. LEGISLATIVE FINDINGS AND INTENT. The legislature finds and declares that

(1) development of gas processing facilities in the state will promote full and stable employment, promote the creation of export markets for the natural energy resources of the state, and promote the long-term development of other natural resources in the state;

(2) it is in the statewide public interest, and is declared to be a public purpose, to promote the prosperity and general welfare of all citizens of the state by stimulating the development of gas processing facilities in the state;

(3) it is further in the statewide public interest, and is declared to be a public purpose, to promote the exploration, drilling of wells, development, and mining of minerals and other natural deposits (other than oil and gas) in the state, to assist the state by diversifying its economy, to make it less dependent on oil and gas, provide increased employment opportunities and provide an incentive for investment in the state; and

(4) the establishment of a special investment tax credit is necessary in order to promote and accomplish the objectives listed in (1) - (3) of this section.

\* Sec. 2. AS 43.20.021(d) is amended to read:

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1 (d) Where a credit allowed under the Internal Revenue  
 2 Code is also allowed in computing Alaska income tax, it is limited  
 3 to 18 percent for corporations of the amount of credit determined  
 4 for federal income tax purposes which is attributable to Alaska.  
 5 This limitation shall not apply to the credits allowed by AS  
 6 43.20.036(j) and (k).

7 \*Sec. 3. AS 43.20.036 is amended by adding new subsections to  
 8 read:

9 (j) For purposes of calculating income tax payable under  
 10 this chapter the taxpayer may apply per taxable year as a credit  
 11 against a tax liability 100 percent of the investment credit  
 12 allowed as to federal taxes under Internal Revenue Code Section  
 13 38(26 U.S.C. 38) on the first \$250 million of qualified investment  
 14 put into use in the state for<sup>a</sup> gas processing project. For the  
 15 purposes of this, "gas processing project" means the integrated  
 16 plant, facilities and equipment, including but not limited to  
 17 facilities and equipment used for conditioning, extraction,  
 18 fractionation, storage, handling and pollution control, for  
 19 preparation of consumer or transportation gas, or for processing  
 20 any product, other than crude oil, of an oil or gas well, into  
 21 liquified natural gas, casinghead gas or fabricated petrochemical  
 22 products, including but not limited to methanol, ammonia, urea,  
 23 olefins, propanes, butanes, polymers and intermediate hydrocarbon  
 24 products, but excluding any pipelines from oil and gas wells to or  
 25 from any plants and facilities. The amount of credit allowed under  
 26 this subsection shall be subject to the limitations imposed by (b)  
 27 of this section, except that the amount of qualified investment  
 28 will not be limited to the first \$20,000,000 of qualified  
 29 investment and shall not be subject to the limitation imposed by AS

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1 43.20.021(d). No credit shall be allowed under this subsection for  
2 any investment credit which is allowed as to federal taxes for  
3 leased property by reason of section 168(f)(8) of the Internal  
4 Revenue Code (26 U.S.C. 168(f)(8)).

5 (k) For purposes of calculating income tax payable under  
6 this chapter the taxpayer may apply per taxable year as a credit  
7 against a tax liability 100 percent of the investment credit  
8 allowed as to federal taxes under Internal Revenue Code Section 38  
9 (26 U.S.C. 38) on the first \$250 million of qualified investment  
10 put into use for a project in the state for each taxable year for  
11 exploration, drilling of wells, development, or mining of the  
12 minerals, wells and other natural deposits listed in Section 613(b)  
13 of the Internal Revenue Code (26 U.S.C. 613 (b)); for the purpose  
14 of this subsection, "mining" has the meaning given in Section  
15 613(c)(2) of the Internal Revenue Code (26 U.S.C. 613 (c)(2)). The  
16 amount of credit allowed under this subsection shall be subject to  
17 the limitations imposed by (b) of this section, except that the  
18 amount of qualified investment will not be limited to the first  
19 \$20,000,000 of qualified investment and shall not be subject to the  
20 limitation imposed by AS 43.20.021(d). Credit shall not be allowed  
21 under this subsection for any investment credit which is allowed as  
22 to federal taxes for leased property by reason of Section 168(f)(8)  
23 of the Internal Revenue Code (26 U.S.C. 168 (f)(8)).

24 \* Sec. 4. The credit applied under subsections (j) and (k)  
25 shall be applied as follows: (a) to an amount of up to one hundred  
26 percent of the initial one million dollars of tax liability, and  
27 (b) to an amount not in excess of 50 percent of the tax liability  
28 in excess of one million dollars. Any unused portion of the credit  
29

1 shall be subject to the carryforward provision contained in Section  
2 46 (b) (3) of the Internal Revenue Code (26 U.S.C. 46(b) (3)).

3 \* Sec. 5. AS 43.20.036(j) is repealed December 31, 1992.

4 \* Sec. 6. The Department of Revenue may prescribe and publish  
5 regulations necessary for the implementation of this Act.

6 \* Sec. 7. This Act takes effect immediately in accordance  
7 with AS 01.10.070(c).  
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AN ACT ESTABLISHING A SPECIAL INVESTMENT TAX CREDIT.....

Section 1. Legislative Findings & Intent

Discusses the need for development of gas processing facilities, well drilling, development and mining of minerals, diversification, of the economy and the need for providing tax incentives to meet the above objectives.

Section 2. AS 43.20.021 (d) is amended to add that the provisions in (d) shall not apply to the credits allowed under the new subsections provided in Section 3 of this bill.

Section 3. AS 43.20.036 is amended by adding 2 new subsections.

1. AS 43.20.36 (j)

- Provides that a taxpayer may apply as a credit against a tax liability, 100 percent of the investment allowed as federal taxes on the full amount of qualified investment put to use south of the Arctic Circle for gas processing facilities.
- Defines gas processing facility
- Provides that the amount of credit allowed shall not be subject to limitations imposed by (b) (\$20,000,000, not counting air ploomtion equipment) but any credit which is allowed under this subsection shall not also be allowed under (b) of this section.
- Also does not allow credit allowed as to federal taxes for leased property.

2. Same as above, but applies to exploration and drilling of wells, developing or mining of natural mineral deposits.

- Identifies wher definition of mining is for the purposes of this subsection.

Section 4. Provides the tax years affected under this bill.

Section 5. Immediate effective date.

NOTE\*\*\*Language on line 29, pg 2 and line 18, pg 3, sure could be improved.....

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
BOB MULCAHY  
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## Senate

### Committee on Resources

TO: Senate Resources Committee Members

FROM: Senate Resources Committee Staff

RE: CSHB 258 (L&C) Establishing a special investment tax credit.

DATE: April 28, 1983

---

HB 258 would provide additional tax credits for gas processing facilities located south of the Arctic Circle and for development of mineral prospects anywhere in the state.

Alaska Statutes currently provide for a tax credit for qualified investments of 1.8% of the amount invested up to the first \$20 million of investment each year. The proposed legislation would increase the percentage to 10% (same as federal tax law) and remove the investment ceiling.

The Committee will be receiving testimony on the bill from the Departments of Revenue and Law. Their testimony will address several concerns in the legislation. Some of these concerns are: the constitutionality of excluding development above the Arctic Circle from the investment tax benefits; the loss of State revenue; and whether the investment tax credit would be a stimulus to mineral and gas processing projects in the state.

STATE OF ALASKA  
DEPARTMENT OF REVENUE

BILL ANALYSIS

Sponsor Substitute for House Bill No. 258

Title: An Act establishing a special investment tax credit and providing for an effective date.

General Effect of Bill: The Bill would create a special investment tax credit on qualified investments for corporations putting into use gas processing facilities south of the Arctic Circle and corporations engaged in the exploration, drilling of wells, development, or mining of the natural deposits listed in I.R.C. §613(b) south of the Arctic Circle.

Effect on Current Law: Current law provides for an investment credit of 18 percent of the investment credit allowed under the I.R.C. upon the first \$20,000,000 of qualified investment put into use in the State for each taxable year. The new Act provides that the investment credit allowed for those corporations subject to the Act shall be the full amount of the investment credit allowed under the I.R.C. with no limit on the amount of qualified investment credit.

Recommendation of Department: The Department of Revenue recommends a thorough study of the effects of the Bill be conducted. The study should include an analysis of the incentive the Bill will provide to the targeted corporations, a review by the Department of Law as to the constitutionality of the geographic limitations of the Bill, the projected revenue impacts to the State. Current Position of Department: The Department is naturally in favor of encouraging the best and highest use of the State's resources but further analysis of the means proposed in the Bill is required before taking a position.

TECHNICAL ASPECTS OF BILL

Section 1: This section of the Bill presents the legislative findings and intent for the Bill. It is found that the development of gas processing facilities south of the Arctic Circle and mineral development is in the best of the interests of the State. Subsection 6 finds that the establishment of the special investment tax credit is necessary in order to promote and accomplish the objectives listed in the first five subsections.

Section 2: Section 2 adds a sentence to AS 43.20.021(d) which effectively states that the Alaska Investment Credit which is normally limited to 18% of the credit allowed under the I.R.C. would not apply to the special investment credit created in the Bill.

Section 3: Section 3 amends AS 43.20.036 by adding subsection (j). The new subsection would provide that the amount of investment credit

allowed on qualified investment put into use south of the Arctic Circle for gas processing facilities is equal to the full amount of the credit under the I.R.C. Whereas the current investment credit is limited to the first \$20,000,000 of qualified investment put into use in the State for each taxable year, this section would remove that limitation. The section also defines what constitutes gas processing facilities.

Section 4: Section 4 is similar to section 3 but applies to corporations putting into use investments south of the Arctic Circle for exploration, drilling of wells, development, or mining of the natural deposits listed in §613(b) of the Internal Revenue Code. The section again provides for the credit to equal 100% of the federal investment credit and removes the limitation of the credit being applicable to the first \$20,000,000 of qualified investment put into use in the State.

Explanation of Changes from Current law: AS 43.20.021(d) and AS 43.20.036(b) provide for an investment credit equal to 18% of the investment credit allowed as to federal taxes under the Internal Revenue Code on the first \$20,000,000 of qualified investment put into use in the State for each taxable year. For example, if a corporation had a qualified investment of \$25,000,000 during tax year 1983, it would be allowed an investment tax credit on the first \$20,000,000 of that investment. If the federal credit was 10% of the qualified investment, the federal credit would be equal to \$2,000,000 and the Alaska credit equal to 18% of that or \$360,000. The corporation could then apply that credit to its tax liability for 1983 and reduce its tax payment to the State.

If the investment credit for the corporation is greater than the tax liability before the application of the credit, the corporation can carryback the excess credit to each of the 3 prior taxable years preceding the unused credit year and carryover the excess credit to each of the 15 years following the unused credit year. For example, if the corporation above had a tax liability to the State of \$180,000 for tax year 1983 before the application of the credit, the credit would completely eliminate the tax due to the State and leave \$180,000 of credit to be carried back or forward and applied to other years.

The Bill would remove the limitation that the credit would be limited to the first \$20,000,000 of qualified investment put into use in the state for each taxable year. In addition, the amount of the credit would be equal to the full amount of the credit allowed as to federal taxes under I.R.C. § 38. Returning to the example above, the corporation making \$25,000,000 of qualified investment in the State in 1983 would be entitled to an investment credit of \$2,500,000. Again, if the 1983 tax liability prior to the application of the credit was \$180,000, the corporation would have \$2,320,000 of unused credit to carry back and carry forward.

It is important to note that not all of the investment credit given to a corporation as a result of the Bill would be enjoyed on a dollar for dollar

basis. Corporations enjoy a deduction for State taxes in computing their Federal income tax liability. With a tax rate of 46% on taxable income over \$100,000, 46% out of every dollar saved in Alaska taxes would go to the Federal Treasury. Again using the example above, of the \$180,000 credit enjoyed by the taxpayer in 1983, 46% or \$82,800 would be paid to the Internal Revenue Service.

The Bill would effectively increase the investment credit on the first \$20,000,000 of qualified investment by more than 550%, from 18% of the Federal credit to 100%. It would also allow for the first time, an investment credit on qualified investment in any taxable year which exceeds the \$20,000,000. The fiscal impact of the credit would not be limited to the year in which the investment was made, but may have an effect for 3 prior years and 15 subsequent years.

**Fiscal Impacts of Bill:** The actual fiscal impacts of the Bill are indeterminable. The impacts are dependent on corporate decisions regarding business investments, the future profitability of mining and gas processing ventures in the State and the number of years in which the investment tax credit could be applied to reduce tax liabilities.

**Legal Ramifications:** There are several legal problems with the Bill, both in its substance and in its drafting. In the area of substance, the Bill has a geographic limitation, the new credit will only be available south of the Arctic Circle. There would be potential for an equal protection challenge by corporations operating North of the Arctic Circle. The rational basis standard would probably be the standard to be applied in such a challenge and some argument could be made in favor of the distinction for gas processing plants because of the findings in § 1 of the bill however, no findings or intent are supported for the limitation on the exploration, drilling of wells, development and mining of minerals and other natural deposits. The State is currently involved in litigation with \$2.3 billion at stake involving the taxation of oil producers and pipeline operators under AS 43.21. The plaintiff taxpayers challenged that tax on the basis of equal protection. To the extent that this Bill would endow a greater benefit on corporations operating south of the Arctic Circle a similar equal protection challenge could be expected from corporations otherwise qualifying for the credit but making investments north of the Arctic Circle.

There are drafting problems in the Bill itself. In §§ 3 and 4 the limitations imposed under AS 43.20.036(b) are deemed not to apply to the new credits. AS 43.20.036(b) contains two limitations: (1) that the investment credit is only available to the first \$20,000,000 of qualified investment; and (2) that the qualified investment must be put into use in the State. The Bill should be amended and the applicable sentences changed to read:

The amount of credit allowed under this subsection shall be subject to the limitations imposed by (b) of this section except that the amount of qualified investment will not be limited to the first \$20,000,000.

The Bill incorporates provisions of the Internal Revenue Code by Reference and sometimes problems arise where the Code changes with resulting impacts in Alaska law. For example, the natural deposits for which a corporation must explore, drill develop or mine are listed in § 613(b) of the Internal Revenue Code. That subsection has been amended several times since its first enactment and will probably be subject to further amendments. The Drafter has cited P.L. 89-809 and P.L. 88-571 as parallel authority, however, those Public Laws merely amended § 613(b) rather than listed the deposits currently in § 613(b). The better alternative would be to list those specific deposits which the Bill would encourage the development of through the special investment tax credit.

#### OTHER CONSIDERATIONS AND ALTERNATIVES TO THE BILL

Mining operations in Alaska are subject to three non-federal taxes, the Alaska Corporation Net Income Tax (AS 43.20), the Alaska Mining License Tax (AS 43.65) and local property taxes. A study by the Department of Commerce and Economic Development compared the mineral tax structure in Alaska with eleven other states. The conclusions were positive: 1) Alaska's tax structure is average compared with the eleven other states in the study and provides a relatively attractive tax environment for mining; 2) Alaska's progressive tax structure is based on net proceeds, superior to gross-proceeds types of taxes because tax rates go down as production declines.

In February, 1983, the Resource Development Council, Inc., along with the Office of Minerals Development, Alaska Department of Commerce & Economic Development, sponsored the International Conference on Coal, Minerals and Petroleum. In Carl Portman's "Executive Summary" for the proceedings of the conference, after recognizing that Alaska's mining activity was at an all time high, noted three obstacles to development of mineral deposits. The major obstacle to development of mineral deposits is the lack of transportation infrastructure. Another problem was that land allocations by the Federal government withdrew much of the State's high potential mineral land and restricted access to other State areas. Taxes were also mentioned, but the problems with taxes arose not out of the present tax structure, which was found to be reasonable, but out of the fear that mining taxes would be increased as the mining industry becomes increasingly productive.

Two out of the three concerns mentioned above are in the jurisdiction of the Alaska legislature, transportation infrastructure and taxation. Improving the transportation infrastructure in the state through the development of more and better roads, access to the railroad, marine shipping facilities and airports would benefit and encourage the industry with no leakage to the Federal Government such as that created by State tax credits. Improved transportation infrastructure also benefits the non-mining sectors because the high costs of transportation in the State are borne by every Alaskan who buys anything from bubble gum to bulldozers.

There are no current problems with taxation other than the fear that the structure might change with the success of mining operations. The non-petroleum mineral developers have not been blind to the fact that the severance tax

rates have increased and there have been changes in the corporation income tax since oil was first discovered at Prudhoe Bay. Though the opportunity to change tax structures presents itself at each legislative session, persons seeking to develop mineral deposits must forecast the future economic climate and decide whether the changes can be weathered and the mine remain profitable.

A tax credit, such as that proposed in the Bill could partially insulate the miner to the extent that carryover credits would reduce the liability in future years. However, because of the federal leakage, a tax credit is a mixed blessing, providing little more than half of the benefit to the miner compared to the cost to the State in lost revenue. Whereas the State has been able to support its operations largely through taxes on the petroleum industry, oil prices are dropping and current reservoirs are being depleted; lost revenues in other tax types correspondingly taken on greater significance.

For the tax years 1978, 1979 and 1980 corporate income taxes on mining businesses constituted between 6 1/2% and 10% of the total non-petroleum corporate net income tax collections. In turn, total non-petroleum corporate income tax collections were slightly more than 3% of the revenues from petroleum corporations. Because revenue estimates based on petroleum production are decreasing, the non-petroleum corporations will be contributing a greater proportion of total State revenues. In 1980, the mining industry was the fifth largest corporate income tax group of taxpayers in the non-petroleum sector.

The conclusion of this analysis is that tax benefits granted the non-petroleum sector should be carefully scrutinized to ensure that the costs to State revenue do not exceed total benefits to the State. Other incentive mechanisms, such as improvement of the transportation infrastructure, as above, or other incentives, such as those described below, should be examined to see which alternatives score higher under a cost versus benefit analysis.

One alternative would be a mineral development loan program. State funds or bond proceeds could be used to finance mineral development, or for that matter, gas processing facilities, without affecting tax revenue. The rates could be favorable and would directly benefit the mineral developer without Federal leakage. Loan applications could be reviewed within legislative guidelines to encourage the highest and best use of the State's natural resources, the interest would partially fund the operation of the program, and the developer would enjoy interest deductions for both State and Federal purposes. Either the current or a modified investment credit provision would supplement the tax benefits from such a loan program.

Another alternative would be to enact legislation similar to the Alaska Industrial Incentive Act, AS 43.25, or adopt industrial incentive tax credits such as those previously found in AS 43.26. The advantages of those alternatives over the investment credit approach in the Bill are that the effect on revenue to the State would be for a known period of time, and that businesses able to benefit from the tax exemptions would be selected by a State agency within legislative guidelines which encourage mineral development and construction of gas processing facilities.

## SUGGESTIONS FOR IMPROVING THE PRESENT BILL.

1. Remove the geographic limitations in the Bill. Development of gas processing facilities and State resources would be beneficial without regard to the region of development. Major oil companies have mining and gas processing interests and would be likely to raise a constitutional challenge to a geographic limitation.
2. Either keep the present limit on qualified investment or keep the current 18% of the Federal limit on the amount of the credit. The State has the potential of having 19 years of fiscal impact from an investment tax credit, the year it arises, 3 prior years and 15 subsequent years. Anything to make the impact predictable will aid the budget process.
3. Limit the number of years to which the investment credit could be carried backward or forward. As stated above, the Internal Revenue Code provides for 3 years back and 15 forward. A shorter period of time would be in the State's best interest.
4. Specifically list the minerals which the State wishes to encourage the development of rather than refer to the code. For example, the code lists gravel in the referenced section; is this a mineral the legislature wishes to subsidize with an investment tax credit?
5. Research whether the Bill would actually reach the desired results. Is an investment credit really going to make a difference in development decisions?

## SUMMARY

This Bill seeks to encourage investing in gas processing facilities and certain mining activities south of the Arctic Circle through special investment tax credits. The special investment tax credits differs from the current credit in that there is no limit to the amount of qualified investment and the credit is equal to the full amount of the Federal credit. The new credits would have fiscal impacts on the tax year in which they arise and may have an effect in 3 prior and 15 subsequent years.

The legislature should explore the actual effectiveness of the proposed credit and whether other programs would reach the desired end more directly without such fall-out effects such as Federal leakage and unpredictability of future State revenue.

STATE OF ALASKA  
FISCAL NOTE

Revision Date 4/11, 1983

I. REQUEST

Bill/Resolution No: CSSSHB 258 (L4C)  
 Title: Special Investment Tax Credit  
 Sponsor: Hayes & Szymanski  
 Requestor: Labor, Commerce & Finance

II. FISCAL DETAIL

Agency Affected: Revenue  
 Program Category Affected: Coll. & Mgmt  
 BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Vincent D. Wright  
 Division: Revenue - Research

Phone: 465-273  
 Date: 4/7/83

Approved by Commissioner: [Signature]  
 Department: Revenue

Date: 4/11/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

#### IV. Analysis of CSSH B 258

The incorporation of this expanded credit in effect would reduce state taxes as a deductible item at the federal level and thus increase the federal tax take.

The impact of this bill is negative to the state in terms of lost revenues. The quantitative impact cannot be assessed due to carry forward and carry backward provisions which vary from one existing operation to another. If the bill is intended for new facilities, the effect cannot be assessed until they are completed and in operation.

# Alaska State Legislature



Speaker of the House of Representatives

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3720

Official Business

## SPECIAL INVESTMENT TAX CREDIT LEGISLATION

As projections of declining revenue loom in Alaska's near future, we must begin to diversify our economy so that both state government and local economies are not so heavily dependent on oil derived revenues. I have introduced legislation which would accomplish this goal by establishing a special investment tax credit. Such a credit would apply for investments to develop gas processing facilities South of the Arctic Circle and to investments for exploration, development and mining of minerals other than oil and gas throughout Alaska. A major priority of both myself and the House Majority is diversification of our economy. I believe enactment of this legislation would go a long way towards achieving that goal.

Currently state law limits the amount of investment tax credit (ITC) which is allowed to corporations in computing their Alaska income taxes to 18% of the amount of investment tax credit which is allowed for federal income tax purposes. So while the Federal ITC is 10%, the Alaska investment tax credit is only 1.8%. Current law also limits the ITC which is allowed in computing Alaska income taxes to the first \$20 million of qualified investment put into use in the state for each taxable year. That limitation would be removed by this bill.

The Alaska tax credit would only apply to investments which also qualify for the federal credit. This is primarily personal property such as trucks, machinery and manufacturing equipment.

It would not include roads, buildings, mine sites and such things as feasibility studies. Using the \$1 billion Quartz Hill mine project for example, a very limited amount of that development would qualify for the tax credit. But enough of an incentive would be created to attract industry to Alaska that currently is lacking.

The promotion of exploration, development and mining of minerals and other natural deposits in the state will encourage development of Alaska's non oil and gas mineral resources. This legislation would also accelerate the diversification of the state's economy and employment base.

One new addition to this legislation, not included in the version which passed the House last session, is inclusion of gas processing facilities South of the Arctic Circle. There are areas in Alaska where established infrastructure, access to ice free ports and substantial amounts of uncommitted reserves of natural gas combine to provide great potential for gas processing development and export activity. The development of these gas processing facilities will promote full and stable employment and minimize adverse population and environmental impacts.

I expect the impact on state revenues upon enactment of this legislation would be minimal. While initially there would be a slight loss of revenue, the long range goal to promote investment and development would increase non petroleum related revenue in future years. The investment tax credit is a temporary tax reduction directly tied to profitable investment that will produce increased revenues in the future. Additionally, investments in targeted industries may substantially expand local governments sales and property tax bases. If the Prudhoe bay curve is accurate, and oil revenues begin to decline in the late 1980's, it is our responsibility to plan to offset that decline. I am confident it will have the support of the administration, which has stated a desire to reach this goal as well.

# # # # #

# Alaska State Legislature



Speaker of the House of Representatives


Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3720

## MEMORANDUM

April 27, 1983

To: Senator Bettye Fahrenkamp  
Senate Resources

From: Rep. Joe Hayes   
Speaker

Re: HB 258

I have been told the Senate resources committee will hear HB 258 re: special investment tax credit on Friday. My staff has given backup on this legislation to your staff. This memo is additional material to be considered.

There were several amendments proposed in the House which were opposed. In anticipation of a similar offering in the Senate, I wish to outline my objections in several areas.

The Department of Revenue wishes to list minerals in the bill which the tax credit would apply to rather than reference the IRS code as the bill now does. For the sake of uniformity and consistency it seems appropriate to maintain the IRS code reference rather than list minerals separately. Investment companies have a legitimate concern in expecting some consistency in taxation policies. In that regard, it makes sense that companies should expect the same provisions of a federal tax credit to apply to a state credit. If the IRS code should at some time delete a mineral that is of benefit to the state, it would be a minor matter to then amend our statutes. I think it most prudent to maintain the current reference as the bill does.

I also have some problems with any type of a sunset provision which may be proposed. Many developments, especially in mining are long term projects of 30 years or more. I think a sunset could discourage potential investment. Investors should not be under the threat of a sunset provision which would terminate the conditions under which an investment was originally made.

If, at some time, it is determined the tax credit is no longer accomplishing the goals for which it is intended, it would be possible for a future legislature to terminate the credit. I think this would be a more beneficial attitude than including a sunset clause which could still cause uncertainty and borderline investors to hold off from committing to an Alaskan investment.

There was a proposal to define gas processing facilities as those which produce only urea, methane and liquified natural gas. The bill now defines them as facilities which produce but are not limited to the production of those items. A facility can produce over one hundred by-products. I do not feel we should withhold the credit from production of the byproducts which may also be of benefit.

Finally, this bill is aimed at encouraging investment and jobs in three major areas...coal mining, general mineral development and gas processing. These areas will likely result in the greatest number of jobs in Alaska. While I am not specifically opposed to credits in other areas, I think the bill should be restricted to the areas it now addresses at this time. Further credits should be examined on their own merits and potential.

Thank you for your consideration and I encourage the committee's quick action on this important legislation.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465 3805

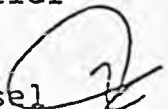
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 11, 1983

SUBJECT: Equal protection analysis of HB 258

TO: Representative Albert P. Adams  
Chairman, House Finance Committee  
Attn: Louann Cutler

FROM: Richard C. Folta   
Legislative Counsel

I have reviewed the "constitutionality of geographic classification in the investment tax credit bill" memorandum by Cook Inlet Region, Inc., concerning the above referenced bill. I concur in their view that the proposed legislation does not violate the constitution.

The Alaska Supreme Court has a more rigorous equal protection requirement than the U.S. Supreme Court, as elicited in State v. Erickson, 574 P.2d 1 (1978), as follows:

. . . must look to the purpose of the statute, viewing the legislation as a whole, and the circumstance surrounding it. It must be determined that this purpose is legitimate, that it falls within the police power of the state, Examining the means used to accomplish the legislative objective and the reasons advanced. Therefore, the court must then determine whether the means chosen substantially further the goals of the enactment. Finally, the state interest in the chosen means must be balanced against the nature of the constitutional right invaded.

There are five purposes mentioned for the investment tax credit in HB 258, all of which are legitimate and proper. However, only the first purpose relates to why the credit is to be in effect only south of the Arctic Circle. All the other purposes are just as compelling for facilities north of the Arctic Circle. In my opinion the first purpose is constitutionally sufficient to sustain the goal of the

proposed enactment. The state interest in encouraging development south of the Arctic Circle where ice-free ports are available near established population centers appears to outweigh the tax discrimination that would be in effect on industries north of the Arctic Circle.

RCF:ljb  
14-004

## Inter - Office Memorandum

TO: Lance Anderson, Vice President, Finance

FROM: Steve Hillard, Vice President and General Counsel *SHA*

Date: March 28, 1983

Subject: CONSTITUTIONALITY OF GEOGRAPHIC CLASSIFICATION IN INVESTMENT TAX CREDIT BILL

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You have asked for a review of the constitutionality of a geographic distinction contained in an bill drafted by CIRI and introduced in the Alaska State Legislature. The legislation will grant certain investment tax credits to those gas processors located south of the Arctic Circle. The question presented is whether this type of classification, based on geography, violates the United States or Alaska Constitutions.

Based upon a review of pertinent federal and state authorities, it is my view that the proposed legislation does not violate the United States or Alaska Constitutions.

I. Federal Constitutional Issues

It is useful to note at the outset that there is one significant constitutional provision which does not appear to apply to the proposed tax credit. The United States Constitution provides that all taxes levied by Congress shall be uniform throughout the United States. U.S. Const. Art. 1, Section 8. The United States Supreme Court has consistently interpreted this requirement to mean geographic uniformity. Knowlton v. Moore, 178 U.S. 41 (1900); Steward v. Davis, 301 U.S. 494 (1938). Under this interpretation, distinctions among the states are impermissible. Thus, the United States District Court for the District of Wyoming has recently held that the Crude Oil Windfall Profits Tax Act of 1980 is unconstitutional because it exempts oil produced from north of the Arctic Circle. Plasvnski v. United States, 82-2 USTC Para. 9654 (D.C. Wyo. 1982). The court noted that although rational justifications for the exemption do exist, the exemption is specifically forbidden by the Constitution. In short, the court appeared to hold that geographic distinctions are per se unconstitutional. The United States Supreme Court recently has determined to review this distinction.

In light of these precedents, it would appear that if Congress were to enact the proposed bill, the bill would run a strong risk of being held unconstitutional. The federal uniformity provision, however, by its terms applies only to acts of Congress, not acts of the states. Generally it has been held, for example, that there is nothing in the United States Constitution which requires state taxation to be uniform. See Carmichael v. Southern Coal Co., 301 U.S. 495 (1937). Thus, the proposed legislation does not violate the uniformity clause of the United States Constitution.

It is also possible to assert that the legislation violates the Equal Protection Clause of the Fourteenth Amendment. It might be contended, in other words, that the proposed legislation impermissibly discriminates against gas processors

located north of the Arctic Circle. The United States Supreme Court, however, has consistently held that where state "taxation is concerned and no special right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." Lehnhauser v. Lake Shore Auto Parts, 410 U.S. 356 (1973); State Board of Tax Comm'rs of Indiana v. Jackson, 283 U.S. 527 (1931). The appropriate test to be applied to state taxation schemes is whether the state classification has a "rational basis" or whether it is "palpably arbitrary" or "capricious." Id. If "any state of facts reasonably can be conceived" to justify a classification, the Court will sustain it.

Applying the foregoing principles to the proposed legislation, it appears that the Supreme Court would uphold the classification. Although not in the context of a taxation case, the Supreme Court has specifically stated that the "Equal Protection Clause relates to equality between persons as such rather than between areas . . . . Territorial uniformity is not a constitutional requisite." Salsburg v. Maryland, 346 U.S. 545 (1954). In the tax area, the Court has upheld a state tax which provided for different tax rates based on the "gravity" of certain oil and which arguably discriminated between oil produced in Northern and Southern Louisiana. Ohio Oil Co. v. Conway, 228 U.S. 146 (1930). The Court held that the classification based on "gravity" was not unreasonable. Although not directly on point, since the case did not involve a specific geographic distinction, Conway does confirm that the Court will apply a relaxed standard of review to state taxation schemes and that all areas of a state need not have an equal tax burden.

A number of lower courts have specifically addressed state tax classifications based on geography. These courts have held that "distinctions based on geographical areas are not, in and of themselves, violative of the Fourteenth Amendment." Levy v. Parker, 346 F.Supp. 877 (E.D. La. 1972); McCarthy v. Jones, 449 F.Supp. 480 (S.D. Ala. 1973) (no "rational basis" for different tax rates for different counties); Weissinger v. Boswell, 330 F.Supp. 615 (M.D. Ala. 1979) (same). These courts have explained that a state "must demonstrate, if it wishes to establish different classes of property based on different geographical locations -- e.g., rural areas as opposed to urban areas -- that the classification is neither capricious nor arbitrary but rests upon some reasonable consideration of difference or policy." Id.

The question thus remains whether the justification asserted for the geographic classification in this case -- to encourage the location of a certain industry in a certain region of the State -- is sufficient to sustain the classification. Although I have not found a case directly on point, the Supreme Court has suggested that tax classifications designed to create incentives for business to locate within a state are permissible. In Allied Stores of Ohio v. Bowers, 358 U.S. 522 (1959), the Court stated that a tax statute which "encourages the location within the state of needed and useful industries by exempting them, though not also others, from its taxes is not arbitrary and does not violate the Equal Protection Clause of the Fourteenth Amendment." The same rationale would appear to apply equally well to the proposed legislation here, since it is designed to encourage location of a business in a particular part of the state.

## II. Alaska Constitutional Issues

There are at least three potential issues under the Alaska Constitution. First, the legislation might violate an implied requirement of "equality and uniformity" of all state taxes. Second, the legislation might violate the Equal Protection Clause found in the Alaska Constitution, Article I, Section 1, which has been interpreted somewhat differently from the Equal Protection Clause of the Fourteenth Amendment. Third, the legislation might constitute a "local or special act" prohibited by Article II, Section 19 of the Alaska Constitution. Let me address the first two issues together, since they are interrelated.

It is necessary to begin with a bit of background. The vast majority of state constitutions embody some provisions for "uniform or equal" taxes. There is, however, no such provision in the Alaska Constitution. The general rule appears to be that in the absence of express provision in the state constitution, it is not essential that state tax statutes operate equally and uniformly. See generally 84 C.J.S. 2d. Taxation, Section 21 (discussing authorities). However, at least one court has held that the principle of uniformity in taxation applies even in the absence of an explicit constitutional provision. See, e.g., Commissioners of Sinking Fund of City of Louisville v. Ohio Valley Grocery Store Co., 240 S.W. 2d 56 (Ky.). Thus, there is at least some possibility that a court might imply a uniformity requirement in the Alaska Constitution.

This possibility is further complicated in the State of Alaska. Although the Constitution of the State of Alaska nowhere requires state taxes to be uniform, Section 9 of the Organic Act of Alaska, 48 U.S.C. Section 28, provides that "all taxes should be uniform upon the same class of subjects." Under the Organic Act, the courts have interpreted the requirement of uniformity to require geographic uniformity. In Hess v. Mullaney, 91 F.Supp. 139 (D.C. Alaska 1950), reversed on other grounds, 189 F.2d 417 (9th Cir. 1950), the court considered whether Alaska's first property tax violated the uniformity requirement of the Organic Act. The property tax levied a tax on all properties in the state, provided that if the property was located within an incorporated city, town or school district, that entity should assess and collect the tax. Plaintiff claimed that the tax was unlawful, since property would be taxed differently depending on where it was located. The District Court agreed, reasoning that classifications may not be based on geographical lines or mere location of the property.

This view was somewhat modified in a successor case, Hess v. Mullaney, 102 F. Supp. 430 (D.C. Alaska 1952), affirmed, 213 F.2d 635 (9th Cir. 1954). Although the court ultimately upheld the property tax, it acknowledged that "unquestionably, systematic geographical discriminations in the burdens of taxation have been held void." The court found, however, that "we assume that the uniformity clause of the Organic Act requires the same measure of uniformity or equality which is required by the Equal Protection Clause of the Fourteenth Amendment." The court held that under the "rational basis" test, it was reasonable for the legislature to have cities assess and collect taxes for property within their jurisdiction.

In light of the foregoing, a strong argument can be made that a separate and distinct "uniformity" requirement no longer exists in Alaska. First, the Alaska Constitution does not provide for uniformity. The Organic Act is a mere act of Congress, and, whatever its continuing effect in light of Alaska statehood, it

probably adds little to the provision of the Alaska Constitution. Second, even if the uniformity requirement of the Organic Act is still controlling, the Ninth Circuit in Hess v. Mullaney held that the Alaska uniformity requirement is no stricter than the equal protection requirement.

A recent case, State v. Reefer King Co., Inc., 559 P.2d 56 (Alas. 1976), support this view and is particularly relevant to this case. The case involved the constitutionality of a state tax which drew a distinction between "floating" and "shore-based" fish processors. Because the tax placed a higher tax rate on floating processors, the floating processors claimed that the statute created an illegal classification under the State equal protection clause. The Alaska Supreme Court rejected that contention. Although the classification could in one sense be deemed to be a "geographical" classification, the Court did not even mention the Hess v. Mullaney cases. Instead, the Court held that the classification should be tested against the State's equal protection analysis, which provides that a statutory classification must

"be reasonable, not arbitrary, and must rest upon some ground of difference having fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced, shall be treated alike."

The Court held that the classification reflected a legislative judgment that shore-based processors make a more valuable contribution to the State's local economies than the floating processors. According to the Court, it is not arbitrary for the legislature to conclude that shore-based processors were to be preferred over floating processors, which distributed economic benefits over several locations. And, in important language for the present issue, the Court concluded that

"The state may legitimately encourage, through tax incentives or exemptions, industries or types of industries which it considers desirable, and this method of encouragement does not deprive other taxpayers, who do not qualify for the benefit, of equal protection of the laws.

Two additional points should be made with respect to Reefer King. First, the case strongly supports the notion that the State of Alaska may make a classification in order to encourage businesses to locate in a particular area. A primary reason for CIRI's proposed legislation, of course, is to encourage gas processors to locate south of the Arctic Circle. Second, the equal protection test adopted by the Alaska Supreme Court is somewhat more demanding than the test used in interpreting the Equal Protection Clause of the Fourteenth Amendment. The Alaska test, for example, requires the classification to bear a "fair and substantial" relation to the purpose of the statute, rather than merely a "reasonable" relationship. More significantly, under the Alaska test, unlike the federal test, the courts will "no longer hypothesize facts which would otherwise sustain questionable litigation." Isakson v. Rickey, 550 P.2d 359 (1975). This means that in order to survive constitutional scrutiny, the proposed legislation must clearly articulate the purpose of the legislation and the rationale for the geographic classification. The rationale for the geographic classification is expressly contained in the investment tax credit bill.

There is one final issue. Article II, Section 19 of the Alaska Constitution provides that the "legislature shall pass no local or special act if a general act can be made applicable." In this case, it could be argued that the proposed legislation is a local or special act in that it favors a particular region of the State.

It is doubtful that the proposed legislation constitutes a local or special act. In Baucher v. Engstrom, 528 P.2d 456 (Alas. 1974), the Alaska Supreme Court stated that "legislation does not become local merely because it operates only on a limited number of geographical areas rather than on a statewide geographical basis. A legislative act may affect only one of a few areas and yet relate to a matter of statewide concern or common interest." Accord, Abrams v. State, 534 P.2d 91 (Alas. 1975); State v. Lewis, 559 P.2d 630, cert denied, 432 U.S. 901 (1977) (upholding the land exchange between CIRI, the United States and Alaska). Thus, to the extent the proposed legislation is a matter of statewide concern, which we believe it is, the proposed legislation is permissible.

More significantly, the Alaska Supreme Court in State v. Lewis held that the test for determining what constitutes "local or special" acts is substantially the same for determining what violates the State equal protection clause. If the equal protection standard is satisfied, "the legislation will not be invalid because of incidental local or private advantages." Id. In terms of our case, then, the crucial issue is whether the proposed legislation violates the State standard of equal protection. If not, Article II, Section 19 will not pose a problem.

SCH:lw

BEFORE THE SENATE RESOURCES COMMITTEE  
LEGISLATURE OF THE STATE OF ALASKA

PREPARED STATEMENT  
OF  
WAYNE B. ALLRED  
ASSISTANT CONTROLLER OF TAXES FOR  
NORTHWEST ALASKAN PIPELINE COMPANY

HOUSE BILL NO. 258

APRIL 29, 1983

MY NAME IS WAYNE B. ALLRED. I AM THE ASSISTANT CONTROLLER OF TAXES FOR NORTHWEST ALASKAN PIPELINE COMPANY ("NORTHWEST"), WHICH IS THE AGENT AND OPERATOR FOR THE ALASKAN NORTHWEST NATURAL GAS TRANSPORTATION COMPANY. NORTHWEST, ON BEHALF OF THE PROJECT SPONSORS, HOLDS THE AUTHORIZATION TO CONSTRUCT A PIPELINE IN ALASKA TO TRANSPORT GAS FROM PRUDHOE BAY TO THE CANADIAN BORDER, AT WHICH POINT THE CANADIANS WILL FURTHER TRANSPORT THE GAS TO THE BORDER OF THE LOWER 48 STATES. NORTHWEST HAS RECEIVED NUMEROUS APPROVALS AND ENDORSEMENTS FOR THE PROJECT, WHICH IS OFFICIALLY TERMED THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM (ANGTS). IN 1977, THE PRESIDENT OF THE UNITED STATES OFFICIALLY DESIGNATED THE ANGTS AS THE PREFERRED SYSTEM TO DELIVER ALASKA'S NORTH SLOPE GAS TO THE CONTINENTAL UNITED STATES, AND THE UNITED STATES CONGRESS RATIFIED HIS DECISION THAT SAME YEAR. ALSO DURING 1977, THE FEDERAL ENERGY REGULATORY COMMISSION ISSUED ITS PRELIMINARY APPROVAL, AND THE CANADIAN GOVERNMENT AND ITS NATIONAL ENERGY BOARD ENDORSED THE ANGTS PROJECT. IN DECEMBER OF 1981, THE U.S. CONGRESS VOTED TO APPROVE THE INCLUSION OF A GAS PROCESSING FACILITY IN THE PREVIOUSLY APPROVED GAS TRANSPORTATION SYSTEM. THIS GAS PROCESSING FACILITY IS TO BE CONSTRUCTED ON ALASKA'S NORTH SLOPE AT PRUDHOE BAY.

DUE TO THE RECENT RECESSIONARY ECONOMY, THE UPHEAVAL IN THE WORLD OIL MARKET, AND THE CURRENT SUPPLY-DEMAND-PRICING

IMBALANCE IN THE NATURAL GAS INDUSTRY, A DECISION WAS MADE BY THE PROJECT SPONSORS TO DELAY THE CONSTRUCTION OF THE PROJECT. HOWEVER, NORTHWEST AND ITS PARTNERS, ALONG WITH THE THREE PRODUCERS WHO OWN THE VAST MAJORITY OF THE PRUDHOE BAY GAS, ARE CONVINCED THAT THE FACTORS CAUSING THE DELAY ARE TEMPORARY AND THAT THIS NATION WILL HAVE AN ULTIMATE NEED FOR THE ALASKAN NORTH SLOPE NATURAL GAS. THEY ARE, THEREFORE, CONTINUING TO PROVIDE THE FUNDS NEEDED FOR THE ACTIVITIES NECESSARY TO MEET THE REVISED SCHEDULE FOR COMPLETION.

THE PROJECT SPONSORS ARE CONTINUING TO EXAMINE ALTERNATIVES FOR MARKETING THE GAS AND FINANCING THE PROJECT. AS YOU KNOW, IN THE PAST, WE HAVE OFFERED THE STATE AN OPPORTUNITY TO INVEST IN THE PROJECT. WE HAVE NEVER, TO THIS DATE, REQUESTED THAT THE STATE SUBSIDIZE THE PROJECT -- ONLY THAT IT CONSIDER MAKING AN INVESTMENT WITH A REASONABLE RATE OF RETURN TO ASSIST A PROJECT WHICH WILL HAVE SIGNIFICANT BENEFITS FOR CITIZENS OF ALASKA. HOUSE BILL NO. 258, HOWEVER, WHICH IS CURRENTLY BEFORE YOU, SEEKS SOMETHING ENTIRELY DIFFERENT. THE BILL PROPOSES TO ESTABLISH A SPECIAL INVESTMENT CREDIT FOR GAS PROCESSING FACILITIES CONSTRUCTED SOUTH OF THE ARCTIC CIRCLE. IT IS, IN FACT, AN INDIRECT STATE SUBSIDY FOR GAS PROCESSING FACILITIES WHICH MAY BE CONSTRUCTED IN THAT GEOGRAPHIC AREA OF THE STATE.

TO GIVE YOU AN IDEA OF THE FISCAL IMPACT OF THIS BILL, LET ME ILLUSTRATE WITH AN EXAMPLE RELATED JUST TO GAS PROCESSING FACILITIES.

IF, UNDER CURRENT ALASKA TAX LAWS, NORTHWEST WERE TO CONSTRUCT AND PLACE IN SERVICE A GAS PROCESSING FACILITY ON THE NORTH SLOPE, COSTING 5 BILLION DOLLARS, IT WOULD RECEIVE AN INVESTMENT CREDIT, OR TAX SUBSIDY, OF ROUGHLY 4 MILLION DOLLARS.

IF A SIMILAR GAS PROCESSING FACILITY WERE CONSTRUCTED SOUTH OF THE ARCTIC CIRCLE, SAY IN THE COOK INLET, AS ENVISIONED UNDER THE TAGS PROPOSAL, THE STATE COULD BE REQUIRED UNDER THIS BILL, TO PROVIDE ROUGHLY \$400 MILLION IN TAX CREDITS OR TAX SUBSIDIES TO SUCH A FACILITY. ADDITIONALLY, THE STATE MAY ADDITIONALLY BE REQUIRED TO PROVIDE CREDITS OF SIMILAR MAGNITUDE FOR LIQUIFICATION FACILITIES.

IN CONCEPT, WHILE WE HAVE NOT SOUGHT LEGISLATION OF THIS NATURE, WE DO NOT OPPOSE THE ESTABLISHMENT OF AN INVESTMENT CREDIT CREDIT FOR GAS PROCESSING FACILITIES. IN FACT, WE WOULD SUPPORT THE PROPOSED CREDIT ABSENT ITS UNACCEPTABLE LIMITATION TO FACILITIES WHICH MAY BE LOCATED SOUTH OF THE 160th PARALLEL. H.B. 258 IN ITS PRESENT FORM, IS CLEARLY DISCRIMINATORY, PROBABLY UNCONSTITUTIONAL, AND APPEARS TO BE SPECIFICALLY DESIGNED TO GRANT AN UNWARRANTED PREFERENCE TO THE RECENTLY CONCEPTUALIZED TRANS ALASKA GAS SYSTEM ("TAGS").

THE TAGS PROPONENTS, HOWEVER, HAVE NOT YET EVEN DEMONSTRATED THAT THEIR PROPOSAL IS TECHNICALLY OR ENVIRONMENTALLY SOUND, THAT THERE ARE ANY REAL MARKETS FOR THE GAS, OR THAT CONGRESS WOULD CONSIDER IT A VIABLE ALTERNATIVE TO THE ANGTS.

RECENTLY, YOUR CONSULTANTS, BOOZ, ALLEN AND HAMILTON, ADVISED THE LEGISLATURE THAT ECONOMIC FACTORS WILL DETERMINE WHICH GAS LINE WILL BE BUILT AND WHEN IT WILL BE BUILT. THE CONSULTANTS ADVISED THAT WHILE YOUR ACTIONS COULD DO LITTLE TO HELP EITHER THE ANGTS PROJECT OR THE NEW TAGS PROPOSAL, YOU COULD, THROUGH YOUR ACTIONS, HARM THE PROSPECTS OF EITHER PROJECT. WE DO NOT BELIEVE THAT IT IS THE LEGISLATURE'S INTENT IN THIS BILL TO IMPEDE, DELAY OR HARM THE LIKELIHOOD OF CONSTRUCTION OF THE ANGTS PROJECT. WE, THEREFORE, RESPECTFULLY REQUEST THAT THE ANGTS PROJECT RECEIVE EQUAL TREATMENT IN THE BILL, AND THAT ALL GEOGRAPHICAL REFERENCES LIMITING THE USE OF THE TAX CREDIT, INCLUDING THE DESIGNATION "SOUTH OF THE ARCTIC CIRCLE," BE REMOVED FROM THE BILL. WITHOUT SUCH MODIFICATION, THE REAL MESSAGE YOU WILL SEND TO THE FINANCIAL MARKETS IS THAT YOUR SUPPORT FOR THE ANGTS PROJECT IS SO LUKEWARM THAT YOU ARE WILLING TO GIVE A TAX PREFERENCE, OF THE SORT NEVER OFFERED TO THE ANGTS, TO A MERE CONCEPT -- ONE THAT HAS NOT YET DEMONSTRATED ITS CREDIBILITY AND WHICH HAS NO SUBSTANTIAL SPONSORS, MUCH LESS ANY SOURCE OF THE MAJOR FUNDS REQUIRED.

IN SUMMARY, WE RESPECTFULLY SUGGEST THAT HOUSE BILL NO. 258 BE REVISED TO ELIMINATE ITS GEOGRAPHICAL LIMITATIONS WHICH ARBITRARILY DISCRIMINATE AGAINST ONE REGION OF THE STATE VIS-A-VIS ANOTHER AND UNFAIRLY PROMOTE A RECENT IDEA FOR TRANSPORTATION OF NORTH SLOPE GAS AT THE EXPENSE OF THE ANGTS PROJECT, WHICH IS MUCH MORE THAN AN IDEA. IT IS, IN FACT, A PROJECT WITH OVER SIX YEARS OF WORK, STUDY, GOVERNMENTAL REVIEW, AND LEGAL PROCEEDINGS BEHIND IT; AND ONE IN WHICH ALMOST \$500 MILLION HAS ALREADY BEEN INVESTED. MUCH OF THAT MONEY, AS YOU KNOW, HAS BEEN SPENT HERE IN ALASKA.

THANK YOU FOR THE OPPORTUNITY TO PRESENT THESE VIEWS.

Hypothetical Mine - Alaska  
David Heatwole, Alaska Miners Assoc.  
Senate Resources Committee

### Ball Park Figures

A medium sized high grade mine

Production Rate - 1000 tons/day

Mine Life - 20 years

Capital Investment \$ 200 million

Subject to ITC 50% - \$100 million

Total ITC for project = \$10 million.

Annual Net Revenue - \$35 million

State IC tax at 10% = \$3.5 million

Mining License Tax at 7% = \$2.5 million

Total Revenue to State

17 years State I.C. Tax = \$45 million  
17 years Mining License Tax = \$40 million

Total = \$85 million

Total I.C. Tax Credit \$10 million





HB 258

# ALASKA MINERS ASSOCIATION, INC.

509 W. Third Ave., Suite 17, Anchorage, Alaska 99501 (907) 276-0347

April 6, 1983

Senator Bettye Fahrenkamp  
Alaska State Legislature  
Pouch V (MS3100)  
Juneau, Alaska 99811

Dear Bettye:

The Statewide Board of Directors of the Alaska Miners Association unanimously passed the attached resolution urging enactment of HB-258. The Alaska Miners Association represents approximately 1600 miners located throughout Alaska.

The Alaska Miners Association believes that the investment tax credits proposed in HB-258 will broaden Alaska's economic base. The people of Alaska are concerned about our state's dependence upon oil revenues and diversification of our state's economy is very important for the long term economic health in Alaska.

Many members of the legislature may be hesitant to consider a tax credit bill in the face of declining oil revenues. However HB-258 is an income-producing bill. It will send a strong signal to investors that Alaska is seriously attempting to attract mineral development and increase exploration and mining activity. The economic benefits accruing to the state will far outweigh the revenues lost by the tax credit.

The initial reduction in revenues by mineral investment would be small, less than ten million dollars annually. The tax credits will make Alaskan mineral investments more competitive on a world wide basis and lead to the establishment of a long term healthy mining industry.

We are asking for your help to obtain passage of this bill and make an investment in Alaska's long term economic future.

Sincerely yours,

ALASKA MINERS ASSOCIATION

Ron Rosander  
Vice President

RR/dlw  
Attachment



# ALASKA MINERS ASSOCIATION, INC.

509 W. Third Ave., Suite 17, Anchorage, Alaska 99501 (907) 276-0347

## RESOLUTION - HOUSE BILL 258

Whereas the Alaska Miner's Association desires to foster the development of Alaska's mineral resources and,

Whereas the people of Alaska desire to broaden the economic basis of our state and,

Whereas the Investment Tax Credits proposed in HB-258 would provide financial incentives for the development of minerals in Alaska and indicate the strong support of the State of Alaska for a mining industry.

The Board of Directors hereby resolves to urge the Governor of Alaska, the Speaker of the Alaska State House, the President of the Alaska State Senate and the Chairpersons of House and Senate Resources Committee for expeditious passage of HB-258.

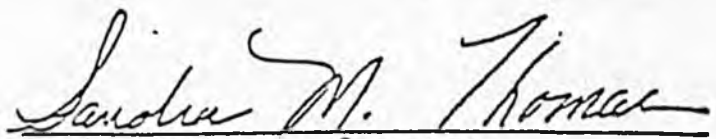
Approved

Fairbanks, Alaska

March 29, 1983



Paul Glavinovich - President



Sandra M. Thomas - Secretary

Department of Revenue  
H.B. 258 Example

FACTS

A mining company doing business exclusively in Alaska makes a \$500,000,000 investment on January 1, 1984 and a like investment on January 1, 1985.

ASSUMPTIONS

1. 65% of the investment in each year is qualified investment credit property.

Examples of Qualified Investment Credit property would be:

- a. machinery & equipment
- b. other property which is an integral part of the manufacturing process, eg. silos, elevators, etc.

Property that does not qualify would be:

- a. real property (other than that which is an integral part of the manufacturing process), eg. warehouses, office buildings, parking lots, etc.
- b. intangible personal property, eg. leases, royalty agreements, etc.

2. The investment produces a 15% pre-tax net rate of return on the new investment in the first year and a constant 7 1/2% pre-tax return thereafter.
3. Federal taxable income from 1981-1992 is \$5M per year excluding that income attributable to the new investment.
4. Tax rates and limitations remain constant from 1984-1992.
5. No investments in qualifying property are made after 1985.