

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5435 SLAB HB 384 - HB 394

187

individual. Thus, if an individual works for an employer who files for bankruptcy and does not pay its employees, the individual does not qualify for unemployment benefits. The proposed amendment to AS 23.20.530(a) in this section rectifies this situation. This section expands the definition of "wages" to include earnings for work that an employee performs but is not paid for because the employer files for bankruptcy.

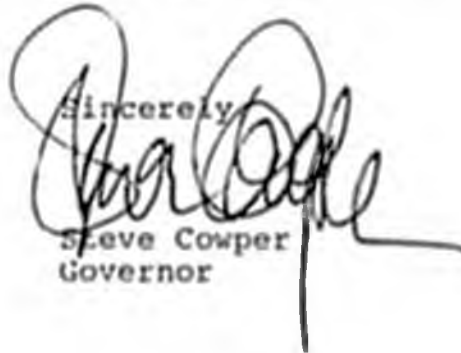
Section 12:

This section repeals two outdated subsections of AS 23.20.175.

Sections 13 and 14:

These sections provide for effective dates, with the amendment regarding the rounding of employee contributions taking effect January 1, 1989, and the other changes taking effect immediately.

Sincerely,



Steve Cowper
Governor

STATE OF ALASKA
THE LEGISLATURE

POLICY STATE CAPITOL
BUREAU ALASKA 99511
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 8, 1988

SUBJECT: HB 384 (title amended)
(Unemployment insurance, and
priority for payment)

TO: Senator Tim Kelly, Chairman
Senate Labor & Commerce Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

Enclosed is an amendment to HB 384 (title am), making a technical change to the title and limiting the application of the payment priority established in the first section of the bill to the priority held by contributions to the unemployment compensation fund.

The first section of the bill poses a potential problem which the amendment seeks to resolve. The section adds unemployment insurance contributions to the obligations that can be paid from a fish processor's or fish buyer's surety bond and makes payment of those contributions the lowest priority for the use of the bond. That part of the section does not raise constitutional questions. However, the section also establishes a priority between the existing uses of the bond, making payment for labor as the first priority, followed by payment to fishermen for the raw fishery resource purchased from them as the second priority. Under Art. 2, sec. 13 of the Constitution of the State of Alaska, bills are required to be confined to a single subject. I have been unable to arrive at a subject that includes both the unemployment insurance provisions and the prioritization of bond proceeds between people who work for fish processors or buyers and people who sell fish to them. If the bill were challenged, a court might find that it violated the single subject requirement.

The second problem in the present form of the bill is that the second clause of the title, "establishing a priority for

Senator Tim Kelly
Page 2
April 8, 1986

payment," is vague. Since the same section of the constitution requires that the subject of a bill be expressed in the title, it would be advisable for the Senate to make a technical title amendment, permitted under the Uniform Rules, to clarify what kinds of payments are affected by the bill.

If I may be of further assistance, please advise.

Enclosure

TBC:gc
WKG2:106

A M E N D M E N T

Offered in the HOUSE

TO: HB 384 (title am)

Page 1, line 7, after "payment":

Insert "of proceeds from a surety bond of a fish processor or primary fish buyer"

Page 1, line 14:

Delete "in the following order of priority."

Page 1, line 18, after "contributions":

Insert "If the surety bond is insufficient to satisfy all obligations under this subsection, the obligations to persons furnishing labor and to independent registered commercial fishermen must be paid before unemployment insurance contributions are paid"

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 SENATE CS FOR HOUSE BILL NO. 384 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to unemployment insurance; estab-
7 lishing a priority for payment; and providing for an
8 effective date."

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

10 * Section 1. AS 16.10.290(a) is amended to read:

11 (a) A person applying for a license as a fish processor or
12 primary fish buyer shall file with the commissioner of labor a surety
13 bond running to the State of Alaska conditioned upon the promise to
14 pay, in the following order of priority, (1) all persons furnishing
15 labor to a fish processor or primary fish buyer, including contractual
16 employee benefits; [AND] (2) independent registered commercial fisher-
17 men for the price of the raw fishery resource purchased from them; and
18 (3) unemployment insurance contributions. The surety or sureties must
19 [SHALL] be satisfactory, in the determination of the commissioner.

20 * Sec. 2. AS 23.20.195(a) is amended to read:

21 (a) If the contributions are unpaid after 30 days from the date
22 of mailing or personal delivery of a written demand for payment, the
23 department may [SHALL] assess and collect in the same manner as con-
24 tributions a penalty equal to 10 percent of the contributions due. In
25 no event may the penalty be less than \$10 (\$1).

26 * Sec. 3. AS 23.20.205(c) is amended to read:

27 (c) If the amount assessed is not paid, or an appeal is not
28 filed under AS 23.20.220, within 30 days after [PERSONAL] service or
29 mailing of the notice, the department may [, SUBJECT TO AS 23.20.220,]

1 collect the amount stated in the assessment by the distraint, seizure
2 and sale of the property, goods, chattels and effects of the delin-
3 quent employer. Goods and property exempt from execution under the
4 laws of this state are exempt from distraint and sale under this
5 section.

6 * Sec. 4. AS 23.20.220(a) is amended to read:

7 Sec. 23.20.220. APPEAL OF ASSESSMENT [PETITION FOR HEARING AND
8 SUMMARY JUDGMENT]. (a) When a notice of assessment is delivered or
9 mailed to a delinquent employer, the employer may within 30 days file
10 an appeal [A PETITION] in writing with the department, stating that
11 the assessment is unjust or incorrect and requesting a hearing on it.
12 The period for filing an appeal may be extended for a reasonable
13 period if the employer shows that the appeal was delayed as a result
14 of circumstances beyond the employer's control. The appeal [PETITION]
15 shall set out the reasons the assessment is objected to and the amount
16 of contributions which the employer admits is due, and must be accom-
17 panied by a bond or deposit of other security in the amount of the
18 assessment to ensure [INSURE] collection. The department may waive
19 the security requirement if the employer submits proof of solvency or
20 reasonable assurance, as prescribed by regulations, that the contribu-
21 tions, interest and penalties due are not in jeopardy. If [NO PETI-
22 TION IS FILED WITHIN THE TIME PRESCRIBED, OR IF] the employer fails to
23 provide the required security, the collection under AS 23.20.205(c) is
24 not stayed and the assessment is prima facie correct. The procedures
25 in AS 23.20.415 apply to an appeal under this subsection. [HOWEVER,
26 THE DEPARTMENT MAY ENTERTAIN A SUBSEQUENT APPLICATION FOR REFUND, AND,
27 IF DENIED A REFUND, A HEARING ON THE APPLICATION IN ACCORDANCE WITH
28 AS 23.20.225.]

29 * Sec. 5. AS 23.20 is amended by adding a new section to read:

1 Sec. 23.20.242. APPEALS BY OFFICER, MEMBER, OR EMPLOYEE. The
2 department shall permit each officer or employee of a corporation or a
3 member or employee of a partnership who is required to pay the contri-
4 butions and interest owed by the corporation or partnership under
5 AS 23.20.165 - 23.20.278 to appeal individually under those pro-
6 visions.

7 * Sec. 6. AS 23.20.277(b) is amended to read:

8 (b) At the end of each calendar quarter, or at the end of any
9 other period as determined by the department, the department shall
10 bill each government entity, nonprofit organization, or group of
11 nonprofit organizations, that [WHICH] has elected to make payments in
12 place of contributions for benefits paid during the quarter or other
13 prescribed period that is attributable to service in the employ of the
14 government entity or nonprofit organization. In the case of nonprofit
15 organizations, the amount billed is an amount equal to the full amount
16 of regular benefits plus [ONE-HALF OF] the state share [AMOUNT] of
17 extended benefits and in the case of a government entity the amount
18 billed is [WHICH HAS ELECTED TO MAKE PAYMENTS UNDER THIS SECTION] an
19 amount equal to the full amount of the regular benefits plus the full
20 amount of the extended benefits paid [DURING THE QUARTER OR OTHER
21 PRESCRIBED PERIOD THAT IS ATTRIBUTABLE TO SERVICE IN THE EMPLOY OF THE
22 NONPROFIT ORGANIZATION].

23 * Sec. 7. AS 23.20.277(e) is amended to read:

24 (e) At the end of each taxable year, the department shall deter-
25 mine whether the total of payments for the year made by a nonprofit
26 organization is less than, or in excess of, the total amount of regu-
27 lar benefits plus the state share [ONE-HALF OF THE AMOUNT] of extended
28 benefits paid to individuals during the taxable year based on wages
29 attributable to service in the employ of the nonprofit organization;

1 and in the case of a government entity that has elected to make pay-
2 ments under this section, whether the total of payments for the year
3 is less than, or in excess of, the total amount of regular benefits
4 plus the total amount of extended benefits as determined in this
5 subsection. Each organization whose total payments for the taxable
6 year are less than the amount so determined is liable for payment of
7 the unpaid balance to the fund in accordance with (f) of this section.
8 If the total payments exceed the amount so determined for the taxable
9 year, all or part of the excess may, at the discretion of the depart-
10 ment, be refunded from the fund or retained in the fund as part of the
11 payments that [WHICH] may be required for the next taxable year.

12 * Sec. 8. AS 23.20.277(1) is amended to read:

13 (1) Each employer that is liable for payments in place of con-
14 tributions shall pay to the department for the fund the amount of
15 regular benefits plus the state share [AMOUNT OF ONE-HALF] of extended
16 benefits paid that are attributable to service in the employ of that
17 employer. However, a government entity that [WHICH] has elected to
18 make payments under this section is liable for the amount of regular
19 benefits plus the full amount of extended benefits that [WHICH] are
20 attributable to service in the employ of that entity. If benefits
21 paid to an individual are based on wages paid by more than one em-
22 ployer and one or more of these employers are liable for payments in
23 place of contributions, the amount payable to the fund by each em-
24 ployer that is liable for payments shall be determined by the depart-
25 ment in accordance with regulations adopted by the department.

26 * Sec. 9. AS 23.20.290(d) is amended to read:

27 (d) The [BEGINNING JANUARY 1, 1981, AND FOR EACH SUCCEEDING YEAR
28 THEREAFTER, THE] rate of contributions payable by each employee of an
29 employer who is subject to AS 23.20.165 is 18 percent of the average

1 benefit cost rate as determined in (e) of this section rounded to the
2 nearest 1/100th [ONE-TENTH] of one percent. However, the rate of
3 contributions for an employee may not be less than one-half percent or
4 more than one percent.

5 * Sec. 10. AS 23.20.390 is amended by adding a new subsection to read:

6 (f) In addition to the liability under (a) of this section for
7 the amount of benefits improperly paid, an individual who is disqual-
8 ified from receipt of benefits under AS 23.20.387 is liable to the
9 department for a penalty in an amount equal to 50 percent of the
10 benefits that were obtained by knowingly making a false statement or
11 misrepresenting a material fact, or knowingly failing to report a
12 material fact, with the intent to obtain or increase benefits under
13 this chapter. The department may, in accordance with regulations
14 adopted under this chapter, waive the collection of a penalty under
15 this section. The department shall deposit into the general fund the
16 penalty that it collects.

17 * Sec. 11. AS 23.20 is amended by adding a new section to read:

18 Sec. 23.20.391. LIEN. (a) A claim under AS 23.20.390 for
19 benefits that have been improperly paid as a result of a false state-
20 ment, misrepresentation, or omission, including a penalty as described
21 in AS 23.20.390(f), is a lien in favor of the state against the real
22 and personal property of the individual.

23 (b) The claim becomes a lien on property other than a motor
24 vehicle when the department files a notice of the lien with the re-
25 cording officer of the recording district in which the property is
26 located. The claim becomes a lien on a motor vehicle when the depart-
27 ment files a notice of the lien in the office of the commissioner of
28 public safety. Filing of the notice of lien is constructive notice to
29 creditors of the owner, and to subsequent purchasers and

1 encumbrancers, of the lien against the property described in the
2 notice.

3 (c) The department may release a notice of lien by filing a
4 certificate of release in the manner prescribed for the filing of a
5 notice of lien. The department may not file a certificate of release
6 until the amount of the claim, including a penalty, if any, is paid,
7 or until it receives assurance of payment that it considers adequate,
8 or until the individual is absolved from liability under AS 23.20.-
9 390(b).

10 * Sec. 12. AS 23.20 is amended by adding new sections to read:

11 Sec. 23.20.393. NOTICE OF ASSESSMENT; DISTRAINT AND SEIZURE.

12 (a) If the department's determination of liability under AS 23.20.390
13 is final and the individual has not made repayment within 90 days, the
14 department may issue a notice of assessment, specifying the amount
15 due, and may serve it on the individual. A peace officer or an au-
16 thorized representative of the department may serve the notice person-
17 ally or the department may mail the notice by certified or registered
18 mail with return receipt requested.

19 (b) If the notice is served by mail, the notice must be de-
20 posited in the post office, postage paid, and addressed to the indi-
21 vidual at the individual's last address of record. The date of ser-
22 vice is the date of delivery shown on the delivery receipt. However,
23 if the department determines that the addressee is deliberately avoid-
24 ing service, then the date of service is the day of mailing.

25 (c) If the amount assessed is not paid within 30 days after
26 personal service or mailing of the notice, the department may collect
27 the amount stated in the assessment by the distraint or seizure of the
28 property, assets, goods, and effects of the individual. Goods and
29 property exempt from execution under the laws of this state are exempt

1 from distraint under this section.

2 Sec. 23.20.394. NOTICE AND ORDER TO WITHHOLD AND DELIVER. (a)
3 The Department of Labor may issue to a person or to a political subdi-
4 vision or other department of the state a notice and order to withhold
5 and deliver property of any kind if (1) the Department of Labor has
6 reason to believe that the person, political subdivision, or other
7 department possesses property that is due or owing under this chapter,
8 or is the property of another person; and (2) notice of assessment has
9 been served at least 30 days before the issuance of the notice and
10 order to withhold and deliver.

11 (b) A peace officer or an authorized representative of the
12 department may serve the notice and order to withhold and deliver.
13 The person, political subdivision, or department upon whom service is
14 made shall answer the notice within 10 days.

15 (c) If the person, political subdivision, or department pos-
16 sesses property, credits, or money subject to the claim of the depart-
17 ment, it shall deliver the property to the department immediately upon
18 demand.

19 (d) If a person fails to answer the notice and order to withhold
20 and deliver within the time prescribed, the superior court in the
21 judicial district in which the order is served may enter a judgment by
22 default against the person for the full amount claimed by the depart-
23 ment in the notice to withhold and deliver, together with costs.

24 * Sec. 13. AS 23.20.530(a) is amended to read:

25 (a) In this chapter, "wages" means all remuneration for service
26 from whatever source, including, but not limited to, insured work,
27 noninsured work, or self-employment; commissions, bonuses, back pay
28 and the cash value of all remuneration in a medium other than cash
29 shall be treated as wages; gratuities customarily received by an

1 individual in the course of service from persons other than the indi-
2 vidual's employing unit may be treated as wages received from the
3 employing unit only to the extent the individual reports the gratu-
4 ities to the employing unit. The reasonable cash value of remunera-
5 tion in a medium other than cash, and the reasonable amount of gratu-
6 ities, shall be estimated and determined in accordance with regu-
7 lations adopted by the department; notwithstanding AS 23.20.350(a),
8 back pay awards shall be allocated to the weeks or quarters with
9 respect to which the pay was earned. If the remuneration of an indi-
10 vidual is not based upon a fixed period of time or if the individual's
11 wages are paid in irregular intervals or in a manner that [WHICH] does
12 not extend regularly over the period of employment, the wages shall be
13 allocated to weeks or quarters in accordance with regulations adopted
14 by the department. The regulations must [SHALL], so far as possible,
15 produce results reasonably similar to those that [WHICH] would prevail
16 if the individual's wages were paid at regular intervals. Wages
17 earned for services performed, but not paid because the employer has
18 filed for bankruptcy, are considered wages for the quarter in which
19 they were earned.

20 * Sec. 14. WAIVER FOR SELF-EMPLOYMENT PROJECT. (a) If a demonstration
21 project to provide self-employment allowances to certain unemployed persons
22 in the state is approved by the federal Department of Labor under sec. 9152
23 of Public Law 100-203, the state Department of Labor may provide self-
24 employment allowances to unemployed persons under AS 23.20 during the term
25 of the demonstration project.

26 (b) The state Department of Labor may waive AS 23.20.360, 23.20.378,
27 23.20.379, 23.20.406, and 23.20.505 for a person who participates in a
28 project under this section to the extent required for the state to partici-
29 pate in the project.

- 1 * Sec. 15. AS 23.20.175(a) and 23.20.175(b) are repealed.
- 2 * Sec. 16. Section 14 of this Act is repealed June 30, 1992.
- 3 * Sec. 17. Section 9 of this Act takes effect January 1, 1989.
- 4 * Sec. 18. Except for sec. 9, this Act takes effect immediately under
- 5 AS 01.10.070(c).

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STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 384
PUBLISH DATE: HOUSE 2/19/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to
Unemployment Insurance..."
Sponsor: Governor
Requestor: House Labor and Commerce

Agency Affected: Labor
BRU: Employment Security
Components: Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE	0	97.0	97.0	97.0	97.0	97.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See Attached

Prepared by: Joe Sitton, Director *JS* Phone: 465-2712
Division: Employment Security Division Date: 1/28/88

Approved by Commissioner: Jim Sampson *J. Sampson* Date: 1/28/88
Agency: Labor

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

ANALYSIS OF FISCAL NOTE FOR"An Act relating to Unemployment Insurance"

Section 9 of this bill provides for a penalty to be assessed claimants who are disqualified for the fraudulent receipt of unemployment insurance benefits. The penalty will be 50% of the benefits that were obtained fraudulently, and the penalties will be deposited in the general fund as unrestricted revenues. Calculations to arrived at estimated anticipated revenues are as follows:

Total detected fraudulent payments made per year	-	\$260,000
50% penalty on detected fraudulent payments	-	\$130,000
A 75% collection rate on the established penalties	-	\$ 97,500
Rounded off to	-	\$ 97,000/year

Assumptions:

1. An effective date of July 1, 1988.
2. Detected fraudulent payments will remain at about \$260,000/year thru 1992.
3. A 75% collection rate will be maintained. The other 25% are uncollectible because of people leaving the state, or otherwise not being able to pay back the funds.

go0188hL
Cramer
4/13/88

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 SENATE CS FOR HOUSE BILL NO. 384 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to unemployment insurance; estab-
7 lishing a priority for payment; and providing for an
8 effective date."

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

10 * Section 1. AS 16.10.290(a) is amended to read:

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12 primary fish buyer shall file with the commissioner of labor a surety
13 bond running to the State of Alaska conditioned upon the promise to
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15 labor to a fish processor or primary fish buyer, including contractual
16 employee benefits; [AND] (2) independent registered commercial fisher-
17 men for the price of the raw fishery resource purchased from them; and
18 (3) unemployment insurance contributions. The surety or sureties must
19 [SHALL] be satisfactory, in the determination of the commissioner.

20 * Sec. 2. AS 23.20.195(a) is amended to read

21 (a) If the contributions are unpaid after 30 days from the date
22 of mailing or personal delivery of a written demand for payment, the
23 department may [SHALL] assess and collect in the same manner as con-
24 tributions a penalty equal to 10 percent of the contributions due. In
25 no event may the penalty be less than \$10 [~~\$1~~].

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12 The period for filing an appeal may be extended for a reasonable
13 period if the employer shows that the appeal was delayed as a result
14 of circumstances beyond the employer's control. The appeal [PETITION]
15 shall set out the reasons the assessment is objected to and the amount
16 of contributions which the employer admits is due, and must be accom-
17 panied by a bond or deposit of other security in the amount of the
18 assessment to ensure [INSURE] collection. The department may waive
19 the security requirement if the employer submits proof of solvency or
20 reasonable assurance, as prescribed by regulations, that the contribu-
21 tions, interest and penalties due are not in jeopardy. If [NO PETI-
22 TION IS FILED WITHIN THE TIME PRESCRIBED, OR IF] the employer fails to
23 provide the required security, the collection under AS 23.20.205(c) is
24 not stayed and the assessment is prima facie correct. The procedures
25 in AS 23.20.415 apply to an appeal under this subsection. [HOWEVER,
26 THE DEPARTMENT MAY ENTERTAIN A SUBSEQUENT APPLICATION FOR REFUND, AND,
27 IF DENIED A REFUND, A HEARING ON THE APPLICATION IN ACCORDANCE WITH
28 AS 23.20.225.]

29 * Sec. 5. AS 23.20 is amended by adding a new section to read:

1 Sec. 23.20.242. LIABILITY OF OFFICER, MEMBER, OR EMPLOYEE. An
2 officer or employee of a corporation or a member or employee of a
3 partnership who is required to pay the contributions and interest owed
4 by the corporation or partnership under AS 23.20.165 - 23.20.278 shall
5 be treated as an employer under those provisions.

6 * Sec. 6. AS 23.20.277(b) is amended to read:

7 (b) At the end of each calendar quarter, or at the end of any
8 other period as determined by the department, the department shall
9 bill each government entity, nonprofit organization, or group of
10 nonprofit organizations, that [WHICH] has elected to make payments in
11 place of contributions for benefits paid during the quarter or other
12 prescribed period that is attributable to service in the employ of the
13 government entity or nonprofit organization. In the case of nonprofit
14 organizations, the amount billed is an amount equal to the full amount
15 of regular benefits plus [ONE-HALF OF] the state share [AMOUNT] of
16 extended benefits and in the case of a government entity the amount
17 billed is [WHICH HAS ELECTED TO MAKE PAYMENTS UNDER THIS SECTION] an
18 amount equal to the full amount of the regular benefits plus the full
19 amount of the extended benefits paid [DURING THE QUARTER OR OTHER
20 PRESCRIBED PERIOD THAT IS ATTRIBUTABLE TO SERVICE IN THE EMPLOY OF THE
21 NONPROFIT ORGANIZATION].

22 * Sec. 7. AS 23.20.277(e) is amended to read:

23 (e) At the end of each taxable year, the department shall deter-
24 mine whether the total of payments for the year made by a nonprofit
25 organization is less than, or in excess of, the total amount of regu-
26 lar benefits plus the state share [ONE-HALF OF THE AMOUNT] of extended
27 benefits paid to individuals during the taxable year based on wages
28 attributable to service in the employ of the nonprofit organization;
29 and in the case of a government entity that has elected to make

1 payments under this section, whether the total of payments for the
2 year is less than, or in excess of, the total amount of regular bene-
3 fits plus the total amount of extended benefits as determined in this
4 subsection. Each organization whose total payments for the taxable
5 year are less than the amount so determined is liable for payment of
6 the unpaid balance to the fund in accordance with (f) of this section.
7 If the total payments exceed the amount so determined for the taxable
8 year, all or part of the excess may, at the discretion of the depart-
9 ment, be refunded from the fund or retained in the fund as part of the
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15 benefits paid that are attributable to service in the employ of that
16 employer. However, a government entity that [WHICH] has elected to
17 make payments under this section is liable for the amount of regular
18 benefits plus the full amount of extended benefits that [WHICH] are
19 attributable to service in the employ of that entity. If benefits
20 paid to an individual are based on wages paid by more than one em-
21 ployer and one or more of these employers are liable for payments in
22 place of contributions, the amount payable to the fund by each em-
23 ployer that is liable for payments shall be determined by the depart-
24 ment in accordance with regulations adopted by the department.

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26 (d) The [BEGINNING JANUARY 1, 1981, AND FOR EACH SUCCEEDING YEAR
27 THEREAFTER, THE] rate of contributions payable by each employee of an
28 employer who is subject to AS 23.20.165 is 18 percent of the average
29 benefit cost rate as determined in (e) of this section rounded to the

1 nearest 1/100th [ONE-TENTH] of one percent. However, the rate of
2 contributions for an employee may not be less than one-half percent or
3 more than one percent.

4 * Sec. 10. AS 23.20.390 is amended by adding a new subsection to read:

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6 the amount of benefits improperly paid, an individual who is disqual-
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8 department for a penalty in an amount equal to 50 percent of the
9 benefits that were obtained by knowingly making a false statement or
10 misrepresenting a material fact, or knowingly failing to report a
11 material fact, with the intent to obtain or increase benefits under
12 this chapter. The department may, in accordance with regulations
13 adopted under this chapter, waive the collection of a penalty under
14 this section. The department shall deposit into the general fund the
15 penalty that it collects.

16 * Sec. 11. AS 23.20 is amended by adding a new section to read:

17 Sec. 23.20.391. LIEN. (a) A claim under AS 23.20.390 for
18 benefits that have been improperly paid as a result of a false state-
19 ment, misrepresentation, or omission, including a penalty as described
20 in AS 23.20.390(f), is a lien in favor of the state against the real
21 and personal property of the individual.

22 (b) The claim becomes a lien on property other than a motor
23 vehicle when the department files a notice of the lien with the re-
24 cording officer of the recording district in which the property is
25 located. The claim becomes a lien on a motor vehicle when the depart-
26 ment files a notice of the lien in the office of the commissioner of
27 public safety. Filing of the notice of lien is constructive notice to
28 creditors of the owner, and to subsequent purchasers and encum-
29 brancers, of the lien against the property described in the notice.

1 (c) The department may release a notice of lien by filing a
2 certificate of release in the manner prescribed for the filing of a
3 notice of lien. The department may not file a certificate of release
4 until the amount of the claim, including a penalty, if any, is paid,
5 or until it receives assurance of payment that it considers adequate,
6 or until the individual is absolved from liability under AS 23.20.-
7 390(b).

8 * Sec. 12. AS 23.20 is amended by adding new sections to read:

9 Sec. 23.20.393. NOTICE OF ASSESSMENT; DISTRAINT AND SEIZURE.

10 (a) If the department's determination of liability under AS 23.20.390
11 is final and the individual has not made repayment within 90 days, the
12 department may issue a notice of assessment, specifying the amount
13 due, and may serve it on the individual. A peace officer or an au-
14 thorized representative of the department may serve the notice person-
15 ally or the department may mail the notice by certified or registered
16 mail with return receipt requested.

17 (b) If the notice is served by mail, the notice must be de-
18 posited in the post office, postage paid, and addressed to the indi-
19 vidual at the individual's last address of record. The date of ser-
20 vice is the date of delivery shown on the delivery receipt. However,
21 if the department determines that the addressee is deliberately avoid-
22 ing service, then the date of service is the day of mailing.

23 (c) If the amount assessed is not paid within 30 days after
24 personal service or mailing of the notice, the department may collect
25 the amount stated in the assessment by the distraint or seizure of the
26 property, assets, goods, and effects of the individual. Goods and
27 property exempt from execution under the laws of this state are exempt
28 from distraint under this section.

29 Sec. 23.20.394. NOTICE AND ORDER TO WITHHOLD AND DELIVER. (a)

1 The Department of Labor may issue to a person or to a political subdi-
2 vision or other department of the state a notice and order to withhold
3 and deliver property of any kind if (1) the Department of Labor has
4 reason to believe that the person, political subdivision, or other
5 department possesses property that is due or owing under this chapter,
6 or is the property of another person; and (2) notice of assessment has
7 been served at least 30 days before the issuance of the notice and
8 order to withhold and deliver.

9 (b) A peace officer or an authorized representative of the
10 department may serve the notice and order to withhold and deliver.
11 The person, political subdivision, or department upon whom service is
12 made shall answer the notice within 10 days.

13 (c) If the person, political subdivision, or department pos-
14 sesses property, credits, or money subject to the claim of the depart-
15 ment, it shall deliver the property to the department immediately upon
16 demand.

17 (d) If a person fails to answer the notice and order to withhold
18 and deliver within the time prescribed, the superior court in the
19 judicial district in which the order is served may enter a judgment by
20 default against the person for the full amount claimed by the depart-
21 ment in the notice to withhold and deliver, together with costs.

22 * Sec. 13. AS 23.20.530(a) is amended to read:

23 (a) In this chapter, "wages" means all remuneration for service
24 from whatever source, including, but not limited to, insured work,
25 noninsured work, or self-employment; commissions, bonuses, back pay
26 and the cash value of all remuneration in a medium other than cash
27 shall be treated as wages; gratuities customarily received by an
28 individual in the course of service from persons other than the indi-
29 vidual's employing unit may be treated as wages received from the

1 employing unit only to the extent the individual reports the gratu-
2 ities to the employing unit. The reasonable cash value of remunera-
3 tion in a medium other than cash, and the reasonable amount of gratu-
4 ities, shall be estimated and determined in accordance with regu-
5 lations adopted by the department; notwithstanding AS 23.20.350(a),
6 back pay awards shall be allocated to the weeks or quarters with
7 respect to which the pay was earned. If the remuneration of an indi-
8 vidual is not based upon a fixed period of time or if the individual's
9 wages are paid in irregular intervals or in a manner that [WHICH] does
10 not extend regularly over the period of employment, the wages shall be
11 allocated to weeks or quarters in accordance with regulations adopted
12 by the department. The regulations must [SHALL], so far as possible,
13 produce results reasonably similar to those that [WHICH] would prevail
14 if the individual's wages were paid at regular intervals. Wages
15 earned for services performed, but not paid because the employer has
16 filed for bankruptcy, are considered wages for the quarter in which
17 they were earned.

18 * Sec. 14. WAIVER FOR SELF-EMPLOYMENT PROJECT. (a) If a demonstration
19 project to provide self-employment allowances to certain unemployed persons
20 in the state is approved by the federal Department of Labor under sec. 9152
21 of Public Law 100-203, the state Department of Labor may provide self-
22 employment allowances to unemployed persons under AS 23.20 during the term
23 of the demonstration project.

24 (b) The state Department of Labor may waive AS 23.20.360, 23.20.378,
25 23.20.379, 23.20.406, and 23.20.505 for a person who participates in a
26 project under this section to the extent required for the state to partici-
27 pate in the project.

28 * Sec. 15. AS 23.20.175(a), ~~23.20.175(b)~~, and 23.20.240(f) are re-
29 pealed.

1 * Sec. 16. Section 14 of this Act is repealed June 30, 1992.

2 * Sec. 17. Section 9 of this Act takes effect January 1, 1989.

3 * Sec. 18. Except for sec. 9 of this Act, this Act takes effect immedi-
4 ately under AS 01.10.070(c).

4/11/88

A M E N D M E N T

Offered in the Senate Labor & Commerce Committee

Proposed by Gary L. Jenkins

TO: HB 384 (Title am)

(1) Page 1, Line 27: Delete the phrase "with the required security".

As amended the line would read;

(c) If the amount assessed is not paid, or an appeal is not filed as required in AS 23.20.220, within 30 days after [PERSONAL] ...

(2) Page 4, Line 20: Insert a new section to read:

* Sec. 8. AS 23.30.279. LIABILITY OF OFFICER, MEMBER OR EMPLOYEE. In this article, "employer" as defined in AS 23.²⁰~~30~~.520 also includes, but is not limited to, an officer or employee of a corporation or a member or employee of a partnership who, as an officer, employee, or member, is under a duty to pay the contributions required by this chapter provided that when such officer, member or employee is individually assessed any contributions and/or interest due, they shall be permitted to individually appeal the assessment as provided in this chapter.

Renumber subsequent sections of the bill accordingly.

(3) Page 8, Line 11: Amend to read as follows:

* Sec. 12. AS 23.20.175 (a) and (b) and AS 23.20.240 (f) are repealed.

DEPARTMENT OF LABOR

AMENDMENT TO: HB 384 (title am)

1. Page 4, after line 27:

Insert a new bill section to read:

*Sec 9. AS 23.20 is amended by adding a new section to read:

Sec. 23.20.384. UNEMPLOYMENT INSURANCE PROVISION WAIVER AND SELF-EMPLOYMENT PROJECT. (a) If a demonstration project to provide self-employment allowances to unemployed persons in the state is approved by the federal Department of Labor under sec. 9152 of P.L. 100-203, the department may provide self-employment allowances to unemployed persons.

(b) The department may waive AS 23.20.360, 23.20.378, 23.20.379, 23.20.406, and 23.20.505 for a person who participates in a project under this section.

2. Renumber the following bill sections accordingly.

3. Page 8, line 13:

Delete "9--12"

Insert "9--13"

MEMORANDUM

State of Alaska

TO: Bob Evans
Legislative Liaison
Office of the Governor

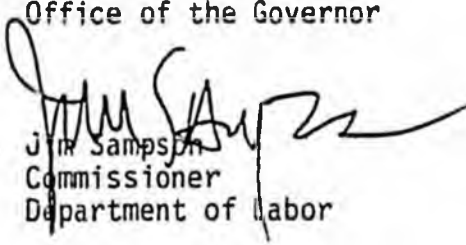
DATE: April 8, 1988

FILE NO:

TELEPHONE NO: 465-2700

SUBJECT: Small Business
Development

FROM:


Jim Sampson
Commissioner
Department of Labor

The Department of Labor would like to participate in a pilot project, sponsored by the U.S. Department of Labor that would encourage unemployed Alaskans to start small businesses.

The concept uses the unemployment insurance system to promote self-employment, and is based upon programs initiated in other countries, particularly Great Britain and France. The idea involves making unemployment insurance benefits available in the form of a self-employment allowance, to targeted claimants who become self-employed. In addition, claimants would receive training in operating a business and other support services such as management assistance to help them gain a solid foothold in the business world. The Small Business Development Centers of the University of Alaska would assist in the effort, as well as the Department of Commerce and Economic Development and the Department of Community and Regional Affairs. They are supportive of the pilot project.

Inasmuch as certain statutorily mandated unemployment insurance eligibility criteria would have to be waived for persons participating in the project, a change to our unemployment insurance law would be required. Draft language for the statute change is attached, and it could be incorporated into House Bill No. 384 which is presently before the Senate Labor and Commerce Committee.

Also attached is an Executive Summary on the pilot project which provides more detailed information on it.

Inasmuch as states that wish to be considered for the pilot project must submit their proposals by May 2, 1988, we will need to move on this immediately if we are going to submit a proposal, particularly in view of the statute change which will be required prior to that time.

Thank you.

JS/EP/kmc
09903

Attachments

THE SELF-EMPLOYMENT DEMONSTRATION PROJECT

EXECUTIVE SUMMARY

Description

The Secretary of Labor is soliciting bids for the "Three-State Self-Employment Demonstration Project," established under Sec. 9152 of the Omnibus Reconciliation Act of 1987. Three states will be chosen to participate in the project which will run for three years beginning January 1989.

The project will test the supposition that some unemployed individuals wish to establish their own businesses, and that these ventures would have a greater survival rate, if the claimants did not lose thousands of dollars in potential unemployment compensation because of employment security laws. This project is modeled after similar projects in Europe, in which the initial pilot projects quickly became nationwide programs. These programs were shown to be effective in creating jobs (1.5 to 2 jobs for each participant in England, for example).

The Alaska Department of Labor would provide initial screening of applicants who are already receiving UI benefits, targeting the "structurally" unemployed—those who are most likely to claim all of their potential benefits. This project would also test the ability of employment security agencies to work with economic development agencies by providing counseling, screening, and other assistance from the Small Business Development Centers, working in cooperation with the Department of Commerce and Economic Development, the University of Alaska, and other state and local organizations. The project would be limited to a maximum of 200 participants per year.

UI Trust Fund and Taxes

While enrolled in the project a participant's benefits would continue to be paid out of the UI trust fund, the same as if they were covered under the regular or extended benefits programs. Because participants in the project would be those claimants who would be most likely to receive all of their potential benefits anyway, the impact on the trust fund and employer and employee taxes would be negligible.

Administrative Costs

The Small Business Development centers would be able to provide counseling, guidance, and screening at no additional cost. The U.S. Department of Labor would fund the research and evaluation activities for the demonstration, including the experimental design, monitoring, and evaluation of the demonstration project.

Administrative costs associated with the payment of benefits may not be funded from federal funds, and must be appropriated from state funding sources. The Employment Security Division has estimated these costs for 200 participants per year, including initial start-up costs (printing of forms, training of personnel, etc.) as follows (in thousands of dollars):

SFY 89	January-June, 1989	30.0
SFY 90		35.0
SFY 91		35.0
SFY 92	July-December, 1991	20.0
Total administrative costs		120.0

Employment Security Laws

The Secretary of Labor has waived applicable federal requirements for availability for work, acceptance of suitable work, and work search for participants enrolled in the project. Alaska would have to make similar changes in the Alaska statutes. The necessary language is attached.

H B

3 8 9



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 22, 1988

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box 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 recovery of state costs incurred in containing or cleaning up oil and hazardous substance spills.

This bill is needed because of cases where parties responsible for oil and hazardous substance spills have declared bankruptcy or left the state. The state is left to remove the hazard with little hope of recovering the costs. Clean-up of such discharges can be enormously expensive, running into the millions of dollars on large spills.

Once a state has undertaken that expense, it can seek to recover its costs against the liable party, but if that party has declared bankruptcy or fled, the state might not be able to obtain repayment from the liable party's remaining assets. The U.S. Supreme Court has ruled that in this situation the responsible party's liability to the state is a debt that can be discharged through bankruptcy like any other debt. Ohio v. Kovacs, 469 U.S. 274 (1985).

But the court also noted that a state could protect itself from the effects of a liable party's bankruptcy by enacting a law giving the state a priority lien on the liable party's assets for the state's costs in remedying a hazardous substance problem. This bill is intended to implement the supreme court's suggestion. Many states already have statutes such as this (e.g., Massachusetts [M.G.L.A. c. 21E, sec. 13]; Connecticut [Conn. Genl. Stats. 22a-452a]; Tennessee [T.C.A. 68-46-209]; Louisiana [LSA-RS 30:1149.6]).

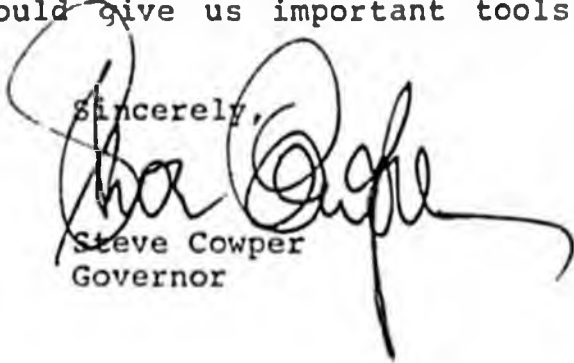
The bill adds a new section to AS 46.08, the chapter on oil and hazardous substance releases. Subsection (a) creates a lien in favor of the state whenever money from the oil and hazardous substance release response fund or any other state fund is used to contain, clean up, or mitigate an oil or hazardous substance spill. The lien would be effective against all property of the persons liable for the spill.

Subsection (b) states the mechanics of enforcing the lien against real property, including a requirement of recording the certificate of lien and giving notice to the liable party and to anyone else with an interest in the property. Subsection (c) contains the important provision that a lien established under the new section takes priority over other liens (except those existing before this bill takes effect), and states the exception for residential real property. As to residential real property, subsec. (d) states that this lien does not have an automatic priority, but only takes precedence over liens filed later. That provision is intended to avoid difficulties with the residential mortgage market, in which lenders might be reluctant to lend for home mortgages if such a mortgage could become secondary to a state lien because of an intervening hazardous substance incident.

Subsection (e) requires the commissioner of the Department of Environmental Conservation to certify that a lien has been reduced or satisfied if payments are made on the liable party's obligation. Subsection (f) permits the owner of property against which such a lien has been asserted to seek a court order removing it. The lien will be released if that person can show that he or she is not liable for the state's costs in a hazardous substance cleanup.

In an era when hazardous substances are an increasing part of our environment, and when the state must safeguard the money available to it for protecting the public health, I believe that this bill would give us important tools. I urge your support of it.

Sincerely,



Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Cost Recovery for Hazardous Sub-
stance Cleanup Expenses
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: DEC
BRU: Environmental Quality
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The proposal will have no fiscal impact.

Prepared by: Amy Kyle *akl*
Division: Commissioner's Office

Phone: 465-2600
Date: 8 Dec. 87

Approved by Commissioner: *[Signature]*
Agency: DEC

Date: 9 Dec. 87

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 389
PUBLISH DATE: HOUSE 2/1/88

FISCAL NOTE

REQUEST:

Revision Date: 29 January 1988
Title: An Act Relating to Oil and
Hazardous Substance Cleanup Costs
Sponsor: Governor
Requestor: House Resources

Agency Affected: DEC, Dept. of Law
BRU: DEC/Environmental Quality
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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
---------	---	---	---	---	---	---

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

FUNDING: (Thousands of Dollars)

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

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The bill will not increase state expenditures. Over the long run, it will likely decrease state expenditures for spill cleanup.

Prepared by: Amy D. Kyle
Division: Commissioner's Office

Phone: 465-2600
Date: 29 January 1988

Approved by Commissioner: Amy D. Kyle
Agency: Department of Environmental Conservation

Date: _____

Distribution (by preparer):

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

HB

390

Suneel Alaska Corporation
Seward Coal Terminal

PHONE: (907) 224-3120
TELEX: 10901 28383 BWD
FACSIMILE: (907) 224-3831

903 OLD AIRPORT ROAD
P.O. BOX 1788
SEWARD, ALASKA 99664

FAX NO. N/A

DATE: April 26, 1988

Number of pages to follow: -2-

To : LIO, JUNEAU *Sen. Kelly*

From : William C. Noll

Regarding : Written Testimony - please see below

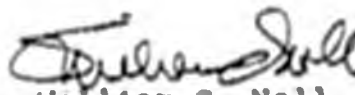
Comments :

Dear LIO:

Please give a copy of the following two pages of written testimony on CS for HB 390 to the following:

- All members of the Senate HESS Committee.
- All members of the Senate Labor & Commerce Committee.
- Representative Bette Cato.

Thank you very much. If you have any problems with this fax, please call me at 224-3120 in Seward.



William C. Noll
Vice President

Suneel Alaska Corporation
Seward Coal Terminal

PHONE (907) 224-3120
TELEX (090) 28333 SWD
FACSIMILE (907) 224-3831

603 OLD AIRPORT ROAD
P.O. BOX 1789
SEWARD, ALASKA 99684

April 26, 1988

To the Honorable Members of the Senate Committee for
Health, Education & Social Services and Labor & Commerce.

The purpose of this letter is to express our support for the Alaska Science and Technology Foundation. We are told that your respective committees will hear testimony on a bill, CS for House Bill 390, which would establish such a foundation. We hope that you will give the bill a favorable hearing and pass it. Some of the reasons for our support are briefly outlined below.

The Foundation, when established and endowed, will be a place where Alaskans can perform the research necessary for our own betterment. By the amount of effort we exert in such a direction, we Alaskans will that much more further from a reliance upon outside experts' opinions on how and why to, for example, develop our resources or a particular resource. In a real sense, we Alaskans will be a little less colonialist and more independent in our decision making processes.

I would like to cite a real example from our company's business experience. Suneel handles large volumes of Alaska's sub-bituminous coal. We buy it from Usibelli Coal Mine near Mount McKinley. We transport it by Alaska Railroad to our terminal in Seward. Then we arrange for shipping it to Korea.

Because this sub-bituminous coal from Usibelli has so much moisture -- normally 27-28% -- we, in effect, have a situation where we can really say that every fourth rail car and every fourth ship is carrying pure water. Only the other three rail cars and the other three ships are carrying anything of value: the calories which the end-users at the power plant really want.

This moisture is organically bound into the coal. It is not something which could be squeezed out. All coal, of course, has moisture. But the coals which are most successfully and easily traded internationally have far less moisture, say, five to ten percent. The clear comparison is that their rail cars and ships are carrying more of value, more calories per trip.

With that background information on sub-bituminous coal, it is also interesting to know that the same coal has a very low sulfur content. It is much lower than the sulfur content of most of Alaska's competitors. Power plant operators like that aspect of our sub-bituminous coal. However, the power plants cannot afford to pay for three ships of calories and one ship of water merely to get a bonus of the lower sulfur content. That high moisture content really is the single biggest reason that Alaska's coal is not being exported in larger volumes today.

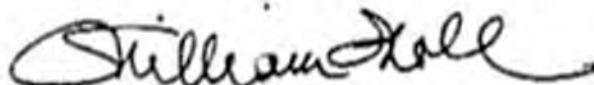
I believe that this situation is tailor made for the kind of research which could be done at the Foundation. When a means is found for lessening the moisture content of Alaska's sub-bituminous coal, putting it on a shipping-cost basis equal to our competitors in Australia, Canada and South Africa, then Alaska will have a premium-grade product which will fit well into the power plants of any of our Pacific Rim target market nations.

Why should Alaska rely on researchers in, say, Japan, Germany or even the Lower 48 to close the doors on possibilities when we Alaskans are the ones with our own interests in mind. To use the coal example again, it is in our own best interests to do the research necessary to produce a more competitive coal. It would not only serve our customers better but it would also expand Alaska's job base by increasing production and transportation sectors of the economy. Additional rewards would come directly to the Foundation itself and to the State in the form of license fees, taxes and royalties.

Others in the resource industries will be able to cite similar examples of needed research which could properly be done at the Foundation. As for us at Suncel, we can point to very real work which can and should be done by Alaskans for Alaskans so well at the Alaska Science and Technology Foundation.

I am only sorry that we were not able to testify in person at your joint hearing on this bill. Please contact me with any comments or further questions you might have. Thank you for your consideration of our testimony. We hope for your positive support.

Respectfully,



William C. Noll
Vice President

Alaska Science and Technology Foundation
CSHB 390 (Fin)am / SB 469

What Does the Proposal Do?

- o Establishes a Science and Technology Foundation as a public corporation within the Department of Revenue. The Foundation has a nine-member board of directors and expert peer review panels to evaluate grant proposals.
- o Establishes an endowment account for the Foundation, consisting of appropriations made to the Permanent Fund's principal and invested on behalf of the Foundation by the Alaska Permanent Fund Corporation.
- o Funds grants for competitively selected basic and applied research projects, with preference given to Alaskan applicants.

Why does Alaska Need a Science and Technology Foundation?

- o To make Alaska competitive and help expand the economy. Applying technology to produce value-added products and encourage instate manufacturing will diversify Alaska's economy.
- o To solve critical Alaska problems that will not be addressed by others. Examples include:
 - reduction of moisture content in Beluga and Healy subbituminous coal for Pacific Rim trade
 - development of a strategic minerals industry, including rare earths
 - improved engineering of roads and foundations on permafrost, including export of Arctic technology
 - one-step conversion of natural gas to gasoline
 - establishment of reliable data bases and models for long-term predictive studies on pollock, salmon and crab
 - improvement of telecommunications capabilities and information resources
 - development of northern nutritious grasses for a red meat industry, and other improved northern crops
 - reduction in threat of infectious diseases, injury and suicide
- o To provide for the deliberate and long-term growth of Alaska's technical capability through the development of qualified personnel, laboratories and equipment.

Endorsements: Alaska Conference of Mayors
City of Fairbanks, City Council
Interior Alaska Manufacturers Association
University of Alaska, Fairbanks
Bering Sea Fishermen's Association

Alaska Miners Association
Fairbanks North Star Borough, Assembly
North Slope Borough, Office of the Mayor
Geophysical Institute, Univ. of AK-Fairbanks
Sigma Xi Scientific Research Society

CSHB 390 (Fin) am

Amendment No. 1:

Page 3, line 6: After "two", delete "nonvoting"

CSHB 390 (Fin) am

Amendment No. 2

Page 4, lines 27-29: Delete and replace with the following:

(d) The board shall give consideration to a broad geographic distribution of projects, particularly to address needs in rural, coastal and interior areas of the state. If consistent with other criteria stated in this act, a portion of available funds shall be distributed as grants of \$100,000 or less.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 22, 1988

HP 290
HP 291

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that establishes the Alaska Science and Technology Foundation, and a companion appropriation bill, appropriating \$100 million to fund an endowment for the foundation.

The Alaska Science and Technology Foundation is designed to promote economic and technological development and public health in Alaska through basic and applied research. The foundation is established as a public corporation in the Department of Revenue. The Alaska Permanent Fund Corporation will be the agent of the foundation for the purpose of investing the principal of the endowment. The endowment will be in an interest-bearing account, and it is anticipated that the interest generated will provide steady funding for research grants of approximately \$6 million to \$8 million each year.

A nine-member board of directors will govern the foundation. The board will solicit and award grants on a competitive basis. Foundation grants will be available for research projects that will pursue (1) the goals of product or process development; (2) the creation of "added value" to the state's natural resources; (3) the identification and development of new industries in the state; (4) the promotion of public health; and (5) other related research that furthers the purpose of the foundation. In awarding grants, preference will be given to Alaskan residents, organizations, and institutions. Grants to out-of-state applicants will be awarded when expertise in an area of science and technology research is not present in Alaska.

An associated goal of the foundation is to promote the skills and enhance the knowledge of our state's scientific and technical community and thus assure the basis for our state's future development. Alaska is one of only seven states in the United States that has devoted no public money for research or the furtherance of technology.

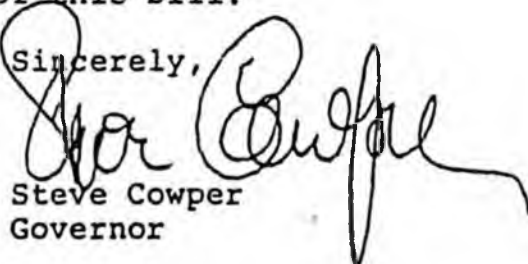
States and countries that fail to expand their technology base, educational facilities, or overall capacity for developmental change will fall behind with respect to other states and countries. As our vast oil resource gradually dwindles over the next two decades, we will lose our prime connection with the national and world economies. So, even as we introduce the "jobs bill" this year, which is expected to provide short-term economic relief and assistance, we must also engage in longer-term development strategies that will encourage and ensure a sustainable economy, bring new business to the state, and develop our own technological capabilities. I strongly believe that the Alaska Science and Technology Foundation will be the instrument that will accomplish these goals.

Section 2 of the bill amends AS 39.25.120(c) and places the executive director and staff of the foundation in the exempt service.

Section 3 of the bill amends the composition of the science and engineering advisory commission, making the executive director of the Alaska Science and Technology Foundation a member of the commission. Section 4 makes a corresponding amendment regarding the terms of commission members.

I strongly urge your support of this bill.

Sincerely,


Steve Cowper
Governor

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CS HB 390 (FIN)
PUBLISH DATE: HOUSE 3/11/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Establishing the Alaska Science
and Technology Foundation
Sponsor: _____
Requestor: _____

Agency Affected: Alaska Permanent Fund
Corporation
BRU: _____
Components: Alaska Permanent Fund
Corporation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		9.0	9.0	9.0	9.0	9.0
TRAVEL		3.0	3.0	3.0	3.0	3.0
CONTRACTUAL		87.0	87.0	87.0	87.0	87.0
SUPPLIES		1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		100.0	100.0	100.0	100.0	100.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		100.0	100.0	100.0	100.0	100.0
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Computed at the rate of 10 basis points per \$1000 of funds invested.
(Note: Costs above for FY 90-93 do not account for inflation.)
These costs are based on CSHB 390 (HESS) WITH attached Amendment No. 1.

Prepared by: Alaska Permanent Fund Corporation
Division: _____

Phone: 465-2047
Date: 3/2/88

Approved by Commissioner: *David A. Rose* David A. Rose
Agency: Alaska Permanent Fund Corporation

Date: 3/2/88

Distribution (by preparer):

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

Page 2 of 2
Fiscal Note
(Establishing the Alaska Science and Technology Foundation)

This bill establishes the Alaska Science and Technology Foundation as a fund to be invested by the Alaska Permanent Fund Corporation.

Passage of this bill would require the addition of part-time accounting support to the Alaska Permanent Fund Corporation for investments, accounting and financial reporting; bank custody fees; audit fees; investment management fees; and travel to report to the Science and Technology Foundation Board of Trustees.

FY 89 costs:	<u>Pers.</u> <u>Svcs.</u>	<u>Travel</u>	<u>Contr.</u>	<u>Suppl.</u>
Part-time Accounting	9.0			
Bank Custody, Audit, & Management Fees			87.0	
Investment Officer Travel		3.0		
Miscellaneous Supplies				<u>1.0</u>
<u>TOTAL</u> <u>\$100.0:</u>	\$ 9.0	3.0	87.0	1.0

CSHB 390 (Fin) am
SECTIONAL ANALYSIS

*** Section 1**

Sec. 37.17.010

The Alaska Science and Technology Foundation is housed in the Department of Revenue. Its purpose is to promote through basic and applied research: economic development and technological innovation in Alaska; public health; telecommunications, and sustained growth and development of Alaskan scientific and engineering capabilities.

Sec. 37.17.020

The endowment of the Alaska Science and Technology Foundation is managed along with other moneys of the permanent fund, but the interest on this money is distributed as grant funds. This interest will not be included in the computations that determine permanent fund net income for other uses, e.g. inflation proofing and dividends.

Sec. 37.17.030

- a) Net annual realized capital gains may be split between the principal and income of the endowment. If approved under the Executive Budget Act, at the request of the board of directors the appropriated interest income from the endowment shall be released to the foundation.
- b) In addition, to endowment income, the foundation can distribute money received from gifts, grants, and other aid; funds received by the foundation do not lapse.
- c) The foundation's administrative expenses come from the endowment income, subject to the Executive Budget Act.
- d) Grants are distributed through a competitive bidding process.
- e) Subject to the Executive Budget Act, income may be deposited to the principal, but cannot be withdrawn by the board at a later time.

Sec. 37.17.040

The nine members of the board of directors are appointed by the Governor to staggered four year terms and may be removed for cause. The membership is specified and is designed to represent the interests of the scientific community as well as the general public with emphasis on resource development, manufacturing, finance, telecommunications, or public health. Four members must be scientists or engineers, two voting members from in-state and two non-voting members from out-of-state.

Sec. 37.17.050

The board shall elect its officers to terms of no more than two years.

Sec. 37.17.060

A majority of the voting members of the board constitutes a quorum.

Sec. 37.17.070

The board must meet at least twice a year. Members receive per diem and travel expenses.

Sec. 37.17.080

This section provides for the hiring of an executive director and additional staff. All employees are in the exempt service.

Sec. 37.17.090

- a) Notice of all solicitations for grant proposals must be given at least annually. When soliciting proposals, preference shall be given to projects that would use or enhance basic and applied research capabilities in the state.
- b) Grant proposals shall be reviewed by an anonymous peer review panel appointed by the board. Members of this panel receive travel and per diem expenses. Grants of less than \$5000 may be exempted from this peer review.
- c) Grant awards will be consistent with the policy and research priorities for the state set by the Alaska Science and Engineering Advisory Commission.
- d) At least 50 percent of endowment income must go to grants of \$100,000 or less.

- e) The board will specify the amount of each grant that can be used for overhead.
- f) Grant recipients will be required to file reports. Research results will be distributed to the public regularly (and in a format of the most use to the scientific community and the general public), unless deemed proprietary by the board prior to the granting of the award.
- g) A fair percentage of income from royalties, licenses, and patents resulting from grant research shall be paid to the endowment principal subject to the Executive Budget Act.
- h) All qualified Alaskans may be eligible for grants. Preference shall be given to Alaskan grant proposals be they individuals, firms, organizations, or academic institutions. Out-of-state recipients may have to associate with an Alaska organization. Grants must further purposes of the foundation to solve Alaska problems.
- i) If grant money is awarded for equipment purchases, the foundation owns that equipment.
- j) An annual report to the Governor and legislature is required.

Sec. 37.17.100

The Alaska Executive Branch Ethics Law shall apply to board members, and they shall adopt a conflict of interest policy for themselves and the peer review panel.

Sec. 37.17.110

This section permits the board to adopt necessary regulations.

*** Section 2**

Sec. 39.25.110

Adds the executive director and staff of the foundation to the exempt service.

*** Section 3**

Sec. 44.19.257(a)

The executive director of the foundation is added to the membership of the Alaska Science and Engineering Advisory Commission. Membership on this

commission is broadened to include a member representing an academic institution *in* the state, rather than *of* the state.

*** Section 4**

Sec. 44.19.259

The executive director of the foundation is exempted from the staggered term provision of the Science and Engineering Advisory Commission.

*** Section 5**

Immediate effective date.

Division of Policy
8 April 1988

CSHB 390 (Fin) and
SECTIONAL ANALYSIS

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A STATEMENT ON LEGISLATION
TO ESTABLISH AN ALASKA SCIENCE, ENGINEERING, AND TECHNOLOGY FOUNDATION
PRESENTED TO THE ALASKA SENATE
COMMITTEES ON HEALTH, EDUCATION, AND SOCIAL SERVICES AND
LABOR AND COMMERCE

BY

Lyle D. Perrigo
1921 Congress Circle, Apartment B
Anchorage, Alaska 99507

April 27, 1988

Members, Chairmen and members of the State Senate Committees on Health, Education, and Social Services and Labor and Commerce, my name is Lyle D. Perrigo. My comments today on Senate Bill 469 to establish an Alaska Science, Engineering, and Technology Foundation, are based on 30 years of experience in conducting and leading applied research programs in a national laboratory, a nonprofit research institute, and a center of the University of Alaska. Also relevant are the one and one-half years in which I was the senior science director for the University of Alaska Foundation; in that period I participated in the work reported in the document entitled "A Challenge to Alaska." I believe my background provides a useful perspective on how research can be and often is used for pragmatic and economic purposes as well as some of the major research needs that face Alaska. Although I am the deputy director of the Arctic Environmental Information and Data Center (AEIDC), University of Alaska, and I work directly with the U.S. Arctic Research Commission, this statement is solely my own and does not necessarily reflect the views of our center, the University of Alaska, or the U.S. Arctic Research Commission.

Before advancing some specific thoughts about the legislation being considered by your committee, some comments concerning to research, views on its

687/255

POSITION PAPERS

importance, and programs elsewhere in the nation which foster research are in order to lay a foundation for my recommendations.

- Research is often considered to be comprised of two types of endeavor, basic and applied research. The former comprises work to increase man's knowledge and understanding of natural phenomena and human interactions. The latter is a term used to describe pragmatic efforts to solve problems and employ the products, processes, or systems developed from existing knowledge for economic benefit or the well-being of industry, the government, and/or people. Both types of research are needed in Alaska.
- Except for certain technology transfer activities even applied research takes significant amounts of time before tangible results are apparent; for example, five to ten years may pass between onset of an applied research project and achievement of significant economic benefits.
- Economic or pragmatic success, even in applied research, is uncertain. Perhaps one project in ten will result in a large payoff, while two in ten may provide acceptable economic or other valued benefits. The remainder likely produced useful scientific and technical results but are otherwise not directly viable.
- Basic research is often done in universities. Nonprofit, for-profit, industry, and national laboratories as well as special multidisciplinary centers within some universities comprise the world of applied research. Some focus their work on one or two areas, while others pursue a wider

spectrum of activity. The spawning of small nonprofit and for-profit research organizations is one step in the diversification process.

- At the present time 43 of the 50 states have programs to stimulate research. Emphasis on the acquisition and application of new knowledge is of interest because they lead to economic diversification and new jobs. Some of the more successful programs are found in Massachusetts, North Carolina, Ohio, Pennsylvania, and Texas.

- The U.S. Arctic Research Commission visited Juneau in mid-March. The Commission met with the Senate HESS Committee other committees of the legislature, the governor, and the Juneau public to support the concept embodied in SB 469. The Commission stated it supported the concept of such a foundation. This body further stated that a research foundation would provide a means of broadening the base of well-qualified research scientists and engineers in the state and acquiring a better understanding of physical, biological, social and medical phenomena in the North. Having an Alaska Science, Engineering, and Technology Foundation is not considered as a gambit that would lessen work on federal and national issues; it would speed the process.

Comments on Proposed Legislation

Because an Alaska Science and Technology Foundation could play a very important role in diversifying the economy of the state and providing a better

future for its residents, I support the concept behind SB 469. Several reasons as well as particular needs in the state call for the passage of SB 469 in this session of the legislature. These points are summarized below:

° Starting the Diversification Process. Diversifying an economy at the present time whether in Alaska, other parts of the nation or elsewhere in the world is dependant upon the development of new technologies or the creative adaptation of older methods to newer situations. Development and adaptation come from research directed at the solution of practical problems. Putting new processes on line may take 5-10 years before a favorable impact is noticed while the economic return from adaptations often occurs quicker. We must start the development and adaptation work now if we are to have a more diversified economy by the turn of the century.

° Nurturing an Applied Research Capability. At present the only comprehensive applied research capability in Alaska resides in the oil and gas industries. We need similar expertise to address a host of opportunities and problems in the state attendant with the wise development of our other resources, the health and welfare of our residents and the balanced care and preservation of the environment. Acquiring those skills and deriving the economic as well as achieving quality of life benefits come only from work on practical Alaskan problems in those areas.

° Addressing Alaskan Problems. For decades the economy of Alaska has depended upon the results of research done to solve federal problems.

outside perceptions of our needs, or to enhance the development of a particular resource in a particular geographic area.

Quite necessarily those agendas are driven by the balanced best interests of those other entities. Needed now are capabilities focussed on the problems and issues facing Alaska today and those that will provide a promising future.

- Completing the System. The attached diagram of similarities between the federal and state science and technology systems is instructive about the role that could be played by the Alaska Science, Engineering, and Technology Foundation. In summary, the passage of SB 469 is needed to complete the system. Without an organization to support the research needed in the state, the system has no muscle nor can pragmatic results be expected; there would be ~~ample opportunities~~ only for discussion, the development of policy, and providing advice. Although agreement, a sense of direction, and a feeling of importance are essential, concrete results in the form of newer or more viable processes, products, and equipment are required for a favorable economic impact.

In February I made a similar statement before your sister organization, the House HESS Committee. At that time I pointed out several suggestions that I believe would strengthen the proposed legislation. I continue to believe the bill forming the foundation could be made more practical and efficient. Amendments to achieve the following would meet those objectives:

SIMILARITIES

Level	Policy	Advice	Study	Funding
State	AK Science & Eng'y Advisory Commission	Governor's Science Advisor	Agencies, Industry, ad hoc	AK Science & Technology Foundation
Federal	Arctic Res. Comm. & Interagency Arctic Comm.	President's Science Advisor	Agencies, Ind. National Academy	National Science Foundation

° Organization and Reportability. Placing the proposed foundation within any existing department could make it a political football. What is needed is a public corporation similar to the Alaska Railroad. Considerable autonomy is required so that good science and technology rather than other agendas govern the preparation of priorities, consideration of proposals, the distribution of funds and evaluations of performance and results. There are always legislative and administrative procedures to disestablish such a body if it violates the trust placed in it.

° Focus and Interests. Language should be included in the legislation to clearly focus the foundation's attention on Alaskan problems and interests. There are parallel federal and national interests in certain parts of the state and in certain scientific fields. There should be no wording to give the impression that Alaskan dollars might be spent to solve federal/national problems. We have more than enough of our own problems to handle without taking care of part of those belonging to the federal government.

° Governing Board. Considerable care in defining the length of terms and categorizing qualifications for membership is needed. First, the terms should run for six, rather than four years. We need stability and considerable insulation from political processes. Second, placing exclusionary language in the bill limiting the number of people from Alaskan universities to one will help allay public fears about the creation of a backdoor funding mechanism for universities. Further, at least one board member should come from each of the following basic

industries: (a) oil and gas, (b) fisheries, (c) mining and minerals, and (d) forestry/forest products. Nominees from those sectors may or may not be scientists or engineers. We need someone from outside the state on the board; one, not two. A draft version of this bill had the speaker of the house and the president of the senate naming one member each. I hope such wording is not reinserted because naming one member each could involve the legislature in administrative matters. It seems to me that both bodies would wish to be in a position to overview operations. Entanglements could make that a more difficult process.

° Applied and Basic Research. Our university research apparatus is generally geared, with a few exceptions such as the Arctic Environmental Information and Data Center (AEIDC), to undertake basic research. A basic emphasis is normally the role of most universities: getting new products, processes, and equipment into the market requires applied research. That type of work is often done by private groups and not-for-profit research institutes and occasionally special, multidisciplinary arms of universities. I hope that the final wording used in the bill will clearly call for both types of research and leave the door open for participation to the private sector and nonprofit organizations as well as universities.

Wording charging the foundation with responsibility to support technology transfer of projects with promising results is one means of strengthening the applied side of research. In the sense I use the phrase technology transfer, I mean demonstration and applications research. It is far broader than information transfer, which often involves distributing

reports, talking with interested people and accessing files via computer linkages.

- ° Limits on Size of Grants. Current wording calling for half the grants from the foundation to be \$100,00 or less is unnecessarily restrictive. First, there may be fewer technically sound proposals in any one year that might fall below that limit than there are realistic demands for projects costing more money. Second, inflation degrades the dollar's purchasing power. Hanging a specific value on a program such as this creates housekeeping problems for future legislatures unless those dollars are indexed.

All of the above are fine-tuning changes. None should be considered as a reason for rejecting legislation.

In summary, I have given information on the importance of research, the stages through which it moves from the generation of new knowledge to application and some processes by which research leads to diversification. Also, I presented ideas on methods to strengthen and make workable the concept outlined in views on the need for a science, engineering, and technology foundation and SB 469.

Thank you for this opportunity to express my views.

Alaska Science and Technology Foundation

CSHB 390 (Fin)am / SB 469

What Does the Proposal Do?

- o Establishes a Science and Technology Foundation as a public corporation within the Department of Revenue. The Foundation has a nine-member board of directors and expert peer review panels to evaluate grant proposals.
- o Establishes an endowment account for the Foundation, consisting of appropriations made to the Permanent Fund's principal and invested on behalf of the Foundation by the Alaska Permanent Fund Corporation.
- o Funds grants for competitively selected basic and applied research projects, with preference given to Alaskan applicants.

Why does Alaska Need a Science and Technology Foundation?

- o To make Alaska competitive and help expand the economy. Applying technology to produce value-added products and encourage instate manufacturing will diversify Alaska's economy.
- o To solve critical Alaska problems that will not be addressed by others. Examples include:
 - reduction of moisture content in Beluga and Healy subbituminous coal for Pacific Rim trade
 - development of a strategic minerals industry, including rare earths
 - improved engineering of roads and foundations on permafrost, including export of Arctic technology
 - one-step conversion of natural gas to gasoline
 - establishment of reliable data bases and models for long-term predictive studies on pollock, salmon and crab
 - improvement of telecommunications capabilities and information resources
 - development of northern nutritious grasses for a red meat industry, and other improved northern crops
 - reduction in threat of infectious diseases, injury and suicide
- o To provide for the deliberate and long-term growth of Alaska's technical capability through the development of qualified personnel, laboratories and equipment.

Endorsements:

Alaska Conference of Mayors
City of Fairbanks, Ci., Council
Interior Alaska Manufacturers Association
University of Alaska, Fairbanks
Bering Sea Fishermen's Association

Alaska Miners Association
Fairbanks North Star Borough, Assembly
North Slope Borough, Office of the Mayor
Geophysical Institute, Univ. of AK-Fairbanks
Sigma Xi Scientific Research Society

CSHB 390 (Fin) am

Amendment No. 1:

Page 3, line 6: After "two", delete "nonvoting"

CSHB 390 (Fin) am

Amendment No. 2

Page 4, lines 27-29: Delete and replace with the following:

(d) The board shall give consideration to a broad geographic distribution of projects, particularly to address needs in rural, coastal and interior areas of the state. If consistent with other criteria stated in this act, a portion of available funds shall be distributed as grants of \$100,000 or less.

HB

394



**ALASKA RURAL ELECTRIC COOPERATIVE
ASSOCIATION, INC.**

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

May 7, 1988

Dear Senator Kelly:

This letter is to ask you to please support passage of Senate CS for HB 394 (L&C). This bill amends the Electric and Telephone Cooperative Act (AS 10.25), and it deals with us only in our corporate capacity as cooperatives. All Alaska statutes that deal with our business as utilities are found in AS 42.05 and are not affected by this bill.

Attached is an explanation of the provisions of Senate CS for HB 394 (L&C) organized by subject area. If you or your staff have questions, please give me a call at 463-4982.

Sincerely,


David Hutchens

Senate CSHB 394 (L&C)
Amendments to Electric and Telephone
Cooperative Act (AS 10.25)

Comments from Alaska Rural Electric
Cooperative Association (ARECA)

Introduction

The Electric and Telephone Cooperative Act was originally enacted in 1959 as a variation of the model state legislation recommended by the Rural Electrification Administration (REA), a unit within the U.S. Department of Agriculture. The REA serves as the principal banker for most electric and telephone cooperatives, and this relationship accounts for their strong and continuing interest in our state enabling legislation.

The environment within which the coops operate has changed immensely during the last 29 years, and the old model act no longer covers everything that is needed in Alaska law. There have been a number of amendments to AS 10.25 through the years; and some internal inconsistencies within the Act have resulted from some of those amendments.

ARECA had a committee from across the state study AS 10.25 for about a year to develop the changes which are needed to clear up ambiguities, to permit cooperatives to operate efficiently, and to assure proper control of the cooperatives by the members. The draft prepared by that committee and unanimously approved by the members of the association provided the starting place from which HB 394 was prepared.

Mail Voting

One kind of change which appears in numerous locations throughout this bill is to clear up the conflicting language on how membership votes may be conducted. The legislature decided long ago that coops should have the option of conducting elections and other membership votes by mail. However, a number of sections still refer to such decisions being made "at the meeting." This bill would make it clear that, if the bylaws so provide, all membership votes can be conducted by mail.

Takeovers/Sellouts

A second change which required amendments in several sections is to make certain that any proposed sale of a cooperative is considered by an informed membership and that a decision to sell must be agreed to by a substantial proportion of the members of the cooperative (Sec. 7, 20, 21, 22). The sale or dissolution of a cooperative is final and irreversible. Such a momentous decision should not be made lightly or by a simple majority. If a pro-sale majority one day becomes a minority on some other day, there is no way to unscramble the egg. To protect the interests of the cooperative members against transitory swings in public opinion, a large majority should be required to agree to the death of the cooperative. In this bill, a two-thirds majority of those voting is required which must also be a majority of all members. Present law requires a majority vote of all members.

Protection of Labor Contracts

Sec. 18 and subsection 22(d) were added at the request of the IBEW to provide if a cooperative is merged into another or is sold, the existing labor contracts must be honored by the new owners.

Powers of Cooperatives

The authority to make contributions for various public purposes (Sec. 2) is adopted verbatim from the law governing all other types of cooperatives in this state (AS 10.15.010 (12)). A typical instance in which this authority is needed is when some local civic or charitable group plans an event for which it needs a temporary service. In many such cases, the cooperative would like to support the local effort by making an in-kind contribution of the temporary service drop rather than having to charge according to its line extension policy. Another example is to permit the electric coops to participate in the national Electric Power Research Institute.

Sec. 3 prohibits cooperatives from using coop funds to support or oppose a candidate for director.

Electric cooperatives would also be authorized to operate waste heat distribution systems (Sec. 4). Since 1980, the legislature has encouraged the use of waste heat, but the cooperatives have no clear authority to engage in that business. The authority to operate an existing heat distribution system (other than waste heat) is intended to permit Golden Valley Electric Association to operate the Fairbanks district heating system now owned by the city if the city should decide to divest itself of that system.

Members

The provision to permit cooperatives to require membership as a condition of service (Sec. 6) is necessary to protect the coops from the possibility of losing their tax exempt status. The Internal Revenue Service (IRS) requires cooperatives to get not less than 85 percent of their revenues from providing service to members.

The provision prohibiting cooperatives from terminating or suspending memberships (Sec. 6) unless their bylaws establish the procedure, is also necessary to keep the coops out of trouble with the IRS. Terminating or suspending a membership without due process can cause the loss of a tax exemption. This provision was adapted from California Corporate Code 12410, Article 4.

Notice of Meetings

The increase in notice requirements for special meetings of the members (Sec. 7) is necessary to give adequate time for the informational processes established in Section 22 to be used when a special meeting is called to sell a cooperative. Sec. 7 also expands the notice period for the annual meeting from 70 to 40 days to 15 to 60 days to make sure the notice contained in the Ruralite magazine can be delivered within the required time period.

Record Date

Establishing a record date for the right to participate in membership meetings (Sec. 9) helps to eliminate disputes as to the legality of actions taken by the members on hotly contested issues

at annual or special meetings or other cooperative elections. This new section was adapted from the Alaska Business Corporation Act (AS 10.05.144).

Board Compensation

The principal change in Sec. 10 is to clarify the law on the payment of per diem to directors. The intent is to make it clear that directors can be compensated for the days on which the director is attending meetings in the performance of duties and for necessary travel days to and from such meetings, not just attendance at formal meetings of the board.

Liability, Indemnification, and Insurance

The new language contained in Sec. 11 is necessary to protect directors and officers from individual liability for actions properly taken in the course of their duties. Subsection (a) limits the liability; (b) authorizes the cooperative to indemnify the directors; and (c) authorizes the cooperative to buy directors' and officers' liability insurance as a way to provide the indemnification.

Similar limitations on personal liability are provided for directors and officers of business corporations (AS 10.05.010 (g)) and for many nonprofit corporations, public hospitals, public schools, and municipalities (AS 9.17.050). SB 343 provides similar limitations on individual liability for directors of business corporations, the rest of the nonprofit corporations, and all other kinds of cooperatives.

Board Meetings

Board meetings could be conducted by teleconference (Sec. 14). A similar provision is made for boards of business corporations (AS 10.05.199 (a)).

The penalty for violations of the meetings statute is rewritten in Sec. 15 to permit the court to determine the appropriate equitable relief. Under the present law the only penalty authorized is to void any action taken at a meeting not in compliance with this section of the law. Recent court decisions seem to indicate that there is no way to correct actions taken incorrectly once they have been voided. This could cripple a cooperative utility if action on a major item like a power supply contract were voided.

Examination of Records

Information which was prepared during or for use in an executive session would be protected in written form (Sec. 16). For example, it does no good to go into executive session to discuss an attorney's briefing paper on a pending lawsuit if that paper itself is available for inspection.

Limitations on Sale of Property

In addition to requiring a two-thirds majority of those voting, which must also be a majority of all members, to sell a cooperative as discussed earlier, Section 21 clarifies the law on exactly which sales of coop property must be referred to a vote of the members.

Sec. 22 establishes a procedure for having the cooperative's property appraised, informing the members, and inviting competing proposals. The purpose of this section is to protect the members by making sure they know what the coop's property is worth before they vote on an offer to buy it.

Sale of Glacier Highway Electric Association to Alaska Electric Light and Power

The possible merger of the two utilities in the Juneau area has been under negotiation, off and on, for about 20 years and on March 31, 1988 the GHEA members voted to sell their cooperative to AEL&P. The rules regarding that transaction should not be changed when it is so near completion. Sec. 23 provides that any sale of cooperative property approved by the members under AS 10.25.400 before the effective date of this Act will be valid even if the transaction is not completed by the effective date.

Sec. 24 repeals AS 10.25.245. This section was enacted in 1980 at the request of GHEA, and it was intended to make a merger with AEL&P easier. The negotiations have proved this approach not to be practical, and it was not used in the sale of GHEA to AEL&P. This section serves no purpose, and we ask that it be repealed.

LETTER OF INTENT
on
HB 394

By providing in AS 10.25.120 that members of cooperatives may vote by mail, while not changing the quorum requirements contained in AS 10.25.110, it is the intent of the legislature that votes conducted by mail are valid if a quorum participates in the vote whether or not a quorum is present in person at the meeting of the members.

CSHB 394 (Judiciary)
Amendments to Electric and Telephone
Cooperative Act (AS 10.25)

Comments from Alaska Rural Electric
Cooperative Association (ARECA)

Introduction

The Electric and Telephone Cooperative Act was originally enacted in 1959 as a variation of the model state legislation recommended by the Rural Electrification Administration (REA), a unit within the U.S. Department of Agriculture. The REA serves as the principal banker for most electric and telephone cooperatives, and this relationship accounts for their strong and continuing interest in our state enabling legislation.

The environment within which the coops operate has changed immensely during the last 29 years, and the old model act no longer covers everything that is needed in Alaska law. There have been a number of amendments to AS 10.25 through the years, and some internal inconsistencies within the Act have resulted from some of those amendments.

ARECA had a committee from across the state study AS 10.25 for about a year to develop the changes which are needed to clear up ambiguities, to permit cooperatives to operate efficiently, and to assure proper control of the cooperatives by the members. The draft prepared by that committee and unanimously approved by the members of the association provided the starting place from which HB 394 was prepared.

Mail Voting

One kind of change which appears in numerous locations throughout this bill is to clear up the conflicting language on how membership votes may be conducted. The legislature decided long ago that coops should have the option of conducting elections and other membership votes by mail. However, a number of sections still refer to such decisions being made "at the meeting." This bill would make it clear that, if the bylaws so provide, all membership votes can be conducted by mail.

Takeovers/Sellouts

A second change which required amendments in several sections is to make certain that any proposed sale of a cooperative is considered by an informed membership and that a decision to sell must be agreed to by a substantial proportion of the members of the cooperative (Sec. 7, 20, 21, 22). The sale or dissolution of a cooperative is final and irreversible. Such a momentous decision should not be made lightly or by a simple majority. If a pro-sale majority one day becomes a minority on some other day, there is no way to unscramble the egg. To protect the interests of the cooperative members against transitory swings in public opinion, a large majority should be required to agree to the death of the cooperative. In this bill, a two-thirds majority of those voting is required which must also be a majority of all members. Present law requires a majority vote of all members.

Protection of Labor Contracts

Sec. 18 and subsection 22(d) were added at the request of the IBEW to provide if a cooperative is merged into another or is sold, the existing labor contracts must be honored by the new owners.

Powers of Cooperatives

The authority to make contributions for various public purposes (Sec. 2) is adopted verbatim from the law governing all other types of cooperatives in this state (AS 10.15.010 (12)). A typical instance in which this authority is needed is when some local civic or charitable group plans an event for which it needs a temporary service. In many such cases, the cooperative would like to support the local effort by making an in-kind contribution of the temporary service drop rather than having to charge according to its line extension policy. Another example is to permit the electric coops to participate in the national Electric Power Research Institute.

Sec. 3 prohibits cooperatives from using coop funds to support or oppose a candidate for director.

Electric cooperatives would also be authorized to operate waste heat distribution systems (Sec. 4). Since 1980, the legislature has encouraged the use of waste heat, but the cooperatives have no clear authority to engage in that business. The authority to operate an existing heat distribution system (other than waste heat) is intended to permit Golden Valley Electric Association to operate the Fairbanks district heating system now owned by the city if the city should decide to divest itself of that system.

Members

The provision to permit cooperatives to require membership as a condition of service (Sec. 6) is necessary to protect the coops from the possibility of losing their tax exempt status. The Internal Revenue Service (IRS) requires cooperatives to get not less than 85 percent of their revenues from providing service to members.

The provision prohibiting cooperatives from terminating or suspending memberships (Sec. 6) unless their bylaws establish the procedure, is also necessary to keep the coops out of trouble with the IRS. Terminating or suspending a membership without due process can cause the loss of a tax exemption. This provision was adapted from California Corporate Code 12410, Article 4.

Notice of Meetings

The increase in notice requirements for special meetings of the members (Sec. 7) is necessary to give adequate time for the informational processes established in Section 22 to be used when a special meeting is called to sell a cooperative. Sec. 7 also expands the notice period for the annual meeting from 20 to 40 days to 15 to 60 days to make sure the notice contained in the Ruralite magazine can be delivered within the required time period.

Record Date

Establishing a record date for the right to participate in membership meetings (Sec. 9) helps to eliminate disputes as to the legality of actions taken by the members on hotly contested issues

at annual or special meetings or other cooperative elections. This new section was adapted from the Alaska Business Corporation Act (AS 10.05.144).

Board Compensation

The principal change in Sec. 10 is to clarify the law on the payment of per diem to directors. The intent is to make it clear that directors can be compensated for the days on which the director is attending meetings in the performance of duties and for necessary travel days to and from such meetings, not just attendance at formal meetings of the board.

Liability, Indemnification, and Insurance

The new language contained in Sec. 11 is necessary to protect directors and officers from individual liability for actions properly taken in the course of their duties. Subsection (a) limits the liability; (b) authorizes the cooperative to indemnify the directors; and (c) authorizes the cooperative to buy directors' and officers' liability insurance as a way to provide the indemnification.

Similar limitations on personal liability are provided for directors and officers of business corporations (AS 10.05.010 (g)) and for many nonprofit corporations, public hospitals, public schools, and municipalities (AS 9.17.050). SB 343 provides similar limitations on individual liability for directors of business corporations, the rest of the nonprofit corporations, and all other kinds of cooperatives.

Board Meetings

Board meetings could be conducted by teleconference (Sec. 14). A similar provision is made for boards of business corporations (AS 10.05.199 (a)).

The penalty for violations of the meetings statute is rewritten in Sec. 15 to permit the court to determine the appropriate equitable relief. Under the present law the only penalty authorized is to void any action taken at a meeting not in compliance with this section of the law. Recent court decisions seem to indicate that there is no way to correct actions taken incorrectly once they have been voided. This could cripple a cooperative utility if action on a major item like a power supply contract were voided.

Examination of Records

Information which was prepared during or for use in an executive session would be protected in written form (Sec. 16). For example, it does no good to go into executive session to discuss an attorney's briefing paper on a pending lawsuit if that paper itself is available for inspection.

Limitations on Sale of Property

In addition to requiring a two-thirds majority of those voting, which must also be a majority of all members, to sell a cooperative as discussed earlier, Section 21 clarifies the law on exactly which sales of coop property must be referred to a vote of the members.

Sec. 22 establishes a procedure for having the cooperative's property appraised, informing the members, and inviting competing proposals. The purpose of this section is to protect the members by making sure they know what the coop's property is worth before they vote on an offer to buy it.

Sale of Glacier Highway Electric Association to Alaska Electric Light and Power

The possible merger of the two utilities in the Juneau area has been under negotiation, off and on, for about 20 years and on March 31, 1988 the GHEA members voted to sell their cooperative to AEL&P. The rules regarding that transaction should not be changed when it is so near completion. Sec. 23 provides that any sale of cooperative property approved by the members under AS 10.25.400 before the effective date of this Act will be valid even if the transaction is not completed by the effective date.

Sec. 24 repeals AS 10.25.245. This section was enacted in 1980 at the request of GHEA, and it was intended to make a merger with AEL&P easier. The negotiations have proved this approach not to be practical, and it was not used in the sale of GHEA to AEL&P. This section serves no purpose, and we ask that it be repealed.

Comparison of SB 369 with CS HB 394 (Judiciary)

SB 369

HB 394

Sec. 1. Amends powers of cooperatives to authorize donations.

Sec. 1. Amends AS 10.05 to conform to repeal of AS 10.25.245.

Sec. 2. Same.

Sec. 2. Authorizes electric cooperatives to operate waste heat or existing district heat systems.

Sec. 3. Prohibits use of cooperative funds to promote or oppose candidates for director.

Sec. 4. Same.

Sec. 3. Amendment to bylaws provision to make it clear that elections may be conducted by mail.

Sec. 5. Same.

Sec. 4. Permits coop to require membership as condition of service and to terminate membership through process contained in bylaws.

Sec. 6. Same.

Sec. 5. Special meetings of membership require notice of 90 to 120 days.

Sec. 7. Same on special meetings. Annual meeting notice changed from 20 to 40 days to 15 to 60 days.

Sec. 6. Clarification of language on voting to permit mail voting but not proxy voting.

Sec. 8. Same.

Sec. 7. Authorizes coop to set a record date for participation in elections.

Sec. 9. Same except that record date cannot be more than 30 days in advance of meeting or election.

Sec. 8. Authorizes director compensation for each day of attendance at meetings. Recall of directors to be for cause.

Sec. 10. Same except that it clarifies language and adds necessary travel days to attend meetings. It also requires coops to have procedure for recall of directors for cause.

Sec. 9. Provides for limitation of personal liability of directors, permits coop to indemnify directors and purchase insurance.

Sec. 11. Same.

Sec. 10. Eliminates surplus language to achieve clarity.

Sec. 12. Same.

Sec. 11. Clarification for use of mail voting.

Sec. 13. Same.

Sec. 12. Authorizes board meetings to be conducted by teleconference.

Sec. 14. Same except that it assures right of member to attend and listen.

Sec. 13. Lists specific topics which may be discussed by board in executive session.

Sec. 14. Give court authority to order appropriate relief for violations of open meeting act rather than all action automatically being void.

Sec. 15. Same.

Sec. 15. Cooperatives may withhold books and records on subjects discussed in executive session.

Sec. 16. Cooperatives may withhold books and records that were prepared for or during discussion in an executive session, and may withhold identity of public records discussed in executive session.

Sec. 16. Election for merger of cooperatives may be conducted by mail.

Sec. 17. Same.

unless

Sec. 18. Cooperatives may not merge surviving cooperative complies with existing labor contracts.

Sec. 17. Election for consolidation of cooperatives may be conducted by mail.

Sec. 19. Same.

Sec. 18. Election for dissolution of cooperative may be conducted by mail and a two-thirds vote of all members is required.

Sec. 20. Same except that vote is two-thirds of those voting which must also be a majority of all members.

Sec. 19. Election for sale of 15 percent or more of cooperative property may be conducted by mail and a two-thirds vote of all members is required.

Sec. 20. Before election to sell 15 percent or more of cooperative property, there must be appraisals, notice to members, notice to other cooperatives, and competing proposals must be submitted to members.

Sec. 21. Immediate effective date.

Sec. 21. Same except that vote is two-thirds of those voting which must also be a majority of all members.

Sec. 22. Same except that language on appraisals is refined and a provision is added which requires purchaser to comply with existing labor contracts.

Sec. 23. Sales of cooperative property approved by the members before the effective date of this act are not effected by this act.

Sec. 24. Repeals AS 10.25.245 which authorizes mergers of coops with business corporations.

Sec. 25. Same.

*Amendments to Electric and Telephone
Cooperative Act (AS 10.25)*

*Comments from Alaska Rural Electric
Cooperative Association (ARECA)*

Introduction

The Electric and Telephone Cooperative Act was originally enacted in 1959 as a variation of the model state legislation recommended by the Rural Electrification Administration (REA), a unit within the U.S. Department of Agriculture. The REA serves as the principal banker for most electric and telephone cooperatives, and this relationship accounts for their strong and continuing interest in our state enabling legislation.

The environment within which the coops operate has changed immensely during the last 29 years, and the old model act no longer covers everything that is needed in Alaska law. There have been a number of amendments to AS 10.25 through the years, and some internal inconsistencies within the Act have resulted from some of those amendments.

ARECA had a committee from across the state study AS 10.25 for about a year to develop the changes which are needed to clear up ambiguities, to permit cooperatives to operate efficiently, and to assure proper control of the cooperatives by the members. The draft prepared by that committee and unanimously approved by the members of the association provided the starting place from which SB 369 and HB 394 were prepared.

Mail Voting

One kind of change which appears in numerous locations throughout these bills is to clear up the conflicting language on how membership votes may be conducted. The legislature decided long ago that coops should have the option of conducting elections and other membership votes by mail. However, a number of sections still refer to such decisions being made "at the meeting." These bills would make it clear that, if the bylaws so provide, all membership votes can be conducted by mail.

Takeovers/Sellouts

A second change which required amendments in several sections is to make certain that any proposed sale of a cooperative is considered by an informed membership and that a decision to sell must be agreed to by a substantial proportion of the members of the cooperative (Sec. 5, 18, 19, 20). The sale or dissolution of a cooperative is final and irreversible. Such a momentous decision should not be made lightly or by a simple majority. If a pro-sale majority one day becomes a minority on some other day, there is no way to unscramble the egg. To protect the interests of the cooperative members against transitory swings in public opinion, a large majority should be required to agree to the death of the cooperative. In these bills, a two-thirds majority is proposed.

Powers of Cooperatives

The authority to make contributions for various public purposes (Sec. 1) is adopted verbatim from the law governing all other types of cooperatives in this state (AS 10.15.010 (12)). A typical instance in which this authority is needed is when some local civic or charitable group plans an event for which it needs a temporary service. In many such cases, the cooperative would like to support the local effort by making an in-kind contribution of the temporary service drop rather than having to charge according to its line extension policy. Another example is to permit the electric coops to participate in the National Electric Power Research Institute.

Electric cooperatives would also be authorized to operate waste heat distribution systems (Sec. 2). Since 1960, the legislature has encouraged the use of waste heat, but the cooperatives have no clear authority to engage in that business. The authority to operate an existing system (other than waste heat) is intended to permit Golden Valley Electric Association to operate the Fairbanks district heating system now owned by the city if the city should decide to divest itself of that system.

Members

The provision to permit cooperatives to require membership as a condition of service (Sec. 4) is necessary to protect the coops from the possibility of losing their tax exempt status. The Internal Revenue Service (IRS) requires cooperatives to get not less than 85 percent of their revenues from providing service to members.

The provision prohibiting cooperatives from terminating or suspending memberships (Sec. 4) unless their bylaws establish the procedure, is also necessary to keep the coops out of trouble with the IRS. Terminating or suspending a membership without due process can cause the loss of a tax exemption. This provision was adapted from California Corporate Code 12410, Article 4.

Notice of Meetings

The increase in notice requirements for special meetings of the members (Sec. 5) is necessary to give adequate time for the informational processes established in Section 20 to be used when a special meeting is called to sell a cooperative.

Record Date

Establishing a record date for the right to participate in membership meetings (Sec. 7) helps to eliminate disputes as to the legality of actions taken by the members on hotly contested issues at annual or special meetings or other cooperative elections. This new section was adapted from the Alaska Business Corporation Act (AS 10.05.144).

Board Compensation

The principal change in Section 8 is to clarify the law on the payment of per diem to directors. The intent is to make it clear that directors can be compensated for the days on which the director is attending meetings in the performance of duties, not just

attendance at formal meetings of the board. However, the language needs to be amended to make it clear that it is a day rather than a meeting which authorizes the payment of par diem. (If a director were to go to three meetings on one day, the director should receive one per diem payment, not three.) To accomplish this, on page 6, line 12, the words "and at a" should be replaced with "or other."



Liability, Indemnification, and Insurance

The new language contained in Section 9 is necessary to protect directors and officers from individual liability for actions properly taken in the course of their duties. Subsection (a) limits the liability; (b) authorizes the cooperative to indemnify the directors; and (c) authorizes the cooperative to buy directors' and officers' liability insurance as a way to provide the indemnification. Similar limitations on personal liability are provided for directors and officers of business corporations (AS 10.05.010 (g)) and for many non profit corporations, public hospitals, public schools, and municipalities (AS 9.17.050).

Board Meetings

Board meetings could be conducted by teleconference (Sec. 12). A similar provision is made for boards of business corporations (AS 10.05.199 (a)).

Several specific items are listed which would permit a board of directors to meet in executive session (Sec. 13). Each of these specifics was thought to be encompassed in the general reasons for executive sessions listed as 1 - 3 when this statute was enacted in 1982. Recent court decisions have cast some doubt on that assumption, so listing these specific items is necessary.

The penalty for violations of the meetings statute needs to be rewritten as is done in Section 14 to permit the court to determine the appropriate equitable relief. Under the present law the only penalty authorized is to void any action taken at a meeting not in compliance with this section of the law. Recent court decisions seem to indicate that there is no way to correct actions taken incorrectly once they have been voided. This could cripple a cooperative if action on a major item like a power supply contract were voided.

Examination of Records

Information on subjects which can properly be discussed in executive session should also be protected in written form (Sec. 15). For example, it does no good to go into executive session to discuss an individual consumer's payment history if the records of that payment history are themselves available for inspection.

Limitations on Sale of Property

In addition to requiring a two-thirds vote to sell a cooperative as discussed earlier, Section 19 clarifies the law on exactly which sales of coop property must be referred to a vote of the members.

Section 20 establishes a procedure for having the cooperative's property appraised, informing the members, and inviting competing proposals. The purpose of this section is to protect the members by making sure they know what the coop's property is worth before they vote on an offer to buy it.

We do propose that this section be amended on page 12, line 11 by changing the phrase "have this property appraised" to "have all the real and personal property proposed for sale appraised". The reason for this change is to inform the members about the value of personal property such as long-term power supply contracts which would not show up on the books of the cooperative.

Sale of Glacier Highway Electric Association to Alaska Electric Light and Power

The possible merger of the two utilities in the Juneau area has been under negotiation, off and on, for about 20 years. We do not want to change the rules regarding that possible transaction when it is so near completion. A new section on "transitional provisions" should be added which provides that any sale of cooperative property approved by the members under AS 10.25.400 before the effective date of this Act will be valid even if the transaction is not completed by the effective date.

Another new section needs to be added to repeal AS 10.25.245. This section was enacted in 1980 at the request of GHEA, and it was intended to make a merger with AEL&P easier. The negotiations have proved this approach not to be practical, and it is not used in the proposed sale of GHEA to AEL&P. This section serves no purpose, and we ask that it be repealed.

Will this
give them
enough
time to
formalize the
sale?

Glacier Highway Electric Association Inc.



P. O. Box 210547 • Auke Bay, Alaska 99821 • Phone (907) 789-7344

February 4, 1988

David Hutchens, Executive Director
Alaska Rural Electric Cooperative Association, Inc.
237 E. Fireweed Lane, Suite 301
Anchorage, Alaska 99503

Re: HB 394/SB 369

Dave,

At our urging AS 10.25 was amended in 1980 to add a section 10.25.245 which would permit the merger of a cooperative with a business corporation. At the time we hoped to merge with Juneau's principal electric utility, the Alaska Electric Light and Power Company. As events turned out, our merger effort failed. Therefore, we have no objection to section 10.25.245 being rescinded.

Over the past two years we have been negotiating an asset purchase agreement with AELP where AELP will purchase all of the assets of our cooperative. We have reached an agreement and expect this effort to succeed; however, it will take some time to be approved by our members, lenders and various government agencies including the Alaska Public Utilities Commission. We ask that our continuing efforts to consolidate Juneau's electric utilities be exempted from the proposed changes of HB 394/SB 369 for 10.25 provisions governing the sale of a cooperative's assets and the dissolution of a cooperative.

Sincerely,

A handwritten signature in cursive script, which appears to read "Charles Y. Walls", is written over a faint, larger version of the same signature.

Charles Y. Walls, General Manager
Glacier Highway Electric Association, Inc.

cc: W.A. Corbus, AELP

Re: Dave Hutchens proposed legislation.

Sections 1 & 2 expands the areas of operation for electric co-ops. It appears to be geared toward a gas pipeline and gas heat production and distribution system.

Sections 3 - 21 are operational changes for electric and telephone co-ops. Sections 3,4,6,7,8,10,11, 16, 17, & 18 are generally housekeeping changes.

Sec. 1 allows the co-ops to:

- * get into the fuel production & transportation business
- * joint venture with other co-ops, corporations, the State and its political subdivisions
- * make charitable donations.

Sec. 2 allows the co-ops to:

- * get into the heating business
- * participate in economic development activities.

Sec. 5 requires 90 - 120 days notice for special meetings.

Sec. 9 limits the liabilities of the directors, employees, etc. and allows the co-ops to buy insurance on their behalf.

Sec. 12 allows board meetings by teleconference.

Sec. 13 adds items to the list of what can be discussed in executive session.

Sec. 14 allows members that are affected by this section to sue and receive relief.

Sec. 15 allows co-ops to withhold information that may be discussed at executive sessions.

Sec. 19 changes the required vote needed to dissolve a cooperative from a simple majority to 2/3.

Sec. 20 deals with disposition of cooperative assets. Current language says "when disposing of all or a substantial portion". The proposed wording is "more than 15%". Currently a majority vote of the members is required. The proposal requires 2/3. Currently the board may dispose of assets to the U.S. government. The new language changes this to the State gov't.

Sec. 21 requires that before disposal of assets the board must; 1) have 3 appraisals 2) give 90 days notice to all members. 3) give 90 days notice to all co-ops in Alaska. 4) give 30 days notice to members of all alternative proposals.

Sec. 22 is an immediate effective date.

5-1695P
Cramer
5/5/88

Original sponsor: Labor and Commerce
Committee

IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 394 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to electric and telephone cooperatives; and providing for an effective date."

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

* Section 1. AS 10.05.376(c) is amended to read:

(c) The [EXCEPT AS PROVIDED IN AS 10.25.245, THE] provisions of this chapter govern the procedures for and effect of the merger.

* Sec. 2. AS 10.25.010 is amended to read:

Sec. 10.25.010. POWERS OF ELECTRIC OR TELEPHONE COOPERATIVE.
Except as provided in (b) of this section, an [AN] electric or telephone cooperative may

(1) sue and be sued in its corporate name;

(2) have perpetual existence;

(3) adopt a corporate seal and alter it;

(4) construct, buy, lease, or otherwise acquire, and equip, maintain, and operate, and sell, assign, convey, lease, mortgage, pledge, or otherwise dispose of or encumber lands, buildings, structures, electric or telephone lines or systems, dams, plants and equipment, and any other real or personal property, tangible or intangible, which is necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(5) buy, lease, or otherwise acquire, and use, and exercise and sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber franchises, rights, privileges, licenses, and easements;

(6) borrow money and otherwise contract indebtedness, and