

ALASKA LEGISLATURE COMMITTEE FILE 1985-1986 00/2

3214.27 HCRA HB 389 - HB 428



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

7/25/89
Date

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ALASKA RURAL ELECTRIC COOPERATIVE
ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

May 3, 1985

The Honorable Peter Goll
Chairman, House Committee on
Community and Regional Affairs
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Goll:

House Bill 387 is scheduled for consideration by your committee on May 6th, but unfortunately I will have to be out of town on that date. Please accept this letter as expressing the views of our association.

We strongly support the concept of direct billing by the Alaska Power Authority as a means of qualifying revenue bonds issued by the APA for municipal tax exempt status for the Susitna Hydroelectric Project. What we want is a bill that does just enough to pass muster with the IRS, but not a bit more. It is going to take a lot of delicate fine tuning to get the bill just right, and it obviously needs a lot of work.

This bill was introduced so late in this session that I was frankly surprised it has been scheduled for consideration this year. The utilities have not had an opportunity since it was introduced to meet and consider this bill. We are not prepared to make suggestions based on a concensus at this time, but we will have substantive testimony at a later date. It makes no difference to us whether that work is later done in your committee or in a subsequent committee assignment.

Sincerely,

David Hutchens
Executive Director

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 19, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to direct service charges for the sale of power by the Alaska Power Authority to retail consumers.

This bill addresses financing concerns with regard to future energy projects acquired or constructed by the Alaska Power Authority where the principal user of the power generated or transmitted by the authority is a non-governmental utility. Section 103(b) of the Internal Revenue Code restricts the use of tax-exempt bonds for financing power projects and transmission interties which are secured by payments to be made under power sales agreements with non-governmental utilities such as private investor-owned utilities, rural electric associations, and electric cooperatives.

This bill would facilitate the use of tax-exempt financing by authorizing the authority to impose and collect direct service charges from consumers, as an alternative to power sales agreements, as a method for securing and providing for the payment of bonds issued by the authority. Money collected by the authority from the imposition of direct service charges will constitute revenues to meet the costs of acquiring, financing, and guaranteeing power projects. The tax-exempt financing permitted by the use of direct service charges should help to reduce the capital costs of power projects.

After this bill is passed, the authority will seek a revenue ruling from the IRS to confirm that the use of direct service charges as security for revenue bonds will permit tax-exempt financing of power projects.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

February 14, 1984

MEMORANDUM

TO: Honorable Bill Sheffield
✓ Governor

FROM: Norman C. Gorsuch
Attorney General

RE: Attached bill related to
direct service charges by
the Alaska Power Authority
Our file: 377-129-84

RECEIVED

Department of Law

FEB 22 1984

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

Attached is a bill that permits the Alaska Power Authority to make direct service charges to retail consumers for power generated or transmitted by means of facilities owned or financed by the authority. The bill was requested by the Alaska Power Authority and, I understand, was approved by John Shively.

A draft transmittal letter to the legislature is also attached. ✓

NGG:MAF:mg

cc w/enc.: Honorable Richard Lyon
Commissioner
✓ Department of Commerce &
Economic Development

Larry Crawford
Executive Director
Alaska Power Authority
334 W. 5th Ave., 2nd Fl.
Anchorage, AK 99501

5/18/83

PROPOSED JOINT DRAFT STATEMENT
OF WOHLFORTH & FLINT AND BORGE & PITT

THE DIRECT BILLING LEGISLATION

We have reviewed certain draft legislation which would authorize the Authority to charge direct service charges for or relating to the purchase of electric energy and the cost and expense of the generation and transmission of such energy, from any retail customer of electric energy generated or transmitted by means of facilities owned or financed by the Authority. The first proposed application of the statutory permission would be in respect of charges for the proposed Anchorage/Fairbanks intertie which would transmit electricity produced by private and public utilities in the railbelt to retail customers. The service charges contemplated would be an amount sufficient to pay principal and interest on bonds issued to construct the Anchorage/Fairbanks intertie and to pay costs of operation and maintenance of the intertie. A schedule of service charges would be established by regulation providing for charges to an individual customer based on consumption of power. All customers in the Area capable of being benefitted would be charged regardless of whether power is transmitted to a particular customer by virtue of the intertie transmission line. The benefit would be the potential of the supply of electricity via the intertie. The electric utilities providing power to the retail customers would collect the charges solely as agent of the Authority which would levy the charges. There would be no liability of any electric utility for payment of any of the direct charges.

We have been asked our opinion as to whether or not the interest on Authority bonds issued to finance the costs of the intertie which would be payable from the service charges would be exempt from Federal income taxation under Section 103(a)(1) of the Internal Revenue Code. The relevant question is whether or not such bonds would constitute "industrial development bonds" under Section 103(b) of the Code. Under that section of the Code an industrial development bond means

any obligation (A) which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by any person who is not an exempt person within the meaning of [Section 103(b)](3)), and (B) the payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) is, in whole or in major part (1) secured by any interest in property used or to be used in a

trade or business or in payments in respect of such property, or (ii) to be derived from payments in respect to property, or borrowed money, used or to be used in a trade or business.

We have examined the relevant regulations, particularly §1.103(7)(B)(3) and (4), as well as published rulings and private letter rulings of the Internal Revenue Service to determine whether or not the proposed bonds meet the description set forth in Section 103(b)(2)(B) which is commonly called the "security interest test". Based on the Internal Revenue Code and current regulations and rulings thereunder, in our opinion the proposed bonds would not be subject to Federal income taxation as industrial development bonds, because the proposed bonds would not meet the "security interest test".

You are advised, however, that the fact situation described above has not been directly addressed in published or private rulings of the Service. We further point out that the Service has shown no hesitation in recent years in overruling published rulings on tax exemption (see for example Revenue Ruling 81-216 which affected the taxability of industrial development bonds) and has on occasion amplified existing rulings in a way which could not be foreseen or ascertained from either the Code, regulations or earlier rulings. In this regard we particularly call your attention to the fact that the phrase "underlying arrangement" as used in the regulations to describe the "security interest test" has been used by the Service to broaden the thrust of the test since the regulations were enacted.

Subsequent events may well, therefore, dictate that a ruling be obtained before proceeding with the financing.

Introduced: 4/19/85
Referred: Community & Regional
Affairs, House Special Committee
on State Loans and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 389

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An act relating to direct service charges for the
7 sale of power by the Alaska Power Authority to retail
8 consumers."

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

10 * Section 1. AS 44.83 is amended by adding new sections to read:

11 Sec. 44.83.085. DIRECT SERVICE CHARGES. (a) The authority may
12 charge and collect direct service charges for or relating to the
13 purchase of power, and the cost and expense of the generation and
14 transmission of power, from a retail consumer of power that is gen-
15 erated or transmitted by means of facilities owned or financed by the
16 authority. "Retail consumer" means a customer of a distributor of
17 electricity as defined in AS 44.83.230, or a distributor of electric-
18 ity to the extent that that entity is a direct consumer of power
19 generated or transmitted by means of facilities owned or financed by
20 the authority.

21 (b) The authority shall by regulation prescribe, and revise as
22 necessary, a schedule of direct service charges. The money derived by
23 the authority from the imposition and collection of direct service
24 charges must be allocated among the projects for which the direct
25 service charges were instituted, and credited to the amounts which
26 must be charged under either the wholesale power rate formula in
27 AS 44.83.398 or any other power rate schedule applicable to the proj-
28 ect under the provisions of AS 44.83.

29 (c) Notwithstanding any other provisions of AS 44.83, the

1 authority is not required to enter into a power sales agreement with
2 respect to the power generated or transmitted by a project if it

3 (1) establishes a schedule of direct service charges with
4 respect to the electrical power or energy or transmission capacity or
5 service from the project; and

6 (2) determines that the imposition and collection of direct
7 service charges will result in the sale of that power at the lowest
8 reasonable price.

9 (d) If the authority enters into a power sales contract with a
10 distributor of electricity, the authority may waive, modify, suspend,
11 or reduce the direct service charge that would otherwise be charged by
12 the authority to retail consumers.

13 Sec. 44.83.086. COLLECTION OF DIRECT SERVICE CHARGES. (a) The
14 authority may enter into one or more agency agreements with a distrib-
15 utor of electricity, relating to the billing and collection of direct
16 service charges authorized under AS 44.83.085. The distributor of
17 electricity may act as agent of the authority for the billing and
18 collection of direct service charges. Each distributor of electricity
19 may do anything necessary or desirable to carry out every such agency
20 agreement.

21 (b) Each municipality and other public agency of the state shall
22 promptly pay to the authority all direct service charges that the
23 authority may charge to it, as a consumer of power, in accordance with
24 AS 44.83.085, and shall provide for the payment in the same manner as
25 other obligations of the municipality or public agency.

26 (c) If a direct service charge is not paid when due, interest
27 accrues and is due to the authority on the unpaid balance at the rate
28 of one and one-half percent a month until the direct service charge
29 and the accrued interest are fully paid to the authority.

1 (d) If any direct service charge is not paid when due, the
2 unpaid balance and all interest accrued, together with attorney fees
3 and costs, may be recovered by the authority in a civil action.

4 (e) In the event of default by a distributor of electricity
5 under a power sales contract between the authority and the distributor
6 of electricity, the authority may charge and collect, as if the con-
7 tract had not been made, direct service charges against the customers
8 of the distributor of electricity sufficient to meet any default or
9 deficiency in payments to be made under the power sales contract.

10 * Sec. 2. AS 44.83.195(a) is amended to read:

11 (a) When a project is operated by the authority, the authority
12 shall derive revenues from the operation of the project by the im-
13 position and collection of direct service charges under AS 44.83.085 and
14 44.83.086, or by entering [ENTER] into one or more contracts for the
15 sale of electrical power, energy, transmission capacity, or service
16 from the project. Unless the contract is entered into under AS 44.-
17 83.380 -- 44.83.425, a contract entered into under this section must
18 [SHALL] meet all requirements of AS 44.83.090.

19 * Sec. 3. AS 44.83.230 is amended by adding a new paragraph to read:

20 (10) "distributor of electricity" means

21 (A) a municipality or other public agency that oper-
22 ates an electric utility;

23 (B) a rural electric, cooperative electric, or private
24 electric utility; or

25 (C) any other person authorized by law to engage in
26 the distribution of electricity.

**STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: _____

REQUEST -

HB 389

FISCAL DETAIL

Bill/Resolution No. _____

Agency Affected: ALASKA POWER AUTHORITY

Title: An act relating to the direct serv

Program Category Affected: _____

charges for the sale of power by the Alaska Power Authority

Sponsor: Senate Rules Committee

BRU, Program or Subprogram(s) Affected: _____

Requestor: Governor

Date of Request: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES			- 0 -			
200 TRAVEL						
300 CONTRACTUAL			NOT APPLICABLE			
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND			- 0 -			
FEDERAL FUNDS			NOT APPLICABLE			
OTHER						
TOTAL						

POSITIONS:

FULL-TIME			- 0 -			
PART-TIME			NOT APPLICABLE			
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert D. Heath
Division: Alaska Power Authority

Phone: 276-0001
Date: 4/12/85

Approved by Commissioner: _____
Agency: _____

Date: _____

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

8/103 JEC

HB 189

"An Act relating to direct service charges for the sale of power by the Alaska Power Authority to retail consumers."

was read the first time and referred to the Community & Regional Affairs, House Special Committee on State Loans, and Finance Committees.

A zero fiscal note was attached.

The Governor's transmittal letter, dated April 19, 1985, appears below:

"Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to direct service charges for the sale of power by the Alaska Power Authority to retail consumers.

This bill addresses financing concerns with regard to future energy projects acquired or constructed by the Alaska Power Authority where the principal user of the power generated or transmitted by the authority is a non-governmental utility. Section 103(b) of the Internal Revenue Code restricts the use of tax-exempt bonds for financing power projects and transmission interties which are secured by payments to be made under power sales agreements with non-governmental utilities such as private investor-owned utilities, rural electric associations, and electric cooperatives.

This bill would facilitate the use of tax-exempt financing by authorizing the authority to impose and collect direct service charges from consumers, as an alternative to power sales agreements, as a method for securing and providing for the payment of bonds issued by the authority. Money collected by the authority from the imposition of direct service charges will constitute revenues to meet the costs of acquiring, financing, and guaranteeing power projects. The tax-exempt financing permitted by the use of direct service charges should help to reduce the capital costs of power projects.

After this bill is passed, the authority will seek a revenue ruling from the IRS to confirm that the use of direct service charges as security for revenue bonds will permit tax-exempt financing of power projects.

Sincerely,

/s/
Bill Sheffield
Governor"

Didn't Congress vote this?



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

7/25/89
Date

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 *
 * DELIVER TO: TCJNU
 *
 * ORIGINAL
 * SENT: 05/07/85 TIME: 08:39
 * FROM: DAVID JENSEN
 * SUBJECT: (H) C & R A STATS (MAY 6, 85)
 * PRINT DATE: 05/07/85 TIME: 08:40
 *

*** FINAL T/C STATS ***

DATE: _____ MAY 6, 1985 - MONDAY _____
 SITE: _____ ANCHORAGE - MAIN MEETING ROOM _____
 SPONSOR: _____ HOUSE COMMUNITY AND REGIONAL AFFAIRS _____
 SUBJECT: _____ HB 289 - APA SALES _____
 LOCAL MODERATOR: _____ DAVID J _____

TESTIFIED:
 NAME/REPRESENTING ADDRESS PHONE
 ERIC WOLFORTH 900 WEST 5TH AVENUE ANCHORAGE 276-6401

OBSERVED:
 NAME/REPRESENTING ADDRESS PHONE
 SUSAN WHITE - APA 334 WEST 5TH AVENUE ANCHORAGE 276-0001
 CAROLYN JONES 1031 WEST 4TH AVE ANCHORAGE 276-3550

TESTIFIED: ___01___
 OBSERVED: ___02___ TIME START: ___3:00___
 TOTAL: ___03___ TIME END: ___3:30PM___

Copy

Transcript of telephone call with Amelia Downey, Clerk, City of Kobuk. Present are Representative Goll, Robert Heath, Dave Hutchins, Susan White and Bob Berry.

Re: HB 391, transfer two A.P.A. projects to public utilities.

Representative Goll: I understand you to say that the City Council has met and passed a resolution to take over this power line, is that correct?

Amelia: It has. Yes.

Representative Goll: There is nothing in the city budget that would allow you to maintain or operate the line at this time. Is that correct?

Amelia: Yes. It would take a lot of budgeting because we have a lot of trouble with this power line. I think that is why Northline wanted to get rid of it so quick. We have a lot of power outages from Shungnak and power line breakage where something is always wrong with this line. We have a back-up generator all right, but if there is something wrong with the line, we can't get power in anyway.

Representative Goll: What would you do if the power line broke while you owned it? Would you look for an appropriation from the state or would you charge your rate-payers or what would be your plan? Have you given any thought to that?

Amelia:probably general fund or labor money to do this project, to get it fixed.

Representative Goll: Do you feel that will be possible from your revenue sharing and municipal assistance?

Amelia: We can probably do that until we do FY86 budget forms...

Representative Goll: And if necessary for raising that money, would you charge your citizens?

Amelia: (undistinguishable) ...No, as it is right now, our rates are .53 cents a kilowatt hour and I couldn't raise it any higher because individual people can't be paying more than that.

Representative Goll: That sounds right to me. Is there any information that you think the committee should have about this line?

Amelia: I can't think of anything right now.

Representative Goll: I am just trying to understand the feelings of the community as best I can about the transfer.

Amelia: They wouldn't like their rates going any higher because they are really looking forward to this power equalization cost when we are able to get it after we transfer this power line because Pat from Northline didn't want to do it while he operated this project. Whenever we get it done, we would like to do power equalization costs.

Representative Goll: When did you get this offer to have the line transferred to you in the first place?

Amelia: It was a real surprise. They just called us up one day and said their contract was up a long time ago and they don't know what to do with this and they would like to give it to Kobuk because they can't operate it any more. It's too expensive and they have to do all that travelling and all the maintenance and it is really hard for them to keep on top of it.

Representative Goll: This was the Alaska Power Authority that called?

Amelia: It was Jack Farleigh...someone from the Alaska Public Utilities Commissioner's office.

Representative Goll: I will give Jack a call and find out what his relationship to all this is. I would like to thank you very much for your information, Miss Downey. I would like you to know that my name is Peter Goll and my number is 465-4925. If you need any information on what is going on with this, give me a call and I will be happy to provide it to you. House Community and Regional Affairs has a bill before it now making this transfer. The main reason for my call was to find out whether the community approved and whether you wanted to own the line.

Amelia: The problem is we won't be making a profit out of it. This is the only power we have because we don't have a big generator to be having our own electricity in Kobuk, it is just a small place. I made out a resolution for the state to approve a generator and equipment building as a capital project grant that the City of Kobuk would like and if we can get that maybe we can get this power line cut off and we can operate our own generator here with our own maintenance money coming out of the FY86 budget.

Representative Goll: I think I understand. Thank you very much for your information and if I can be of any service to you, please give me a call.

Introduced: 4/19/85
Referred: Community & Regional
Affairs, Labor & Commerce and
Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 391

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act authorizing the Alaska Power Authority to
transfer certain projects to public utilities; and
providing for an effective date."

7

8

9

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

10

* Section 1. Notwithstanding AS 44.83.380 -- 44.83.425, the Alaska

11

Power Authority may transfer the following projects to appropriate public
utilities:

12

13

(1) Port Lions transmission line, funded by sec. 1, ch. 90, SLA 1981,

14

as amended by sec. 69, ch. 92, SLA 1981;

15

(2) Kobuk - Shungnak transmission line, funded by sec. 4, ch. 90, SLA

16

1981.

17

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-

18

10.070(c).



**STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS**

DEPARTMENT Commerce & Econ. Dev.	DIVISION Alaska Power Authority	BILL NUMBER HB 391	SPONSOR House Rules/by Governor
DEPARTMENT POSITION Support passage of HB 391.			
PREPARED BY Susan White, Special Assistant to the Executive Director	DATE	COMMISSIONER'S SIGNATURE 	DATE 5/1/85

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Commerce and Economic Development Office of Energy	CONSTITUENT GROUP(S) AFFECTED BY BILL Kodiak Electric Association City of Kobuk
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL None

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

See attached.

ANALYSIS OF BILL/PROGRAM EFFECTS

Proposed projects transfer as specified in HB 391 would grant the Kobuk-Shungnak and Port Lions transmission lines to the City of Kobuk and Kodiak Electric Association. Transfer of these projects would remove them out of the Energy Program for Alaska and relinquish the State's responsibility to own, operate and maintain them.

If statutory authority is not provided for transfer of the Kobuk-Shungnak line, APA will work to develop an O&M agreement with AVEC (which operates the power plant at Shungnak) and the City of Kobuk and develop a set of fees to provide for O&M revenues to be returned to the State. Currently, APA is providing minimal maintenance twice a year to assure basic operational status of the line. Maintenance costs over the past two years have been approximate y \$5,000 per year.

Although O&M funding for the Port Lions line is not budgeted in the APA's FY '86 operating budget, the FY '86 costs, if the project is retained by the APA, could potentially be absorbed within the existing budget (Terror Lake O&M agreement). If additional funding (program receipts) is, in fact, required, an RPL will be submitted to the LB&A Committee.

AMENDMENTS PROPOSED

No amendments.

2267W5185a

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

BACKGROUND/LEGISLATIVE INTENT

The two transmission line projects recommended for transfer from the Power Authority to the appropriate utilities are the Kobuk-Shungnak and Port Lion's transmission lines. Appropriations to the Power Authority's Power Development Fund provided for the construction of these projects and include them in the Energy Program for Alaska. Power projects acquired or constructed as part of the Energy Program for Alaska may only be transferred through legislation.

The Kobuk-Shungnak transmission line was funded through two separate appropriations of \$345,000 (SLA 79, Ch. 80) and \$200,000 (SLA 81, Ch. 90). These appropriations were funded respectively to the Department of Commerce and Economic Development, Office of Energy and the Alaska Power Authority. The line is complete and has been operational since February 1982.

The Port Lion's transmission line was funded through three appropriation sources. (Please see attached Port Lion's funding summary). The Port Lion's line is complete and is ready to begin operation.

The Power Authority Board of Directors passed Resolution #1985-01 recommending transfer of the two projects, and requested legislation be introduced to effect the transfer. The Attorney General's Office has found the proposed transfer to be appropriate as the lines to be granted and transferred to the local utilities would serve the required public purpose.

PORT LION'S FUNDING SUMMARY

Total Construction Cost: \$1,639,481

Funding Sources:

C . 54, SLA 1980, page 3, line 9	\$ 93,812 (a)
C . 92, SLA 1981, page 12, line 6	1,400,000
C . 92, SLA 1981, page 12, line 9	145,669 (b)
	<u>\$1,639,481</u>

- (a) Balance of \$200,000 appropriation, remainder (\$106,188) was used by KEA to conduct feasibility study for a Port Lion's power project.
- (b) Revised program from Terror Lake allocation to Port Lion's allocation within the same appropriation.

MEMORANDUM

along assigned fiscal notes of 4/16/85
State of Alaska

TO: Ray Gillespie
Director of Legislative Relations
Office of the Governor

DATE: April 12, 1985

FILE NO:

FROM: Robert D. Heath
Executive Director
Alaska Power Authority

Introduction of New Legislation

We have reviewed the attached Alaska Power Authority related bills recently transmitted to Governor Sheffield by the Attorney General's office. The current bills relating to 1) Direct service charges for the sale of power by the Alaska Power Authority to retail consumers, 2) authorization for the Alaska Power Authority to transfer certain projects to public utilities, and 3) placing the employees of the Alaska Power Authority in exempt service under the State Personnel Act, were originally adopted as resolutions by the Board of Directors of the Alaska Power Authority at the February 26, 1985 Board meeting.

These resolutions were transmitted to the Governor from the Power Authority on March 19, 1985, following Board recommendation for introduction in bill form during the current legislative session. At this time, I would like to reaffirm the Board's recommendation and request that the bills, as prepared by the Attorney General's office, be introduced.

The bill relating to the transfer of transmission line projects is extremely important and requires legislative action this session. The two projects recommended for transfer are currently a liability to the State as property insurance is not presently provided on these projects, nor have funds been requested in our agency's budget for FY86. Don Hitchcock of the Division of Risk Management has advised Power Authority staff that property insurance should not be procured based on the excessive cost which would be required to insure the facilities. In addition, operation and maintenance funds have not been requested in our agency's FY86 budget, as it has been the intent of the Power Authority to transfer the projects within their first year of operation. Maintaining ownership of the facilities by the Authority would require an excessive amount of State funds in future years.

Please contact my office if additional information relating to the attached bills is required.

Attachments as stated.

SK/RDH/ald

cc: Commissioner Loren H. Lounsbury

0000/000

ALASKA POWER AUTHORITY
RESOLUTION 1985 - 04

Appd 6-1

RESOLUTION BY THE ALASKA POWER AUTHORITY BOARD OF DIRECTORS RECOMMENDING THAT AS 44.83 BE AMENDED TO AUTHORIZE THE ALASKA POWER AUTHORITY TO CHARGE AND COLLECT DIRECT SERVICE CHARGES TO RETAIL CONSUMERS FOR FACILITIES OWNED OR FINANCED BY THE AUTHORITY.

Whereas, the Alaska Power Authority has before FERC a pending application for license for the Susitna Hydroelectric Project;

Whereas, the economic viability of the Susitna Hydroelectric Project depends on the issuance of the tax-exempt revenue bonds;

Whereas, the recommended legislation authorizing Direct Service Charges for the cost and expense of the generation and transmission of the Susitna Project and other projects could provide the tax-exempt status for the issuance of revenue bonds;

Now Therefore, Be It Resolved, by the Board of Directors of the Alaska Power Authority, that AS 44.83 is recommended for statutory amendment to specifically authorize the Alaska Power Authority to Direct Service Charge to retail consumers the cost and expense of facilities owned or financed by the Authority.

Be It Resolved, the the Alaska Power Authority Board of Directors respectfully request the Governor to introduce legislation providing for amendment of AS 44.83 as recommended herein.

The resolution having been submitted to a vote, the vote thereon was as follows:

YEAS: Arnold, Harrison, Huffman, Knapp, Lombardy, Wynn

NAYS: Allison

ABSENT: 0

And the resolution was declared adopted on this the 26th day of February, 1985.

ALASKA POWER AUTHORITY

BY: *[Signature]*
Chairman

BY: *[Signature]*
Secretary

Resolution 85-01

AUTHORIZATION FOR EXECUTIVE DIRECTOR TO NEGOTIATE THE TRANSFER OF PROJECTS FUNDED UNDER THE ENERGY PROGRAM FOR ALASKA TO THE APPROPRIATE UTILITY UPON THE PROVISION OF APPROPRIATE STATUTORY AUTHORITY

Whereas the Alaska Power Authority has broad responsibility to construct, acquire, finance and operate power projects;

Whereas the Power Development Fund was established to finance major retail generation, transmission and distribution projects under the Energy Program for Alaska;

Whereas there are presently within the Energy Program for Alaska several small retail generation, transmission and distribution projects;

Whereas operation and maintenance of these projects would place an unnecessary economic burden to the State;

Whereas the Alaska Power Authority has neither the financial nor staff resources to operate and maintain these projects, often located in remote areas throughout the state that are more properly maintained by local utilities;

Whereas projects funded under the Energy Program for Alaska must remain in state ownership;

Whereas these projects are not being transferred for corporate purposes without a change in legislation transferring these projects out of the Energy Program for Alaska;

Whereas these projects were constructed within the boundaries of newly-formed or existing utilities, and;

Whereas these utilities are willing to receive these projects and assume all liability, operation and maintenance costs;

Be it resolved by the Board of Directors of the Alaska Power Authority that the Executive Director is hereby empowered to negotiate the transfer of said projects to the appropriate utility. Such transfer shall be contingent upon passage of legislation to enable such transfer to take place.

Be it further resolved that the Governor introduce legislation permitting the transfer of these projects out of the Energy Program for Alaska.

The resolution having been submitted to a vote, the vote thereon was as follows:

Arnold, Harrison, Huffman, Allison,

YEAS: Knapp, Lomabury, Nunn

NAYS: 0

ABSENT: 0

And the resolution was declared adopted on this the 26th day of February, 1985.

ALASKA POWER AUTHORITY
BY: [Signature] Chairman

BY: [Signature] Secretary

MEMORANDUM

State of Alaska

TO: Larry Crawford
Executive Director
Alaska Power Authority

DATE: July 18, 1984

FILE NO

TELEPHONE NO

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Transfer of APA
facilities -
July 9, 1984.

BY:

RAK
Ross A. Kopperud
Assistant Attorney General
Transportation Section, Anchorage

JUL 18 1984

ALASKA POWER AUTHORITY

The issue was raised in Eric Yould's memorandum to me of August 4, 1983, whether the APA had the authority to transfer the Cantwell Distribution System to Golden Valley Electric Association (GVEA) upon completion. Eric Yould's memo is attached for your convenience. By subsequent telephone calls and from APA staff, the question has been expanded to include whether the APA can dispose of other projects once they are completed.

I responded to this inquiry in the fall of 1983, although there is no memorandum confirming the advice given at that time. The advice given was that the APA could transfer these facilities away to other entities in keeping with the APA's purpose.

On July 6, 1984, I discussed the above advice which I had previously given to the APA with Carolyn Jones, assistant attorney general for the APA. Ms. Jones confirmed that this advice was consistent with her understanding of the APA's authority and further stated she had also given similar advice to the APA in her memorandum to you of May 30, 1984, referenced "Use and disbursement of appropriations". Ms. Jones's memorandum is also attached for your convenience.

The underlying rationale for my advice to the APA is as follows:

A.S. 44.83.070. Purpose of the Authority.

The purpose of the authority is to promote, develop and advance the general prosperity and economic welfare of the people of Alaska by providing a means of constructing, acquiring, financing and operating power production facilities limited to fossil fuel, wind power, tidal, geothermal, hydroelectric, and solar energy and energy conservation facilities.

Under A.S. 44.83.080 entitled "Powers of the Authority", it states:

In furtherance of its corporate purpose, the authority has the following powers in addition to its other powers;

(7) to sell, lease as lessee or lessor, exchange, donate, convey ... real or personal property owned by it, or in which it has an interest, when in the judgment of the authority, the action is in furtherance of its corporate purpose.

. . . .

(14) to enter into contracts or agreements with respect to the exercise of any of its powers, and do all things necessary or convenient to carry out its corporate purpose and exercise the powers granted in this chapter.

(Emphasis added).

The above statutory references make it clear that the APA may donate or convey real or personal property in furtherance of its corporate purpose. The other statutory references make it clear that the purpose and authority of the APA is quite broad. It is my understanding that the APA has no staff or facilities to maintain and operate those facilities which it wants to transfer to public utilities. It would, I believe, be consistent with the APA's corporate purpose to transfer the facilities in issue to various utilities who can maintain and operate those facilities for the benefit of the people of Alaska.

In conclusion, absent legislation which would specifically restrict the APA's power to transfer its facilities to some other entity, it is my opinion that the APA may transfer its facilities to other entities so long as it is in keeping with the APA's corporate purpose.

If you should have any further questions on this issue, please call me at your convenience.

RK/dw



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 19, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99817

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill authorizing the Alaska Power Authority to transfer two completed transmission line projects that were originally financed through the power development fund. Rather than attempt to deal retroactively with the 1981 appropriations for the Port Lions transmission line and the Kobuk - Shungnak transmission line, the bill simply permits the power authority to transfer the projects.

AS 44.83.380 -- 44.83.425 require that the Alaska Power Authority own and operate projects constructed with money from the power development fund. That fund was originally intended to finance major retail generation, transmission, and distribution projects under the "energy program for Alaska." The power authority board and staff have determined that they have neither the financial nor staff resources to operate and maintain small projects that are often located in remote areas of the state. This bill will permit the authority to transfer ownership, management, and operation of these two projects to the local utilities.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield
Governor

**STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: _____

REQUEST

Bill/Resolution No.: SB HB 391

Title: An act authorizing the APA to trans-
fer certain projects to public utilities

Sponsor: Senate Rules Committee

Requestor: Governor

Date of Request: _____

FISCAL DETAIL

Agency Affected: Alaska Power Authority

Program Category Affected: _____

BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES			- 0 -			
200 TRAVEL						
300 CONTRACTUAL			NOT APPLICABLE			
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS			- 0 -			
OTHER			NOT APPLICABLE			
TOTAL						

POSITIONS:

FULL-TIME			- 0 -			
PART-TIME			NOT APPLICABLE			
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert D. Heath Phone: 276-0001
 Division: Alaska Power Authority Date: 4/12/85

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

MEMORANDUM

State of Alaska

TO: Larry Crawford
Executive Director
Alaska Power Authority

DATE July 18, 1984

FILE NO

TELEPHONE NO

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Transfer of APA
facilities -
July 9, 1984.

BY: *RAK*
Ross A. Kopperud
Assistant Attorney General
Transportation Section, Anchorage

JUL 18 1984

ALASKA POWER AUTHORITY

The issue was raised in Eric Yould's memorandum to me of August 4, 1983, whether the APA had the authority to transfer the Cantwell Distribution System to Golden Valley Electric Association (GVEA) upon completion. Eric Yould's memo is attached for your convenience. By subsequent telephone calls and from APA staff, the question has been expanded to include whether the APA can dispose of other projects once they are completed.

I responded to this inquiry in the fall of 1983, although there is no memorandum confirming the advice given at that time. The advice given was that the APA could transfer these facilities away to other entities in keeping with the APA's purpose.

On July 6, 1984, I discussed the above advice which I had previously given to the APA with Carolyn Jones, assistant attorney general for the APA. Ms. Jones confirmed that this advice was consistent with her understanding of the APA's authority and further stated she had also given similar advice to the APA in her memorandum to you of May 30, 1984, referenced "Use and disbursement of appropriations". Ms. Jones's memorandum is also attached for your convenience.

The underlying rationale for my advice to the APA is as follows:

A.S. 44.83.070. Purpose of the Authority.

The purpose of the authority is to promote, develop and advance the general prosperity and economic welfare of the people of Alaska by providing a means of constructing, acquiring, financing and operating power production facilities limited to fossil fuel, wind power, tidal, geothermal, hydroelectric, and solar energy and energy conservation facilities.

Memo to Larry Crawford
Executive Director
Alaska Power Authority

July 18, 1984
Page 2

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In furtherance of its corporate purpose, the authority has the following powers in addition to its other powers;

(7) to sell, lease as lessee or lessor, exchange, donate, convey ... real or personal property owned by it, or in which it has an interest, when in the judgment of the authority, the action is in furtherance of its corporate purpose.

.

(14) to enter into contracts or agreements with respect to the exercise of any of its powers, and do all things necessary or convenient to carry out its corporate purpose and exercise the powers granted in this chapter.

(Emphasis added).

The above statutory references make it clear that the APA may donate or convey real or personal property in furtherance of its corporate purpose. The other statutory references make it clear that the purpose and authority of the APA is quite broad. It is my understanding that the APA has no staff or facilities to maintain and operate those facilities which it wants to transfer to public utilities. It would, I believe, be consistent with the APA's corporate purpose to transfer the facilities in issue to various utilities who can maintain and operate those facilities for the benefit of the people of Alaska.

In conclusion, absent legislation which would specifically restrict the APA's power to transfer its facilities to some other entity, it is my opinion that the APA may transfer its facilities to other entities so long as it is in keeping with the APA's corporate purpose..

If you should have any further questions on this issue, please call me at your convenience.

RK/dw

DEPARTMENT OF LAW

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

April 8, 1985

RECEIVED
APR 11 1985

MEMORANDUM

TO: Honorable Bill Sheffield
Governor

FROM: *Norman C. Gorsuch*
Norman C. Gorsuch
Attorney General

RE: Attached bill on transfer of
transmission line projects from the
power development fund
Our file: 377-182-85

Attached is a bill to authorize transfer of two completed transmission line projects (Port Lions and Kobuk - Shungnak) that were originally financed through the power development fund, a fund administered by the Alaska Power Authority. The bill was requested by the board of directors of the authority. We do not know the extent of review or approval it has received in your office.

Although the board originally asked for legislation permitting the transfer of three projects out of the "energy program for Alaska," our research indicates that the appropriation for the Delta agricultural project was never made to the power development fund. Consequently, that project is not within the energy program for Alaska and no legislation is necessary for transferring that project.

We understand that the transfer of these projects is intended to be a gift, not a sale, to the respective utilities. This grant of public property raises the question of whether a public purpose is being served, as required by art. IX, sec. 6, of the Alaska Constitution, which provides in part:

No tax shall be levied, or appropriation of public money made, or public property transferred, ... except for a public purpose.
[Emphasis added.]

We do not know many of the facts surrounding these proposed transfers, but, considering a number of Alaska Supreme Court decisions that have applied art. IX, sec. 6, it would appear that a grant of power transmission lines to communities such as these would indeed serve a public purpose. We have been told

Honorable Bill Sheffield
377-182-85

April 8, 1985
Page 2

that the local utilities to which these projects are intended to be transferred are owned by nonprofit corporations, but we do not know the basis for their selection, their demonstration of ability to operate and maintain the transmission lines, the nature or extent of the service they plan to provide, or the way in which these free transmission lines will affect the utilities' rate structures. The power authority will no doubt provide this sort of information as the bill works its way through your office and the legislature.

A draft transmittal letter to the legislature is also attached.

NCG:ANP:CEJ:cmh

cc w/enc.: Hon. Loren H. Lounsbury, Commissioner
Dept. of Commerce & Economic Development

Lee Nurn, Chairman
Alaska Power Authority
Anchorage

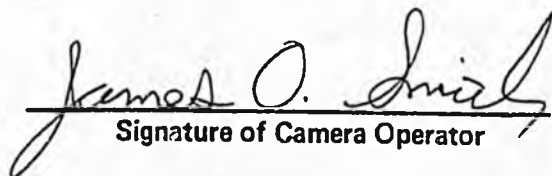
Robert Heath, Executive Director
Alaska Power Authority
Anchorage

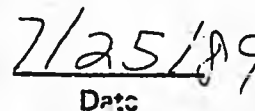
Xc: Susan White



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

H B

4 2 8

Offered: 4/22/86
Referred: Community & Regional
Affairs

Original sponsor: Marrou

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2

CS FOR HOUSE BILL NO. 428 (Resources)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to controlled livestock districts."

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

8 * Section 1. AS 03.35.010 is amended to read:

9 Sec. 03.35.010. CREATION AND RESTRICTION IN USE OF CONTROLLED
10 LIVESTOCK DISTRICTS. Except as provided in (b) of this section, a
11 borough assembly [A DISTRICT JUDGE] may by ordinance create and estab-
12 lish a controlled livestock district within the [A CITY OR ORGANIZED]
13 borough [,OR IN OTHER SETTLED AREAS OF THE STATE,] as provided in this
14 chapter, to consist of [ONE OR MORE TOWNSHIPS OR PORTIONS THEREOF OR
15 OF] a contiguous area of not less than 1,280 acres. It is unlawful
16 for any domestic animal to graze or run at large within a controlled
17 livestock district unless the domestic animal is [HERDED ON OPEN
18 PUBLIC DOMAIN AND] tended by a person and prevented from grazing or
19 running upon private roads or highways and privately owned land.

20 * Sec. 2. AS 03.35.010 is amended by adding a new subsection to read:

21 (b) Each city of any class constitutes a controlled livestock
22 district. The area of a former city of any class within a municipa-
23 lity unified under AS 29.68.240 - 29.68.440 constitutes a controlled
24 livestock district. The area of the state that is not within a con-
25 trolled livestock district constitutes open public domain.

26 * Sec. 3. AS 03.35.020(a) is amended to read:

27 Sec. 03.35.020. PETITION TO CREATE, ADD, OR ABOLISH. (a) A
28 controlled livestock district may be created upon petition of not
29 fewer [LESS] than 10 [60 PER CENT OF THE] resident owners or [AND]

1 lessees of cultivated or improved land within the area to be included
2 in the district. The petition shall contain a statement of its pur-
3 pose, shall define the boundaries of the area to be included within
4 the district, shall be signed by the 10 [REQUISITE 60 PER CENT OF THE]
5 resident owners or [AND] lessees within the area described, and shall
6 be filed with the borough clerk [DISTRICT JUDGE] for the borough
7 [DISTRICT] within which the land is situated.

8 * Sec. 4. AS 03.35.020(c) is amended to read:

9 (c) Portions of a district or an entire district may be abol-
10 ished or eliminated if 10 [60 PERCENT OF THE] owners or [AND] lessees
11 of cultivated or improved land within the district or the area affect-
12 ed petition for the abolishment, in which event the procedure set out
13 in this section for formation of a controlled livestock district shall
14 be followed for dissolution.

15 * Sec. 5. AS 03.35.030 is amended to read:

16 Sec. 03.35.030. NOTICE, HEARING, AND ORDINANCE [ORDER]. (a)
17 Upon receipt of a petition for the establishment of a controlled
18 livestock district, the borough assembly [DISTRICT JUDGE] shall set a
19 time for hearing the petition not less than 30 days after the receipt
20 of the petition [THEREAFTER]. Notice of the time and place of the
21 hearing and its purpose shall be posted in not less than three con-
22 spicuous public places within the proposed district, including a post
23 office, for a period of at least 30 days before the hearing. If there
24 is no post office within the proposed district, then the notice shall
25 be posted in two conspicuous public places in the proposed district
26 and in the post office nearest the proposed district.

27 (b) If, at the hearing, the borough assembly [DISTRICT JUDGE]
28 finds that the petition is sufficient and that notice of the hearing
29 has been given, it may adopt an ordinance [THE DISTRICT JUDGE SHALL

1 ENTER AN ORDER] creating and establishing the controlled livestock
2 district and describing its boundaries. The borough clerk [DISTRICT
3 JUDGE SHALL CERTIFY TO THE CLERK OF THE SUPERIOR COURT FOR THE JUDI-
4 CIAL DISTRICT A COPY OF THE FINDINGS AND ORDER. THE DISTRICT JUDGE]
5 shall send a copy of the ordinance [ORDER] to the commissioner of
6 natural resources [DIRECTOR, DIVISION OF AGRICULTURE, DEPARTMENT OF
7 NATURAL RESOURCES].

8 * Sec. 6. AS 03.35.040. is amended to read:

9 Sec. 03.35.040. LIABILITY FOR DAMAGES, AND LIEN. (a) The owner
10 of land within a controlled livestock district, whether the land is
11 fenced or unfenced,

12 (1) is entitled to recover, from the owner or person having
13 custody and control of a domestic animal, for actual damages or in-
14 juries [ANY INJURY] done or caused by the domestic animal [IT] when
15 grazing or running at large within a controlled livestock district
16 contrary to the provisions of this chapter, and

17 (2) has a lien upon the domestic animal for the amount of
18 the damage done.

19 (b) A [HOWEVER, NO] claim for damages in excess of \$5,000 [\$50]
20 is not allowed against any one animal for any one trespass.

21 * Sec. 7. AS 03.35.070 is amended to read:

22 Sec. 03.35.070. DEFINITIONS. In [AS USED IN] this chapter

23 (1) "domestic animal" includes goats, sheep, cattle, hors-
24 es, and swine;

25 (2) "owner of land" means a [INCLUDES A FREEHOLDER, TENA-
26 CONTRACT VENDEE OR OTHER] person in actual possession of land.

Introduced: 5/8/85
Referred: Community & Regional
Affairs and Resources

1 IN THE HOUSE

BY MARROU

2

HOUSE BILL NO. 428

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to grazing districts."

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

8 * Section 1. AS 03.35.010 is amended to read:

9 Sec. 03.35.010. CREATION AND RESTRICTION IN USE OF CONTROLLED
10 LIVESTOCK DISTRICTS. A district judge may create and establish a
11 controlled livestock district within an [A CITY OR] organized borough
12 [,] or [IN] other settled area [AREAS] of the state, as provided in
13 this chapter, to consist of one or more townships or portions of a
14 township [THEREOF] or of a contiguous area of not less than 1,280
15 acres. It is unlawful for any domestic animal to graze or run at
16 large within a city or controlled livestock district unless the domes-
17 tic animal is [HERDED ON OPEN PUBLIC DOMAIN AND] tended by a person
18 and prevented from grazing upon private roads or highways and pri-
19 vately owned land.

20 * Sec. 2. AS 03.35.010 is amended by adding a new subsection to read:

21 (b) Each city of any class constitutes a controlled livestock
22 district. The area of a former city of any class within a municipal-
23 ity unified under AS 29.68.240 - 29.68.440 constitutes a controlled
24 livestock district. The area of the state that is not within a con-
25 trolled livestock district constitutes open public domain.

26 * Sec. 3. AS 03.35.020(a) is amended to read:

27 (a) A controlled livestock district may be created upon petition
28 of not less than 60 percent of the resident owners and lessees of
29 cultivated or improved land within the area to be included in the

1 district. The petition shall contain a statement of its purpose,
2 shall define the boundaries of the area to be included within the
3 district, shall be signed by the requisite 60 percent of the resident
4 owners and lessees within the area described, and shall be filed with
5 the district judge for the district within which the land is situated.

6 * Sec. 4. AS 03.35.020(c) is amended to read:

7 (c) Portions of a district or an entire district may be abol-
8 ished or eliminated if 60 percent of the owners and lessees of cul-
9 tivated or improved land within the district or the area affected
10 petition for the abolishment, in which event the procedure set out in
11 (a) of this section for formation of a controlled livestock district
12 shall be followed for dissolution.

SECTIONAL ANALYSIS HB 428

Section 1 of the bill (copy enclosed) bars a city from having a livestock district within its boundaries. Also, it adds the areas of cities to controlled livestock districts as places where animals must be "tended by a person and prevented from grazing upon... privately owned land".

Section 2 states that every city and unified municipality constitutes a controlled livestock district. This extends considerably the area where people are required to tend their livestock.

Section 3 adds improved land to cultivated land, "the resident owners and lessees" of which can vote to form a livestock district. This increases the number of eligible people, and could simplify a formation of a district by allowing house (or cabin) owners to vote as well as the farmers and ranchers.

Section 4 is the opposite of Section 3 and allows the abolition or elimination of a livestock district, as Section 3 allows it to be created.

Further Possible Compromises

(A)

Allow open range in certain well established areas (such as the Fox River Valley), but require livestock owners to control their animals within, say, one-quarter mile of State roads.

(B)

If a person does not have a State grazing lease, perhaps he/she should not be allowed to utilize open range.

(C)

Allow ranchers to buy the grazing leases that they've been using for decades, and then require them to fence it in. This was part of the reasoning behind HB 248 last year regarding University-grant land--allow the farmer/rancher to own the land.

STATE OF ALASKA
THE LEGISLATURE

APR 02 1985

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 2, 1985

SUBJECT: Open range (Work Order No. 14-0972)
TO: Representative Andre Marrou
FROM: Richard A. Bradley
Legislative Counsel *B*

You have requested an "overview" of the law relating to the responsibilities of owners of cattle.

I gather that there have been at least two cases, both arising in the jurisdiction of the Homer District Court, that have been concerned with these issues. The cases are the C'Meara v. Anderson case that you provided me the pleadings on and In re New Way Agriculture Cooperative, (3HO 83-264 CIV). My information does not suggest which way the latter case was decided since all that I have is the Brief of the state opposing the creation of a controlled livestock district on the real property described in the petition. The decision in the New Way Agriculture Cooperative case is not indicated but the state opposed the establishment of the controlled livestock district because of technical problems in the petition.

Judge Fuld's decision may or may not become a significant precedent for the future. But I have some difficulties with the decision.

He concludes that Alaska law, like the English common law, should "protect the interests of private property over that of the cattle owner." He is unable to distinguish between trespassing cattle and trespassing oil company equipment or trespassing hunters.

He arrives at this conclusion from an essentially pure common law approach, that is, he finds the law under AS 03.30 confused and unhelpful and legislative intent uncertain; he seems unaware of AS 03.35 (or fails to note its existence)

Representative Andre Marrou
April 4, 1985
page 2

and thus he is forced to find a solution in the uncodified, common law.

I think it is fair to state that the law is in a state of disrepair.

Two separate chapters of the law have dealt with the regulation of cattle in this context. See former AS 03.30 ("Fences") and present AS 03.35 ("Grazing Districts"). Both are derived from the compilation of the laws in 1949 (ACLA 1949) though I have not sought to determine which is the more venerable; each is (or was) in its way equally venerable.

The provisions of former AS 03.30 adopted the "fence-out" concept; before that law was largely repealed in 1977 (ch. 55, SLA 1977), it protected the property owner who fenced his property and kept the fence in repair according to statutorily established standards (found in former AS 03.30.010). In such a case, the owner of trespassing cattle was liable for resulting damages if the cattle were to breach the fence. Viewing AS 03.30 as the exclusive law on the subject, the area fenced under former AS 03.30 would therefore have ceased to be open public domain land and been excluded from the application of the so-called Western common law rule.

The difficulty is that there is other law.

The provisions of AS 03.35 permit the establishment of "controlled livestock districts." In my view, a slightly (well, thoroughly) confused statement in AS 03.35.010 may reflect the intention of the legislature:

Sec. 03.35.010. CREATION AND RESTRICTION IN USE OF CONTROLLED LIVESTOCK DISTRICTS. * * * It is unlawful for any domestic animal to graze or run at large within a controlled livestock district unless the domestic animal is herded on open public domain and tended by a person and prevented from grazing upon private roads or highways and privately owned land.

If I were to recast the quoted language into clearer prose, I would delete the phrase "herded upon open public domain and"; it would then read:

Representative Andre Marrou
April 4, 1985
page 3

It is unlawful for any domestic animal to graze or run at large within a controlled livestock district unless the domestic animal is tended by a person and prevented from grazing upon private roads or highways and privately owned land.

The result in this situation is not different from the situation under AS 03.30 before its amendment in 1977.

I note that Governor Hammond expressed concern in 1977 when the fence-out laws were repealed. See 1977 House Journal at 1484. No useful legislative history (beyond the governor's letter) appears to remain to indicate what was intended. Note, however, that while the amendment to AS 03.30 deleted the option of the individual to erect a fence, AS 03.35 continues to permit the establishment of a controlled livestock area by judicial decree.

In the area outside the controlled livestock area, open range conditions exist. And, under AS 03.30 as it existed before the 1977 amendment, the area outside fences is an area of the "open public domain."

And while there are some suggestions about the status of the "common law" in Alaska at this time (including the decision of Judge Fuld in O'Meara), I believe that that suggestion is not altogether accurate. AS 03.35 has supplanted the "common law" by its enactment of a statutory framework that explicitly recognizes open range conditions except when a controlled livestock district has been established.

The statutory law in the state does not, however, have a fence-out aspect. In my view, that fact has no implications for the common law and does not revive the common law.

Therefore, in my opinion, the law in Alaska is generally that the entire state is open range except to the extent that controlled livestock districts have been established under AS 03.35. There are clear problems with this result in urban areas but the law permits the establishment of controlled livestock districts in these circumstances. Note, moreover, that the legislature apparently intended the controlled livestock district to be the answer in urban areas since it is in these areas that AS 03.35.010 suggests that the districts be established. It is under this situation that I have reservations about the decision suggesting that the English common law rule applies in urban areas.

Representative Andre Marrou
April 4, 1985
page 4

Having said that, I note an existing problem with AS 03.35 that may have been the basis for the state's opposition to the establishment of the controlled livestock district in the New Way Agriculture Cooperative case. The threshold requirement for the establishment of the district is that a certain number of the owners of "cultivated land" join in the petition. The term "cultivated" is not defined in AS 03.35; if it really has its usual meaning, it would not likely be useful in urban areas-- but I suspect that it should be read as "improved" (or as "cultivated or improved"). I confess that I am substantially rewriting the law as I say this and suggest that the legislature may wish to reconsider what was meant by the usage of the term.

And a general review of the law in both AS 03.30 and 03.35 is timely.

If I may be of further assistance, please advise.

RAB:csh
c3/081

Bradley
5/3/86 ✓

Original sponsor: Marrou

1 IN THE HOUSE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 428 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to open public range."

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

8 * Section 1. AS 03.35.010 is amended to read:

9 Sec. 03.35.010. CREATION AND RESTRICTION IN USE OF CONTROLLED
10 LIVESTOCK DISTRICTS. (a) The state constitutes a controlled live-
11 stock district. An area of open public range may be established under
12 this chapter13 (1) in the areas outside a borough of the state; and14 (2) in the areas outside a city or former city of any class
15 in a borough of the state.16 (b) A district judge may create and establish open public range
17 in the area outside a borough of the state [A CONTROLLED LIVESTOCK
18 DISTRICT WITHIN A CITY OR ORGANIZED BOROUGH, OR IN OTHER SETTLED AREAS
19 OF THE STATE,] as provided in this chapter [, TO CONSIST OF ONE OR
20 MORE TOWNSHIPS OR PORTIONS THEREOF OR OF A CONTIGUOUS AREA OF NOT LESS
21 THAN 1,280 ACRES].22 (c) A borough assembly may by ordinance establish open public
23 range in the areas outside a city or a former city of any class within
24 the borough as provided in this chapter.25 (d) It is unlawful for any domestic animal to graze or run at
26 large within a controlled livestock district [UNLESS THE DOMESTIC
27 ANIMAL IS FED ON OPEN PUBLIC DOMAIN AND TENDED BY A PERSON AND
28 PREVENTED FROM GRAZING UPON PRIVATE ROADS OR HIGHWAYS AND PRIVATELY
29 OWNED LAND].

1 * Sec. 2. AS 03.35.020 is repealed and reenacted to read:

2 Sec. 03.35.020. PETITION TO CREATE, ADD, OR ABOLISH. (a) An
3 area of open public range may be established on the petition of not
4 less than 60 percent of the owners of land within the proposed open
5 range area outside a borough. The petition shall contain a statement
6 of its purpose, shall define the boundaries of the area, shall be
7 signed by 60 percent of the owners of land within the area described,
8 and shall be filed with the district judge for the area within which
9 the land is situated.

10 (b) An area of open public range may be established in an area
11 outside the area of a city or former city in a borough upon petition
12 of not fewer than 10 owners of land within the proposed open range
13 area. The petition shall contain a statement of its purpose, shall
14 define the boundaries of the area, shall be signed by 10 owners of
15 land within the area described, and shall be filed with the borough
16 assembly.

17 (c) An addition to an area of open public range may be made
18 under the procedures established under (a) and (b) of this section if
19 the addition is contiguous to an area of open public range.

20 (d) All or a portion of an area of open public range may be
21 returned to status as a controlled livestock district if the required
22 number of the owners of land within the area affected petition for the
23 change. If a petition is filed requesting a change, the procedure set
24 out in (a) and (b) of this section for formation of an area of open
25 public range shall be followed.

26 * Sec. 3. AS 03.35.030 is amended to read:

27 Sec. 03.35.030. NOTICE, HEARING, AND ORDER OR ORDINANCE. (a)
28 Upon receipt of a petition for the establishment of an area of open
29 public range in an area outside of a borough of the state [A

1 CONTROLLED LIVESTOCK DISTRICT], the district judge shall set a time
2 for hearing the petition not less than 30 days after the receipt of
3 the petition [THEREAFTER].

4 (b) Upon receipt of a petition for the establishment of an area
5 of open public range in an area within a borough of the state, the
6 borough assembly shall set a time for hearing the petition not less
7 than 30 days after the receipt of the petition.

8 (c) Notice of the time and place of the hearing and its purpose
9 shall be posted in not less than three conspicuous public places
10 within the proposed area [DISTRICT], including a post office, for a
11 period of at least 30 days before the hearing. If there is no post
12 office within the proposed area [DISTRICT], then the notice shall be
13 posted in two conspicuous public places in the proposed area [DIS-
14 TRICT] and in the post office nearest the proposed area [DISTRICT].

15 (d) If, at the hearing, the district judge finds that the peti-
16 tion is sufficient and that notice of the hearing has been given, the
17 district judge shall enter an order creating and establishing the area
18 of open public range [CONTROLLED LIVESTOCK DISTRICT] and describing
19 its boundaries. The district judge shall [CERTIFY TO THE CLERK OF THE
20 SUPERIOR COURT FOR THE JUDICIAL DISTRICT A COPY OF THE FINDINGS AND
21 ORDER. THE DISTRICT JUDGE SHALL] send a copy of the order to the
22 commissioner of natural resources [DIRECTOR, DIVISION OF AGRICULTURE,
23 DEPARTMENT OF NATURAL RESOURCES].

24 (e) If, at the hearing, the borough assembly finds that the
25 petition is sufficient and that notice of the hearing has been given,
26 it may adopt an ordinance creating and establishing the area of open
27 public range and describing its boundaries. The borough clerk shall
28 send a copy of the ordinance to the commissioner of natural resources.

29 * Sec. 4. AS 03.35.040 is amended to read:

1 Sec. 03.35.040. LIABILITY FOR DAMAGES, AND LIEN. (a) The owner
2 of land within a controlled livestock district, whether the land is
3 fenced or unfenced,

4 (1) is entitled to recover, from the owner or person having
5 custody and control of a domestic animal, for actual damages or in-
6 juries [ANY INJURY] done or caused by the domestic animal [IT] when
7 grazing or running at large within a controlled livestock district
8 contrary to the provisions of this chapter, and

9 (2) has a lien upon the domestic animal for the amount of
10 the damage done.

11 (b) A [HOWEVER, NO] claim for damages in excess of \$5,000 [\$50]
12 is not allowed against any one animal for any one trespass.

13 * Sec. 5. AS 03.35.070 is amended to read:

14 Sec. 03.35.070. DEFINITIONS. In [AS USED IN] this chapter

15 (1) "domestic animal" includes goats, sheep, cattle, hors-
16 es, and swine;

17 (2) "owner of land" means a [INCLUDES A FREEHOLDER, TENANT,
18 CONTRACT VENDEE OR OTHER] person in actual possession of land.
19
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Original sponsor: Marrou

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 428 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to controlled livestock districts."

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

8 * Section 1. AS 03.35.010 is amended to read:

9 Sec. 03.35.010. CREATION AND RESTRICTION IN USE OF CONTROLLED
10 LIVESTOCK DISTRICTS. Except as provided in (b) of this section, a
11 borough assembly [A DISTRICT JUDGE] may by ordinance create and
12 establish a controlled livestock district within the [A CITY OR
13 ORGANIZED] borough [,OR IN OTHER SETTLED AREAS OF THE STATE,] as
14 provided in this chapter, to consist of [ONE OR MORE TOWNSHIPS OR
15 PORTIONS THEREOF OR OF] a contiguous area of not less than 1,280
16 acres. It is unlawful for any domestic animal to graze or run at
17 large within a controlled livestock district unless the domestic
18 animal is [HERDED ON OPEN PUBLIC DOMAIN AND] tended by a person and
19 prevented from grazing or running upon private roads or highways and
20 privately owned land.

21 * Sec. 2. AS 03.35.010 is amended by adding a new subsection to read:

22 (b) Each city of any class constitutes a controlled livestock
23 district. The area of a former city of any class within a
24 municipality unified under AS 29.68.240 - 29.68.440 constitutes a
25 controlled livestock district. The area of the state that is not
26 within a controlled livestock district constitutes open public domain.

27 * Sec. 3. AS 03.35.020(a) is amended to read:

28 Sec. 03.35.020. PETITION TO CREATE, ADD, OR ABOLISH. (a) A
29 controlled livestock district may be created upon petition of not

1 fewer [LESS] than 10 [60 PER CENT OF THE] resident owners or [AND]
2 lessees of cultivated or improved land within the area to be included
3 in the district. The petition shall contain a statement of its pur-
4 pose, shall define the boundaries of the area to be included within
5 the district, shall be signed by the 10 [REQUISITE 60 PER CENT OF THE]
6 resident owners or [AND] lessees within the area described, and shall
7 be filed with the borough clerk [DISTRICT JUDGE] for the borough
8 [DISTRICT] within which the land is situated.

9 * Sec. 4. AS 03.35.020(c) is amended to read:

10 (c) Portions of a district or an entire district may be abol-
11 ished or eliminated if 10 [60 PERCENT OF THE] owners or [AND] lessees
12 of cultivated or improved land within the district or the area affect-
13 ed petition for the abolishment, in which event the procedure set out
14 in this section for formation of a controlled livestock district shall
15 be followed for dissolution.

16 * Sec. 5. AS 03.35.030 is amended to read:

17 Sec. 03.35.030. NOTICE, HEARING, AND ORDINANCE [ORDER]. (a)
18 Upon receipt of a petition for the establishment of a controlled
19 livestock district, the borough assembly [DISTRICT JUDGE] shall set a
20 time for hearing the petition not less than 30 days after the receipt
21 of the petition [THEREAFTER]. Notice of the time and place of the
22 hearing and its purpose shall be posted in not less than three con-
23 spicuous public places within the proposed district, including a post
24 office, for a period of at least 30 days before the hearing. If there
25 is no post office within the proposed district, then the notice shall
26 be posted in two conspicuous public places in the proposed district
27 and in the post office nearest the proposed district.

28 (b) If, at the hearing, the borough assembly [DISTRICT JUDGE]
29 finds that the petition is sufficient and that notice of the hearing

1 has been given, it may adopt an ordinance [THE DISTRICT JUDGE SHALL
2 ENTER AN ORDER] creating and establishing the controlled livestock
3 district and describing its boundaries. The borough clerk [DISTRICT
4 JUDGE SHALL CERTIFY TO THE CLERK OF THE SUPERIOR COURT FOR THE
5 JUDICIAL DISTRICT A COPY OF THE FINDINGS AND ORDER. THE DISTRICT
6 JUDGE] shall send a copy of the ordinance [ORDER] to the commissioner
7 of natural resources [DIRECTOR, DIVISION OF AGRICULTURE, DEPARTMENT OF
8 NATURAL RESOURCES].

9 * Sec. 6. AS 03.35.040. is amended to read:

10 Sec. 03.35.040. LIABILITY FOR DAMAGES, AND LIEN. (a) The owner
11 of land within a controlled livestock district, whether the land is
12 fenced or unfenced,

13 (1) is entitled to recover, from the owner or person having
14 custody and control of a domestic animal, for actual damages or in-
15 juries [ANY INJURY] done or caused by the domestic animal [IT] when
16 grazing or running at large within a controlled livestock district
17 contrary to the provisions of this chapter, and

18 (2) has a lien upon the domestic animal for the amount of
19 the damage done.

20 (b) A [HOWEVER, NO] claim for damages in excess of \$5,000 [\$50]
21 is not allowed against any one animal for any one trespass.

22 * Sec. 7. AS 03.35.070 is amended to read:

23 Sec. 03.35.070. DEFINITIONS. In [AS USED IN] this chapter

24 (1) "domestic animal" includes goats, sheep, cattle,
25 horses, [AND] swine, dogs, and cats;

26 (2) "owner of land" means a [INCLUDES A FREEHOLDER, TENANT,
27 CONTRACT VENDEE OR OTHER] person in actual possession of land.
28

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 428
 Title : Grazing Districts

 Sponsor : Rep. Marrou
 Requestor : House Resources
 Date of Request : 4/10/86

FISCAL DETAIL

Agency Affected : Natural Resources
 BRU : Agriculture Management

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Carol Wilson
 Division : Commissioner's Office

Phone : 465-2400
 Date : 4/10/86

Approved by Commissioner : Mrs. D. Arnold, Deputy
 Agency : Natural Resources

Date : 4/10/86

Dissemination (by Agency preparing fiscal note):

- Executive Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

"May 25, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

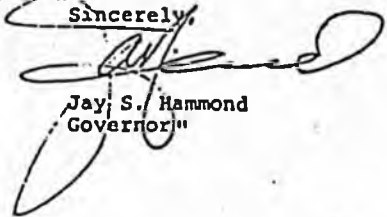
I am allowing to become law without my signature and am transmitting the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

SCS
CSHD
90

SENATE COMMITTEE SUBSTITUTE
COMMITTEE SUBSTITUTE
HOUSE BILL NO. 90
(Relating to domestic animals)
Chapter 55, SLA 1977

I am concerned about the final provision of the bill repealing certain provisions of the law relating to open range land, specifically, the section defining a legal fence and the section providing that an owner of an animal which enters upon land enclosed by a legal fence shall be liable to the landowner. By repealing these sections, substantial doubt and uncertainty is created concerning the rights of a person owning land in an open range district to protect himself from possible damage caused by another's domestic animals. The present statute clearly provides for liability; its repeal suggests that the owner of animals is no longer to be liable to the landowner. Yet, general principles of tort law, as well as common sense, suggest that a landowner, if he puts up a fence to keep animals off his property, should be entitled to damages if the animals knock down the fence and come upon his property. Repeal of the definition of a legal fence further complicates this issue and leaves in doubt the current law. I am hopeful that the legislature might clarify this next session.

Sincerely,



Jay S. Hammond
Governor"

Messages dated May 25, 1977 were read stating the Governor has signed the following bills and is transmitting the enrolled and engrossed copies to the Lieutenant Governor's office for permanent filing:

SB
197
am H

SENATE BILL NO. 197 amended House
(sale of subsistence salmon roe)
Chapter 56, SLA 1977

HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 188
(membership on the Alaska Code Commission and
Criminal Law Revision Subcommittee)
Chapter 57, SLA 1977

HCS
SB
188MESSAGES FROM THE SENATE

A message dated May 24, 1977 was read stating the Senate has passed the following and they are returned:

HOUSE CONCURRENT RESOLUTION NO. 65 amended HCR
(Requesting Governor to preserve the superintendent's 65
quarters at the Alaska Pioneers' Home in Sitka) am
COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 193 amended CSBH
(child care; effective date) 193
am

The above were referred to the Chief Clerk for enrollment.

A message dated May 24, 1977 was read stating the Senate HCS
has concurred in the House amendment to SENATE BILL NO. 50 SB
amended (utilities and state rights-of-way; effective 50
date), thus adopting (Fin)
am H

HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 50 (Finance) amended House
(utilities; effective date)

A message dated May 24, 1977 was read stating the Senate HCS
has failed to concur in the House amendment to COMMITTEE CSSB
SUBSTITUTE FOR SENATE BILL NO. 150 (supplemental appro, ria- 150
tion, Department of Education; effective date), namely,
HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 150 (appropriations to Department of Educa-
tion; effective date), and respectfully requests the House
to recede from its amendment.

In the event that the House does not recede, the President has appointed the following members to a Conference Committee to meet with a like Committee from the House to consider the above bills:

Senator Hackney, Chairman
Senator Ferguson
Senator Orsini

A message dated May 24, 1977 was read stating the Senate HCS
has adopted the Free Conference Committee report on COM- CSSB
MITTEE SUBSTITUTE FOR SENATE BILL NO. 238 amended and 238
HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 238 (oil and gas properties production
tax; effective date) thus adopting

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 238
(oil and gas taxation; effective date)

1
Justice Jay A. Rabinowitz
Supreme Court
Box 850
Fairbanks, Alaska 99707

REC'D
14 FEB 86
FROM
DAVE STESSING, ATTY.
Box 1771
Homer 99603

Sept. 12, 1985
Halibut Cove

Dear Jay:

I am writing in regard to Case 3HO-84-276 SC.

I feel the Lower Courts have brought in a verdict on the above case that is not in conformance with actual Law.

As the first Bill I worked on as a Freshman Legislator in 1963 was the Open Range issue I introduced legislation repealing the Estray Act as it had been used to impound horses running at large in the Sterling area; it at that time not being included in a Controlled Grazing District and we didn't want a law on the Books that in any way put a burden on the livestock industry.

I was joined in my open range argument by Jacob Stalker, the reindeer herder from the Seward Peninsula, who had a fear that small tract owners up north would impound deer to get free meat and by Art Harris who had a large ranch in the Aleutians and was afraid the small land owners could use impoundment as a hassement tool.

At the time on the House floor argument was made by those who opposed the Act that if Alaska remained truly Open Range then the law would not only effect the private property owners in areas that did not have a Controlled Grazing District but in the absence of highway regulation motorists as well..in other words if you were to hit an animal in an Open Range area the motorist paid for the animal and in areas closed to Open Range the owner of the animal pays the cost.

Some years later the cattlemen were faced with a fence law that made fencing an area once included in a Controlled Grazing district very expensive so I did what was necessary to repeal the fence law.

Dr. Honsinger, the State Veteranian, asked why I hadn't just modified the fence law but the reasoning at that time was if the people formed a controlled grazing district the live stock owners job was to keep his stock confined and to dictate the kind of fence that was necessary.

Again a few years later then Representative Leo Rhode came to my office on the Senate side and asked if he modified the Controlled Grazing District Law to make it easier to form a Grazing District if I would allow the Bill through the Senate as times were changing. I raised no objection but I think you will find that Alaska is

predominately open range and for a court to award damages to a property owner outside a controlled area is more a case of a Judge writing Law than ruling on it.

The two remedies for a property owner outside a Controlled Grazing District still remain #1. form a Grazing District or #2. go back to the Legislature and change the Law.

Yours truly,

Clem V. Tillion

Clem V. Tillion

State of Alaska)
City of.....)

On this *14* day of *September* 19*55*, personally appeared before me *Clem V. Tillion*, who acknowledged to me that he signed and sealed the same as his free and voluntary act and deed.

Lucile A Chamberlain

.....
NOTARY PUBLIC in and for the State of Alaska, residing at

.....*6/29/56*.....
My Commission expires.....

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

April 18, 1986

SUBJECT: Controlled livestock districts
[CSHB 428(Resources)]

TO: Representative Andre Marrou

FROM: Richard A. Bradley
Legislative Counsel

Jack Sanderson has requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill amends AS 03.35.010, Creation and Restriction in Use of Controlled Livestock Districts.

Sec. 10(a) transfers from the district court to a borough assembly the power to establish a controlled livestock district; the section limits the power to establish the controlled livestock districts to the areas within a borough. The assembly will adopt a controlled livestock district by ordinance.

The phrase "or in other settled areas of the state" is deleted as inconsistent with the logic of the amendment.

The phrase "one or more townships or portions thereof or of" was deleted because it did not, in fact, establish a limitation; the only legislative limitation is the minimum size of "1,280 acres", an area one mile by two miles.

The phrase "herded on open public domain and" was deleted as essentially inconsistent with the logic of the description of a "controlled livestock district."

Section 2 of the bill adds Sec. 03.35.010(b). It provided that the area of a city of any class constitutes a controlled livestock district. Moreover, the area of any former city of any class within a unified municipality (i.e., Juneau, Sitka, Anchorage) constitutes a controlled livestock district. And the remainder of the state is "open public domain."

Section 3 of the bill amends AS 03.35.020(a). It changes from "60 percent of the resident owners and lessees of cultivated land within the area" to "10 resident owners or lessees of cultivated or improved land within the area" the number of those who are required to petition for the establishment of a controlled livestock district. As amended, sec. 10 would provide that the only areas in which a controlled livestock district may be established within a borough are the areas of the borough that are not within the limits of a city or former city of any class. The petition shall be filed with the borough clerk rather than the district judge.

Section 4 of the bill amends AS 03.35.020(c). The section permits a petition to abolish all or a portion of a controlled livestock district using the same procedures as for its establishment, that is, by ordinance.

Section 5 amends AS 03.35.030, Notice, Hearing, and Ordinance, and conforms the language of the section to the substantive changes already made.

Sec. 30(a) relates to the receipt of the petition and its notice by the borough assembly.

Sec. 30(b) permits the assembly, in its discretion, to establish the controlled livestock district. It directs the borough clerk to send a copy of the ordinance to the commissioner of natural resources.

Section 6 of the bill amends AS 03.35.040, Liability for Damages, and Lien.

Sec. 40(a) permits the owner of land within a controlled livestock district, "whether the land is fenced or

Representative Andre Marrou
Page 3
April 18, 1986

unfenced," to recover for "actual damages or injuries done or caused" in place of the existing law's "any injury done".

Sec. 40(b) provides that no claim may exceed "\$5,000" in place of the existing "\$50").

Section 7 of the bill amends AS 03.35.070, Definitions. Sec. 70(1) adds "cats and dogs" to the definition of "domestic animals".

Sec. 70(2) provides that "owner of land" means a person in actual possession of land and eliminates some extraneous examples.

The bill does not have an affirmative effective date section.

If I may be of further assistance, please advise.

RAB:mkr
m4/142

"May 25, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

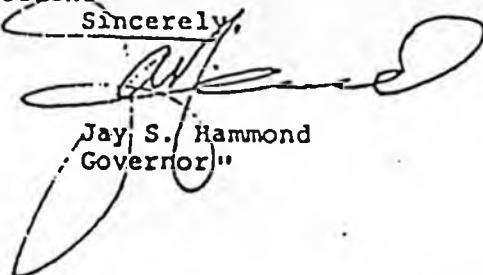
I am allowing to become law without my signature and am transmitting the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

SCS
CSHB
90

SENATE COMMITTEE SUBSTITUTE
COMMITTEE SUBSTITUTE
HOUSE BILL NO. 90
(Relating to domestic animals)
Chapter 55, SLA 1977

I am concerned about the final provision of the bill repealing certain provisions of the law relating to open range land, specifically, the section defining a legal fence and the section providing that an owner of an animal which enters upon land enclosed by a legal fence shall be liable to the landowner. By repealing these sections, substantial doubt and uncertainty is created concerning the rights of a person owning land in an open range district to protect himself from possible damage caused by another's domestic animals. The present statute clearly provides for liability; its repeal suggests that the owner of animals is no longer to be liable to the landowner. Yet, general principles of tort law, as well as common sense, suggest that a landowner, if he puts up a fence to keep animals off his property, should be entitled to damages if the animals knock down the fence and come upon his property. Repeal of the definition of a legal fence further complicates this issue and leaves in doubt the current law. I am hopeful that the legislature might clarify this next session.

Sincerely,



Jay S. Hammond
Governor

Messages dated May 25, 1977 were read stating the Governor has signed the following bills and is transmitting the enrolled and engrossed copies to the Lieutenant Governor's office for permanent filing:

SB
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am H

SENATE BILL NO. 197 amended House
(sale of subsistence salmon roe)
Chapter 56, SLA 1977

Alaska State Legislature

COMMITTEES:

Committee on Community and Regional Affairs
Committee on Transportation
Special Committee on Oil and Gas
Special Committee on Fisheries
Finance Sub-committee on Fish and Game



Andre Marrou
Representative

District 5

Kenai	Sterling
Soldotna	Anchor Point
Homer	Port Graham
Seldovia	English Bay
Kachemak	Nikolaevsk
Kasilof	Halibut Cove
Nimlich	Clam Gulch

April 21, 1986

To: Peter Goll, Chairman House Community & Regional Affairs Committee.
From: Andre Marrou, Representative

Subject: CSHB 428, Controlled Livestock Districts.

CSHB 428 proposes to change how controlled livestock grazing districts are established. Specifically, it:

°increases the number of people eligible to petition for a controlled livestock district by adding "improved land" (house and cabin owners) to "cultivated land" (farmers and ranchers);

°decreases the required number of signatures from 60% of "cultivated" land owners to only 10 owners of "improved or cultivated" land;

°provides that all cities constitute controlled livestock districts, thereby enlarging the area where persons are responsible for their animals;

°allows a borough assembly instead of a district judge, to establish a controlled livestock district after public hearings;

°clearly establishes that open range exists in Alaska outside controlled livestock districts;

°raises the maximum liability of livestock owners within a district from \$50 to \$5000.

A recent court decision stated that the issue of open vs. closed range should be clarified by the Legislature. This bill will solve many of the problems that have arisen.

This bill is a cooperative effort with Rep. Dave Thompson and should receive favorable action in the Senate if we can pass it to them.

Thanks in advance for your consideration.

Attachments:

fiscal note
sectional analysis

Alaska State Legislature

COMMITTEES:

Committee on Community and Regional Affairs
Committee on Transportation
Special Committee on Oil and Gas
Special Committee on Fisheries
Finance Sub-committee on Fish and Game



Andre Marrou
Representative

District 5

Kenai	Sterling
Soldotna	Anchor Point
Homer	Port Graham
Seldovia	English Bay
Kachemak	Nikolaevsk
Kasilof	Halibut Cove
Ninilchik	Clam Gulch

April 11, 1986

To: Peter Goll, Chairman & Members of the H. C&RA Committee
From: Andre Marrou, Representative *AM*

Subject: CSHB 428 (Res), Controlled Grazing Districts

Public feelings on this issue are very strong. On the one side, there are small private landowners upset about cattle and horses grazing on their land, and in some cases their gardens and lawns, without accountability to the livestock owners. On the other hand, there are farmers and ranchers whose very livelihood depends upon access to open range, which they have had for decades upon decades here in Alaska.

As a case in point, ranchers are adamant that they need open range in the Fox River Valley at the head of Kachemak Bay, comprising thousands of acres. On the other hand, there have been abuses of the system.

Mr. O'Meara, in his law suit against the Andersons, claims that the courts have agreed with him that open range is a "myth" in Alaska. As I have advised Mr. O'Meara, I disagree with him and feel that the courts clearly said that the situation is now muddled and should be clarified by the Legislature. I pointed out to Mr. O'Meara that two former Governors, two former Senators, and one incumbent Senator, all have pointed out that open range has been a fact of life in Alaska for decades.

However, times change as more people move into an area, and laws need to be adjusted to current situations. CSHB 428 is offered as a partial solution-- a compromise. Please refer to the "Sectional Analysis."

Consider what a rancher would feel if he or she were suddenly required to build miles upon miles of fences around a state lease which he or she has been using for 20, 30, or 40 years. I daresay no rancher in the State could afford to do it. For example, there are now 39 grazing leases on State land, totaling 215,750 acres or about 5,532 acres per lease. Some ranchers have been using these grazing leases for 40 years. Which makes more sense-- asking a relative newcomer to fence in 1 acre, or suddenly requiring ranchers to fence in 5,500 acres (about 8½ square miles) that they've been using for a very long time?

Page 2
House C&RA, CSHB 428
April 28, 1986

Even another alternative is to allow ranchers to buy the grazing leases that they've been using for decades, and then require them to fence it in. This was part of the reasoning behind HB 248 last year regarding University-grant land--allow the farmer/rancher to own the land.

Also, please note that the five letters and affidavits from previous legislators and governors included two from original delegates to the Alaska Constitutional Convention in 1955-56. I included them because of the historical perspective, which I am not able to provide. One of the Constitutional Conventional delegates is current Sen. Jack Coghill. These delegates knew what they meant when they wrote the original Constitution of the State of Alaska, and therefore can provide a unique view of how Alaska has progressed during the last 30 years. Alaska has only had 5 Governors, including the current one, and 2 of these went to the trouble of recently addressing letters to the Alaska Supreme Court in support of open range.

CSHB 428(Res) incorporates most of the features of HB 385 and is supported by the latter's sponsor (Rep. Dave Thompson)

Walter J. Hickel

Box 101700
Anchorage, Alaska 99510-1700
907-270-7400

September 20, 1985

Justice Jay A. Rabinowitz
Supreme Court
Box 850
Fairbanks, AK 99707

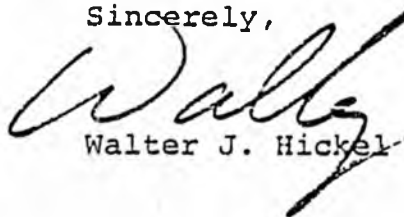
Dear Justice Rabinowitz:

I am writing to you in the hopes that the Supreme Court might hear a case that could have long-range implications for the State of Alaska, specifically Case Number 3H0-84-276 SC.

Attorney David G. Stebing has brought this matter to my attention and, while the statutes are clear and I am very much aware of them as they relate to Alaska's historical open-range, it is my feeling that this whole situation should be adjudicated.

Thank you for your consideration of this matter.

Sincerely,



Walter J. Hickel

bcc: David G. Stebing

IN THE SUPREME COURT FOR THE STATE OF ALASKA

AT ANCHORAGE

ELTON ANDERSON and EDNA)
ANDERSON,)
)
Petitioners,)
)
vs.)
)
MICHAEL s. O'NEARA and)
JANET V. O'NEARA,)
)
Respondents.)

Case No. 3HO-84-276 SC

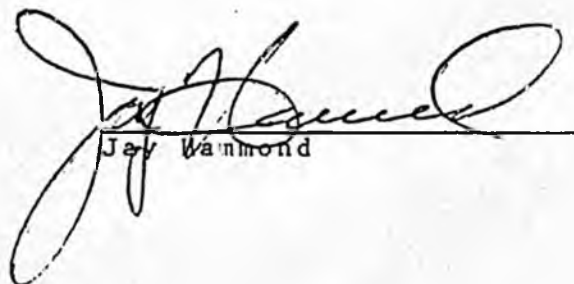
AFFIDAVIT OF JAY HAMMOND

Jay Hammond states as follows:

1. I am a former Governor of the State of Alaska.
2. I recall drafting the attached letter dated May 25, 1977 in which I expressed my concern about the impact that repeal of the fence-out law would have on liability on open range land.
3. It was then, and continues to be my opinion that the "open-range" rule of liability has long applied in Alaska concerning trespass by cattle on unenclosed property not located within the closed grazing district. I believe the trial court in case no. 3HO-84-276 SC erred insofar as it failed to acknowledge the existence of the open-range rule of liability as it has existed in Alaska.

DATED THIS 22nd day of September, 1985.

I, Jay Hammond, represent that there is no notary available in the Lake Clark area where I live, and that I have executed this document. I would sign this document under oath if a notary were available.


Jay Hammond

IN THE SUPREME COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

ELTON ANDERSON and EDNA)
ANDERSON,)
)
Petitioners,)
)
vs.)
)
MICHAEL s. O'MEARA and)
JANET V. O'MEARA,)
)
Respondents.)

RECEIVED

9/20/85 Smeley

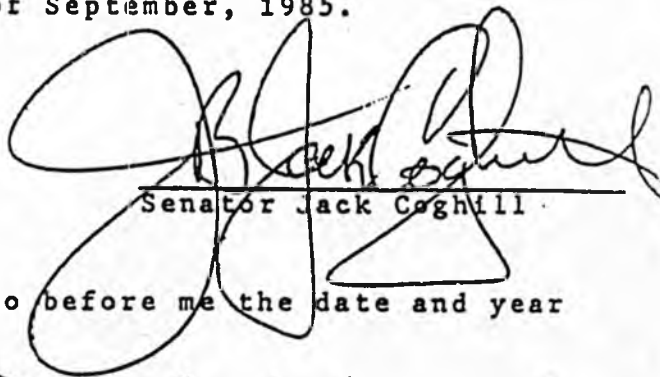
Case No. 3HO-84-276 SC

AFFIDAVIT OF JACK COGHILL

Jack Coghill being duly sworn and under oath, states as follows:


1. I was a delegate to the Alaska Constitutional Convention, a member of the territorial legislature, and am presently a Senator in the Alaska Legislature.
2. I am aware that the fence-out law previously codified at Alaska Stat. §03.30.010 et seq. was repealed in 1977. It is my belief that with the repeal of the fence-out law the "open range" rule of liability applies in situations involving trespass by cattle.
3. In 1957 as a member of the territorial legislature, I assisted in the codification of the original fence-out law. At that time it was my understanding that the "open range" rule of liability had previously been followed in Alaska.
4. I am of the opinion that the 1977 repeal of the fence-out law may have been an oversight insofar as it is determined that the act did away with open range.
5. In the last legislative session, I introduced a bill to effectively reinstate the fence-out law. That bill never made it out of committee.

DATED THIS 18 day of September, 1985.


Senator Jack Coghill

SUBSCRIBED and SWORN to before me the date and year
last above written.




Notary Public for Alaska
My Commission Expires:

IN THE SUPREME COURT FOR THE STATE OF ALASKA

AT ANCHORAGE

ELTON ANDERSON and EDNA)
ANDERSON,)
)
Petitioners,)
)
vs.)
)
MICHAEL s. O'MEARA and)
JANET V. O'MEARA,)
)
Respondents.)

Case No. 3HC-84-276 SC

AFFIDAVIT OF YULE KILCHER

Yule Kilcher, being duly sworn and under oath, states as follows:

1. I was a delegate to the Alaska Constitutional Convention in 1955-56, and was an Alaskan Senator from 1963-66.
2. I have raised cattle in the Kachemak Bay area from 1945 until the present, and was a co-founder of the Fox River Valley Cattlemen's Association which was founded in the early 1950s.
3. The Fox River Valley Cattlemen's Association accepted the Open Range concept as a fundamental precept in the Alaska cattle industry.
4. While a member of the Alaska Senate, I drafted and introduced the Little Taylor Grazing Act and the Farmers' Preference Act. Both of these pieces of legislation were enacted into law. Both of these laws favored ranching. The concept of "Open Range" was discussed and acknowledged by state legislators at the time as an old-standing rule of liability for Alaska.
5. The Open Range concept was in fact the foundation and starting point for all legislation in Alaska favoring ranching.

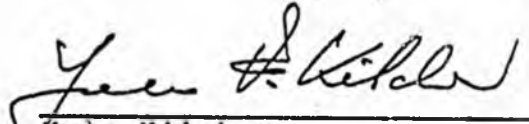
I believe the failure of the Alaska judicial system to recognize the Open Range rule of liability as it has existed

DAVID G. STEBING
Attorney at Law

P. O. BOX 1771
HOMER, ALASKA 99603
PHONE: (907) 238-6364

in Alaska for decades will result in numerous family-run cattle ranching operations going out of business because of the inability of these individuals to fence vast acreages of grazing land in order to avoid liability for trespass by their cattle.

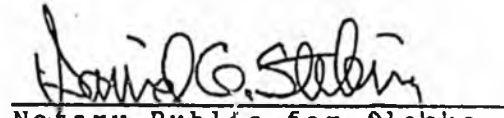
DATED this 16th day of September, 1985.



Yule Kilcher

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

SUBSCRIBED AND SWORN to before me this 16th day of September, 1985.



Notary Public for Alaska
My commission expires: 5/2/88

State of Alaska
NOTARY PUBLIC
DAVID G. STEBING
My Commission Expires

HOUSE
COMMITTEE REPORT

(7)
Date referred: 3/12/86
(Referral reversed 3/12/86)

FURTHER REFERRALS: C & RA

DATE: 4/21/86

The RESOURCES Committee has considered HB 428

"An Act relating to grazing districts."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS for HB 428 (Resources) same title
- new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Shultz Dick Shultz

Miller (NP) W. Miller

Thompson W. Thompson

Jenkins Paul Jenkins

Cato W. Cato

John Sund

Dick Shultz
Co-Chairman Shultz

Senator John B. (Jack) Coghill
Alaska State Legislature

Pouch V
Juneau, Alaska 99811
(907) 465-4921

Box 55028
North Pole, Alaska 99705
(907) 488-7332



April 10, 1986

MEMORANDUM

TO: Representative Shultz

FROM: Senator Coghill

RE: HB 428

A large, stylized handwritten signature in black ink, which appears to be 'JBC', is written over the 'FROM' line and extends across the 'TO' line.

I am supporting HB 428 as introduced by Representative Marrou. This bill addresses a problem that we are facing as urban development grows and the conflicts over grazing uses increases.

We have always had the concept of open range in Alaska. As a member of the Alaska Constitutional Convention I have a historical perspective to add on the concept of open range within the state. Attached you will find an affidavit that I signed in September of 1985.

cc Representative Marrou