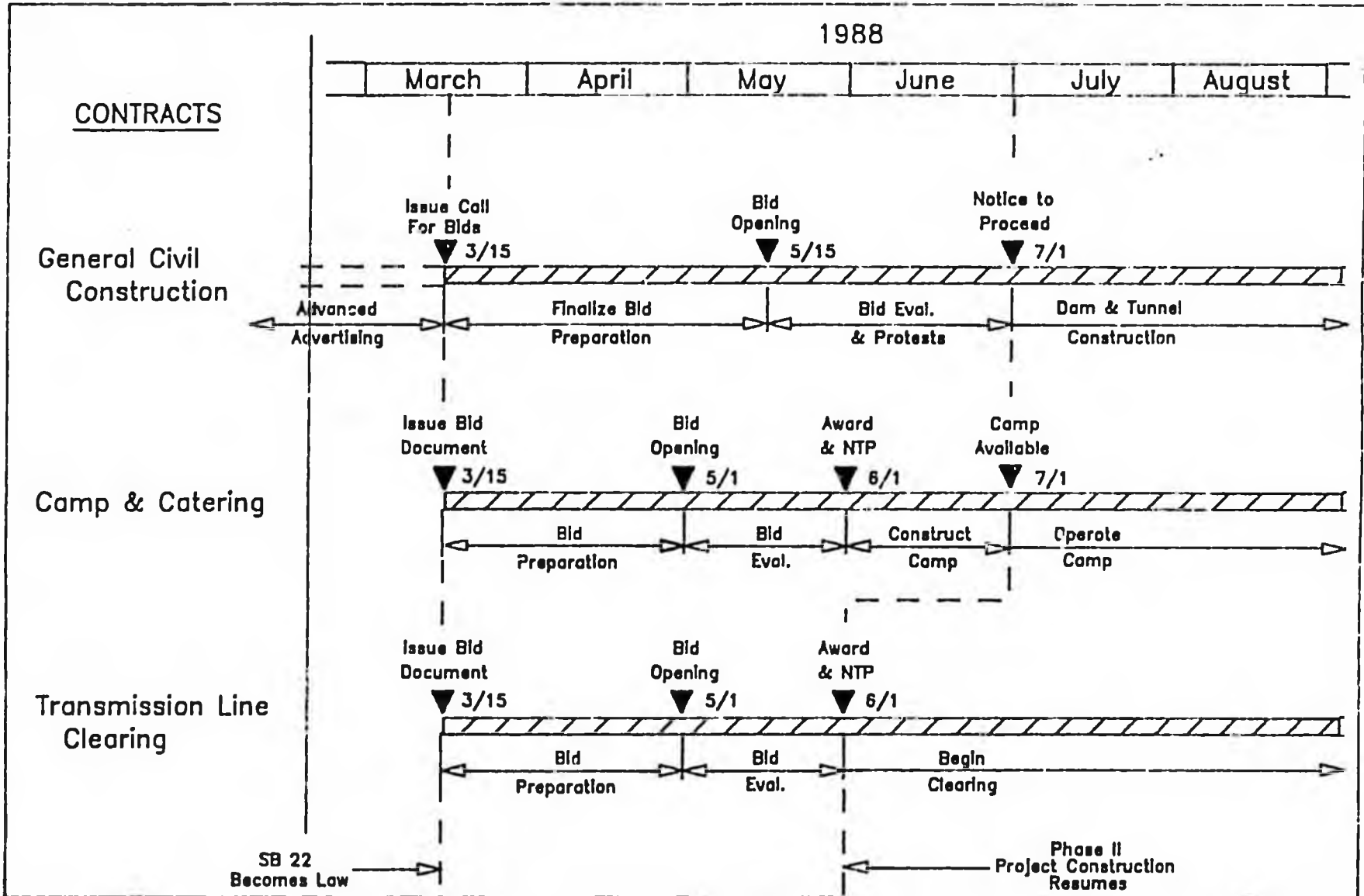


ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5502 SRES HB 356 - HB 510

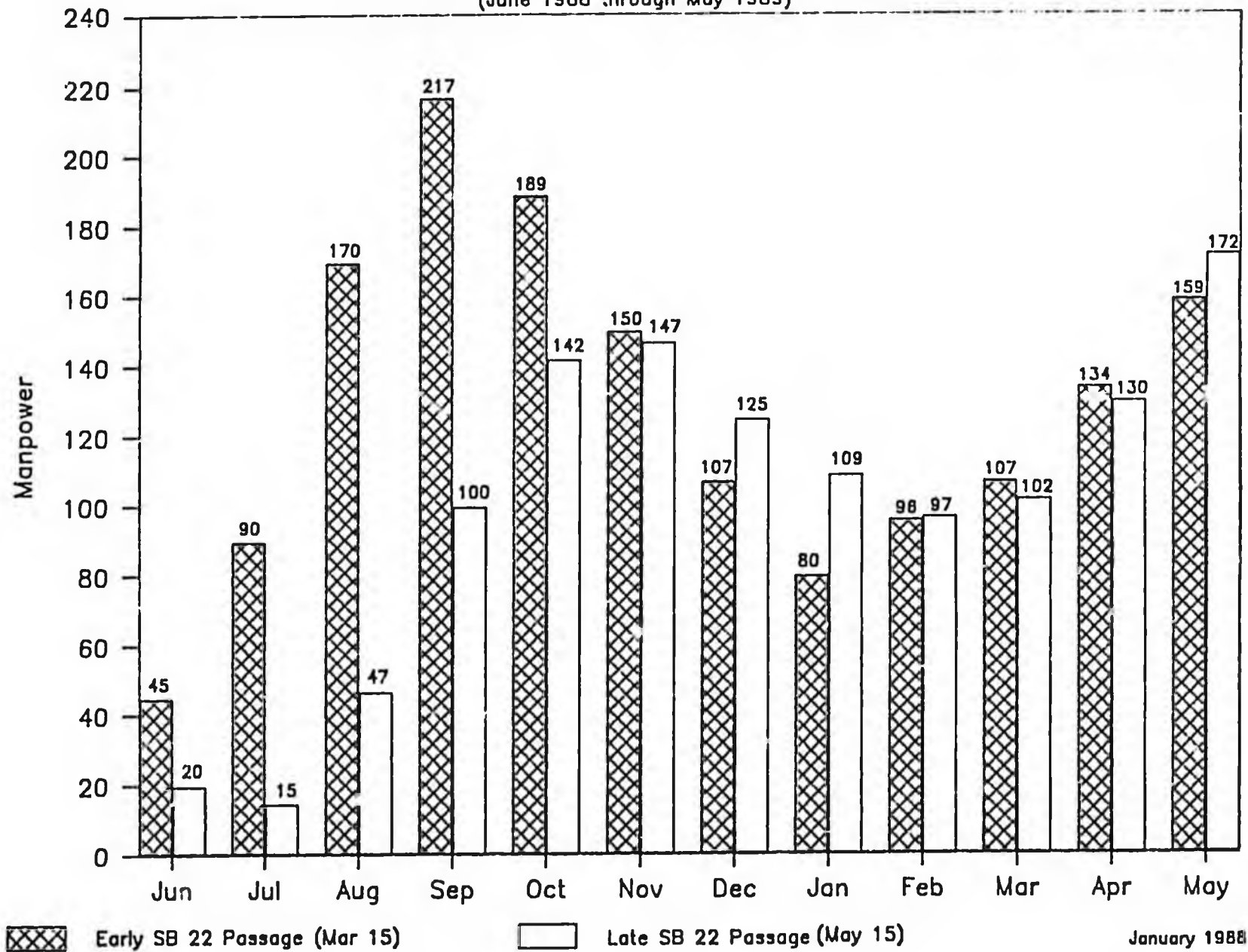
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Bradley Lake Hydroelectric Project 1988 Construction Schedule



Bradley Lake Hydroelectric Project Projected Manpower Requirements

(June 1988 through May 1989)



January 1988

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturgulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
(907) 465-4907

February 17, 1988

Bob LeResche, Executive Director
Alaska Power Authority
P.O. Box AM
Juneau, AK 99811

RE: CSHB 356 (Rules) am

Dear Mr. LeResche:

The referenced bill with a letter of intent was referred to the Senate Resources committee. The committee is scheduled to hold hearings on February 29, 1988.

As part of the review process, I would appreciate receiving written response to the following questions not later than the scheduled hearing:

1. Does CSHB 356 (Rules) am contain anything that will cause further delays to the Bradley Hydroelectric Project or increase the cost of revenue bond financing?
2. Has the bond counsel issued a written opinion supporting the above? If yes, please attach a copy.
3. Has the Attorney General issued a written opinion giving CSHB 356 (Rules) am a clean bill of health? If yes, please attach a copy.
4. Is the letter of intent redundant? If needed, does it require changes?

Based on a preliminary review, the bill does not appear to contain any fatal flaws. Unless some are discovered subsequently, my intention is to move the bill as is, in order to assure its timely passage by the Senate and approval by the Governor not later than March 15, 1988.

Sincerely,

A handwritten signature in black ink, appearing to be "J. Coghill".

Senator J. Coghill
Chairman

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE (907) 465-3650

February 24, 1988

Honorable Jack Coghill
Pouch V
Juneau, Alaska 99811

Re: CSHB 356 (Rules) am

Dear Senator Coghill:

At Bob LeResche's request on your behalf, I have reviewed CSHB 356 (Rules) am which amends AS 42.05 and AS 44.83 by excluding certain utilities or their activities from regulation or review by the Alaska Public Utilities Commission (APUC), and by revising the method of calculating eligibility for power cost equalization benefits. Since you have not asked a specific question of me regarding the bill, I will generally review the bill for you in this opinion.

As you know, the major provisions in this bill appeared last year in HCS CSSSSB 22. That bill was subsequently vetoed by Governor Cowper because it included a provision deregulating 67 small telephone and electric utilities. 1/ The current bill, HB 356, was introduced in the House at the request of the governor. 2/ Although the original bill has been somewhat amended since its introduction, I am advised that the Governor is comfortable with the house version of the bill and would like to see its passage in the current form.

CSHB 356 (Rules) am would limit the APUC's authority to review and approve the wholesale power agreement and related agreements concerning the Bradley Lake hydroelectric project entered into by the Alaska Power Authority (APA) and one or more public utilities until after long-term debt incurred for the

1/ In many respects, this opinion restates the opinion of this office contained in our legal review of HCS CSSSSB 22(Fin) for Governor Cowper. See Attorney General file 883-87-0062.

2/ For your convenience I am attaching a copy of the transmittal letter from the governor which accompanied HB 356 in its original form.

project had been retired. Meetings between the APA and public utilities concerning an agreement exempt from APUC review would, however, have to comply with the open meetings act. The bill incorporates the original language from SB 22 affecting power cost equalization benefits. The bill endorses a Bradley Lake power sales agreement that is partly financed with state equity contributions. I will address these provisions separately.

I. Regulation of APA Activities

Sections 1 -- 3 speak to the APUC's oversight of the agreement for the sale of wholesale power by the APA to public utilities, and the contracts between utilities for the distribution of that power. The perceived need for these changes arose as a result of a 1986 amendment to AS 42.05.431. That amendment, by adding AS 42.05.431(b), gave the APUC authority to review in advance and approve wholesale power agreements between public utilities entered into on or after June 7, 1986.

Section 1 of this bill amends AS 42.05.431(b) by excluding from APUC review wholesale power agreements and related contracts entered into between the APA and one or more utilities between October 31, 1987 and January 1, 1988. 3/ It also permits the utility to charge rates sufficient to meet its obligations under the agreement or related contracts. Meetings between the parties concerning these agreements are subject to the open meetings act. Section 2 then requires the APUC to allow the utility's rates to reflect the utility's validated costs under wholesale power agreements and related contracts. Section 3 makes minor changes to AS 44.83.090(b) to more precisely define what contracts are exempt from APUC review.

Similar provisions in HCS CSSSSB 22(Fin) were the subject of extensive review by the Department of Law after its passage. See Attorney General file No. 883-87-0062. 4/ We noted then that a bill which benefits only one hydroelectric project may be challenged as special legislation. Because the bill arguably addresses a matter that is unique but of statewide concern, we could not say that the bill was invalid. As to

3/ By definition, the only project affected would be the Bradley Lake Hydroelectric Project.

4/ For your convenience, a copy of the bill review letter is attached.

section 1 of CSHB 356 (Rules) am, we would note the same legal issue.

Section 1 contains several new provisions that were not a part of last year's bill:

(1) it allows the APA to contract with utilities to guarantee that the utilities will charge sufficient rates to cover the APA's bond obligations regarding the Bradley Lake project;

(2) it expands the scope of the Bradley Lake regulatory exemption to include secondary contracts that are associated with the project, e.g., a wheeling agreement and an agreement to share transmission facilities, and to include future amendments to the sales agreement and secondary contracts;

(3) it requires meetings between the parties regarding the agreements be held according to the state open meetings law.

None of these new provisions raise any legal issues not covered in our letter reviewing HCS CSSSSB 22.

Section 2 adds a new subsec. (d) to AS 42.05.511, "Unreasonable [public utility] management practices," to specify that "[v]alidated costs incurred by a utility in connection with the related contracts [exempt from APUC review] must be allowed in the rates charged by the utility." The effect of sec. 2 is that the APUC has jurisdiction to validate the costs incurred by a utility and used in the wheeling and transmission rate formula but no jurisdiction to alter or amend that formula. This effect is clarified in the letter of intent passed by the House with the bill. Senate adoption of the letter of intent is recommended as well.

One final issue raised by secs. 1 -- 3 is whether the APUC will have jurisdiction under federal law to review the Bradley Lake power sales agreement, notwithstanding these changes in state law. As we noted in our 1987 review, the Public Utilities Regulatory Policy Act (PURPA) authorizes the APUC to conduct hearings on whether a co-generator or small power producer can provide energy at a cost equal to or less than the utility's current costs. 16 U.S.C. 824a-3(b). If alternate energy is available at equal or less cost, then the APUC may order the utility to purchase the alternate power.

Despite the fact that Congress passed this legislation 10 years ago, there are numerous unanswered questions regarding whether the APUC, or its federal counterpart FERC, could successfully order a purchaser of power from Bradley Lake to buy its power instead from a co-generator or small hydro producer. We are advised by our FERC counsel in Washington, D.C. that (1) a test case has been pending before FERC for six years as to whether FERC has jurisdiction to regulate state instrumentalities, and (2) FERC will not regulate if the rates and charges for the wholesale sale of power are set by an authorized agent of the state. Arguably, the APA is an authorized agent of the state. For all these reasons, we believe it is not clear whether the APUC could assert jurisdiction under PURPA over the APA.

II. Power Cost Equalization Calculations

Section 4 of the bill states that the APUC may not consider validated costs or kilowatt hour sales to a Department of Defense facility when determining the level of a utility's power cost equalization benefits. This section would nullify an APUC order that the sales should be so included. Inclusion of these sales to a federal facility, we are informed, has resulted in reducing the power cost equalization benefits paid to at least one utility's consumer-members and has resulted in repayment of excess power cost equalization subsidies received by the utility.

III. Excess Payment Term

Section 5 adds a new provision to the bill. It refers to a provision in the Bradley Lake power sales agreement which requires the utilities' to continue making payments to the state after long-term debt incurred for the project is retired. Section 5 is a legislative endorsement of an amendment to the agreement which would reflect the legislature's support of the project's financing partly through cash grants. Since the provision as written does not direct the APA to renegotiate the agreement, it avoids any possible constitutional issues regarding the separation of powers or abrogation of contracts.

IV. Effective Date

Section 6 of the bill makes secs. 1 -- 4 retroactive to November 1, 1987 with one exception. The requirement that meetings be conducted under the open meetings act is not included in the retroactive provision. Thus, an APUC proceeding initiated after that date to review a power sales or related agreement regarding the Bradley Lake project would be void. In addition, any inclusion of kilowatt hour sales to federal defense

Honorable Jack Coghill

February 24, 1988
Page 5

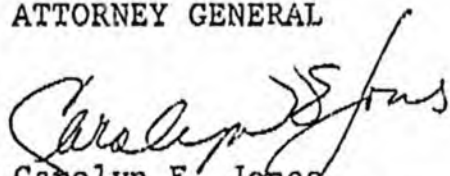
facilities in the power cost equalization computation from November 1, 1987 to the present also would be void.

In conclusion, although some constitutional or other legal questions are raised by this bill, I believe that there are no constitutional or legal problems in it that would require amendment by the Senate. I offer no recommendation on the policy issues in the bill.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:


Carolyn E. Jones
Assistant Attorney General

CEJ:sw

Enclosures

June 3, 1987

Honorable Steve Cowper
Governor
State of Alaska
P.O. Box A
Juneau, AK 99811

Re: HCS CSSSSB 22(Fin) -- exempt
certain utilities from APUC
regulation and review
Our file: 883-87-0062

Dear Governor Cowper:

At Bob Evans' request on your behalf, we have reviewed HCS CSSSSB 22(Fin), which amends AS 42.05 and AS 44.83 by excluding certain utilities or their activities from regulation or review by the Alaska Public Utilities Commission (APUC), and by revising the method of calculating eligibility for power cost equalization benefits.

Originally, this bill would have simply exempted from APUC regulation telephone and electric utilities with less than 250 subscribers. (That amendment, with some modification, has remained in all versions of the bill.) Senator Coghill, SB 22's sponsor, subsequently added several sections to the bill to limit the APUC's authority to review and approve wholesale power agreements between the Alaska Power Authority (APA) and another public utility. SSSB 22. A provision affecting power cost equalization benefits was subsequently added by the Senate Finance Committee. CSSSSB 22(Fin), sec. 7. We will address these three substantive changes separately. (HCS CSSSSB 22(Jud) and HCS CSSSSB 22(Fin) made additional modifications, with the latter raising the 250-subscribers exemption to 500.)

I. Regulation of Small Utilities

Section 4 of the bill amends AS 42.05.711(a) to exempt from APUC regulation those electric or telephone utilities that have fewer than 500 retail subscribers. We understand that this section would affect 67 of 307 certificated utilities.

Under current law, electric or telephone utilities that gross less than \$50,000 annually are exempt from APUC regulation.

AS 42.05.711(e). Moreover, a telephone or electric utility that grosses less than \$325,000 annually may elect to be exempt from APUC regulation. AS 42.05.711(f); AS 42.05.712.

Proponents of sec. 4 have argued that the cost of regulating utilities with fewer than 500 retail subscribers outweighs the benefits of regulation. Opponents of the exemption, including the APUC, argued that the current statute is superior to the proposed amendment because it allows consumers of small electric and telephone utilities the choice of whether the benefits of regulation outweigh the costs of regulation.

II. Regulation of APA Activities

Sections 1 -- 3, 5, and 6 speak to the APUC's oversight of costs associated with the sale of wholesale power by the APA to a public utility. The perceived need for these changes arose as a result of a 1986 amendment to AS 42.05.431. That amendment (adding AS 42.05.431(b)) gave the APUC authority to review in advance and approve wholesale power agreements between public utilities. 1/ It is our understanding that both the APA and the APUC have submitted, directly to you, their views on the policy wisdom of these sections of the bill. We will not repeat the arguments here.

Section 1 of this bill amends AS 42.05.431(b) by excluding from APUC review those wholesale power agreements identified in sec. 2 of the bill (proposed AS 42.05.431(c)). Section 2 then describes the excluded wholesale power agreements as those between the APA and a public utility for the sale of power from a project licensed for construction by the Federal Energy Regulatory Commission (FERC) before January 1, 1987. Section 6 amends the APA's enabling legislation to the same end, although the amendment is awkward and probably unnecessary to achieve the

1/ AS 42.05.431(b) was part of a complex, lengthy, and controversial package of amendments in the "sunset" reauthorization bill for the APUC. The effect of the amendment on the APA, its wholesale power agreements, and the Bradley Lake power sales agreement in particular, was not specifically addressed by the 1986 legislature. The meaning of AS 42.05.431(b) is plain and unambiguous, and clearly authorizes the APUC to review and approve wholesale power agreements between the APA and another public utility. 1987 Inf. Op. Att'y Gen. (663-87-0365; February 18).

goals of this bill.

While the language of sec. 2 speaks in general terms, the Bradley Lake hydroelectric project is the only APA project that will benefit from this change in the law. (Wholesale power agreements entered into by June 7, 1986 have already been excluded from the ambit of AS 42.05.431(b). See sec. 8, ch. 104, SLA 1986.) Thus, the principal legal issue raised by sec. 2 is whether this change in the law would be viewed as "special" legislation in contravention of art. II, sec. 19, of the Alaska Constitution. That section states in pertinent part: "[t]he legislature shall pass no local or special act if a general act can be made applicable."

There is a possibility that a court would rule that sec. 2 is "special" legislation affecting only the Bradley Lake hydroelectric project and is therefore unconstitutional. However, it can be argued that sec. 2 addresses a matter that is unique, but of statewide concern, and is therefore constitutional. See State v. Lewis, 559 P.2d 630, 643 (Alaska 1977), cert. den. 432 U.S. 901, 97 S.Ct. 2943 (1977). Legislation may affect only one area and yet relate to a matter of statewide concern or common interest, and therefore be valid. Abrams v. State, 534 P.2d 91 (Alaska 1975). Thus, even though sec. 2 of the bill may raise a constitutional question, we cannot say that it is invalid.

Section 3 adds a new subsec. (d) to AS 42.05.511, "Unreasonable [public utility] management practices," to specify that power costs "incurred by a utility in connection with a contract with the Alaska Power Authority that is exempted from [APUC] review" by sec. 2 of the bill "shall be allowed in the rates charged by the utility." As noted above, the only APA project to which sec. 2 applies is Bradley Lake. The effect of sec. 3 is that Bradley Lake power costs will be passed through to utility customers without APUC review as to whether the resulting rates are "just and reasonable" under AS 42.05.381 and 42.05.431, and without APUC review to determine whether the power sales agreement is "necessary and consistent with the public interest" under AS 42.05.511(c). The Senate version of the bill included power costs, wheeling charges for facilities owned or leased by the state, and overhead costs associated with the contract. In the final version of the bill, however, only the utility's power costs incurred in connection with the power sales agreement are not automatically allowed in the rates charged by the utility.

Section 5 provides that the APA is not a public utility under the Alaska Public Utilities Commission Act (AS 42.05). In

our 1987 memorandum of advice mentioned above, in footnote 1, we concluded that the APA was a public utility within the meaning of AS 42.05, but that the APA was specifically exempt from APUC jurisdiction. See page 1 of that memorandum. Thus, under current law, the APUC has the authority to review a power sales agreement between the APA and another public utility even though the APA itself is not subject to APUC jurisdiction. If sec. 5 becomes law, the APUC's jurisdiction under AS 42.05.431(b) to review power sales agreements between public utilities will no longer extend to agreements to which the APA is a party.

The principal legal issue raised by sec. 5 is whether the APUC will have jurisdiction under federal law to review power sales agreements to which the APA is a party, notwithstanding these changes in state law. The Public Utilities Regulatory Policy Act (PURPA) was passed by Congress in 1978 to encourage conservation and efficiency in energy use and provide incentives for industrial co-generators and small power producers. See e.g., House Ad Hoc Com. on Energy, National Energy Act, H. Rep. No. 95-543, 95th Cong., 1st Sess., I at 8, 10, 21 (1977); Senate Com. on Energy and Natural Resources, Public Utility Regulatory Policy Act of 1977, S. Rep. No. 95-422, 95th Cong., 1st Sess., at 20 (1977). Under PURPA, the APUC is authorized to conduct hearings on whether a co-generator or small power producer can provide energy at a cost equal to or less than the utility's current costs. 16 U.S.C. 824a-3(b). If alternate energy is available at equal or less cost, then the regulatory agency may order the utility to purchase the alternate power.

Despite the fact that Congress passed this legislation nine years ago, there are numerous unanswered questions regarding whether the APUC or FERC could successfully order a purchaser of power from Bradley Lake to buy its power instead from a co-generator or small hydro producer. We are advised by our FERC counsel in Washington, D.C. that (1) a test case has been pending before FERC for five years as to whether FERC has jurisdiction to regulate state instrumentalities and (2) FERC will not regulate if the rates and charges for the wholesale sale of power are set by an authorized agent of the state. Arguably, the APA is an authorized agent of the state. For all these reasons, we believe that it is not clear whether the APUC could assert jurisdiction under PURPA over the APA.

III. Power Cost Equalization Calculations

Section 7 of the bill states that the APUC may not consider validated costs or kilowatt hour sales to a Department of Defense facility when determining if a utility is eligible for

power cost equalization benefits. This section nullifies an APUC order that ruled that the sales should be so included. Inclusion of these sales to a federal facility, we are informed, has resulted in raising the costs of power to at least one utility's consumer-members and has resulted in repayment of power cost equalization subsidies by the utility.

IV. Effective Date

Section 8 of the bill makes secs. 1, 2, 5, 6, and 7 retroactive to June 7, 1986. Thus, an APUC proceeding initiated after that date to review a power sales agreement in which the APA is a party would be void. 2/ We understand that none was initiated. In addition, any inclusion of kilowatt hour sales to federal defense facilities from June 7, 1986 to the present would also be void.

In conclusion, although some constitutional or other legal questions are raised by this bill, we believe that there are no constitutional or legal problems in it that would require a veto. We are offering no recommendation on the policy issues in the bill.

Very truly yours,

Grace Berg Schaible
Attorney General

GBS:CEJ:kmb

2/ Power sales agreements entered into before June 7, 1986 were previously excluded from APUC jurisdiction. Sec. 8, ch. 104, SLA 1986.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

RECEIVED
DEPT. OF LAW

JAN 12, 1988

January 13, 1988

TIME to 3:34

The Honorable Ben Grusserdorf
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 the authority of the Alaska Public Utilities Commission (APUC) in connection with certain activities of the Alaska Power Authority (APA) and in connection with calculating power cost equalization.

As you know, last session I vetoed HCS CSSSSB 22(Fin) on this subject. However, as stated in my June 15, 1987 veto message (1987 Senate Journal, p. 1731), my reason for vetoing that bill was its inclusion of provisions that would remove APUC regulation over some 67 small public utilities in the state. Existing law adequately provides for them. The attached bill deletes that section. Section 5 of HCS CSSSSP 22(Fin), which would have removed from the APUC's jurisdiction the review of all wholesale power agreements to which APA is a party, by declaring that the APA is not a public utility, has also been deleted. Section 1 of the attached bill provides an exemption from such APUC review and approval for the Bradley Lake project.

Two provisions in the attached bill were not contained in the vetoed bill. First, the bill proposes to amend AS 42.05.431 and 42.05.511 to allow the APA to contract with utilities to guarantee that the utilities will charge sufficient rates to cover the APA's bond obligations regarding the Bradley Lake project. Second, these same amendments expand the scope of the Bradley Lake regulatory exemption to include secondary contracts that are associated with the project. These related contracts include an agreement for wheeling and related services between Bradley Lake power purchasers and Chugach Electric Association, Inc., and an agreement for the sharing of transmission facilities between Bradley Lake power purchasers and Homer Electric Association, Inc.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

420 "L" STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 276-6222

February 24, 1988

Senator John B. Coghill
Chairman
Senate Resources Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Senator Coghill:

I am writing to respond to the questions that you have asked with respect to CSHB 356 (Rules) which is currently pending before the Senate Resources Committee.

1. The Commission did not have oversight over the APA before AS 42.05.431(b) was passed in 1986 and does not have oversight over the APA today. Rather, the Commission's jurisdiction is limited to utilities and the ratemaking consequences of any actions they take, including the purchase of power. The 1986 legislation did, however, make explicit, rather than discretionary, the Commission's authority to require advance approval of wholesale power contracts. At the same time it limited the extent of the Commission's ability to review contracts after they were in effect. CSHB 356 (Rules) eliminates both the advance approval and subsequent review of the Bradley Lake power sales agreement.

2. In our assessment, CSHB356 (Rules) and CSCSSSB22 (Finance) would result in essentially equivalent limitations on APUC oversight over wholesale power contracts between utilities and the APA. However, the new bill substantially reduces regulation over agreements solely between regulated utilities that affect common plant and common costs for Bradley Lake and non-Bradley Lake power transmission.

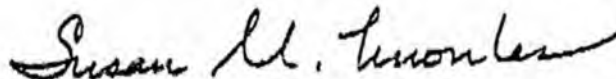
3. By exempting the Bradley Lake power sales agreement from Commission approval and guaranteeing rates sufficient to meet covenants, CSHB356 (Rules) appears to eliminate any regulatory oversight which could be deemed to delay construction or increase repayment uncertainty for bondholders. It is unclear, however,

Senator John B. Coghill
February 24, 1988
Page 2

what effect this legislation may have on any federal requirements under PURPA. In any event, we hope that you did not mean to imply that by some action taken to date the Commission has purposefully contributed to either: a delay in the project or an increase in its costs. The facts are that the Commission was obligated to fulfill the functions previously delegated by the Legislature, including advance approval of wholesale power contracts, and was not responsible for the flaws in CSCSSSB22 (Finance) which resulted in the Governor's veto.

If you would like additional information from the Commission, please do not hesitate to contact me.

Sincerely yours,



Susan M. Knowles
Chairman

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturgulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
(907) 465-4907

February 17, 1988

Susan Knowles, Chairperson
Alaska Public Utilities Commission
420 L St., Suite 100
Anchorage, AK 99501

RE: CSHB 356 (Rules) am

Dear Ms. Knowles:

The referenced bill with a letter of intent was referred to the Senate Resources committee. The committee is scheduled to hold hearings on February 29, 1988.

As part of the review process, I would appreciate receiving written response to the following questions not later than the scheduled hearing:

1. Assuming CSHB 356 (Rules) am becomes law as is, will APUC have more or less oversight over APA than before the inadvertent passage of the 1986 legislation?
2. Compared to SB 22 which attempted to restore the historical jurisdictional balance between APA and APUC and was vetoed by the Governor, and assuming CSHB 356 (Rules) am becomes law as is, will APUC have more or less oversight over APA?
3. Does CSHB 356 (Rules) am contain anything that would cause or allow APUC to delay the Bradley project further or to increase the revenue bond financing costs by increasing the uncertainty level of the investors?

Based on a preliminary review, the bill does not appear to contain any fatal flaws. Unless some are discovered subsequently, my intention is to move the bill as is, in order to assure its timely passage by the Senate and approval by the Governor not later than March 15, 1988.

Sincerely,

Senator J. Coghill
Chairman

Alaska State Legislature

Senate Advisory Council



P.O. Box V
State Capitol
Juneau, Alaska 99811
Phone: (907) 465-3114

MEMORANDUM

TO: Senator J. Coghill, Chairman
Senate Resources Committee

FROM: Kurt S. Dzinich *KSD*
Senior Advisor

DATE: February 23, 1988

SUBJECT: CSHB 356 (Rules) am IR # 88-003235

In response to your request, following is an analysis of CSHB 356 (Rules) am.

Before proceeding with specifics, it is worthwhile to recall that this bill was introduced at the request of the Administration and that it was in lieu of SB 22 which was vetoed in 1987. The purpose of SB 22 was to restore the APA's statutory exemption from APUC oversight that had existed since its inception but was inadvertently removed without any substantive hearings in 1986 legislation. The legislature had wisely provided that exemption in the APA's enabling legislation in order to allow for least cost revenue bond financing and in order to preclude duplication or even triplicate oversight which always resulted in unnecessary delays and cost increases. The legislature's intent was clear i.e. once it approved a project in accordance with AS 44.83.185, it did not want further delays or second guessing by APUC.

While SB 22 attempted to restore APA's exemption from APUC oversight that existed prior to the 1986 legislation, CSHB 356 (Rules) am only exempts the Bradley Lake Hydroelectric Project from APUC overview and then only until all long-term debt for the project is retired. After that point, APUC would have jurisdiction over APA and Bradley related issues. Furthermore, APUC would have overview of all subsequent APA projects after the Bradley project and to the extent that power sale agreements were required.

The overriding question is whether the committee and the Senate should go along with CSHB 356 (Rules) am thereby allowing the Governor to sign the bill before March 15, 1988 in order to allow the project to be restarted this summer without further delays or whether to go back and address the basic jurisdictional dispute between APA and APUC. This latter course would most likely result in missing of the March 15, 1988 deadline leading to further delays and cost increases to the project.

Senate Advisory

Sectional Analysis CSHB 356 (Rules) am

Section 1, subsection (c)(1) amends AS 42.05.431 pertaining to powers of the APUC by exempting APA's wholesale power agreements for the sale of power and related contracts (these are for wheeling services over HEA and CEA owned portions of the transmission system) for a project licensed by FERC (Federal Energy Regulatory Commission) before January 1, 1987, and entered between the APA and the utilities after October 31, 1987 and before January 1, 1988. This time bracket covers the Bradley Lake project agreements. The exemption terminates when all long-term debt on the project is retired.

Subsection (c)(2) establishes a public utilities' right to include a covenant for collecting sufficient revenues to pay for debt service under the power sale agreement.

Subsection (d) mandates that meetings between APA and public utilities related to power sale agreements or other matter exempted from APUC review under subsection (c)(1) above are subject to AS 44.62.310 (open public meetings law).

Section 2 amends AS 42.05.511, pertaining to APUC's jurisdiction, to allow utilities to include validated costs in their rates if incurred as part of contracts described by the proposed AS 42.05.431(c). While APUC would validate the costs, the commission is specifically prohibited from amending or otherwise altering the formulas set out in current contracts.

Section 3 amends AS 44.83.090(b) pertaining to APA, clarifies that the relationship between APA and APUC is not modified except for wholesale power agreements and related contracts described in the proposed AS 42.05.431(c)(1) i.e. APUC has no jurisdiction to review or approve these.

Section 4 amends AS 44.83.162 pertaining to the APA's power cost equalization (PCE) program to exclude validated costs or kilowatt/hour sales associated with U.S. Department of Defense facilities. The net effect would be to decrease the costs to the ratepayers and increase the cost of the PCE program.

Section 5 expresses the legislature's intent that if the power sale agreement is amended then section 29 should be removed for the benefit of the consumers. Section 29 requires that the utilities keep paying the same debt service for an additional twenty years after the 30 year revenue bonds are paid off. This provision was agreed to in lieu of rate reopeners such as in the four-dam pool agreement. In terms of real dollars, the effect would be that the ratepayers would pay back to the state about \$10 million (present value) for the \$175 million in equity that the state contributed to the project.

Senator J. Coghill, Chairman
February 23, 1988
Page 3

Section 6 makes sections 1 - 4 of the proposed bill except AS 42.05.431 (d) retroactive to November 1, 1987 in order to cover all power sale agreements and related contracts signed for the Bradley project.

Section 7 is the effective date clause.

Summary & Conclusion. If the objective is to restart the Bradley Lake Hydroelectric project without further delays this summer, the Governor must sign the enabling legislation not later than March 15, 1988. In order to accomplish that, and minimize further delays and cost increases, it is essential that the already concluded power sale agreements and related contracts be exempted from further lengthy and uncertain APUC review and approval process and as was originally intended by the legislature when it authorized the project in accordance with AS 44.83.185 in 1984.

The objective of completing Bradley without further delays and at least cost can now best be attained thru passage of CSHB 356 (Rules) am. In its present form the bill does not contain any fatal flaws and would accomplish the immediate task of restarting the project. Other related issues would best be handled seperately from this bill.

Alaska State Legislature

Senate Advisory Council



P.O. Box V
State Capitol
Juneau, Alaska 99811
Phone: (907) 465-3114

MEMORANDUM

TO: ALL SENATORS

FROM: Kurt S. Dzinich *KSD*
Senior Advisor

DATE: January 27, 1988

RE: Bradley Lake Project Update

For your information, following is a brief summary of the current status of the Bradley Lake Hydroelectric project.

As you probably recall, in early 1987 the APA Board of Directors decided that no further contracts would be awarded to continue construction of the Bradley project until the Railbelt utilities had signed unconditional power sale agreements for 100% of the energy output. Project completion at that time was 22%.

The power sale agreement negotiations were complicated by the position of the Railbelt utilities that they would not sign the power sale agreements unless the legislature committed to the completion of the Railbelt intertie system between the Kenai Peninsula and Fairbanks.

As the 1987 legislative session progressed, a second complication arose due to an attorney general's opinion that the 1986 legislation dealing with APUC had extended its powers to APA. The APA had previously been statutorily exempted from APUC oversight since its inception in the late 1970's. An attempt to restore the pre-1986 jurisdictional balance between APA and APUC failed when the Governor vetoed SB 22 and the legislature failed to override the veto in the 1987 special session.

As a result of the above activities, the Bradley project remained on hold in 1987 incurring about a year's delay in its construction completion schedule.

By the end of 1987, the APA Board of Directors and the governing boards of the Railbelt utilities (except the Fairbanks Municipal Utility whose share was picked up by the GVEA) had ratified the unconditional power sale agreements. In addition, the utilities had among themselves completed the necessary wheeling agreements which would allow each utility to be able to receive its share of the Bradley energy over the existing intertie system containing sections owned by CEA and HEA. The power sale agreement is conditioned on these wheeling agreements.

ALL SENATORS
January 27, 1988
Page 2

After the failure of SB 22, the APA Board stipulated that the Bradley project would remain on hold until the APUC had completed its review and approval process. This process was expected to take six months or longer depending on whether the APUC decision would be appealed in the courts.

As he had indicated earlier when vetoing SB 22, the Governor introduced a "clean" version of that bill as HB 356. The bill is assigned to the House Judiciary and Finance committees with initial hearings scheduled for January 27, 28, and 29, 1988. Essentially, this bill would exempt the Bradley Lake power sale agreements and related wheeling contracts from APUC review.

While some have intimated that the removal of the APUC from the APA's project approval process is tantamount to eliminating public or ratepayer oversight, the fact of the matter is that all of the Railbelt utilities are owned and controlled by their ratepayers through their elected governing boards or assemblies. In addition, since the project was assumed by the APA from the Corps of Engineers in early 1983, there have been numerous public hearings by the APA, the FERC, and the Legislature with more than ample opportunity for public comment and oversight.

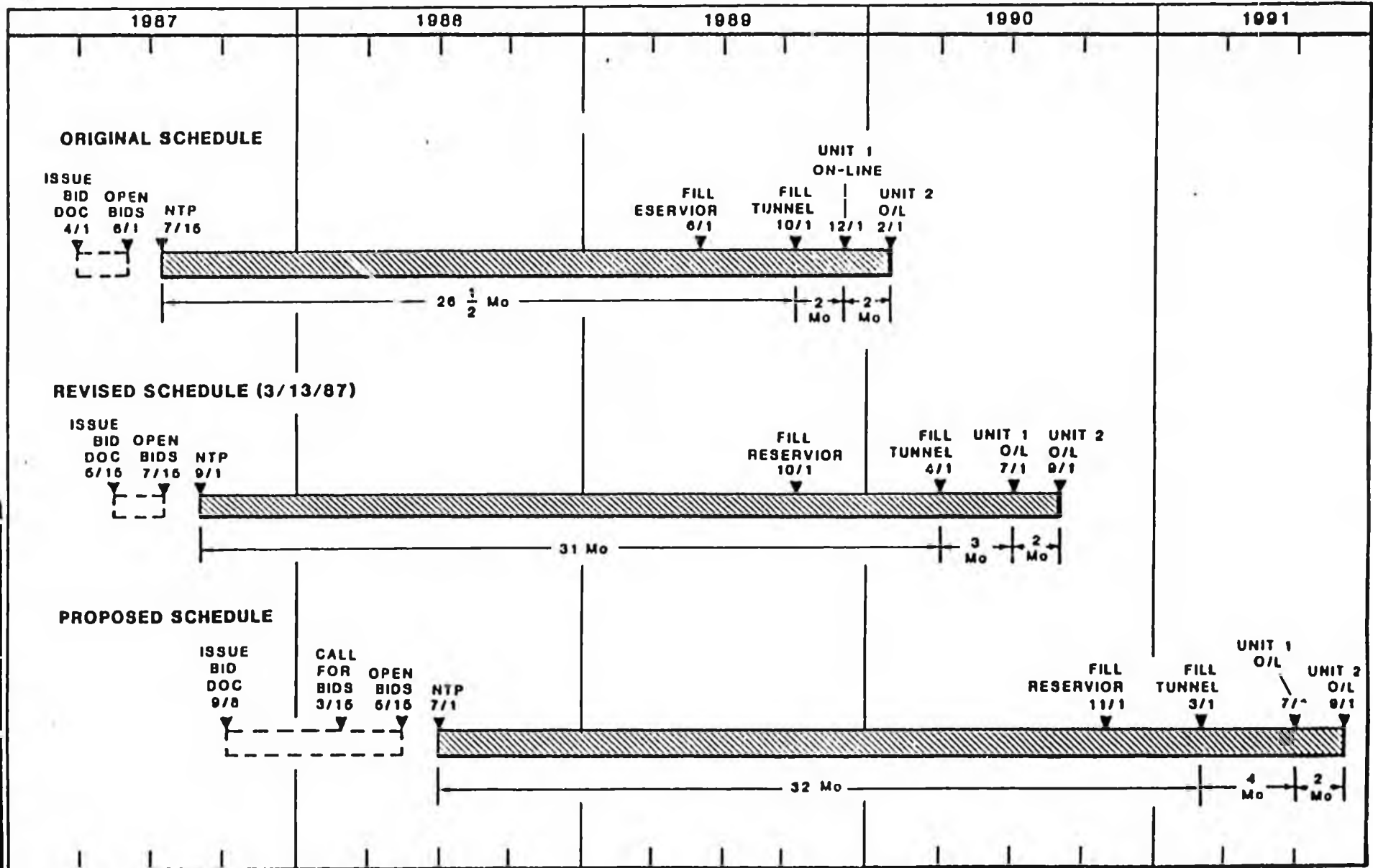
In order not to lose yet another construction season (1988), it is essential that the Governor sign HB 356 by the middle of March 1988. This would allow APA to complete the bid solicitation, review and award process and allow for start of construction by mid-summer. This new schedule would result in a completion date of September 1991 or some 19 months later than the original project schedule, or 12 months later than the March 13, 1987 revised schedule. Attached is a copy of the schedule comparison.

In summary, timely passage of HB 356 without "killer amendments" and signing by the Governor by mid-March of 1988 are critical to being able to restart the project this summer and completing it without further needless delays and cost increases.

Please let me know if you have any questions.

Attachment:

Alaska Power Authority
BRADLEY LAKE SCHEDULE COMPARISON



ATTACHMENT A



Tom Fink,
Mayor

Municipal Light & Power

1200 EAST FIRST AVENUE — ANCHORAGE, ALASKA 99501-1685
TELEPHONE (907) 279-7671
TELECOPIER (907) 278-2961



February 25, 1988

Alaska State Legislature
Senate Resources Committee
Hon. John B. Coghill, Chairman
Box V
Juneau, Alaska 99811

Subject: CSHB 356 (Rules) am

Dear Senator Coghill:

In reply to your request of February 16, 1988 I offer the following testimony:

- Q. Does the letter of intent accurately portray the utilities' understanding of this issue based on testimony to date on HB 356?
- A. Yes. The letter of intent by Representative Sund and adopted by the House accurately portrays my understanding of the intent of the wheeling contract ML&P entered into.
- Q. Is the letter of intent redundant given CSHB 356 (Rules) am?
- A. Yes, I believe the subject bill in Section 2 also accurately portrays the intent of the wheeling contract.
- Q. Are you satisfied with the CSHB 356 (Rules) am? If not, why not?
- A. Yes. I do not believe contracts between the State and a utility should ever be subject to review by another State agency because I believe the State has the obligation to internally resolve it's differences and not require the public to expend considerable cost and energy in what could and should be resolved by the State Administration. And to give the State Administration credit, they are in this case trying to do exactly that.

I also hope and expect that long before the time the Bradley Lake long-term debt is paid off the Legislature will come to understand that State regulation of public power utilities, both municipals and REA co-op, is not in the public interest and I feel that regulation of these utilities which are already subject to local control, over time, tend to result in higher, not lower rates.

Thank you for the opportunity to state my views on this matter. I certainly support and applaud your effort to have this bill enacted into law in the near future.

Sincerely,


Thomas R. Stahr
General Manager

PROVIDE FOR TOMORROW, SAVE ENERGY TODAY.

AM 1 4 P

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturgulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
(907) 465-4907

February 16, 1988

Tom Stahr, General Manager
Anchorage Municipal Light & Power
1200 East First Avenue
Anchorage, AK 99501

RE: CSHB 356 (Rules) am

Dear Mr. Stahr:

The referenced bill with a letter of intent was referred to the Senate Resources Committee. The committee is scheduled to hold hearings on February 29, 1988.

As part of the review process, I would appreciate receiving written response to the following questions not later than the scheduled hearing:

1. Does the letter of intent accurately portray the utilities' understanding of this issue based on testimony to date on HB 356?
2. Is the letter of intent redundant given CSHB 356 (Rules) am?
3. Are you satisfied with the CSHB 356 (Rules) am? If not, why not?

Based on a preliminary review, the bill does not appear to contain any fatal flaws. Unless some are discovered subsequently, my intention is to move the bill as is, in order to assure its timely passage by the Senate and approval by the Governor not later than March 15, 1988.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Coghill".

Senator J. Coghill,
Chairman



ALASKA RURAL ELECTRIC COOPERATIVE
ASSOCIATION, INC.

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

February 24, 1988

Dear Senator Coghill:

In response to your letter of February 16th, this is to inform you that our association strongly supports HB 356 and has no objection to the form of that bill before your committee, CSHB 356 (Rules) am.

The letter of intent which the House adopted with the bill does accurately represent our understanding of that portion of the bill which it addresses. This letter is probably useful in that it clearly tells the APUC to keep their hands off the cost allocation formula agreed to by the utilities as an essential element of the services and wheeling contracts.

We understand that there is presently some confusion as to whether passage of HB 356 would somehow cause the wholesale power contracts entered into between the APA and the "4-dam pool communities" to become subject to the jurisdiction of the APUC. It is our opinion that this bill does not affect the "4-dam pool" in any way, and that the existing "4-dam pool" contracts, including "rate reopeners" contemplated by the terms of the contracts, are not and will not become subject to APUC jurisdiction. In support of this position, we submit the enclosed letter of July 22, 1987 from Commissioner Carolyn Guess for the APUC to Mr. Robert LeResche of the Alaska Power Authority, and Attorney General opinion letters dated Feb. 12, 1988 and Feb. 22, 1988 addressed to Senator Fred Zharoff and signed by Carolyn Jones. We are not requesting an amendment to HB 356 for our members in the "4-dam pool" because we do not believe it to be necessary.

We commend you for your intention stated in your letter to pass this bill as is in order to assure its timely passage by the Senate and approval by the Governor not later than March 15, 1988. We encourage you to proceed in accordance with your stated intention.

Respectfully,

David Hutchens
Executive Director

DEMOCRACY IN ACTION

Δ Ρ Ε C Α

STATE OF ALASKA

July 22, 1987

ALASKA PUBLIC UTILITIES COMMISSION

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

RECEIVED
STATE OF ALASKA DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

JUL 27 1987

ALASKA POWER

420 "L" STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 276-6222

RECEIVED

JUL 27 1987

ALASKA POWER
AUTHORITY

Mr. Robert E. LeResche
Executive Director
Alaska Power Authority
P.O. Box AM
Juneau, Alaska 99811

Re: Interpretation of AS 42.05.431(b) as it applies to contracts between regulated utilities and the Alaska Power Authority (APA)

Dear Mr. LeResche:

This letter responds to your inquiry of June 24, 1987, in which you raise several questions regarding the above-referenced matter.

In order to make sure that all the inquiries in your letter have been addressed, this response is divided into four sections: the Four Dam Pool Contracts; Intertie Agreements; Waste Heat Agreements; and the Bradley Lake Wholesale Power Agreements.

Four Dam Pool Contracts:

The Commission believes it is clear that the 1986 legislative amendment to AS 42.05 which created subsection .431(b) (hereinafter .431(b)) does not apply to contracts in place prior to its enactment. Therefore, the Commission has no basis to assert jurisdiction over the existing Four Dam Pool contracts.

Amendments and "re-openers" to these contracts pose a somewhat different question. To the extent that a re-opener is purely "formula" in nature, and clearly within the contemplation of the parties to the original agreement, it is probable that Commission approval would not be required. On the other hand, amendments which result in substantial changes to the agreements may be subject to Commission review. At this time, the best guidance we can offer is to suggest that all changes to these contracts be submitted to the Commission for preliminary evaluation to determine the appropriate application, if any, of .431(b).

Intertie Agreements:

The Commission initially determined that .431(b) had questionable application to intertie agreements and requested the Department of Law to review the issue. With an opportunity for only a preliminary review, the Department of Law has indicated that the services provided within the context of an intertie agreement do not appear to constitute a transaction for wholesale power as contemplated by the statute.

During the Open Meeting of July 17, 1987, at which the Commission met to discuss a response to your letter, a concern was raised regarding an intertie agreement associated with an APA power project. If the intertie is an integral part of the overall wholesale power transaction, an argument can be made that such agreements do require Commission approval.

Based on the Department of Law's advice and the Commission's own analysis, we conclude that, as a general matter, intertie agreements are not subject to Commission approval. However, the Commission will seek further review by the Attorney General on the question of intertie agreements which are negotiated in conjunction with an otherwise jurisdictional wholesale power agreement.

The APA is hereby informed that no action will be taken in response to the filing of the Craig/Klawock intertie agreement; this project may proceed without further Commission involvement. It should be noted, however, that costs associated with APA projects will be subject to the Commission's review in determining revenue requirements for utilities subject to economic regulation.

Waste Heat Sales Agreements:

The provisions of .431(b) apply to wholesale power agreements "between public utilities." It is not necessary to reach the question of whether the sale of waste heat fits under the definition of a wholesale power agreement because the agreements cited by the APA include nine waste heat projects that result in a direct relationship between your agency and the ultimate consumer (i.e. school districts, hospitals etc.). Since these agreements are not "between public utilities," they are not subject to Commission approval.

Bradley Lake Wholesale Power Agreements:

The provisions of .431(b) clearly apply to Bradley Lake contracts. While the Commission understands and appreciates the critical nature of the APA contract approval process, we hope you will appreciate that the regulatory process is subject to a wide variety of considerations beginning with a statutory requirement for a reasonable period of public notice of the contracts requiring approval. In the event an individual or entity seeks to intervene in a Commission proceeding, our procedures must accommodate a schedule which provides reasonable response time for all parties. In addition, as I am sure you are well aware, Commission decisions are subject to judicial review, the timing of which is totally beyond this agency's control.

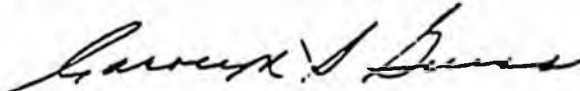
Notwithstanding the constraints of the regulatory process, it is the Commission's intent to respond as timely as possible to the Bradley Lake filings. To that end, any party to a Bradley Lake contract can submit its agreement for initial Commission staff review upon the signing of the general manager commitment letter. However, the Commission would not proceed with the formal approval process until the agreement has been fully executed by the

utility's governing board. As the Commission indicated in its Open Meeting, we believe that the staff review and analysis process could be furthered if your designated staff and ours have communication prior and subsequent to the filing of any contract. It is our experience that on occasion delays can be caused by a lack of relevant information timely provided to Commission staff. Because your staff may not be familiar with the kinds of data normally submitted in analyzing wholesale power agreements, we strongly suggest that communication between our staffs begin immediately.

I believe this letter fully responds to your inquiries. If you have additional questions or clarifications, please contact me or Ted Moninski, the Commission's Executive Director.

Sincerely,

ALASKA PUBLIC UTILITIES COMMISSION



Carolyn S. Guess
Acting Chairman

P.S. I note that your letter to the Commission was specifically directed to Commissioner-elect Peter Sokolov. While the Governor has appointed Mr. Sokolov to the position recently vacated by the retirement of former Chairman Marvin Weatherly, he has not yet named a new, permanent APUC Chairman. During the interim, the Governor has asked that I assume the responsibilities of Acting Chairman.

CORRESPONDENCE DISTRIBUTION	
ACTION:	INFORMATION:
_____	B. N. Petue M. Hubbard
_____	D. Shira C. Jones
_____	G. Manni J. Swenfeld
_____	D. Ebele
DATE REC'D:	DATE DUE:

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0303
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL
February 12, 1988

Honorable Fred F. Zharoff
Pouch V
Juneau, Alaska 99811

Re: APUC Review/ "4 Dam Pool"
Power Sales Agreement
File No. 661-88-0329

Dear Senator Zharoff,

You have asked our opinion whether the Alaska Public Utility Commission (APUC) is authorized to review the Long-Term Power Sales Agreement 4 Dam Pool - Initial Project of the Alaska Power Authority ("the Agreement").

As you know, the Alaska Power Authority ("the APA"), 2 electric cooperatives and three cities in southeast Alaska signed the Agreement in October, 1985. The Agreement provided for the sale over 45 years of hydroelectric power from 4 state-owned hydroelectric projects collectively known as the Initial Project. See Agreement, Sec. 2(b). The Agreement requires the power purchasers to resell the power at a rate sufficient to pay the costs of operating and maintaining the projects and the cost of debt service. 1/ See Agreement, Sec. 5(b). The Agreement also provides, as required by law, for the parties to renegotiate the debt service component of the wholesale power rate in the years 2000 and 2015. See AS 44.33.625; Agreement, Sec. 9. This provision is commonly referred to as "the rate reopener."

In 1986 the legislature amended AS 42.05.431 by adding a new subsection which provided that a wholesale power agreement between public utilities is subject to advance approval of the APUC. AS 42.05.431(b). 2/ Moreover, the APUC may order the parties to negotiate an amendment to a wholesale power agreement when the APUC finds that the rates set in accordance with the

1/ The debt service component is paid to the APA to retire a loan between the Department of Commerce and Economic Development and the APA for the purpose of constructing and acquiring the 4 Dam Pool hydroelectric projects.

2/ This office has previously determined that sec. 431(b) applies to wholesale power agreements to which the APA is a party. 1987 Inf. Op. Att'y Gen. (February 18; 663-87-0365).

agreement are not just and reasonable. Id. The only comment I have found on the purpose of subsection (b) is in a letter from Attorney General Brown to Governor Sheffield, reviewing HB 314 after it was passed by the legislature. The letter states, "[t]he commission's authority to approve wholesale power agreements would be made explicit by AS 42.05.431(b)." Letter, June 4, 1986, A.G. File No. 883-86-0135.

At the same time that the legislature adopted AS 42.05.431(b), however, the legislature further provided that subsection (b) "applies only to wholesale power agreements entered into on or after June 7, 1986." Sec. 8, ch. 104, SLA 1986. Since this Agreement was entered into prior to June 7, 1986, section 431(b) does not apply to the existing Agreement.

The more difficult question is whether the APUC acquires jurisdiction over this 45-year Agreement if the parties exercise their rights under the rate reopener provision of the existing Agreement and voluntarily elect to amend the Agreement in the year 2000 or 2015 as to the rates to be charged under the Agreement. By the terms of the existing Agreement, they may reopen the Agreement as to the debt service component of the wholesale power rate. See Agreement, sec. 9. The Agreement provides an elaborate procedure for determining whether the debt service component should be revised. As long as the parties proceed under the provisions of section 9 of the existing Agreement, such activity should not produce a new agreement subject to APUC review under AS 42.05.431(b).

This opinion does not address whether the APUC would have jurisdiction over the agreement should the parties decide to amend the Agreement regarding a subject not contemplated by the original Agreement. Nor does this opinion address whether the APUC would acquire jurisdiction if the parties so modified and amended the original Agreement as to create a new agreement.

I hope this opinion has answered your question. Please let me know if I can be of further assistance.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 

Carolyn E. Jones
Assistant Attorney General

cc: Susan Knowles, APUC
Elizabeth Hickerson, AGO
Art Peterson, AGO

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
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FAIRBANKS ALASKA 99701-4679

P O BOX K—STATE CAPITOL
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PHONE: (907) 465-3600

February 22, 1988

Honorable Fred F. Zharoff
Pouch V
Juneau, Alaska 99811

Re: APUC Review/ "4 Dam Pool"
Power Sales Agreement
File No. 661-88-0329

Dear Senator Zharoff:

In my letter dated February 12, 1988 I advised you that the Alaska Public Utility Commission (APUC) would not have jurisdiction over the Long-Term Power Sales Agreement 4 Dam Pool - Initial Project of the Alaska Power Authority ("the Agreement") if the parties exercised their rights under the rate reopener provision of the Agreement. This opinion was based on the fact that the Agreement contemplated a rate reopener period and provided an elaborate procedure for a reconsideration of the rates charged under the Agreement. As such, the Agreement was specifically excluded from APUC review.

I expressed no opinion on whether the APUC would acquire jurisdiction over the Agreement should the parties decide to amend the Agreement regarding a subject not contemplated by the original Agreement. Nor did I address whether the APUC would acquire jurisdiction if the parties so modified and amended the original Agreement as to create a new agreement. Your memorandum of February 15, 1988 asks me to address these two questions as well.

Without having an actual amendment to the Agreement and an actual set of facts before me, it is not possible to give you a definite answer. I do not, however, want to foreclose the possibility that at some point the parties to the Agreement may so amend the Agreement that it no longer resembles the Agreement which the legislature exempted from APUC review. Should that

Honorable Fred F. Zharoff

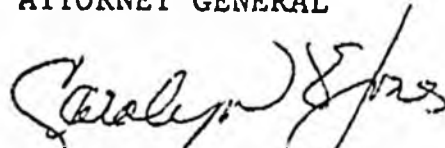
February 22, 1988
Page 2

eventuality occur, then the APUC may well successfully assert jurisdiction over the amended Agreement.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:



Carolyn E. Jones
Assistant Attorney General

CEJ:sw

cc: Susan Knowles, APUC
Elizabeth Hickerson, AGO

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturgulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
(907) 465-4907

February 16, 1988

Dave Hutchens, Executive Director
ARECA, Inc.
237 E. Fireweed Lane, Suite 301
Anchorage, AK 99503

RE: CSHB 356 (Rules) am

Dear Mr. Hutchens:

The referenced bill with a letter of intent was referred to the Senate Resources Committee. The committee is scheduled to hold hearings on February 29, 1988.

As part of the review process, I would appreciate receiving written response to the following questions not later than the scheduled hearing:

1. Does the letter of intent accurately portray the utilities' understanding of this issue based on testimony to date on HB 356?
2. Is the letter of intent redundant given CSHB 356 (Rules) am?
3. Are the utilities satisfied with the CSHB 356 (Rules) am?
If not, why not?

Based on a preliminary review, the bill does not appear to contain any fatal flaws. Unless some are discovered subsequently, my intention is to move the bill as is, in order to assure its timely passage by the Senate and approval by the Governor not later than March 15, 1988.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Jack Coghill".

Senator J. Coghill
Chairman

HB

364



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 15, 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 penalties for commercial fishing violations. This bill addresses penalty provisions for both noncriminal strict liability violations and for criminal misdemeanors, and is intended to bring commercial fisheries penalty provisions into conformity with present economic conditions in the fishing industry.

The bill has three main components: (1) clarification of existing penalty provisions regarding license forfeiture and suspension; (2) increasing noncriminal strict liability penalties; and (3) increasing criminal misdemeanor penalties.

With respect to the first component, sec. 1 of the bill amends AS 16.05.710, regarding license forfeiture and suspension for commercial fishing violations, to clarify that commercial fishing licenses may be suspended only after conviction for a criminal violation. Due to the somewhat different status of interim use and limited entry permits, the proposed amendments of AS 16.05.710 also clarify the treatment of a license that is an interim use or entry permit by specifically referring to those permits. In Beran v. State, 705 P.2d 1280 (Alaska App. 1985), the court strongly implied that it would invalidate as unconstitutional any fish or game law that provided for a jail sentence or forfeiture of a commercial fishing license unless the offense is defined in a way that requires proof of a culpable mental state.

Section 2 of the bill makes clear that, for purposes of forfeiture and suspension, a commercial fishing license includes a crewmember license.

The second component of the bill is dealt with in sec. 3. Proposed AS 16.05.722 establishes penalties for noncriminal, strict liability violations, providing for a maximum fine of \$6,000 and mandatory forfeiture of any illegally taken or retained fish. The new statute would create a rebuttable

presumption, patterned after a provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. sec. 1860(e)) that all fish found on board the vessel or at the fishing site were taken or retained illegally. It is often impossible to prove which individual fish on board a vessel, or at a fishing site, were the fish actually taken or retained illegally. Establishing the rebuttable presumption that all fish on board or at a site were taken or retained illegally will avoid the often impossible burden on the state to prove which specific fish were so taken or retained and will prevent a violator from keeping unlawfully taken fish, while at the same time allowing the violator the opportunity to prove that fish on board the vessel or at the site were actually taken and retained lawfully.

It is widely agreed in the commercial fishing community that the maximum \$300 fine for strict liability offenses established by the court in Constantine v. State, 739 P.2d 188 (Alaska App. 1987) is an insufficient deterrent for commercial fisheries violations. In the Bristol Bay commercial salmon fishery, for example, it is possible to net \$10,000 to \$15,000 worth of fish in one single illegal set. Accordingly, ever since the Constantine decision was issued prosecutors have found it necessary to file virtually all commercial fisheries cases as criminal misdemeanors in order to obtain a realistic fine. This in turn requires the state to prove at least the culpable mental state of negligence, which can be difficult to do in commercial fisheries cases where there are often no witnesses and often the violations occur in remote areas. In addition, it is expensive to try all fisheries cases as criminal misdemeanors, particularly in the bush, since the defendant is entitled to a trial by jury rather than a court trial.

Several lower courts found, after Beran was decided but before the Constantine decision, that AS 16.05.720(a)'s fine of \$5,000 plus AS 16.05.720(c)'s fine of an amount equal to the value of all fish on board, plus AS 16.05.190 -- 16.05.195's forfeiture of gear such as nets, pots, and tackle, was authorized by the legislature for strict liability violations, and was constitutionally permissible even though no jury trial was provided and no public defender appointed.

Moreover, as Court of Appeals Judge James Singleton pointed out in his dissenting opinion in Constantine, at the time the Alaska legislature first established the penalties for commercial fishing violations in 1959 (\$5,000 or one year, in jail, or both), all commercial fishing violations were treated as strict liability offenses.

In Constantine, however, the majority court held that the legislature only intended a \$300 fine and forfeiture of illegally taken fish for strict liability violations. The court has never ruled, however, on the question of what fines, forfeitures, or license penalties can constitutionally be imposed for strict liability violations.

Although proposed AS 16.05.722 raises the maximum fine to \$6,000 for strict liability violations, and retains the provision for mandatory forfeiture of illegally taken fish, it eliminates the possibility of forfeiture of gear. Forfeiture of gear is often a cumbersome process that is not cost effective and does not necessarily deter illegal conduct if the gear can be readily replaced. The increased fine of \$6,000 takes into account the fact that forfeiture of gear is no longer provided, and reflects the pre-Constantine combined fine and gear forfeiture strict liability penalties. It provides a reasonable range of penalties that the trial court can tailor to the individual circumstances of each case and each fishery.

In summary, sec. 3 of the bill will bring treatment of most commercial fisheries cases as strict liability offenses back to the situation that existed before the Beran and Constantine decisions. The section also sets out the rule already established by the court in Beran and in AS 11.81.900(56) that a "violation" is a noncriminal offense and that a person charged with a violation is not entitled to a trial by jury or to representation at public expense. It also specifies that in a noncriminal violation the state bears the burden of proving the violation "by a preponderance of the evidence."

The third component of the bill is also dealt with in sec. 3. Proposed AS 16.05.723 changes the penalties for misdemeanor commercial fisheries violations to more accurately reflect current economic conditions in Alaska's commercial fisheries. The existing maximum fine in AS 16.05.720 for commercial fisheries violations is \$5,000, a figure established under territorial law in 1924, enacted as AS 16.05.720 in 1959, and not amended since then. Commercial fishing in Alaska has evolved into a highly regulated, competitive industry with, for example, limited entry permits for the Bristol Bay salmon fishery selling for in excess of \$100,000 and potential profits in several fisheries in the six digit range. A \$5,000 fine for a violation of the state's commercial fisheries laws and regulations is an inadequate penalty. Proposed AS 16.05.723(a) increases the

maximum fine to \$15,000, which more accurately reflects current economic conditions in the fishing industry.

Proposed AS 16.05.723(a) also specifies that the court shall order forfeiture of all illegally taken or retained fish found on board the vessel or at the fishing site at the time of the violation. The proposed statute creates a rebuttable presumption that all fish found on board the vessel or at the fishing site were taken or retained illegally. As explained above, this provision is necessary to avoid allowing a person convicted of a fishing violation to retain illegally taken fish.

Proposed AS 16.05.723(b) and (c) continue the mandatory penalty provisions of current AS 16.05.720 for certain particularly serious offenses. For the crimes specified, proposed AS 16.05.723(b) and (c) mandate, in addition to the other penalties in the section, imposition of a fine equal to the gross value of the fish found on board or at the site at the time of the violation, with the fine increasing to three times the value of the fish, or a fine of \$10,000, whichever is greater, for a third or subsequent conviction within a 10-year period. Violation convictions and misdemeanor convictions both count toward the enhanced penalty.

Proposed AS 16.05.723(a) also makes it clear that once fish are forfeited under that section, the court cannot additionally order forfeiture of the fish or their fair market value under AS 16.05.195. However, it also is the intent of this bill that imposition of a penalty under AS 16.05.722 or 16.05.723 is not a bar to other remedies such as a civil damages action or a civil in rem forfeiture action under AS 16.05.195. Furthermore, it is not the intent of this bill that the penalties in AS 16.05.710, 16.05.722, and 16.05.723 would supersede or affect penalties under limited entry law in AS 16.43.

The existing commercial fisheries penalty section, AS 16.05.720, is repealed by sec. 5 of the bill.

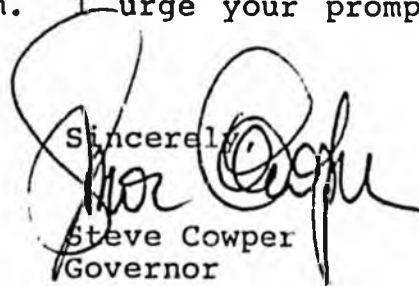
Because of the need to have this important legislation operative in time for the 1988 commercial fishing season, the bill includes an immediate effective date.

Drafts of this bill have been discussed extensively with the Department of Public Safety, division of fish and wildlife

The Honorable Ben Grussendorf

Page 5

protection, the Department of Fish and Game, district attorneys, and other attorneys in the Department of Law, and is strongly supported by them. I urge your prompt action on this bill.

Sincerely,

Steve Cowper
Governor

SENATE COMMITTEE REPORT

FURTHER

DATE TURNED INTO OFFICE _____

4/29/88

Mr. President:

Resources _____ Committee considered Sc CSHB 364 (JUD)

commercial fishing violations; efd

and recommended

replace with Sen CS For CS For HB 364) same title
 or adopt _____ CS _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous

zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
Paul Gruber
[Signature]
[Signature]

[Signature]
Chairman signature and recommendation

Committee Backup attached



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Commercial Fish	BILL NUMBER CSHB 364(JUD)	SPONSOR House Rules
SHORT TITLE OF BILL An act relating to commercial fishing violations			
DEPARTMENT POSITION Support			
PREPARED BY <i>Robert C. Clasky</i> ROBERT C. CLASKY	DATE 5/3/88	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 5/3/88

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Public Safety Law	CONSTITUENT GROUP(S) AFFECTED BY BILL Commercial Fishermen
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Recent court action has reduced the maximum fine for strict liability violations of commercial fishing violations to \$300. The department did not feel that level of fine was adequate to deter violations, and therefore requested introduction of legislation so the problem could be addressed.

ANALYSIS OF BILL/PROGRAM EFFECTS

The department believes that the committee substitute most likely achieves a balance between the concerns of the public and the state. The fines and other punishments should provide a level of deterrent that will cause fishermen to seriously consider their actions, while not being heavy handed to those that make an honest mistake.

AMENDMENTS PROPOSED

None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

Bill Version: HB 364
Publish Date: HOUSE 1/15/88

FISCAL NOTE

REQUEST

Revision Date: _____
Title: An act relating to commercial fishing and providing for an effective date

Agency Affected: Public Safety
BRU: Fish & Wildlife Protection

Sponsor: Rules - Governor's Request
Requestor: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Colonel Jack Jordan
Division: Fish & Wildlife Protection

Phone: 269-5532
Date: 01/07/88

Approved by Commissioner: *Wayne H. ...*
Agency: Public Safety

Date: 01/07/88

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 364
PUBLISH DATE: HOUSE 1/15/88

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: ADF&G
Title: An Act relating to commercial fishing violations and providing for an effective date. BRU: _____
Sponsor: Rules Committee Components: _____
Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
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:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

[Empty box for analysis]

Prepared by: Roland Shanks Phone: 465-4100
Division: Commissioner's Office Date: 1/11/88
Approved by Commissioner: [Signature] Date: 1-11-88
Agency: Fish and Game

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 364 (Jud)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 5/3/88
Title: "An Act relating to commercial fishing violations..."
Sponsor: Rules/Governor's Request
Requestor: Senate Resources

Agency Affected: Public Safety
BRU: Fish & Wildlife Protection
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-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Colonel Jack Jordan/dp
Division: Fish & Wildlife Protection

Phone: 269-5532
Date: 5/3/88

Approved by Commissioner: *J.A.H. Ho* Arthur English
Agency: Public Safety

Date: 5/3/88

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to commercial fishing violations
Sponsor: House Rules
Requestor: Senator Coghill

Agency Affected: Fish and Game
BRU: Commercial Fisheries
Components: Commercial Fisheries

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Robert C. Clasby
Division: Commercial Fisheries
Approved by Commissioner: [Signature]
Agency: Fish and Game

Phone: 465-4210
Date: 5/3/88
Date: 5/3/88

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

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 3, 1988

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

The Honorable John B. (Jack) Coghill
Chairman, Senate Resources Committee
Members, Senate Resources Committee
P.O. Box V
Juneau, Alaska 99811

Re: CS for HB 364 (Jud.)
(Commercial fisheries penalties)

Dear Senators:

This letter confirms the Departments of Law, Public Safety, and Fish and Game's support for CS for HB 364 (Jud.), which your committee has scheduled for hearing on Wednesday, May 4 at 1:30 p.m. We believe that the bill as amended in the House provides a workable program for enforcement of commercial fisheries laws and regulations and we urge your committee's and the full Senate's approval of the bill.

The concerns addressed in our previous letters, including the April 22, 1988, letter to the House Judiciary committee have been for the most part resolved by the House Judiciary Committee substitute and we do not recommend any additional amendments. We view the bill as expressing the very reasonable legislative conclusion that a fine of up to \$3,000 for a first offense and up to \$6,000 for a subsequent offense represents, in the context of commercial fisheries, a fine that is not "criminal in nature." This provision tracks past approaches to commercial fisheries fines and is consistent with testimony from fishermen presented to the Board of Fisheries during a hearing on this bill.

We urge the expeditious approval of this bill so that we will have a law in place for the 1988 fishing season.

Thank you.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: *Sarah E. McCracken*
Sarah E. McCracken
Assistant Attorney General

SEM:jem

go0288hX

Hein

5/6/88

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 364 (Resources)

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 commercial fishing violations;
7 and providing for an effective date."

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

9 * Section 1. AS 16.05.710(a) is repealed and reenacted to read:

0 (a) A person convicted of a misdemeanor for violating AS 16.05.-
1 440 - 16.05.690 or a federal or state commercial fishing statute or
2 regulation is, in addition to other penalties provided by law, subject
3 to the following penalties:

4 (1) upon a first or second conviction the court may sus-
5 pend, for a period of not more than one year,

6 (A) the person's commercial fishing license and the
7 right to obtain a limited entry permit; or

8 (B) one or more of the person's limited entry permits
9 and the person's right to obtain a commercial fishing license;
10 and

11 (2) upon a third or subsequent conviction the court shall
12 suspend, for a period of not more than three years,

13 (A) the person's commercial fishing license and the
14 right to obtain a limited entry permit; or

15 (B) one or more of the person's limited entry permits
16 and the person's right to obtain a commercial fishing license.

17 * Sec. 2. AS 16.05.710 is amended by adding new subsections to read:

18 (c) During the period for which a limited entry permit is sus-
19 pended under (a) of this section a permit card may not be issued and

1 the permit may not be transferred or sold.

2 (d) In this section

3 (1) "commercial fishing license" includes a crew member
4 license;

5 (2) "limited entry permit" includes an interim use permit.

6 * Sec. 3. AS 16.05 is amended by adding new sections to read:

7 Sec. 16.05.722. STRICT LIABILITY COMMERCIAL FISHING PENALTIES.

8 (a) A person who without any culpable mental state violates AS 16.-
9 05.440 - 16.05.690, or a regulation of the Board of Fisheries or the
0 department governing commercial fishing, is guilty of a violation and
1 upon conviction is punishable by a fine of not more than

2 (1) \$3,000 for a first conviction; and

3 (2) \$6,000 for a second or subsequent conviction.

4 (b) In addition, the court shall order forfeiture of any fish,
5 or its fair market value, taken or retained as a result of the commis-
6 sion of the violation. For purposes of this subsection, it is a
7 rebuttable presumption that all fish found on board a fishing vessel
8 used in or in aid of a violation, or found at the fishing site, were
9 taken or retained in violation of AS 16.05.440 - 16.05.690 or a com-
0 mercial fisheries regulation of the Board of Fisheries or the depart-
1 ment. It is the defendant's burden to show by a preponderance of the
2 evidence that fish on board or at the site were lawfully taken and
3 retained.

4 (c) A person charged with a violation under this section is
5 entitled to a trial by court but not by jury, and is not entitled to
6 representation at public expense.

7 Sec. 16.05.723. MISDEMEANOR COMMERCIAL FISHING PENALTIES. (a)

8 A person who negligently violates AS 16.05.440 - 16.05.690, or a
9 regulation of the board of fisheries or the department governing

1 commercial fishing, is guilty of a misdemeanor and in addition to
2 punishment under other provisions in this title, including AS 16.05.-
3 195 and 16.05.710, is punishable upon conviction by a fine of not more
4 than \$15,000 or by imprisonment for not more than one year, or by
5 both. In addition, the court shall order forfeiture of any fish, or
6 its fair market value, taken or retained as a result of the commission
7 of the violation, and the court may forfeit any vessel and any fishing
8 gear, including any net, pot, tackle, or other device designed or
9 employed to take fish commercially, that was used in or in aid of the
0 violation. Any fish, or its fair market value, forfeited under this
1 subsection may not also be forfeited under AS 16.05.195. For purposes
2 of this subsection, it is a rebuttable presumption that all fish found
3 on board a fishing vessel used in or in aid of a violation, or found
4 at the fishing site, were taken or retained in violation of AS 16.05.-
5 440 - 16.05.690 or a commercial fisheries regulation of the board of
6 fisheries or the department, and it is the defendant's burden to show
7 by a preponderance of the evidence that fish on board or at the site
8 were lawfully taken and retained.

9 (b) If a person is convicted under this section of one of the
10 following offenses, then, in addition to the penalties imposed under
11 (a) of this section, the court may impose a fine equal to the gross
12 value of the fish found on board or at the fishing site at the time of
13 the violation:

14 (1) commercial fishing in closed waters;
15 (2) commercial fishing during a closed period or season;
16 (3) commercial fishing with unlawful gear, including a net,
17 pot, tackle, or other device designed or employed to take fish commier-
18 cially; or

19 (4) commercial fishing without a limited entry permit

holder on board if the holder is required by law or regulation to be present.

(c) Upon a third misdemeanor conviction within a period of 10 years for an offense listed in (b) of this section or any combination of offenses listed in (b) of this section, the court shall impose, in addition to any penalties imposed under (a) of this section, a fine equal to three times the gross value of the fish found on board or at the fishing site at the time of the offense, or a fine equal to \$10,000, whichever is greater.

* Sec. 4. AS 16.05.925 is amended to read:

Sec. 16.05.925. PENALTY FOR VIOLATIONS. Except as provided in AS 16.05.430, 16.05.722, 16.05.723, [16.05.720,] 16.05.831, and 16.05.860, a person who violates AS 16.05.920, or a regulation adopted under this chapter or AS 16.20, is guilty of a class A misdemeanor.

* Sec. 5. AS 16.05.720 is repealed.

* Sec. 6. Notwithstanding the provisions of this Act, in a case pending on the effective date of this Act involving a commercial fishing violation that occurred before the effective date of this Act, the court shall apply the law that was in effect on the date the violation occurred.

* Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

go0288hX
Hein
5/4/88

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
 2 SENATE CS FOR CS FOR HOUSE BILL NO. 364 (Resources)
 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 commercial fishing violations;
 7 and providing for an effective date."

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 11 440 - 16.05.690 or a federal or state commercial fishing statute or
 12 regulation is, in addition to other penalties provided by law, subject
 13 to the following penalties:

14 (1) upon a first or second conviction the court may sus-
 15 pend, for a period of not more than one year,

16 (A) the person's commercial fishing license and the
 17 right to obtain a limited entry permit; or

18 (B) one or more of the person's limited entry permits
 19 and the person's right to obtain a commercial fishing license;
 20 and

21 (2) upon a third or subsequent conviction the court shall
 22 suspend, for a period of not more than three years,

23 (A) the person's commercial fishing license and the
 24 right to obtain a limited entry permit; or

25 (B) one or more of the person's limited entry permits
 26 and the person's right to obtain a commercial fishing license.

27 * Sec. 2. AS 16.05.710 is amended by adding new subsections to read:

28 (c) During the period for which a limited entry permit is sus-
 29 pended under (a) of this section a permit card may not be issued and

1 the permit may not be transferred or sold.

2 (d) In this section

3 (1) "commercial fishing license" includes a crew member
4 license;

5 (2) "limited entry permit" includes an interim use permit.

6 * Sec. 3. AS 16.05 is amended by adding new sections to read:

7 Sec. 16.05.722. STRICT LIABILITY COMMERCIAL FISHING PENALTIES.

8 (a) A person who without any culpable mental state violates AS 16.-
9 05.440 - 16.05.690, or a regulation of the Board of Fisheries or the
10 department governing commercial fishing, is guilty of a violation and
11 upon conviction is punishable by a fine of not more than

12 (1) \$3,000 for a first conviction; and

13 (2) \$6,000 for a second or subsequent conviction.

14 (b) In addition, the court shall order forfeiture of any fish,
15 or its fair market value, taken or retained as a result of the commis-
16 sion of the violation. For purposes of this subsection, it is a
17 rebuttable presumption that all fish found on board a fishing vessel
18 used in or in aid of a violation, or found at the fishing site, were
19 taken or retained in violation of AS 16.05.440 - 16.05.690 or a com-
20 mercial fisheries regulation of the Board of Fisheries or the depart-
21 ment. It is the defendant's burden to show by a preponderance of the
22 evidence that fish on board or at the site were lawfully taken and
23 retained.

24 (c) A person charged with a violation under this section is
25 entitled to a trial by court but not by jury, and is not entitled to
26 representation at public expense.

27 Sec. 16.05.723. MISDEMEANOR COMMERCIAL FISHING PENALTIES. (a)

28 A person who negligently violates AS 16.05.440 - 16.05.690, or a
29 regulation of the board of fisheries or the department governing

1 commercial fishing, is guilty of a misdemeanor and in addition to
2 punishment under other provisions in this title, including AS 16.05.-
3 195 and 16.05.710, is punishable upon conviction by a fine of not more
4 than \$15,000 or by imprisonment for not more than one year, or by
5 both. In addition, the court shall order forfeiture of any fish, or
6 its fair market value, taken or retained as a result of the commission
7 of the violation, and the court may forfeit any vessel and any fishing
8 gear, including any net, pot, tackle, or other device designed or
9 employed to take fish commercially, that was used in or in aid of the
10 violation. Any fish, or its fair market value, forfeited under this
11 subsection may not also be forfeited under AS 16.05.195. For purposes
12 of this subsection, it is a rebuttable presumption that all fish found
13 on board a fishing vessel used in or in aid of a violation, or found
14 at the fishing site, were taken or retained in violation of AS 16.05.-
15 440 - 16.05.690 or a commercial fisheries regulation of the board of
16 fisheries or the department, and it is the defendant's burden to show
17 by a preponderance of the evidence that fish on board or at the site
18 were lawfully taken and retained.

19 (b) If a person is convicted under this section of one of the
20 following offenses, then, in addition to the penalties imposed under
21 (a) of this section, the court may impose a fine equal to the gross
22 value of the fish found on board or at the fishing site at the time of
23 the violation:

- 24 (1) commercial fishing in closed waters;
25 (2) commercial fishing during a closed period or season;
26 (3) commercial fishing with unlawful gear, including a net,
27 pot, tackle, or other device designed or employed to take fish commer-
28 cially; or
29 (4) commercial fishing without a limited entry permit

1 holder on board if the holder is required by law or regulation to be
2 present.

3 (c) If, within the 10 years preceding an offense, a person has
4 been convicted two or more times of a misdemeanor offense listed in
5 (b) of this section or under former AS 16.05.720, then, upon a con-
6 viction of that person under this section for an offense listed in (b)
7 of this section, and in addition to the penalties imposed under (a) of
8 this section, the court shall impose a fine equal to three times the
9 gross value of the fish found on board or at the fishing site at the
10 time of the offense, or a fine equal to \$10,000, whichever is greater.

11 * Sec. 4. AS 16.05.925 is amended to read:

12 Sec. 16.05.925. PENALTY FOR VIOLATIONS. Except as provided in
13 AS 16.05.430, 16.05.722, 16.05.723, [16.05.720,] 16.05.831, and 16.-
14 05.860, a person who violates AS 16.05.920, or a regulation adopted
15 under this chapter or AS 16.20, is guilty of a class A misdemeanor.

16 * Sec. 5. AS 16.05.720 is repealed.

17 * Sec. 6. The provisions of this Act do not apply to commercial fishing
18 violations that occurred before the effective date of this Act.

19 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).
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28
29

PRESENT LAW

AS 16.05.720:

All violations of AS 16.05.480-16.05.690 are misdemeanors punishable by:

- a) fine up to \$5000
- b) up to 1 year in prison

Additional penalties:

AS 16.05.710:
forfeiture of commercial fishing license for up to one year (1st & 2nd conviction);
up to three years (3rd conviction)

AS 16.05.190:
equipment used in violation of F & G statutes and regulations may be seized and may be forfeited after conviction in a criminal case under AS 16.05.195 (a)(1) or in a civil proceeding under AS 16.05.195(a)(2).

HB 364

AS 16.05.720 is repealed.

New sec. 16.05.723, provides that one who negligently violates 16.05.44-16.05.690 is guilty of a misdemeanor and is punishable by:

- a) a fine up to \$15,000
- b) up to 1 year in prison

Additional penalties:

AS 16.05.710:
amended to include possible forfeiture of limited entry permits and interim use permits. Only misdemeanor convictions subject offender to possible forfeiture of licenses & permits.

AS 16.05.190: no change.
(Note: this section makes reference to forfeiture upon conviction for a violation of F & G statutes and regulations. This presumably means that the forfeiture applies regardless

CSHB 364

AS 16.05.720 is repealed.

Same as HB 364

Same as HB 364

Same as HB 364

Additional penalties:

Same as HB 364, except 3-year license suspension/ forfeiture kicks in at second conviction.

Same as HB 364

Under AS 16.05.190, fish may be seized under a valid search. Upon conviction, the fish are forfeited, according to the statute.

Under AS 16.05.195, fish taken, transported or possessed in violation of Title 16 or F & G regulations may be forfeited after conviction in a criminal case or in a civil proceeding.

If convicted of one of the "BIG 4" violations, in addition to all other penalties, the violator is punishable by a fine of not less than the gross value to the fisherman of the fish found on the vessel or at the fishing site at the time of the violation. If it's a 3rd conviction, in addition to the possible license forfeiture under AS 16.05.710, the fine is not less than three times the gross value of the fish or \$10,000., whichever is greater.

of the offender's mental state.)

AS 16.05.195: no change. (Note: 16.05.723 itself requires the court to forfeit any fish taken in connection with the violation (or its fair market value). There is a rebuttable presumption that fish found on board or at the site were taken in violation of the law. The Court may not use both .195 and .723 to make a double forfeiture

If convicted of one of the "Big 4" offenses prosecuted as a misdemeanor, the additional fine for gross value of the fish remains as in existing law.

AS 16.05.195 not amended, but 16.05.723 gives Court discretion to forfeit fish.

Same as HB 364, except that "gross value" fines are discretionary with the Court.

The Court of Appeals has ruled that, absent authorization from the Legislature, the penalties for any offenses prosecuted under a strict liability theory may not include imprisonment, and that fines may not exceed \$300.

New section 16.05.722 provides that that a person who offends with no culpable mental state is guilty of a violation and is punishable by:

- a) a fine of up to \$6,000
- b) mandatory forfeiture of fish taken in connection with the violation.

There is no jury trial and no public representation.

Same as HB 364, except Court may impose the following:

- a) \$3,000 fine for 1st conviction
\$6,000 fine for 2nd and subsequent convictions.
- b) additional fine of 50% of value of fish on board or at site at time of violation. (1st conviction)
additional fine of full value of fish (2nd and subsequent convictions)

COMPARISON - existing law v. CSHB 364 (Judiciary)		
	Violation	Misdemeanor
standard	now: strict liability HB364: same	negligence same
jury	now: no HB364: same	yes same
public defender	now: no HB364: same	yes same
jail	now: no HB364: same	up to one year same
fines (maximum)	now: \$ 300 HB364: \$ 3,000 1st offense \$ 6,000 2nd or subsequent offense	\$ 5,000 \$ 15,000 * larger potential fine in "big 4" cases and/or for 3-time offenders
forfeiture and suspension	<p>now: AS.16.05.190 calls for discretionary forfeiture of gear, mandatory forfeiture of fish in violation or misdemeanor cases. AS 16.05.195 calls for discretionary forfeiture in misdemeanor cases.</p> <p>AS 16.05.710(a) allows for forfeiture & suspension of "licenses". it's unclear as to whether this means crewmember licenses OR limited entry permits, also unclears as to whether a CRIMINAL conviction is required for forfeiture of these licenses. (this subsection was written in 1960, long before limited entry permits existed)</p>	
	<p>HB 364: FISH:</p> <p>Upon conviction, fish are forfeited in either strict liability or misdemeanor cases. However, bill establishes rebuttable presumption that fish were taken illegally. If defendant can prove some or all of the fish were not taken illegally, they can get them (or their fair market value) back. The defendant must prove this by a preponderance of the evidence.</p>	
	EQUIPMENT: vessel or gear CANNOT be forfeited	Vessel or gear MAY be forfeited by court
	LICENSE OR PERMIT: CANNOT be suspended.	License and/or permit MAY be suspended for up to 1 year for a first or second misdemeanor conviction, SHALL be suspended for up to 3 years for a third or subsequent conviction. Cannot be transferred or sold while suspended.

The reason for HB 364 is this: recent court of appeals decisions have seriously reduced the deterrent effect of penalties for commercial fishing offenses. The pertinent court cases are:

Reynolds v. State (1982)
Beran v. State (1985)
Constantine v. State (1987)

In Reynolds v. State, the court refused to hold a commercial fisherman "strictly liable" for his conduct, requiring the state to prove at least a culpable mental state of negligence to establish a criminal offense. The court did suggest, indirectly, that the legislature could enact a "strict liability" violation category if it wished.

Subsequently, the Board of Fish adopted regulations establishing strict liability as an applicable mental state for commercial fishing violations.

In Beran v. State, the court affirmed that the legislature had authorized the Board to make the breach of commercial fishing regulations a "violation", but that this strict liability offense could not lead to "criminal penalties". In this particular case, "criminal penalties" was defined as a jail sentence. The court indicated it would uphold the fine of \$2500.

In Constantine v. State, because they lacked other legislative definition, the court concluded that a "violation" in a commercial fishing case would also fall under the definition of "violation" for criminal procedure, and applied AS 12.55.035(b)(5), which limits fines to \$300. If the state wished to impose a larger fine, it would have to prove negligence mens rea, and prosecute the case as a criminal offense, rather than relying on the strict liability.

Through all these cases, the court did not address, or else they upheld, forfeiture of the fish taken as a result of the offense.

CS HB 364 (Judiciary) accomplishes the following:

Bill Sec 1.

Revised AS 16.05.170 (a): Clarifies that the court may suspend a commercial fishing license and/or limited entry permit for a criminal conviction (not a strict liability conviction).

Bill Sec. 2.

Revised AS 16.05.710: Clarifies that while a permit is suspended, a

card may not be issued and the permit may not be transferred or sold, also clarifies the definition of licenses and permits.

Bill Sec. 3.

New AS 16.05.722: Establishes strict liability offenses as violations, and sets penalties. Clarifies existing law that upon conviction, forfeiture of illegally taken fish (or their fair market value) is mandatory.

Note: it is a "rebuttable presumption" that the fish on board or at the site were taken illegally. If the defendant can prove the contrary by a preponderance of the evidence, they can reclaim all or part of the fish (or their fair market value).

Also, it makes it clear that for a strict liability offense, the defendant is not allowed a jury trial or public defender (the same as a "violation" under criminal code).

New AS 16.05.722: Raises the maximum fine for a criminal commercial fishing conviction from \$5,000 (established in 1924) to \$15,000, more accurately reflecting the current value of commercial fishing offenses. Also states that forfeiture of fish is mandatory upon conviction, and allows for the same "rebuttable presumption" as in strict liability offenses. As in existing law, forfeiture of gear or vessels is up to the discretion of the court.

If the conviction is for one of the following (referred to as the "big four"), the court MAY impose an additional fine equal to the gross value of the fish:

1. Commercial fishing in closed waters,
2. Commercial fishing during a closed period or season,
3. Commercial fishing with illegal gear,
4. Commercial fishing without a limited entry permit or the permit holder present, if required by law or regulation.

Additionally, if it is the defendant's THIRD criminal conviction of one of the "big four" listed above, the court SHALL impose a fine equal to three times the gross value of the fish, or \$10,000, whichever is greater.

Bill Sec.'s 4 and 5 make the proper technical amendments to existing statutes.

Bill Sec. 6 is the effective date clause.

HB

309



HB 389

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]).

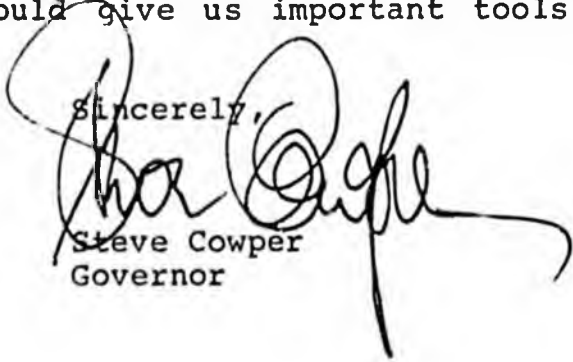
The bill adds a new section to AS 46.08, the chapter on oil and hazardous substance releases. Subsection (a) creates a lien in favor of the state whenever money from the oil and hazardous substance release response fund or any other state fund is used to contain, clean up, or mitigate an oil or hazardous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

W

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 389
PUBLISH DATE: HOUSE 1/22/88

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 fisca' impact.

Prepared by: Amy Kyle *Wale*
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 Phone: 465-2600
Division: Commissioner's Office Date: 29 January 1988

Approved by Commissioner: Amy D. Kyle / for Date: _____
Agency: Department of Environmental Conservation

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

HB

510

SENATE COMMITTEE REPORT

FURTHER

FINANCE

4/20/88

DATE TURNED INTO OFFICE _____

Mr. President:

Resources

Committee considered ^{SCS} CSHB 510 (RES)

transferring responsibility for the issuance of certain fishing, hunting, and trapping licenses, tags, and identification cards from the commissioner of revenue to the commissioner of fish and game; and relating to compensation for penalties against, and proceeds, fees, forms, and reports transmitted by agents and recommended who sell or collect fees for certain licenses, tags, etc

[] replace with Sen CS CS HB 510) [] same title
[] or adopt _____ CS _____) [] new title

[] attached amendment(s) and

[] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted _____

Committee [] attached or [] adopted fiscal note(s)

[] new [] updated or [] previous

[] zero [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
[Signature]
[Signature]
[Signature]

[Signature]
Chairman signature and recommendation

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act transferring responsibility
for the issuance of certain fishing...
Sponsor: Rep. Boyer
Requestor: Rep. Boyer

Agency Affected: Fish and Game
BRU: Administration & Support
Components: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		386.9	390.0	390.0	390.0	390.0
TRAVEL		7.8	8.0	8.0	8.0	8.0
CONTRACTUAL		547.2	550.0	550.0	550.0	550.0
SUPPLIES		10.0	10.0	10.0	10.0	10.0
EQUIPMENT		120.0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		1071.9	958.0	958.0	958.0	958.0

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

REVENUE		9800.5	9850.0	10050.0	10240.0	10400.0
---------	--	--------	--------	---------	---------	---------

\$100.0 to \$300.0 of revenue is currently uncollectable

FUNDING: (Thousands of Dollars)

GENERAL FUND		1071.9	958.0	958.0	958.0	958.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		10	10	10	10	10
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

FY 89 request includes a transfer of \$662.1 from the Department of Revenue and \$133.0 in one-time items. See enclosed for more details.

Prepared by: Beverly Reaume, Director
Division: Administration

Phone: 465-4120
Date: 04/27/88

Approved by Commissioner: Don W. Collinsworth
Agency: Fish and Game

Date: 04/27/88

Distribution (by preparer):

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

DEPARTMENT OF FISH AND GAME - FISCAL NOTE TO ACCOMPANY HB510

TRANSFER OF FUNDING FROM THE DEPT. OF REVENUE:

PERSONAL SERVICES:

Revenue Licensing Supervisor	54.8
Accounting Supervisor I	46.7
Clerk Typist II	26.9
Accounting Clerk II	31.4
Clerk Typist III	28.3
Data Entry Center Supervisor	38.7
Subtotal	226.8

CONTRACTUAL:

Printing, Postage, Telephone	36.8
Wang VS & Maintenance Costs	39.0
Other Contractual	0.3
Vendor Compensation	356.6
Subtotal	432.7

SUPPLIES: 2.6

SUBTOTAL REVENUE TRANSFER 662.1

SUMMARY OF TOTAL REQUEST

REVENUE TRANSFER TO ADF&G	662.1
ADF&G ADDITIONS	209.8
FULLY FUND VENDOR COMPENSATION	67.0
ADF&G ONE TIME ITEMS	133.0
TOTAL REQUEST	1071.9

PROPOSED ADDITIONS BY DEPT. OF FISH AND GAME:

PERSONAL SERVICES:

Programmer/Analyst III	48.4
Data Processing Clerk I	28.5
Accounting Supervisor II	44.3
Accounting Technician II	38.9
Subtotal	160.1

TRAVEL: 7.8

CONTRACTUAL:

Postage, Phones, Copier	14.5
Printing	20.0
Fully fund vendor compensation	67.0
Subtotal	101.5

SUPPLIES: 7.4

ONE TIME COSTS

Space modify/telephone	13.0
Computer/Optical Scanner	105.0
Microfilm/Verticle files	15.0

SUBTOTAL ONE TIME ITEMS 133.0

SUBTOTAL FISH & GAME ADDITIONS 409.8

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SCS for CSHB 510 (RES)
PUBLISH DATE: 2/15/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act transferring issuance of fishing, hunting, trapping licenses..."
Sponsor: Boyer
Requestor: Finance

Agency Affected: Revenue
BRU: Income and Excise Audit Division
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	0	(226.8)	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	(432.7)	0	0	0	0
SUPPLIES	0	(2.6)	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	(662.1)	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	(662.1)	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	(662.1)	0	0	0	0

POSITIONS:

FULL-TIME	0	(6)	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared By: Steven E. Kettel, Director Phone: (907) 465-2320
Division: Income and Excise Audit Division Date: April 27, 1988

Approved by Commissioner: Hugh Malone Date: April 27, 1988
Agency: Department of Revenue

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

Prepared By: Steven E. Kettel
Income and Excise Audit Division
Department of Revenue
April 27, 1988

HB 510 Analysis

The Department of Revenue supports this legislation transferring the fish and game licensing program to the Department of Fish and Game.

This program consists of the following features:

- 1) coordination of statewide sales of fish and game licenses, tags, permits and duck stamps through over 900 private vendors;
- 2) design and mailout of licenses and forms;
- 3) data capture of monthly, quarterly, and annual sales reports from the vendors;
- 4) processing and deposit of cash receipts;
- 5) reconciliation of vendor reports to cash receipts; and
- 6) paying additional compensation to vendors based upon the number of licenses sold.

The Department of Revenue suggests a January 1, 1989 effective date for the following reasons:

- a) This program is run on a calendar year basis, and transfer mid-year would adversely impact the smooth operation of the program.
- b) The department is in the planning phase for automating this program and a January 1 transition date will give us additional time to complete the work.

To effect the transfer, the Department will give the Department of Fish and Game the resources it has allocated to the program, including:

- 1) Data processing software and documentation including file layouts, flow chart, program listing, data file tapes, etc., assuring that Fish and Game would convert the data from a Wang file structure to an IBM file structure and the Wang COBOL programs to IBM COBOL programs. Utilizing pre-1986 IBM programs would require some modification. Assuming Fish and Game retains a Wang structure, the Department is willing to transfer a Wang VS 85 mainframe and program related peripheral equipment to the Department of Fish and Game.

Prepared By: Steven F. Kettel
Income and Excise Audit Division
Department of Revenue
April 27, 1988

HB 510 Analysis (Cont.)

2) Transfer of funding will include:

A) Personal Services

The following positions will transfer from the Income and Excise Audit Division with associated funding of \$188.1:

<u>Position</u>	<u>Range/Step</u>	<u>FY 89 Budget</u>
Revenue Licensing Supervisor	16K	\$54.8
Accounting Supervisor I	14J	\$46.7
Clerk Typist II	7B	\$26.9
Accounting Clerk II	9D	\$31.4
Clerk Typist III	8B	<u>\$28.3</u>
		\$188.1

The following position will transfer from the Administrative Services Division with associated funding of \$38.7:

<u>Position</u>	<u>Range/Step</u>	<u>FY 89 Budget</u>
Data Entry Center Supervisor	14A	\$38.7

B) Contractual

The following associated funds will transfer from the Income and Excise Audit Division:

Vendor Compensation:	\$356.6
Printing, Postage, Telephone:	<u>\$36.8</u>
	\$393.4

The following associated funds will transfer from the Administrative Services Division:

Wang VS & Maintenance costs:	\$39.0
Other contractual costs:	<u>\$.3</u>
	\$39.3

C) Supplies

The transfer of associated supply funds from the Income and Excise Audit Division will be \$2.5.

The transfer of associated supply funds from the Administrative Services Division will be: \$.1

Prepared By: Steven E. Kettel
Income and Excise Audit Division
Department of Revenue
April 27, 1988

HB 510 Analysis (Cont.)

SUMMARY OF TRANSFERS:

Personal Services	\$226.8
Contractual	\$432.7
Supplies	<u>\$2.6</u>
Total Transfer:	\$662.1

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act transferring issuance of fishing, hunting, trapping licenses."
Sponsor: Representative Boyer
Requestor: Resources & Finance

Agency Affected: Revenue
Bk: Income and Excise Audit Division
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	(226.6)	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	(432.7)	-	-	-	-
SUPPLIES	-	(2.6)	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	(662.1)	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-	(b)	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

(see attached analysis)

Prepared by: Steven E. Kettel, Director Phone: (907) 465-2320
Division: Income and Excise Audit Division. Date: 03/04/88

Approved by Commissioner: Hugh Malone Date: 03/04/88
Agency: Department of Revenue

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

HB 510 Analysis (Cont.)

2) Transfer of funding will include:

A) Personal Services

The following positions will transfer from the Income and Excise Audit Division with associated funding of \$188.1:

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Revenue Licensing Supervisor	16K	\$54.8
Accounting Supervisor I	14J	\$46.7
Clerk Typist II	7B	\$26.9
Accounting Clerk II	9D	\$31.4
Clerk Typist III	8B	<u>\$28.3</u>
		\$188.1

The following position will transfer from the Administrative Services Division with associated funding of \$38.7:

<u>Position</u>	<u>Range/Step</u>	<u>FY 89 Budget</u>
Data Entry Center Supervisor	14A	\$38.7

B) Contractual

The following associated funds will transfer from the Income and Excise Audit Division:

Vendor Compensation:	\$356.6
Printing, Postage, Telephone:	<u>\$36.8</u>
	\$393.4

The following associated funds will transfer from the Administrative Services Division:

Wang VS & Maintenance costs:	\$39.0
Other contractual costs:	<u>\$.3</u>
	\$39.3

C) Supplies

The transfer of associated supply funds from the Income and Excise Audit Division will be \$2.5.

The transfer of associated supply funds from the Administrative Services Division will be: \$.1

SUMMARY OF TRANSFERS:

Personal Services	\$226.8
Contractual	\$432.7
Supplies	<u>\$2.6</u>
Total Transfer:	\$662.1

Prepared By: Steven E. Kettel
Income and Excise Audit Division
Department of Revenue
February 20, 1988

HB 510 Analysis

The Department of Revenue supports this legislation transferring the fish and game licensing program to the Department of Fish and Game.

This program consists of the following features:

- 1) coordination of statewide sales of fish and game licenses, tags, permits and duck stamps through over 900 private vendors;
- 2) design and mailout of licenses and forms;
- 3) data capture of monthly, quarterly, and annual sales reports from the vendors;
- 4) processing and deposit of cash receipts;
- 5) reconciliation of vendor reports to cash receipts; and
- 6) paying additional compensation to vendors based upon the number of licenses sold.

The Department of Revenue suggests a January 1, 1989 effective date for the following reasons:

- a) This program is run on a calendar year basis, and transfer mid-year would adversely impact the smooth operation of the program.
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To effect the transfer, the Department will give the Department of Fish and Game the resources it has allocated to the program, including:

- 1) Data processing software and documentation including file layouts, flow chart, program listing, data file tapes, etc., assuring that fish and Game would convert the data from a Wang file structure to an IBM file structure and the Wang COBOL programs to IBM COBOL programs. Utilizing pre-1986 IBM programs would require some modification. Assuming Fish and Game retains a Wang structure, the Department is willing to transfer a Wang VS 85 mainframe and program related peripheral equipment to the Department of Fish and Game.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Fish and Game
 Title: An Act transferring responsibility BRU: Administration & Support
for the issuance of certain fishing...
 Sponsor: Rep. Boyer Components: Administrative Services
 Requestor: Rep. Boyer

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		386.9	390.0	390.0	390.0	390.0
TRAVEL		7.9	9.0	9.0	8.0	9.0
CONTRACTUAL		219.9	222.0	322.0	322.0	322.0
SUPPLIES		10.0	10.0	10.0	10.0	10.0
EQUIPMENT		120.0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		844.5	730.0	730.0	730.0	730.0

CAPITAL						
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REVENUE		9,800.5	9,850.0	10,050.0	10,240.0	10,400.0
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\$100.0 to \$300.0 of revenue is currently uncollectable

FUNDING: (Thousands of Dollars)

GENERAL FUND		844.5	730.0	730.0	730.0	730.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		10	10	10	10	10
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

FY 89 request includes a transfer of \$662.1 from the Department of Revenue and \$133.0 in one-time items. See enclosed for more details.

Prepared by: *Sever Lane* Phone: 465-4100
 Division: Administration Date: 03 04 89
 Approved by Commissioner: *Don Collinsworth* Date: 03 04 89
 Agency: Fish and Game

Distribution (by preparer):

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

DEPARTMENT OF FISH AND GAME - FISCAL NOTE TO ACCOMPANY HB510

TRANSFER OF FUNDING FROM THE DEPT. OF REVENUE:
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PERSONAL SERVICES:

Revenue Licensing Supervisor	54.8	
Accounting Supervisor I	46.7	
Clark Typist II	26.9	
Accounting Clerk II	31.4	
Clark Typist III	28.3	
Data Entry Center Supervisor	38.7	
Subtotal		226.8

CONTRACTUAL:

Printing, Postage, Telephone	36.8	
Wang US & Maintenance Costs	39.0	
Other Contractual	0.3	
Vendor Compensation	356.6	
Subtotal		432.7

SUPPLIES: 2.6

SUBTOTAL REVENUE TRANSFER 662.1

SUMMARY OF TOTAL REQUEST

REVENUE TRANSFER TO ADF&G	662.1
ADF&G ADDITIONS	209.8
CHANGE TO VENDOR COMPENSATION	-160.4
ADF&G ONE TIME ITEMS	133.0
TOTAL REQUEST	844.5

PROPOSED ADDITIONS BY DEPT. OF FISH AND GAME:
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PERSONAL SERVICES:

Programmer/Analyst III	48.4	
Data Processing Clerk I	28.5	
Accounting Supervisor II	44.3	
Accounting Technician II	38.9	
Subtotal		160.1

TRAVEL: 7.8

CONTRACTUAL:

Postage, Phones, Copier	14.5	
Printing	20.0	
Reduce Vendor compensation	-160.4	
Subtotal		-125.9

SUPPLIES: 7.4

ONE TIME COSTS

Spec modify/telephone	13.0
Computer/Optical Scanner	105.0
Microfilm/Verticle files	15.0

SUBTOTAL ONE TIME ITEMS 133.0

SUBTOTAL FISH & GAME ADDITIONS 182.4