

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
5620 HOUSE COMMUNITY & REGIONAL AFFAIRS

24

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: "An Act adopting the Uniform  
Conservation Easement Act;.."  
Sponsor: Senate Judiciary Committee  
Requestor: \_\_\_\_\_

Agency Affected: Community & Regional Affairs  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
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	-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						
TEMPORARY						

**ANALYSIS : (Attach a separate page if necessary)**

*Jim Plasman*  
Prepared by: Jim Plasman, Deputy Director Phone: 465-4750  
Division: Municipal & Regional Assistance Date: 4/14/89  
Approved by Commissioner: Raymond W. Lindblom for David H. Hoffman Date: 4/14/89  
Agency: Community & Regional Affairs

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

STEVE COWFER, GOVERNOR

**DEPARTMENT OF NATURAL RESOURCES**

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400

March 6, 1989

The Honorable Jan Faiks  
Chair, Senate Judiciary Committee  
P.O. Box V  
Juneau, AK 99811

Dear Senator Faiks:

Subject: Senate Bill 123, Uniform Conservation Easement Act.

Position: The department does not object to this bill and at the present time has no plans or funding to purchase conservation easements. The bill allows for the preservation and conservation of natural and historic resources for the public benefit while maintaining private ownership of the property.

Background: SB 123 has support from historic preservation and natural history conservation groups. The bill provides a process which allows conservation easements to be donated or sold to a governmental or charitable non-profit organization.

Common land law does not allow a conservation easement restriction to attach to land in perpetuity. It is based on model legislation drafted by the National Conference of Commissioners on Uniform State Laws. Alaska is one of four states without a conservation easement law.

Conservation easements will provide public land managers with an alternate acquisition method to employ in appropriate circumstances so as to benefit both the private and public sectors. It is a cost-effective way to protect historic and natural values on private lands without the cost of fee simple purchase of the land. The owner is compensated through purchase of the easement or the ability to deduct the value of the easement from federal income taxes as a charitable gift. Because the property remains in private ownership, it remains on local tax rolls, and the public does not take on the responsibility of maintenance and operation of the property.

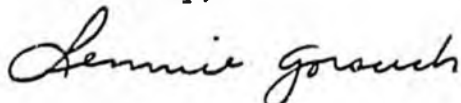
Senator Faiks

- 2 -

March 6, 1989

Conservation easements can be used to protect public values in historic structures and archaeological sites, natural, scenic and open spaces, fishing streams or watershed or critical waterfowl nesting areas.

Sincerely,



Lennie Gorsuch  
Commissioner

cc: Bill Sponsor  
Committee Members  
Bob Evans  
Denby Lloyd  
Gary Gustafson  
Neil Johannsen  
Judith Bittner

SB \_\_\_\_\_ -- ALASKA CONSERVATION EASEMENTS BILL

WHAT WOULD THE BILL DO?

SB \_\_\_\_\_ would provide the legal process to create conservation easements on private property in Alaska.

WHAT IS A CONSERVATION EASEMENT?

A conservation easement is a legal agreement made voluntarily by a private property owner to limit, for the benefit of the public, the type or amount of use of a property. The easement may be donated or it may be sold. An easement is created to protect natural, scenic, open space, historical or cultural values. The easement is accepted, held and monitored by a governmental agency or an appropriate nonprofit corporation. Simply put, the easement is a restriction on the use of real estate.

WHAT KIND OF EASEMENTS ARE WE TALKING ABOUT?

Two types of easements which would be frequently used are Historic Easements and Wildlife Conservation Easements. A typical Historic Easement would be the voluntary written agreement of the owner of a historic building to preserve the historic character of the building and not to replace it with any other structure. A Wildlife Conservation Easement might provide for the perpetual preservation of the watershed of a particularly unique fishing stream or a critical waterfowl nesting area.

IS THIS A NEW IDEA?

No, conservation easements were first used in the 1880s. Alaska is one of four states without a conservation easement law to take advantage of the land management tool which has been called a "terrific alternative to fee acquisition."

WHY DO WE NEED  
A LAW TO DO  
THIS?

An Alaska conservation easement law is necessary because the common laws that govern land do not allow such a restriction to attach to the land in perpetuity in those instances where the Grantee of The Easement does not own an adjoining parcel of land. The new law would remove that restriction to allow certain charitable and governmental organizations to have enforceable easements without owning the adjoining land.

SB <sup>12</sup> is essentially verbatim from the Uniform Conservation Act which was drafted as a model law by the National Conference of Commissioners on Uniform State Laws.

WHAT ARE THE  
PUBLIC  
ADVANTAGES?

A conservation easement provides a cost-effective way to protect public values of private land. These values may be natural, historic, scenic or cultural. It allows such values to be protected without the cost of fee simple purchase of land. The land stays in private ownership.

Because the land stays in private hands, it also stays on the local tax rolls. The assessed valuation may increase or decrease depending on the nature of the easement. For example a historic easement may make the property more valuable for tourist related use while a critical habitat easement would probably reduce value because development would be prohibited.

Furthermore, since the property stays in private ownership the public does not incur the management costs that would come if the lands or buildings were publicly owned. While the public holder of the easement must monitor the agreement this would be an extremely modest cost.

WHY WOULD A PRIVATE  
LANDOWNER WANT  
TO CREATE AN  
EASEMENT?

The landowner who donates a conservation easement, to a public agency or qualified charity, can claim federal income tax deductions for the charitable gift. In the alternative the landowner may sell the easement for what he considers a fair price. All such transactions would be voluntary. No governmental taking through eminent domain would be involved.

Estate taxes can also be reduced through the donation of an easement. Property restricted by a perpetual conservation easement either before the landowner's death or executed as an element of his/her will, must be valued in the estate at its restricted value, resulting in lower taxes.

HOW LONG DOES  
AN EASEMENT LAST?

A conservation easement would restrict the land for only as long as agreed to by the owner.

WHAT ABOUT  
PUBLIC ACCESS?

Understandably, most landowners want to retain an ability to control access to land that is still theirs. The landowner and the grantee of the easement may, however, provide for public access if the landowner so agrees.

IN SUMMARY: Conservation easements are flexible, adaptable agreements tailored to the needs of the property owner and the character of the property. Specific public benefits are provided -- without the expense of purchase and while maintaining the land in private ownership.

# Keeping downtown in shape

## Deal insures facade of Wendler Building

By RON ZELLAR  
Times Business Writer

The owner of a downtown landmark acquired from the Municipality of Anchorage in 1984 has donated the building's exterior and air rights to a city-created, non-profit corporation.

Bill Mundy, owner of the Wendler Building at 400 D St., said terms of the agreement with Anchorage Historic Properties Inc. require him to maintain the facade and to insure the building or replacement, among other conditions.

In return, he will receive a tax benefit for the donation, known as a "historic preservation and conservation easement," and retain ownership of the building's interior.

Mundy made the donation just before the end of the 1988 tax year. The size of the tax benefit will not be known until an appraisal is done within the next three months to see how the donation affects the property's value, he said.

Kerry Hoffman, executive director of Anchorage Historic Properties, said the potential tax benefit is sizable, and the corporation hopes the transaction will spur interest in easements to help preserve the city's historic buildings.

The Wendler Building was built by merchant A.J. Wendler in 1913 as a grocery store with living quarters on the second floor. The grocery, situated at Fourth Avenue and J Streets, See Building, page B-3

# Building

Continued from page B-1

was one of 92 businesses that opened on the city's main street the same year.

The business was converted to a restaurant and bar by Wendler's daughter and was renamed Club 23. In 1982, the property was sold and the building donated to the city on the condition that it be moved. A renovation plan by a partnership that included Mundy was accepted by the city, which spent \$47,000 to move the building to its present location.

Another structure, called the Landmark Building, was built behind the historic building to boost its available space. Mundy said a portion of the Landmark's second floor was designed to be used with the Wendler Building as a restaurant — a plan he still hopes to pursue when the Anchorage economy improves.

Donation of the air rights means no structure taller than the existing buildings can be built on the site.

The insurance provision requires that if the Wendler Building burns or is destroyed by an earthquake or some other disaster, proceeds must be used to build a replica, or to situate and restore another historic building on the site.

For example, he said, Anchorage Historic Properties might want to move one of several other buildings now in storage at the Cook Inlet Prerail Facility if the Wendler Building were destroyed.

Mundy said tax incentives for historic buildings changed along with other tax laws in 1986, and it is doubtful the renovation project could have been done under current rules, which limit an individual's use of rehabilitation investment credits.

Hoffman said changes to restore some of the tax benefits are scheduled for consideration by Congress, but sizable benefits remain under present laws for businesses owning historic structures.



Bill Mundy will get a tax benefit for donating the Wendler Building's exterior to a non-profit.

To be eligible for tax benefits, landmark buildings must be listed on the National Register of Historic Places. About a dozen Anchorage buildings are on the registry, she said.

Anchorage Historic Properties plans an effort this year to get more buildings listed on the

registry, she said. The corporation uses the money as an endowment to protect historic properties and to operate a revolving loan fund.

Hoffman said the organization is working to be self-supporting through earned revenues, memberships, contributions and projects.

The corporation uses the money as an endowment to protect historic properties and to operate a revolving loan fund.

Hoffman said the organization is working to be self-supporting through earned revenues, memberships, contributions and projects.



December 21, 1988

Representative Curt Menard  
351 W. Swanson Avenue, Suite 1  
Wasilla, Alaska 99687

RE: Easement Enabling Legislation

Dear Curt:

I tried to schedule a meeting with you this week but learned that you will be out of town for the rest of the month. So, I'm writing this letter, so that I can inform you of some very important legislation which we hope will be enacted during this session.

Attached is a draft of legislation that Senator Arliss Sturgulewski has agreed to introduce during the next session. We have been working with her on this since last March. A copy of the Work Draft is attached. At her request we have prepared a facts sheet and a draft of a "dear colleague" letter for her to send to her fellow Senators. She hopes to have a number of her colleagues sign on as cosponsors. A copy of the facts sheet is attached for your reference.

In the process of researching the key issues with the legislation, Dee Frankfourth discovered that Sam Cotton had asked for information from the House Research Agency in February, 1988. A copy of a memo to Sam is attached.

If enacted, the proposed legislation will be a positive step for preservation and conservation all over Alaska. As you may know, historic preservation has many tangible and intangible benefits. More and more, historic preservation, tourism, and economic development are all strongly linked to each other. And, preservation easements are a great way to protect our heritage resources.

Because this legislation will benefit historic preservation interests all over the state, we feel that it is a statewide issue. To help garner statewide support, we enlisted Joe Evans of the Anchorage Municipal Assembly to help us get a resolution of support of the legislation from the Alaska Municipal League (AML). The AML passed the resolution on November 18, 1988. A copy of the resolution is attached.

The Alaska Association for Historic Preservation passed a resolution of support on November 27, at its Annual meeting.



Page 2

The proposed legislation will enable governments and qualified nonprofit organizations to acquire/receive easements on real property that are of unlisted duration. These kinds of easements are agreements between consenting parties. When easements in perpetuity are donated to qualified organizations, donors may be entitled to valuable tax benefits. Preservation depends largely on generous donations by private parties.

The inherited English common law of real property leaves doubt about the enforceability of historic easements which are not tied to an adjoining property. The proposed legislation removes that doubt.

The Uniform Conservation Easement Act was obtained from the National Conference of Commissioners on Uniform State Laws. As you know, this prestigious body drafts model legislation in an attempt to create uniform legislation on various subjects throughout the United States. I'm sure that every legislator in Alaska will be familiar with the work of this organization.

To date, all but 4 states have enacted this enabling legislation.

This legislation will be a positive step for preservation and conservation all over Alaska.

I have spoken with Kay Brown and her aid, Eric Meyers about the legislation. Kay is supportive of the legislation, although she feels that she may not know it "inside-out" well enough to champion it through the House. She suggested that I speak with you. We would very much like to have your sponsorship of the legislation on the House side. We feel that this legislation is a winner. I would appreciate talking to you at your earliest convenience. I can be reached at 274-3600.

Good luck during the next session!

Sincerely,  
ANCHORAGE HISTORIC PROPERTIES, INC.

*Kerry A. Hoffman*  
*for*

Kerry A. Hoffman  
Executive Director



Page 3

Copy: Kay Brown  
Judy Bittner  
Janet McCabe  
President, Board of Directors, Anchorage Historic  
Properties, Inc.

7  
*This was passed  
on 11/18/83 by the  
Alaska Municipal League*

Introduced by: Anchorage Municipal Assembly

Date: November 16, 1988

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

RESOLUTION NO. ....

A RESOLUTION REGARDING THE HISTORIC EASEMENT  
ENABLING ACT AND UNIFORM CONSERVATION EASEMENT  
ACT

WHEREAS, historic preservation has many benefits to a community both tangible and intangible, and

WHEREAS, historic preservation easements are one tangible historic preservation strategy, and

WHEREAS, the proposed Uniform Conservation Easement Act will enable governments and qualified nonprofit organizations to acquire/receive easements on real property that are of unlimited duration, and

WHEREAS, the inherited English common law of real property leaves doubt about the enforceability of historic easements which are not tied to an adjoining property, and

WHEREAS, the proposed Uniform Conservation Easement Act removes that doubt.

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League supports the enactment of the Uniform Conservation Easement Act.

This resolution was passed by the governing body of Municipality of Anchorage on November 15, 1988.



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

8

P.O. Box Y, State Capitol  
Juneau, Alaska 99811-3100  
Mall Stop 3100  
(907) 465-3991

February 19, 1988

MEMORANDUM

TO: Representative Sam Cotten  
ATTN: Ned Farquhar  
FROM: Karen Oakley *ke*  
Legislative Analyst  
RE: Conservation Easements  
Research Request 88.138

You asked for information on conservation easement statutes in other states. You also asked what federal and local tax benefits a landowner achieves by granting a conservation easement and how conservation easements affect federal and local government revenues.

In this memorandum, we present background information on easements in general and on conservation easements in particular, and discuss the conservation easement statutes of other states; the tax and revenue consequences of conservation easements; and the applicability of conservation easements to the Alaska situation.

The primary source of information presented in this memorandum is Powell on Real Property, Vol. 3, Chapter 34A entitled "Conservation Easements," by William R. Ginsberg, published by Matthew Bender and Co. This article provides a definitive and very readable review of the topic and is attached (Attachment A).

In summary, we found:

- The conservation easement is a well-established legal concept and is widely used throughout the United States as a means to protect scenic or other natural values of private land and to preserve historic structures.
- Because a conservation easement is held by a person, rather than by an adjacent parcel, the easement is considered to be held in gross. Under common law, an easement in gross cannot run with the land. To ensure that a conservation easement is enforceable in perpetuity, this common law deficiency must be corrected by statute.

- Alaska is one of only four states that does not have a conservation easement statute.
- State statutes typically specify: the purposes for which easements may be made; the types of organizations that are eligible to receive an easement; the duration of an easement; and the parties that are empowered to enforce the terms of an easement. In specifying the purposes, holders and enforcers of conservation easements, states vary considerably.
- Landowners that donate a conservation easement to a charitable organization are eligible for a federal income tax deduction. Landowners granting a conservation easement may also pay less local property tax due to decreased value of the parcel.
- Governments are the most common holders of conservation easements, and easements represent a cost-effective way for governments to protect the public value of private land. The revenue foregone by allowing conservation easements is considerably less than the cost of fee simple purchase of land.
- Native corporations are the major private landowners in Alaska. Conservation easements may provide a way to protect portions of these lands from development while still allowing subsistence use.

## BACKGROUND

### Easements in General

An easement is a legal agreement between a property owner and the holder of the easement that affects the present owner's and all future owners' use of the property. An easement is a limitation on the possessory rights of an owner in the form of an enforceable property right.

Easements may be negative or affirmative. A negative easement restricts the use to which land subject to the easement may be put. An affirmative easement grants the right to perform certain activities on the property, such as the right to cross the land or to erect powerlines.

An easement may also be either "appurtenant" or "in gross." An easement appurtenant is the most familiar form of easement and refers to the situation where two parcels of land, usually adjacent, are held by different owners, and one parcel is benefitted and the other parcel burdened by the grant of certain rights, for example, the right to cross. If the owner of Parcel A grants a right-of-way to the owner of Parcel B, the right of the owner of Parcel B to cross Parcel A becomes one of the property rights that comes with ownership of Parcel B. A right-of-way is an affirmative appurtenant easement that lasts in perpetuity and runs with the land.

In contrast to the easement appurtenant which transfers property rights from one parcel to another, the easement in gross transfers property rights from one parcel to a person, corporate or natural, that owns no land at all. Under common law, the easement in gross is not assignable and cannot run with the land.

### The Conservation Easement

The conservation easement is a restriction on the use of real estate. The easement is usually held by a nonprofit or governmental entity and is a negative easement in gross. A conservation easement has specific purposes commonly including the protection of natural, scenic or open space values or preserving the historical or cultural aspects of real property.

Conservation easements were first employed in the late 1880s in Boston to protect parkways. During the 1930s, the U.S. Fish and Wildlife Service began to obtain easements as a means to preserve wetlands for migratory waterfowl. The National Park Service also began the practice of purchasing scenic easements along highways. In the 1960s, many states authorized the acquisition of scenic easements along highways to take advantage of federal funds made available for that purpose by the Federal Highway Beautification Act.

As the use of scenic highway easements developed, the applicability of the easement to other objectives, such as preservation of open space or historic preservation, was urged. Beginning with California in 1959 and New York in 1960, many states passed legislation authorizing government or nonprofit organizations to acquire conservation easements. The laws removed the common law impediment to holding an easement in gross in perpetuity. By 1975, 16 states had conservation easement statutes; by 1984, 44 states had conservation easement statutes (see following section for a discussion of state statutes).

Although the highway beautification act had an important influence on the development of the conservation easement, the 1964 determination by the Internal Revenue Service that the value of a conservation easement donated to a charitable organization was deductible for federal income tax purposes probably had an even greater effect.

In 1985, the Land Trust Exchange, a national association of land trusts, published a study of the use of conservation easements throughout the United States (Attachment B). They found that over 1.7 million acres were protected by conservation easements. Of these easements, 1.2 million acres were held by the federal government, 200,000 by state and local governments and 350,000 acres by nonprofit organizations.

#### CONSERVATION EASEMENT STATUTES IN OTHER STATES

The primary purpose of a state conservation easement law is to overcome the short term nature of an easement in gross under the common law. Because an easement in gross, under the common law, does not run with the land and therefore does not last in perpetuity, the conservation easement must be created in statute.

Almost all states have adopted some type of conservation easement statute during the past 30 years.<sup>1</sup> In 1981, the National Conference of Commissioners on Uniform State Laws approved a Uniform Conservation Easement Act (Attachment C). Many of the states that adopted a conservation easement statute during the 1980s fashioned their statutes after this uniform act.

In establishing the conservation easement, state statutes typically address four topics:

- 1) Purpose. Some states may allow conservation easements to be used to achieve a broad range of objectives, while other states restrict the use of conservation easements to a few specifically defined purposes.
- 2) Duration. State statutes generally provide that conservation easements shall be in perpetuity or of unlimited duration, unless the parties provide otherwise in the document creating the restrictions. Some states set a minimum term of 10 to 15 years.<sup>2</sup>

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<sup>1</sup>The only states that have not adopted a conservation easement statute are Alaska, Hawaii, Kansas and Wyoming.

<sup>2</sup>Under the IRS code, the tax benefits from donating a conservation easement accrue only if the easement runs in perpetuity.

- (3) Holders. State statutes fall into two categories with respect to the parties that are permitted to hold a conservation easement: those which allow only a government agency to receive an easement and those which also allow private nonprofit organizations to receive easements. Within these categories, there are many variations. For example, Mississippi allows only the Mississippi Commission on Wildlife Conservation to hold conservation easements. South Carolina allows a variety of governmental agencies to hold easements, but allows only one nonprofit organization, the Nature Conservancy, to hold conservation easements. In contrast, Utah allows any party entitled to own real property interests to hold a conservation easement.
- (4) Enforcement. The success of a conservation easement in achieving its objective depends in part on enforcement of the terms of the agreement, and enforcement depends on having standing (and resources) to sue. Few state statutes clearly specify the categories of persons that have standing to enforce an agreement. The Uniform act recommends that four classes, including third parties, be granted standing.

Copies of conservation easement statutes from Oregon (1983), which is patterned after the uniform act, Washington (1979), Connecticut (1971) and Minnesota (1985) are attached as examples (Attachment D).

#### TAX AND REVENUE CONSEQUENCES OF CONSERVATION EASEMENTS

For the property owner that grants a conservation easement, both federal income taxes and local property taxes may be reduced. Conservation easements therefore may act to reduce the tax revenues of the federal government and of the local governments in which the conservation easements lie. In this section, the tax consequences (for the individual) and the revenue consequences (for governments) are discussed.

#### Federal Income Tax Consequences

Under the Internal Revenue Service (IRS) Code, the donation of a conservation easement to a qualified charitable organization qualifies as a tax-deductible charitable contribution. The IRS statute and implementing regulations are attached in Attachment E, and a recent tax journal article on obtaining the deduction for contribution of a conservation easement is attached in Attachment F.

The federal tax law on conservation easements is, as you might expect, complex.<sup>3</sup> In brief, to qualify for a charitable donation deduction, a conservation easement must meet three tests: it must consist of a qualified real property interest, be given to a qualified organization and be used, in perpetuity, exclusively for conservation purposes. Qualified organizations must have both a commitment to protect the conservation purposes of the donation and the resources to enforce the restrictions.

Qualified conservation purposes are defined as:

- the preservation of land areas for outdoor recreation by, or the education of, the general public;
- the protection of relatively natural habitat of fish, wildlife or plants or similar ecosystem;
- the preservation of open space (including farmland and forest land) where such preservation is: 1) for the scenic enjoyment of the general public; or 2) pursuant to a clearly defined federal, state or local governmental conservation policy, and will yield a significant public benefit; or
- the preservation of an historically important land area or a certified historic structure.

#### Real Property Tax Consequences

Because a conservation easement severely limits the uses to which a property may be put, the market value of the property should be reduced. Since real property taxes are based on assessed valuation, conservation easements should reduce property value and, thereby local tax liability. However, some local governments may fail to recognize a conservation easement as a factor in the assessment of property burdened by a conservation easement. To ensure that the effect of a conservation easement is considered in the determination of assessed value, some state statutes specifically address this topic (see the Oregon statute at 271.785).

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<sup>3</sup>A former IRS attorney, Stephen J. Small, who helped write the current conservation easement regulations, is now in private practice and has recently written a book entitled The Federal Tax Law of Conservation Easements. This book, as well as other memos on conservation easement tax topics, are available from the Land Trust Exchange.

### Valuation of Conservation Easements

The primary issue that arises with both the deductibility of a conservation easement donation and local property tax assessment is the valuation of a conservation easement. Under the IRS code and under most local tax assessment codes, the value of an easement is its fair market value. As a practical matter, however, there is no market for conservation easements. They are not ordinarily bought and sold, thus there is no direct method to determine their market value.

The traditional method of valuing a conservation easement is the "before and after" approach where the value of the easement is equal to the difference between the fair market value of the total property before granting of the easement and the fair market value of the property after the easement. Since there have been very few sales of properties encumbered by conservation easements, the "after" valuation is difficult to determine. ①

Another method of valuing conservation easements for IRS purposes has been used: the comparable sales method. The comparable sales method suffers from the same drawback as the "before and after" method; sales data on which to base an appraisal are sparse. ②

Issues of conservation easement valuation are discussed in greater detail in Attachment A, pp. 55-63, and in Attachment F.

### Effect on Federal and Local Government Revenues

Obviously, conservation easements cause a decrease in federal income tax revenues and in local property tax revenues, but as yet, no one has attempted to quantify these decreases.

The Land Trust Exchange (in their 1985 survey) found that some local governments were opposed to conservation easements because they feared erosion of their tax bases. However, only 21 percent of the respondents to the survey indicated that any of their easements had reduced property taxes. Mr. Ginsberg in (his article at pp. 53 - 54) noted that fears of erosion of the tax base have little basis in fact:

. . . Any meaningful diminution in the tax base as a result of conservation easements is highly unlikely in most jurisdictions where the major portion of assessed value is based on improvements, not land. If a reduction in assessed value occurs as a result of conservation easements, there would be countervailing economic and environmental benefits. These would include a reduction in the demand for (and costs of) public services, and enhanced values of other property in the area.

For both the federal and local governments, conservation easements represent a cost-effective way to secure open space or to protect other conservation values. As the Land Trust Exchange found, the vast majority of conservation easements are held by federal, state and local governments. Had these governments been required to purchase these properties in fee simple to protect the desired values, the costs would be considerably greater than the foregone tax revenues.

#### APPLICATION TO ALASKA

Although Alaska does not have a conservation easement statute, Title 29 (Municipal Code) recognizes the possibility of such easements. Alaska Statute 29.45.050, which specifies the optional exemptions and exclusions that a local government may include in its property tax code, allows a local government to exempt from taxation a conservation easement that is granted to a governmental body in perpetuity [AS 29.45.050(e)]. Since Alaska statutes do not currently provide for conservation easements, this section of the Municipal Code presumably has not yet had any practical effect.

In Alaska, the majority of land is owned by federal, state and local governments, and some persons might question the need for a conservation easement statute. In this regard, it is important to remember that a conservation easement is an agreement entered into voluntarily by a property owner. For some persons, the federal and local tax benefits may be the primary reason that they wish to enter into such an agreement, although the Land Trust Exchange found that most landowners granting conservation easements were motivated by a desire to preserve unique characteristics of their land. A conservation easement statute merely provides private landowners with an option for protecting their land.

Representative Cotten  
February 19, 1988  
Page 9

A conservation easement statute may be of particular interest to native landowners concerned with protecting lands used for subsistence. Native corporations are major private landowners in Alaska. In theory, there is no reason that a native corporation could not grant a conservation easement to a governmental or nonprofit organization for the purposes of protecting its land.<sup>4</sup> The conservation easement is a voluntary agreement made by a private landowner, and the agreement can include any variety of terms and conditions. Such an agreement would presumably preclude all future development (negative easement) but allow an affirmative easement allowing the landowners to enter the property to pursue subsistence activities. Conservation easement agreements commonly include such affirmative easements for the purposes of inspection and enforcement.

I hope you find this information useful. If we can provide any additional information, please let me know.

Attachments

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<sup>4</sup>We have not attempted to research the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation Act, or the recent 1991 amendments to see whether these statutes contain any provisions that would preclude a native corporation from entering into a conservation easement agreement; nor have we attempted to ascertain whether any federal income tax benefits would accrue to a native corporation granting a conservation easement for subsistence. You may wish to have an attorney undertake these analyses.

STATE OF ALASKA  
THE LEGISLATURE

9  
POURBY STATE CAPITOL  
JUNEAU ALASKA 99801  
907 465 3000

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 24, 1989

SUBJECT: Uniform Conservation Easement Act  
(SB 123)

TO: Senator Arliss Sturgulewski

FROM: Richard A. Bradley  
Legislative Counsel RB

Melissa has asked that I comment on the purposes behind this uniform act-- that is, what are those restrictions that the uniform act seeks to address?

I have copied the material from the Uniform Laws Annotated that addresses these questions; see particularly the "prefatory note." But because this uniform act seems to contain an unusual amount of esoteric lawyer-talk, I will attempt a brief user's guide to the Uniform Conservation Easement Act.

The title explains part of what is being attempted; the idea is that valuable natural or historic property now in private hands might be protected for future generations by granting a "conservation easement" in the property to a third party, either a nonprofit corporation dedicated to the protection of that kind of property or government. See sec. 34.17.060(2). The holder of the easement can then sue, if necessary, to see that the property is maintained according to the terms of the easement.

But it has been necessary to change the rules of the common law to accomplish this purpose.

The usual understanding of an easement is that it relates to "an interest in land." The problem with conservation easements is that the interest held does not relate to any such "interest in land." The holder of the easement has no right to use the land for any purpose; it merely seeks to regulate the use by others.

The prefatory note states that these kinds of controls over land are typically cast in the suggested three common law forms: easements, covenants real, and equitable servitudes.

Senator Arliss Sturgulewski  
Page 2  
January 24, 1989

The note suggests that easements are generally well understood by courts but covenants and servitudes less so. And the note suggests that the solution to these understandings (or possible misunderstandings) would not be the creation of a fourth and new form of interest, by whatever name.

The suggested solution is to take the easement, the well-understood mechanism, and remove the common law limitations on its use to solve the problem of conservation easements. These common law problems are stated in Sec. 34.17.030.

If I may be of further assistance, please advise.

RAB:kb  
wkk1/071

Enclosure

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 1800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 9, 1989

SUBJECT: Conservation easements and their  
abuse: SB 123

TO: Senator Jan Faiks, Chair  
Senate Judiciary Committee

FROM: Richard A. Bradley   
Legislative Counsel

Chris Christensen has asked that I suggest a solution to the concern that there will be efforts to evade municipal ad valorem property taxation by the use of conservation easements.

The use of the conservation easement should result in a decrease in the value of the property since some of the rights to the use of the property have been transferred to a municipality or a nonprofit corporation.

The easy answer is to provide for some penalty on an inconsistent use or the transfer of the easement to the owner of the property that is the subject of the easement; such a transfer would result in the merger of the two estates and the elimination of the conservation easement.

While there are undoubtedly myriad ways of achieving this goal, I note the existence in state law of a similar provision that applies a sanction on the transfer of property receiving the beneficial farm use assessment. I refer to AS 29.45.060, primarily subsections (a) and (b); those subsections provide:

Sec. 29.45.060. FARM OR AGRICULTURAL LAND. (a) Farm use land included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use and may not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the land for both full and true value and farm

Senator Jan Faiks  
Page 3  
March 9, 1989

is conveyed to the owner of the property, the owner shall pay to the municipality an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding 10 years, as though the land had not been assessed subject to the conservation easement.

(b) To secure the assessment under this section, an owner of land subject to a conservation easement must apply to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the assessor and shall include information that may reasonably be required to determine the entitlement of the applicant."

Note some changes suggested.

Since there is no reimbursement to the municipality from the state, I have eliminated the participation by the state assessor and the references to the state.

I have suggested a ten year payback period, in place of the seven year in AS 29.45.060.

If I may be of further assistance, please advise.

RAB:gc  
WKG7/122

M E M O R A N D U M

TO: Senator Jan Faiks  
FROM: John Reese  
DATE: March 9, 1989  
RE: S.B. 123

S.B. 123. Implications of conservation easement on:

1. Elimination of properties from tax base, and
2. Ability of owner of property to control use of easement or even obtain return of easement by donation to a sham non-profit organization.

\* \* \*

1. Tax Base. Obviously, donation of the easement removes the segment of the property from the tax base. Property taxes are a function of market value, and the limitation of the easement may frequently reduce the market value of a property. In some situations, the nature of a particular easement may virtually eliminate the marketability of a property and, therefore, its contribution to the general tax base.

On the other hand, this is not really a change in the law. Presently, any owner of a property can donate the property to a qualified non-profit group, church, charity, etc., and thereby remove it from the tax base. The question is whether there are any controls on the process.

The controls are simple economics.

What the person gives up by donating the easement is valued according to the market. If it is insignificant (e.g. cannot change the facade of a building for five years), the market value will change little. If it is substantial (e.g. donation of prime development acreage to be used as park land), the loss to the tax rolls would be huge. But the donator loses the value of what is donated -- very little in the first example and a lot in the second. The tax loss is a small part of the loss in either case. The willingness of the contributor is tempered by his or her own personal financial well being, possibly the most effective control in our society.

But, is it subject to abuse? This brings us to the second issue.

2. Use of Easement as a Ruse to Avoid Taxes. First, it is important to note that the basic motivation control, self-interest, is at play here. If someone is going to donate an easement, the maximum financial benefit of doing so requires that the recipient be organized as a non-profit group, meeting the state and federal requirements for deductibility of contributions, tax credits, etc. Under federal law, any organization receiving tax deductible gifts must have provisions in its articles of incorporation and by-laws which require assets to be used solely for the non-profit purpose, and if dissolved, the assets (including conservation easements) must be contributed to a similar tax qualified non-profit group. State law is similar, although not quite as specific. See AS 10.20. It cannot be given back (unless the easement itself requires it).

If the contributor did receive it back, this would bring due recapture rules of the Internal Revenue Service, which would make it a very expensive choice. On the other hand, if the easement provided for return after a period, the tax implications would be very small, as the market value effect would be very small from the beginning.

I doubt if there are local property tax recapture rules designed for this, but even without that, the federal income tax deductions and tax credits are the big items for the contributor.

\* \* \*

In summary, a conservation easement allows contribution of part of an asset, while leaving it partially on the tax rolls, rather than removing it completely. It cannot be used to avoid taxes because the substantial Internal Revenue Service benefits are reversed if that is tried. Federal and state law restrict it as well.

# Uniform Conservation Easement Act

## National Conference of Commissioners on Uniform State Laws

### Historical Note

The Uniform Conservation Easement Act was approved by the National Conference of Commissioners on Uniform State Laws in 1981. The complete text of the act, the prefatory note, and comments are set forth here.

### Commissioners' Prefatory Note

The Act enables durable restrictions and affirmative obligations to be attached to real property to protect natural and historic resources. Under the conditions spelled out in the Act, the restrictions and obligations are immune from certain common law impediments which might otherwise be raised. The Act maximizes the freedom of the creators of the transaction to impose restrictions on the use of land and improvements in order to protect them, and it allows a similar latitude to impose affirmative duties for the same purposes. In each instance, if the requirements of the Act are satisfied, the restrictions or affirmative duties are binding upon the successors and assigns of the original parties.

The Act thus makes it possible for Owner to transfer a restriction upon the use of Blackacre to Conservation, Inc., which will be enforceable by Conservation and its successors whether or not Conservation has an interest in land benefited by the restriction, which is assignable although unattached to any such interest in fact, and which has not arisen under circumstances where the traditional conditions of privity of estate and "touch and concern" applicable to covenants real are present. So, also, the Act enables the Owner of Heritage Home to obligate himself and future owners of Heritage to maintain certain aspects of the house and to have that obligation enforceable by Preservation, Inc., even though Preservation has no interest in property benefited by the obligation. Further, Preservation may obligate itself to take certain affirmative

actions to preserve the property. In each case, under the Act, the restrictions and obligations bind successors. The Act does not itself impose restrictions or affirmative duties. It merely allows the parties to do so within a consensual arrangement freed from common law impediments, if the conditions of the Act are complied with.

These conditions are designed to assure that protected transactions serve defined protective purposes (Section 1(1)) and that the protected interest is in a "holder" which is either a governmental body or a charitable organization having an interest in the subject matter (Section 1(2)). The interest may be created in the same manner as other easements in land (Section 2(a)). The Act also enables the parties to establish a right in a third party to enforce the terms of the transaction (Section 3(a)(3)) if the possessor of that right is also a governmental unit or charity (Section 1(3)).

The interests protected by the Act are termed "easements." The terminology reflects a rejection of two alternatives suggested in existing state acts dealing with non-possessory conservation and preservation interests. The first removes the common law disabilities associated with covenants real and equitable servitudes in addition to those associated with easements. As statutorily modified, these three common law interests retain their separate existence as instruments employable for conservation and preservation ends. The second approach seeks to create a novel additional interest which, although unknown to the common law, is, in some ill-defined sense, a statutorily modified amalgam of the three traditional common law interests.

The easement alternative is favored in the Act for three reasons. First, lawyers and courts are most comfortable with easements and easement doctrine, less so with restrictive covenants and equitable servitudes, and can be expected to experience severe confusion if the Act opts for a hybrid

fourth interest. Second, the easement is the basic less-than-fee interest at common law; the restrictive covenant and the equitable servitude appeared only because of then-current, but now outdated, limitations of easement doctrine. Finally, nonpossessory interests satisfying the requirements of covenant real or equitable servitude doctrine will invariably meet the Act's less demanding requirements as "easements." Hence, the Act's easement orientation should not prove prejudicial to instruments drafted as real covenants or equitable servitudes, although the converse would not be true.

In assimilating these easements to conventional easements, the Act allows great latitude to the parties to the former to arrange their relationship as they see fit. The Act differs in this respect from some existing statutes, such as that in effect in Massachusetts, under which interests of this nature are subject to public planning agency review.

There are both practical and philosophical reasons for not subjecting conservation easements to a public ordering system. The Act has the relatively narrow purpose of sweeping away certain common law impediments which might otherwise undermine the easements' validity, particularly those held in gross. If it is the intention to facilitate private grants that serve the ends of land conservation and historic preservation, moreover, the requirement of public agency approval adds a layer of complexity which may discourage private actions. Organizations and property owners may be reluctant to become involved in the bureaucratic, and sometimes political, process which public agency participation entails. Placing such a requirement in the Act may dissuade a state from enacting it for the reason that the state does not wish to accept the administrative and fiscal responsibilities of such a program.

In addition, controls in the Act and in other state and federal legislation afford further assurance that the Act will serve the public interest. To begin with, the very adoption of the Act by a state legislature facilitates the enforcement of conservation easements serving the public interest. Other types of easements, real covenants, and equitable servitudes are enforceable, even though their myriad purposes have seldom been expressly scrutinized by state legislative bodies. Moreover, Section 1(2) of the Act restricts the entities that may hold conservation and preservation easements to governmental agencies and charitable organizations, neither of which is likely to accept them on an indiscriminate basis. Governmental programs that extend benefits to private donors of these easements provide additional controls against potential abuses. Federal tax statutes and regulations, for example, rigorously define the circumstances under which easement donations qualify for favorable tax treatment. Controls relating to real estate assessment and taxation of restricted properties have been, or can be, imposed by state legislatures to prevent easement abuses or to limit potential loss of local property tax revenues resulting from unduly favorable assessment and taxation of these properties. Finally, the

American legal system generally regards private ordering of property relationships as sound public policy. Absent conflict with constitutional or statutory requirements, conveyances of fee or nonpossessory interests by and among private entities are the norm, rather than the exception, in the United States. By eliminating certain outmoded easement impediments which are largely attributable to the absence of a land-title recordation system in England centuries earlier, the Act advances the values implicit in this norm.

The Act does not address a number of issues which, though of conceded importance, are considered extraneous to its primary objective of enabling private parties to enter into consensual arrangements with charitable organizations or governmental bodies to protect land and buildings without the encumbrance of certain potential common law impediments (Section 4). For example, with the exception of the requirement of Section 2(b) that the acceptance of the holder be recorded, the formalities and effects of recordation are left to the state's registry system; an adopting state may wish to establish special indices for these interests, as has been done in Massachusetts.

Similarly unaddressed are the potential impacts of a state's marketable title laws upon the duration of conservation easements. The Act provides that conservation easements have an unlimited duration unless the instruments creating them provide otherwise (Section 2(c)). The relationship between this provision and the marketable title act or other statutes addressing restrictions on real property of unlimited duration should be considered by the adopting state.

The relationship between the Act and the local real property assessment and taxation practices is not dealt with; for example, the effect of an easement upon the valuation of burdened real property presents issues which are left to the state and local taxation system. The Act enables the structuring of transactions so as to achieve tax benefits which may be available under the Internal Revenue Code, but parties intending to attain them must be mindful of the specific provisions of the income, estate, and gift tax laws which are applicable. Finally, the Act neither limits nor enlarges the power of eminent domain; such matters as the scope of that power and the entitlement of property owners to compensation upon its exercise are determined not by this Act but by the adopting state's eminent domain code and related statutes.

## Uniform Conservation Easement Act, 1981 Act

An Act to be known as the Uniform Conservation Easement Act, relating to (here insert the subject matter requirements of the various states).

Sec. 1. Definitions.

Sec. 2. Creation, Conveyance, Acceptance, and Duration.

- Sec. 3. Judicial Actions.
- Sec. 4. Validity.
- Sec. 5. Applicability.
- Sec. 6. Uniformity of Application and Construction.

## §1. [Definitions]

As used in this Act, unless the context otherwise requires:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(2) "Holder" means:

(i) a governmental body empowered to hold an interest in real property under the laws of this State or the United States; or

(ii) a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

### Commissioners' Comment

Section 1 defines three central elements: What is meant by a conservation easement; who can be a holder; and who can possess a "third-party right of enforcement." Only those interests held by a "holder," as defined by the Act, fall within the definitions of protected easements. Such easements are defined as interests in real property. Even if so held, the easement must serve one or more of the following purposes: protection of natural or open-space resources; protection of air or water quality; preservation of the historical aspects of property; or other similar objectives spelled out in subsection (1).

A "holder" may be a governmental unit having specified powers (subsection (2)(i)) or certain types of charitable corporations, associations, and trusts, provided that the purposes of the holder include those same purposes for which the conservation easement could have been created in the first place (subsection (2)(ii)). The word "charitable," in subsections 1(2) and (3), describes organizations that are charities according to the common law definition

regardless of their status as exempt organizations under any tax law.

Recognition of a "third-party right of enforcement" enables the parties to structure into the transaction a party that is not an easement "holder," but which, nonetheless, has the right to enforce the terms of the easement (Sections 1(3), 3(a)(3)). But the possessor of the third-party enforcement right must be a governmental body or a charitable corporation, association, or trust. Thus, if Owner transfers a conservation easement on Blackacre to Conservation, Inc., he could grant to Preservation, Inc., a charitable corporation, the right to enforce the terms of the easement, even though Preservation was not the holder, and Preservation would be free of the common law impediments eliminated by the Act (Section 4). Under this Act, however, Owner could not grant a similar right to Neighbor, a private person. But whether such a grant might be valid under other applicable law of the adopting state is left to the law of that state (Section 5(c)).

### Library References

Health and Environment — 25.5(4).

C.J.S. Health and Environment §§91 *et seq.*, 130, 132.

## §2. [Creation, Conveyance, Acceptance, and Duration]

(a) Except as otherwise provided in this Act, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(c) Except as provided in Section 3(b), a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

### Commissioners' Comment

Section 2(a) provides that, except to the extent otherwise indicated in the Act, conservation easements are indistinguishable from easements recognized under the pre-Act law of the state in terms of their creation, conveyance, recordation, assignment, release, modification, termination, or alteration. In this regard, subsection (a) reflects the Act's overall philosophy of bringing less-than-fee conservation interests under the formal easement rubric and of extending that rubric to the extent necessary to effectuate the Act's purposes given the adopting state's existing

common law and statutory framework. For example, the state's requirements concerning release of conventional easements apply as well to conservation easements because nothing in the Act provides otherwise. On the other hand, if the state's existing law does not permit easements in gross to be assigned, it will not be applicable to conservation easements because Section 4(2) effectively authorizes their assignment.

Conservation and preservation organizations using easement programs have indicated a concern that instruments purporting to impose affirmative obligations on the holder may be unilaterally executed by grantors and recorded without notice to or acceptance by the holder ostensibly responsible for the performance of the affirmative obligations. Subsection (b) makes clear that neither a holder nor a person having a third-party enforcement right has any rights or duties under the easement prior to the recording of the holder's acceptance of it.

The Act enables parties to create a conservation easement of unlimited duration subject to the power of a court to modify or terminate it in states whose case or statute law accords their courts that power in the case of easement. See Section 3(b). The latitude given the parties is consistent with the philosophical premise of the Act. However, there are additional safeguards, for example, easements may be created only for certain purposes and may be held only by certain "holders." These limitations find their place comfortably within similar limitations applicable to charitable trusts, whose duration may also have no limit. Allowing the parties to create such easements also enables them to fit within federal tax law requirements that the interest be "in perpetuity" if certain tax benefits are to be derived.

Obviously, an easement cannot impair prior rights of owners of interests in the burdened property existing when the easement comes into being unless those owners join in the easement or consent to it. The easement property thus would be subject to existing liens, encumbrances and other property rights (such as subsurface mineral rights) which pre-exist the easement, unless the owners of those rights release them or subordinate them to the easement. (Section 2(d).)

#### Library References

Health and Environment §25.5(4).  
C.J.S. Health and Environment §§91 et seq., 130, 132.

### §3. [Judicial Actions]

(a) An action affecting a conservation easement may be brought by:

- (1) an owner of an interest in the real property burdened by the easement;
- (2) a holder of the easement;
- (3) a person having a third-party right of enforcement; or

(4) a person authorized by other law.

(b) This Act does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

#### Commissioners' Comment

Section 3 identifies four categories of persons who may bring actions to enforce, modify, or terminate conservation easements, quiet title to parcels burdened by conservation easements, or otherwise affect conservation easements. Owners of interests in real property burdened by easements might wish to sue in cases where the easements also impose duties upon holders and these duties are breached by the holders. Holders and persons having third-party rights of enforcement might obviously wish to bring suit to enforce restrictions on the owners' use of the burdened properties. In addition to these three categories of persons who derive their standing from the explicit terms of the easement itself, the Act also recognizes that the state's other applicable law may create standing in other persons. For example, independently of the Act, the attorney general could have standing in his capacity as supervisor of charitable trusts, either by statute or at common law.

A restriction burdening real property in perpetuity or for long periods can fail of its purposes because of changed conditions affecting the property or its environs, because the holder of the conservation easement may cease to exist, or for other reasons not anticipated at the time of its creation. A variety of doctrines, including the doctrines of changed conditions and *cy pres*, have been judicially developed and, in many states, legislatively sanctioned as a basis for responding to these vagaries. Under the changed conditions doctrine, privately created restrictions on land use may be terminated or modified if they no longer substantially achieve their purpose due to the changed conditions. Under the statute or case law of some states, the court's order limiting or terminating the restriction may include such terms and conditions, including monetary adjustments, as it deems necessary to protect the public interest and to assure an equitable resolution of the problem. The doctrine is applicable to real covenants and equitable servitudes in all states, but its application to easements is problematic in many states.

Under the doctrine of *cy pres*, if the purposes of a charitable trust cannot be carried out because circumstances have changed after the trust came into being or, for any other reason, the settlor's charitable intentions cannot be effectuated, courts under their equitable powers may prescribe terms and conditions that may best enable the general charitable objective to be achieved while altering specific provisions of the trust. So, also, in cases where a charitable trustee ceases to exist or cannot carry out its responsibilities, the court will appoint a substitute trustee upon proper application and will not allow the trust to fail.

The Act leaves intact the existing case and statute law

of adopting states as it relates to the modification and termination of easements and the enforcement of charitable trusts.

#### Library References

Health and Environment  $\Rightarrow$  25.5(4).  
C.J.S. Health and Environment §§91 et seq., 130, 132.

### §4. [Validity]

A conservation easement is valid even though:

- (1) it is not appurtenant to an interest in real property;
- (2) it can be or has been assigned to another holder;
- (3) it is not of a character that has been recognized traditionally at common law;
- (4) it imposes a negative burden;
- (5) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- (6) the benefit does not touch or concern real property;
- or (7) there is no privity of estate or of contract.

#### Commissioners' Comment

One of the Act's basic goals is to remove outmoded common law defenses that could impede the use of easements for conservation or preservation ends. Section 4 addresses this goal by comprehensively identifying these defenses and negating their use in actions to enforce conservation or preservation easements.

Subsection (1) indicates that easements, the benefit of which is held in gross, may be enforced against the grantor or his successors or assigns. By stating that the easement need not be appurtenant to an interest in real property, it eliminates the requirement in force in some states that the holder of the easement must own an interest in real property (the "dominant estate") benefited by the easement.

Subsection (2) also clarifies common law by providing that an easement may be enforced by an assignee of the holder.

Subsection (3) addresses the problem posed by the common law's recognition of easements that served only a limited number of purposes and its reluctance to approve so-called "novel incidents." Easements serving the conservation and preservation ends enumerated in Section 1(1) might fail of enforcement under this restrictive view. Accordingly, subsection (3) establishes that conservation or preservation easements are not enforceable solely because they do not serve purposes or fall within the categories of easements traditionally recognized at common law.

Subsection (4) deals with a variant of the foregoing problem. The common law recognized only a limited number of "negative easements"—those preventing the owner of the burdened land from performing acts on his land that he would be privileged to perform absent the easement. Because a far wider range of negative burdens than those recognized at common law might be imposed by conservation or preservation easements, subsection (4) modifies

the common law by eliminating the defense that a conservation or preservation easement imposes a "novel" negative burden.

Subsection (5) addresses the opposite problem—the unenforceability at common law of an easement that imposes affirmative obligations upon either the owner of the burdened property or upon the holder. Neither of those interests was viewed by the common law as true easements at all. The first, in fact, was labeled a "spurious" easement because it obligated the owner of the burdened property to perform affirmative acts. (The spurious easement was distinguished from an affirmative easement, illustrated by a right-of-way, which empowered the easement's holder to perform acts on the burdened property that the holder would not have been privileged to perform absent the easement.)

Achievement of conservation or preservation goals may require that affirmative obligations be incurred by the burdened property owner or by the easement holder or both. For example, the donor of a facade easement, one type of preservation easement, may agree to restore the facade to its original state; conversely, the holder of a facade easement may agree to undertake restoration. In either case, the preservation easement would impose affirmative obligations. Subsection (5) treats both interests as easements and establishes that neither would be unenforceable solely because it is affirmative in nature.

Subsections (6) and (7) preclude the touch and concern and privity of estate or contract defenses, respectively. Strictly speaking, they do not belong in the Act because they have traditionally been asserted as defenses against the enforcement not of easements but of real covenants and of equitable servitudes. The case law dealing with these three classes of interests, however, had become so confused and arcane over the centuries that defenses appropriate to one of these classes may incorrectly be deemed applicable to another. The inclusion of the touch and concern and privity defenses in Section 4 is a cautionary measure, intended to safeguard conservation and preservation easements from invalidation by courts that might inadvertently confuse them with real covenants or equitable servitudes.

#### Library References

Health and Environment  $\Rightarrow$  25.5(4).  
C.J.S. Health and Environment §§91 et seq., 130, 132.

### §5. [Applicability]

(a) This Act applies to any interest created after its effective date which complies with this Act, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This Act applies to any interest created before its effective date if it would have been enforceable had it been

created after its effective date unless retroactive application contravenes the constitution or laws of this state or the United States.

(c) This Act does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.

#### Commissioners' Comment

There are four classes of interest to which the Act might be made applicable: (1) those created after its passage which comply with it in form and purpose; (2) those created before the Act's passage which comply with the Act and which would not have been invalid under the pertinent pre-Act statutory or case law either because the latter explicitly validated interests of the kind recognized by the Act or, at least, was silent on the issue; (3) those created either before or after the Act which do not comply with the Act but which are valid under the state's statute or case law; and (4) those created before the Act's passage which comply with the Act but which would have been invalid under the pertinent pre-Act statutory or case law.

It is the purpose of Section 5 to establish or confirm the validity of the first three classes of interest. Subsection (a) establishes the validity of the first class of interests, whether or not they are designated as conservation or preservation easements. Subsection (b) establishes the validity under the Act of the second class. Subsection (c) confirms the validity of the third class independently of

the Act by disavowing the intent to invalidate any interest that does comply with other applicable law.

Constitutional difficulties could arise, however, if the Act sought retroactively to confer blanket validity upon the fourth class of interests. The owner of the land ostensibly burdened by the formerly invalid interest might well succeed in arguing that his property would be "taken" without just compensation were that interest subsequently validated by the Act. Subsection (b) addresses this difficulty by precluding retroactive application of the Act if such application "contravenes the constitution or laws of this state or the United States." That determination, of course, would have to be made by a court.

#### Library References

Health and Environment  $\Leftrightarrow$  25.5(4).  
C.J.S. Health and Environment §§91 et seq., 130, 132.

#### §6. [Uniformity of Application and Construction]

This Act shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of the Act among states enacting it.

#### Library References

Health and Environment  $\Leftrightarrow$  25.5(2).  
C.J.S. Health and Environment §§61 et seq., 91 et seq., 106 et seq., 115 et seq., 125 et seq., 133 et seq.

S B

150

# HOUSE COMMITTEE REPORT

(5)

Date Referred: March 29, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 4/27/90

The CRA Committee considered:

CSSSSB 150(C&RA)

CS SSSB NO. 150 (C&RA)

SENIOR HOUSING OFFICE/OLDER AK COMM

"An Act establishing a senior housing office and loan program in the Department of Community and Regional Affairs; directing the Older Alaskans Commission to assist the senior housing office; and authorizing the issuance of bonds for senior housing."

**RECOMMENDATIONS:**

- [ ] be replaced with \_\_\_\_\_ [ ] the same title
- [ ] be replaced with \_\_\_\_\_ [ ] a new title
- [ ] have attached amendment(s)
- do pass
- [ ] do not pass
- [ ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

fiscal impac \_\_\_\_\_

fiscal note(s) C&RA

zero fiscal note

zero fiscal note(s) AK Housing Corp.

[ ] zero with analysis \_\_\_\_\_

[ ] zero fn/analysis Older AK Comm

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not  
Pass      No Rec      Amend

<u>Eugene A. Kubina KUBINA</u>			
<u>Cheri Davis C. DAVIS</u>			
<u>Richard Foster RICHARD FOSTER</u>			
<u>Eileen P. MacLean MACLEAN</u>			

Eileen P. MacLean  
Chairman's Signature

## FISCAL NOTE

**REQUEST:**

Revision Date: 2/23/90 Agency Affected: \_\_\_\_\_  
 Title: Establishing a Senior Housing Office and Loan Program BRI: Alaska Housing Finance Corporation  
 Sponsor: Senator Duncan Components: \_\_\_\_\_  
 Requestor: Senator Pourchaire

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: Robert Sullivan Phone: 5649315  
 Division: APFC Mortgage department Date: 2/23/90  
 ACKNOWLEDGED BY [Signature]  
 Approved by Commissioner: \_\_\_\_\_ Date: 2/23/90  
 Agency: \_\_\_\_\_

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

) Changes in \_\_\_\_\_ (\_\_\_\_\_)  
 have no fiscal impact.  
 This fiscal note is  
 appropriate.

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: Establishing Senior Housing  
       Office Loan Program  
 Sponsor: Senator Duncan  
 Requestor: \_\_\_\_\_

Agency Affected: Community & Regional Affairs  
 BRU: Housing  
 Components: Housing Construction and  
               Housing Loan

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	79.2	80.3	81.4	82.6	83.9	85.3
TRAVEL	30.0	30.0	30.0	30.0	30.0	30.0
CONTRACTUAL	50.0	50.0	60.0	60.0	70.0	70.0
SUPPLIES	0.0	5.1	5.1	5.1	5.1	5.1
EQUIPMENT	2.0	1.0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>166.2</b>	<b>169.4</b>	<b>176.5</b>	<b>175.7</b>	<b>189.0</b>	<b>190.4</b>

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

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

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	166.2	169.4				
FEDERAL FUNDS						
OTHER			176.5	175.5	189.0	190.4
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

**ANALYSIS : (Attach a separate page if necessary)**

There is no fiscal effect for FY 90.

Please see attachment.

Prepared by: Hank Hodge  
 Division: Rural Development Division

Phone: 563-1073  
 Date: 3/12/90

Approved by Commissioner: [Signature]  
 Agency: Department of Community & Regional Affairs

Date: 8 March 90

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

Position Title <b>Loan Examiner III</b>		No. of Positions <b>1</b>	Range/Step <b>19A</b>	Org. Unit <b>GGH</b>
Time Status <b>Full</b>	Staff Months <b>12 Months</b>	Location <b>Anchorage</b>		Election District
Type of Expenditure		Justification		
		CSSB 150 Senior Housing Office in FY 91 will require this additional staff person. Position will be responsible for program coordination and meeting with a large constituency, gathering information, responding to requests, attending meetings, and attending to other issues relating to developing a senior housing office, including the implementation and processing of the senior citizen housing loan program.		
<b>1</b>	<b>2</b>	<b>3</b>		
Salary	40.1			
Benefits	12.8			
Premium Pay				
Other				
<b>Total Personal Services</b>	<b>52.9</b>			
Travel		30.0		
Contractual		14.7		
Commodities		5.0		
Equipment		2.0		
Other		0		
<b>Total Cost</b>		<b>51.7</b>		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	104.6		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For  
New Position**

Agency Department of Community & Regional Affairs  
 BRU Housing Assistance  
 Component Housing Construction

Page 3 of 4  
 Revised Date

**FY 91**

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Administration  
 Title: An Act establishing a senior housing and loan program in Department\* BRU: Older Alaskan Commission  
 Sponsor: Duncan Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

\* of Community and Regional Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & 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	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	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER 1034	0	0	0	0	0	0
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)

The duties which this bill adds to the Older Alaskans Commission Statute do not require any additional resources.

Prepared by: Connie J. Sine, Executive Director *CJS* Phone: 465-3250  
 Division: Older Alaskan Commission Date: 3/7/90  
 Approved by Commissioner: Frank S. Baxter *Frank S. Baxter* Date: 3/9/90  
 Agency: Department of Administration

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

# Alaska State Legislature



SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811-3100  
(907) 465-4766

COMMITTEES:  
FINANCE  
VICE CHAIR -  
HEALTH EDUCATION  
& SOCIAL SERVICES  
BUDGET & AUDIT  
BANKING &  
ECONOMIC  
DEVELOPMENT

## MEMORANDUM

**DATE:** March 30, 1990

**TO:** Eileen MacLean, Chair  
House Community & Regional Affairs Committee

**FROM:** Senator Jim Duncan

**RE:** CS SS SB 150 (C&RA), establishing a senior housing office and loan program in the Department of Community and Regional Affairs; and authorizing the issuance of bonds for senior housing.

**CS SB 487 (B&ED), making appropriations to the Alaska Housing Finance Corporation for the senior housing bond account and to the senior housing revolving fund in the Department of Community and Regional Affairs.**

I request that you schedule my Senior Housing Bills, CS for SS SB 150 (C&RA), establishing a senior housing office and revolving loan fund, and CS SB 487 (B&ED) making appropriations to AHFC and the Department of Community and Regional Affairs to establish the Senior Housing Bond Account and Revolving Loan Fund for a hearing as soon as possible. I believe these bills establish a workable mechanism to provide more senior housing in the State of Alaska.

Working with the Alaska Housing Finance Corporation, the Department of Community and Regional Affairs, and the Older Alaskan's Commission, I believe we have arrived at a very workable, financially feasible solution for financing and operation of a Senior Housing Office and Loan Program in this state. I believe the placement of the Senior Housing Office and Revolving Loan Program in the Rural Development Division of the Department of Community and Regional Affairs demonstrates our commitment to rural as well as urban senior housing projects.

**Major provisions in CS SS SB 150 (C&RA) are as follows:**

**Section 1.** (Page 1, line 12) Sec. 18.56.083. **Bonds for Senior Housing.** (a) Authorizes AHFC to issue up to \$30,000,000 in senior housing bonds for senior housing projects of which AHFC approves. (b) Requires Community and Regional Affairs to compile and submit to AHFC for approval lists of senior housing projects which they have determined to be desirable and financially feasible. (c) The bond proceeds are deposited in the loan fund as determined necessary by AHFC. (d) Establishes a Senior Housing Bond Account in AHFC. Allows AHFC to pledge funds and security interest assignments in the Bond Account and assets in the Senior Housing Revolving Loan Fund for the payment of the bonds. If necessary, AHFC may also use money in the Bond Account for payment of the bonds.

**Section 2.** (Page 2, Line 10) AS 44.21.230(a)(9) **Older Alaskan's Commission.** Requires the OAC to give assistance to the senior housing office. This is to ensure coordination of OAC's senior programs and use of their expertise in the development of senior housing in this state.

**Section 3.** (Page 3, Line 11) AS 44.21.230(b) **Older Alaskan's Commission.** Adds housing to the issues upon which the OAC may collect facts and statistics, and perform studies.

**Section 4.** (Page 4, Line 6) Sec. 44.47.585. **Senior Housing Office.** (a) Establishes a Senior Housing Office in Community and Regional Affairs to coordinate senior housing programs and administer the loan program. This was the primary recommendation of the Older Alaskan's Commission in its "Senior Housing Report" released in September, 1989. The Office would provide assistance to senior citizens in need of housing. In addition, it would encourage private sector involvement in senior housing through dialogue with and coordination with potential developers. The Senior Housing Office would be charged with ensuring that residences constructed through the Senior Housing Revolving Loan Program conform to the special needs of senior citizens. (b) The Senior Housing Office is required to consult with the Older Alaskan's Commission so the housing needs of senior citizens can be met efficiently and effectively.

(Page 5, Line 10) Sec. 44.47.587. (a) Establishes the **Senior Housing Revolving Fund** in Community and Regional Affairs and provides that the proceeds of bonds sold by AHFC will be deposited in the Fund for specific projects only. Provides that AHFC can pledge amounts in the Revolving Loan Account for security on Senior

Housing Bonds issued by AFFC. Loans can be made for conventional mortgages, building materials, renovations and improvements of individual or congregate residences, to cooperatives, and for construction of senior housing. **b)** Requires CRA and AHFC to jointly establish guidelines in regulations for determining financial feasibility and the need for projects.

(Page 6, Line 3) **Sec. 44.47.589. Interest Rate.** Specifies the interest rate to be charged to borrowers on the senior housing loans to be the cost of funds plus two percent for construction loans, and the cost of funds plus 1/2 of one percent for permanent loans. The funds generated through this increased interest rate will be used to offset the cost of the senior housing loans program as soon as there has been enough lending activity in the fund to support the office.

(Page 6, Line 9) **Sec. 44.47.591. Conditions on Loans (a)** Requires the Department of Community and Regional Affairs (C&RA) to adopt regulations establishing acceptable security on loans from the Senior Housing Revolving Loan Fund. **(b)** Requires C&RA to develop regulations intended to reasonably preserve the use of facilities constructed as senior housing with senior housing loan funds for senior citizens.

(Page 6, Line 21) **Sec. 44.47.593. Transfer and Assignment of Certain Assets.** (a) Directs C&RA to transfer repayments of bond principal to AHFC. (b) Directs C&RA to assign to AHFC a security interest in property financed with bond proceeds.

(Page 7, Line 2) **Sec. 44.47.595. Fire Insurance.** Requires loan recipients to purchase and maintain fire insurance.

(Page 7, Line 7) **Sec. 44.47.597. Loan Origination and Servicing.** Allows the Senior Housing Office to enter into loan servicing agreements with private financial institutions or regional native housing authorities.

(Page 7, Line 22) **Sec. 44.47.599. Appraisals.** Allows the Senior Housing Office to have appraisals done on property as necessary.

(Page 8, Line 1) **Sec. 44.47.601. Toll-Free Telephone Number.** Requires the Senior Housing Office to maintain a toll free number.

(Page 8, Line 6) **Sec. 44.47.605. Contracting for Services.** Allows the Senior Housing Office to contract for services of professional appraisers, engineers, architects, planners, etc., as necessary to carry out the loan program.

(Page 8, Line 10) Sec 44.47.609. **Definitions.** (2) The definition of senior housing is copied from the definition of senior housing in the current Senior Citizen's Housing Development Fund (AS 44.47.620), except the different forms a cooperative may take are listed beginning on line 16 with "residential horizontal property regimes", and running through "residential condominiums organized under AS 34.08" on line 19.

**CS SB 487 (B&ED) accomplishes the following:**

**Section 1.** \$10 million is appropriated from AHFC's Revolving Loan Fund to capitalize a Senior Housing Bond Account established in AHFC.

**Section 2.** Retains within the Senior Housing Revolving Loan Fund all funds received or accrued to the fund for the Fiscal Year beginning July 1, 1990, except for the interest due on the bonds which is appropriated to AHFC in Section 3.

**Section 3.** The interest due and payable on the bonds issued by AHFC will be transferred from the revolving loan account in C&RA to the bond account in AHFC for Fiscal Year 1991. Note that payments on the bond principal are transferred from the Senior Housing Revolving Loan Account in Section 44.47.593 of SB 150.



## Central Alaska Retired Teachers Association

Volume 1 V, Number 2

December 1989

### SURVEY SHOWS RETIRED TEACHERS WANT SENIOR HOUSING HERE

Of the twenty-four CARTAs who returned the middle income housing survey that was included with the September/October newsletter, only one said "not interested" in senior housing in Anchorage. Most were looking forward to the future. Three indicated need within the next 1-3 years; nine said in 3-6 years; eleven were looking forward beyond six years.

Judging from these responses—a pretty fair return from the approximately 200 newsletters mailed, Central Alaska retired teachers are definitely interested in having appropriate Anchorage-area housing available for middle and upper income senior citizens and would themselves participate. Not only are they interested. They are also flexible and would accept several possible variations.

About half desire rentals, half condominiums to be purchased. Some marked both, indicating either would be acceptable. Three preferred separate village-type units. Two-bedroom apartments were chosen by nineteen. Extra storage and heated parking received high marks.

Location preference was not conclusive: downtown (9), east Anchorage (7), midtown (6), south Anchorage (3), Turnagain (2), out of town but within Municipality (2). Several marked more than one choice. Fifteen wanted a view, with mountains highly preferred. The other location question asked near what facilities the housing should be located. Respondents were asked to mark any that applied; most marked several. The results: shopping area (14), grocery store (14), public transportation (12), drug store (11), medical facilities (8), library (6), park (6), theaters (5), athletic facility (3), educational facilities (2). Two respondents marked "all of the above."

Amenities desired within the retirement housing

complex were identified as follows: maintenance personnel (20); some food service (17), with one meal a day (10), two meals (5), three meals (2); coin-op laundry (16); transportation (15); athletic room (14); security personnel (14); library (12); resident manager (12); swimming pool (12); meeting rooms (10); first aid room (9); arts and crafts area (9); card/game room (8); beauty parlor (7); general store (6).

Twenty indicated willingness to purchase units outright and pay \$50-\$75,000 (8), \$75-\$100,000 (10), \$100-\$150,000 (2). The same number were willing to pay rent: \$500-\$750 (8), \$750-\$1000 (10), \$1000-\$1500 (2).

Continued on page 3

#### PUT THESE 1990 CARTA MEETINGS ON YOUR CALENDAR—AND COME !!!

Jan 13—Regular meeting. Program is

Medigap Insurance: How Do You Choose, with guest speaker to answer questions.

Feb 10—White Elephant Auction for scholarship fund.

Bring items to sell and money to buy!

Mar 17—ASRTA / CARTA joint luncheon meeting at the Hilton Hotel. Speaker to be announced.

Apr 21—Regular meeting. Election of officers for upcoming year. Program to be announced.

May 12—Regular meeting. Installation of officers.

Note: The March and April meetings are the third Saturday of the month. The March meeting date was changed to coincide with the AARP training workshop. The Senior Center was not available for CARTA on the regular April meeting date.

JEAN MCLANE underwent surgery November 20th, but we hear he is doing well. It's put our Sunshine Committee in a position to receive our sunshine himself. You can drop him a note at 1911 Kuskokwim, Anchorage 99504 or call him at 279-3166.

GENEVA and BUCK SMITH travelled "outside" in their fifth-wheel for two months. They visited friends and relatives and enjoyed relaxing days in Idaho, Washington, California, Arizona, New Mexico and Nevada. They left their pickup and trailer in Las Vegas where they plan to return in April for the Alaskans Convention. They also visited their daughter in Hawaii for two weeks.

MARLOU and DICK SMITH will be visiting family in the San Diego area during January 1990.

RITA and JOHN STRACHAN recently returned from a two week visit to Ireland--great horse country and thousands of castles and ruins. Their 17-day trip included trail riding, horseback lessons in Donegal, a visit to the Waterford factory, scenic trips to the Ring of Kerry, Connemara country, and, of course, the famous Blarney castle. They planned to spend the holidays with grandchildren in Sedro Wooley, Washington. A family reunion after Christmas in San Francisco is also planned to celebrate Rita's 50th birthday and to ring in 1990. Relatives and friends from Alaska, Hawaii, the east coast, and the west coast are all planning to help Rita enjoy turning half a century.

ALICE THOMPSON has been sightseeing in New York and Washington, D.C., then a visit to a sister in Ohio, followed by a flight to Mexico for fun in the sun. She'll be back to Anchorage in January.

MARIE TVEIT's new address is PO Box 96474, Houston, Texas, 77213-6474.

#### **MCDONAGH APPOINTED TO TEACHERS RETIREMENT SYSTEM BOARD**

CARTA has been notified by the office of Governor Cowper that one of its members, Roxy McDonagh, has been appointed to the Teachers Retirement System Board to replace Merritt Olson. CARTA will look forward to regular reports from her to keep the membership advised about the administration of the retirement fund.

#### **NO ANSWERS YET FROM GOVERNOR OR COMMISSIONER ON AD HOC PRPA**

Letters and copies of the last CARTA newsletter featuring the Post Retirement Pension Adjustment problem went to Governor Cowper and Commissioner Andrews saying in part:

According to information made available to the Central Alaska Retired Teachers Association, it is the plan of this administration to deny teacher retirees an ad hoc post-retirement pension adjustment justified by an increase in cost of living. Such an action is unconscionable and appears to us to be illegal.

To date no reply has been received from either the Governor or the Commissioner.

#### **Volunteers Needed**

Weekday mornings and afternoons for two hour shifts in Dining Room, Recreation, Gift Shop.  
Contact Liz Illg in Volunteer Services 562-2281

OUR LADY OF COMPASSION CARE CENTER  
LONG TERM AND REHABILITATIVE CARE

4900 Eagle Street Anchorage, Alaska 99503

#### **WHITE HOUSE CONFERENCE ON AGING NOT YET ORDERED BY THE PRESIDENT**

Under the Older Americans Act, the President may call for a 1991 White House Conference on Aging. Prior to the conference, the national aging network will be involved in a year of pre-conference related events.

The Alaska Older Alaskans Commission hopes that it will be possible to convene an Alaska Conference on Aging, perhaps in late spring 1991, and is asking Governor Cowper for a one-time allocation from the FY91 budget.

#### **HOUSING SURVEY, cont.**

Many marked both purchase and rental figures although they preferred one or the other in an earlier question. There was a greater spread on acceptable monthly maintenance and service fees. Several noted it would depend on what is included. Preferences were \$150-\$200 ((10), \$200-\$250 (5), \$250-\$300 (4), over \$350 (1), no idea (1), no preference marked (2).

PUBLIC OPINION MESSAGE

DEAR: SENATOR DUNCAN

*Carlame*

NAME: KAYE CORY DAKER  
TITLE:  
ADDRESS: BOX 55659  
CITY: NORTH POLE  
PHONE: 489-2455  
BILL NO: SB 150  
SUBJECT: SENIOR HOUSING OFFICE/OLDER AK COMM  
MESSAGE: SB 150 / SB 407: MEMBERS OF SANTA SENIOR CENTER ASSOCIATION INC.  
SUPPORT SB 150 AND SB 407. CAPITAL MONEY FROM AHFC INTO SENIOR HOUSING  
REVOLVING FUND AS BASIS FOR SELLING BONDS. URGENT NEED FOR SENIOR HOUSING  
IN NORTH POLE AREA. PLEASE SPREAD ON RECORD. EOM/MJO

ZIP: 99705

POMID: 07075258  
DATE: 03/01/90  
TIME: 07:52:58  
LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BARNES	BOUCHER	ADAMS
BOYER	BROWN	BINKLEY
COLLINS	COTTEN	COGHILL
DAVIDSON	DAVIS, C.	ELIASON
DAVIS, M.	DONLEY	FAHRENKAMP
ELLIS	FINKELSTEIN	FAIKS
FOSTER	FURNACE	FISCHER
GOLL	GRUENBERG	FRANK
GRUSSENDORF	HANLEY	HALFORD
HOFFMAN	HUDSON	JONES
JACKO	KOPONEN	KELLY
KUDINA	LARSON	KERTTULA
LEMAN	MACLEAN	PEARCE
MARTIN	MENARD	POURCHOT
MILLER	NAVARRÉ	RODEY
PETTYJOHN	PHILLIPS	STURGULEWSKI
RIEGER	SHARP	SZYMANSKI
SHULTZ	SHACKHAMMER	UEILING
TAYLOR	ULMER	ZHAROFF
WALLIS	ZAWACKI	

*Radio Program 1/17/90*

**LEGISLATIVE PRIORITIES  
OF  
THE PIONEERS OF ALASKA**

1. During this session of the Legislature the Pioneers are most interested in protecting the Senior programs presently in place. We prefer the \$250.00 monthly bonus program remain as it is, however, rather than see it suffer major setbacks, the Grand Igloo supports an annuity program as introduced by Senator Kerttula.

2. The Pioneers support a requirement of 65 years of age as a minimum for admission to the Pioneer Home system, and removal of the word 'destitute' as is presently used in giving priority for admission.

3. The Pioneers support full state funding to cover property tax exemptions for Seniors.

4. The Pioneers support in-Home Support Care and Senior Housing. Re: HB 218; SB 150.

5. The Pioneers support Health Care legislation. Re: HB 47.

6. Also, it has been noted, from a recent news article that Sen Uehling has prefiled legislation that would give Medicare eligible Senior an option to choose to receive health care under Medicaid at home rather than in a Long Term Care facility. The Pioneers certainly support this concept.

The Pioneers have taken no position regarding a State Income Tax or the Governor's proposal on an Education Endowment.

The Pioneer's registered lobbyist is Bill Ray, 165 Behrends Ave, Juneau, AK, 99801, Tel: (907) 586-1225

Bob Huffman, Chm.  
Legislative Committee  
Pioneers of Alaska



ALASKA STATE LEGISLATIVE COMMITTEE

CHAIRMAN  
Mr. R. W. Bob Paul  
130 Seward Street #705  
Juneau AK 99801  
(907) 586-2085

VICE CHAIRMAN  
Mrs. Marie C. Mackenzie  
1620 Crescent  
Anchorage AK 99508  
(907) 562-4895

SECRETARY  
Miss Ann L. ...  
771 ...  
...  
(907) 562-...

SENIOR CITIZEN HOUSING  
POSITION PAPER

BACKGROUND/PROBLEM

Since 1980, Alaska's senior population has grown by 66% to more than 19,000 residents according to the Department of Labor. It is one of the fastest growing age groups in the state. If Alaska's population continues to grow older as projected, the senior population could double soon after the year 2000. Many seniors who formerly would have retired Outside are now remaining in Alaska.

Affordable, secure, accessible housing facilities with attendant supportive services are meager at best, and totally unavailable in most rural and urban Alaska communities. Thus, the strong desire of older Alaskans to remain independent as long as possible in their own homes must give way to some other housing solution when they can no longer maintain a private residence.

It is socially and economically advantageous to all Alaskans to effectively address senior citizen housing needs.

PROPOSED SOLUTION

Mechanisms must be established to enable and encourage seniors and their families, profit or non-profit organizations and government agencies to work cooperatively in meeting the needs. Development of alternative approaches, home equity conversions and provision of methods for realistic financing are but a few of the topics which must be addressed. Appropriate lands on which to locate necessary facilities need to be made available.

Physical housing, as such, is not the only aspect to be addressed in meeting senior needs. Greater support must be provided for adult family care, weatherization, day care, respite care, case management, and other services which make it possible for a senior to stay in his or her own home as long as possible.

In summary, necessary lands, financing methods, mechanisms for cooperative action and supportive services must be made available if we are to solve senior citizen housing problems in Alaska.

PROPOSED LEGISLATION

SB 150 would create a senior housing office in the Department of Community and Regional Affairs, and a revolving loan fund for all types of senior housing.

HB 218 would expand the Alaska Housing Finance Corporation's authority to include loans to build congregate housing for seniors, and to cooperatively establish a pilot program of such housing.

These bills currently in the Alaska Legislature would constitute a start in addressing senior housing problems, and the AARP ALASKA STATE LEGISLATIVE COMMITTEE supports passage of this legislation.

SENATE STATE AFFAIRS COMMITTEE TESTIMONY  
October 19, 1989

My name is Amos J. Alter. I live at 303 Distin Ave. in Juneau. I speak in recognition of a serious need for affordable housing alternatives for Alaska's elderly people. In addition to recognizing the need I speak in support of actions to provide housing for middle and low income persons.

As a member of the State Legislative Committee of the American Association of Retired Persons, a group with an Alaska membership of about 32,000 persons, I speak in support of the concept of making those resources available to seniors which enable them to stay in their own homes as long as possible thereby avoiding the high costs to society incurred by institutionalization. Among other things such resources should include a variety of housing alternatives, congregate, group new or converted facilities, additions to existing housing, non-profit, public or private participation. State and local governments and individuals as well as the private sector should be encouraged to cooperate in meeting the need.

A sizable proportion of the senior citizen community is able and willing to make reasonable payment for housing. Incentives such as funding through revenues, low interest loans, land grants for sites and coordination and leadership in developing viable alternatives are all needed. There is a singular lack of housing alternatives for those middle income persons ineligible for low rent housing and yet unable to meet housing needs beyond a private home. Residential and assisted living alternatives for these persons in their own communities would allow them to remain in Alaska. As they are allowed to remain in Alaska they would continue to contribute to their communities economically as well as socially. A retired person spending retirement income in the community is a significant part of the economic base of that community.

In summary it is to the advantage of all Alaskans to provide housing alternatives for the elderly which keep seniors independent as long as possible. AARP supports those actions which will expedite and provide affordable housing alternatives for all Alaskan elders regardless of their income.

# Senate passes measures aimed at encouraging senior housing

By BRIAN S. AKRE  
THE ASSOCIATED PRESS

Legislation that would create a state Senior Housing Office and a loan fund intended to spur development of housing for the elderly has been passed by the Senate.

The legislation is in two bills that were approved Wednesday and sent to the House. A primary goal of the legislation is to encourage development of medium-size apartment complexes with common dining facilities and other services favored by the elderly.

"Many existing projects of this type are not available to middle- or upper-income seniors since they are funded through federal programs which include income restrictions," Sen. Jim Duncan, D-Juneau and prime sponsor of the bills, said in a news release.

Senate Bill 150, approved without opposition, would create the Senior Housing Office to study and plan for the housing needs of Alaska's elderly. The idea came from recommendations of a recent Older Alaskans Commission report on elderly housing needs.

The office would seek funding to develop housing alternatives, provide housing-related financial information to the elderly and public education about alternatives to nursing homes and large housing projects.

The bill also would authorize the



Alaska Housing Finance Corp. to issue up to \$30 million in bonds for senior housing projects. The state Department of Community and Regional Affairs would submit to AHFC a list of projects determined to be desirable and financially feasible.

Proceeds from the bond sales would go into a revolving loan fund managed by the department. Loans from the fund could be made for a variety of housing needs, including conventional mortgages, renovations to individual and group homes, cooperatives and construction of new senior housing.

The new housing office would be within the department, but the law would require the office to work with the commission.

The department estimates it would cost \$166,200 in fiscal 1991 to operate the office with two full-time employees. The office costs would be paid through the general fund for the

first two years, then the money would come from the revolving loan fund.

Senate Bill 487, approved 16-2, would allow the use of \$10 million from AHFC revolving loan funds as security for the senior housing bond sales.

"The result will be a lower interest rate for construction and renovation of senior housing," Duncan said. "This means more affordable housing for seniors."

Duncan said rents and fees would be enough to repay the loan fund.

"The seniors across this state have said they support this legislation," he said.

Sen. John Binkley, R-Bethel, and Sen. Rick Halford, R-Chugiak, voted against SB487. Binkley objected to dedicating the \$10 million in unrestricted AHFC capital.

"It's an additional \$10 million that is not available for AHFC to pay back the \$1.6 billion we have put into AHFC," he said. "We have not seen a penny of that put back."

Binkley also said it is misleading to suggest the \$10 million will ensure lower rents.

"It probably would have been better to take the \$10 million and appropriate it to specific projects for housing for seniors, rather than using it for collateral on more debt to build housing that seniors really can't afford."

THE FOLLOWING DOCUMENT HAS  
NOT BEEN FILMED BUT IS  
AVAILABLE IN THE ORIGINAL  
FILE

# *SENIOR HOUSING REPORT*



**Alaska's senior citizen housing today,  
what seniors will need for tomorrow,  
and what the State can do to help**

**Prepared by the Older Alaskans Commission  
for the Alaska Legislature and Governor Steve Cowper**

**September 1989**

SB

153

# HOUSE COMMITTEE REPORT

(5)

Date Referred: March 8, 1989

FURTHER REFERRALS: RESOURCES  
FINANCE

Date of Committee Action: 3/21/89

The COMMUNITY & REGIONAL AFFAIRS Committee considered: SB 153

SENATE BILL NO. 153 [APPROP: FISH & AVIATION TAX REV.SHARING]  
"An Act making a supplemental appropriation to the Department of Revenue for reimbursement to municipalities under the fisheries tax refund program and the aviation fuel revenue sharing; and providing for an effective date."

- RECOMMENDATIONS:
- [ ] be replaced with \_\_\_\_\_ [ ] the same title
  - [ ] have attached amendment(s) [ ] a new title
  - [✓] do pass
  - [ ] do not pass
  - [ ] no recommendation
  - [ ] individual recommendations
  - [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Date/Dept)

- [ ] fiscal impact \_\_\_\_\_ [ ] fiscal note(s) \_\_\_\_\_
- [ ] zero fiscal note \_\_\_\_\_ [ ] zero fiscal note(s) \_\_\_\_\_
- [ ] zero with analysis \_\_\_\_\_ [ ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

Richard Love  
Cheryl Davis  
Eileen Maclean

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SIGNING:  
(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		X	

Eileen P. Maclean

Chairman's signature



# Alaska State Legislature

House of Representatives  
Community & Regional Affairs

## TABLE OF CONTENTS

### SENATE BILL 153

\*\*\*\*\*

ITEM 1:	Bill Summary
ITEM 2:	Sectional Analysis
ITEM 3:	Department of Revenue Position Paper
ITEM 4:	Operating Budget Tax Allocations
ITEM 5:	Supplemental Requests
ITEM 6:	Statutes
ITEM 7:	Supporting Resolutions
ITEM 8:	FY 88 Raw Fish Revenues by Cities
ITEM 9:	SB 153

Sen. Zharoff

## BILL SUMMARY OF SB 153

Under AS 43.75.130, the state is obligated to reimburse to communities one half of the revenues collected under the fisheries business tax collected in those communities where processing occurs. Traditionally, the Department of Revenue would estimate the amount that the state would be obligated to reimburse to the communities under this program and provide that information to the legislature for inclusion in DOR's budget. The problem with this approach is that DOR does not know the exact amount to be distributed during a given fiscal year by the time the legislature adjourns because of the timing of collections of the tax. This has created underfunding in the budget of the amount to be reimbursed to communities in each of the past two operating budgets. Last year, the legislature passed a supplemental appropriation of \$730,264 because of underfunding. This year, the amount of underfunding has been calculated to be \$3,411,196, or roughly 30% of the total amount the state is obligated to share. All the fish taxes have been collected. the state has received its share and the \$3.4 million remaining obligation to municipalities has been collected and deposited in the general fund. All that remains is for legislative authorization to distribute these funds.

The Aviation Fuel Revenue Sharing supplemental is similiar. Sixty percent of the aviation fuel taxes collected by the state (minus administrative costs) are refunded to municipalities owning or leasing and operating an airport. The \$46,579 included in Section 2 is the Municipality of Anchorage's share of unanticipated, and therefore unbudgeted, Aviation Fuel taxes collected at Merrill Field.

The Department of Revenue submitted these supplementals for inclusion in the governor's supplemental bill, but since municipalities are counting on these funds for their FY 89 budgets, I have introduced SB 153 in hopes that this bill will receive expedited action and these funds will not be held up in the governor's supplemental.

Sen. Zharoff

SECTIONAL ANALYSIS OF SENATE BILL 153

SECTION 1: Appropriates the amount still owed to municipalities and boroughs under the fisheries tax refund program (AS 43.75.130(a)) to the Department of Revenue for disbursement. The amount still owed is \$3,411,196.

SECTION 2: Appropriates the amount still owed to the Municipality of Anchorage under the Aviation Fuel Revenue sharing program (AS 43.40.010(e)) to the Department of Revenue for disbursement. The amount still owed is \$46,578.

SECTION 3: Lapses the unexpended and unobligated balances created by this bill on July 1, 1989.

SECTION 4: Provides for an immediate effective date.

# 3

STEVE COWPER, GOVERNOR

**DEPARTMENT OF REVENUE**

OFFICE OF THE COMMISSIONER

P.O. BOX 5  
JUNEAU, ALASKA 99811-0400  
PHONE: (907) 465-2300  
TELEFAX: (907) 465-2389

February 14, 1989

The Honorable Fred Zharoff  
Alaska State Senate  
P.O. Box V  
Juneau, AK 99811


Dear Senator Zharoff:

This is in response to your request for this Department's position on Senate Bill 153.

As you know, the Department of Revenue has requested supplemental appropriations to fully fund the shared taxes program for FY89. The initial appropriation was based on a Department of Revenue estimate and was short approximately \$3.4 million. More than 50 municipalities and boroughs throughout Alaska are affected. The supplemental request process has been a routine measure in recent years. We have proposed language in this years budget bill (HB 100) which would authorize the Department to pay out all shared taxes collected under the various tax statutes. This would effectively put an end to our annual request for a supplemental to make a late payment of revenues to the communities.

SB 153 is intended to speed up the supplemental process by providing a separate appropriation bill to fund the refund program. It is anticipated that this legislation would pass through the legislature much more quickly than HB 100. It is important that communities receive these funds quickly. The Department supports your efforts to assist us in obtaining these necessary funds.

Sincerely,



Hugh Malone  
Commissioner  
Department of Revenue  
(907)465-2300

89-48



RECEIVED 11/13/88

## MEMORANDUM

STATE OF ALASKA

DEPARTMENT OF REVENUE

TO: Nancy Bennett  
Director  
Administrative Services

DATE: November 1, 1988

FILE NO: 6099I

TELEPHONE NO: 465-2320

THRU:

SUBJECT: FY 89 Raw Fish  
Supplemental

*Ste*  
FROM: Steven E. Kettel  
Director  
Income and Excise Audit Division

We request \$3,411,196.00 in a supplemental for FY 89 Raw Fish Revenue Sharing. This request should be funded from general fund monies.

cc: Sandra Yadao  
Shirley Minnich

STATE OF ALASKA  
DEPARTMENT OF REVENUE  
INCOME AND EXCISE AUDIT DIVISION

M E M O R A N D U M

TO: Nancy Bennett  
Director  
Administrative Services

FROM: Steven E. Kettel *SEK*  
Director  
Income & Excise Audit Division

DATE: January 13, 1989

SUBJECT: FY 89 Aviation Fuel  
Supplemental Request

We request \$46,578.11 in a supplemental for FY 89 Aviation Fuel Revenue Sharing. This amount is derived from taxes collected from Merrill Field Airport which we were unable to share until this time. This request should be funded from general fund monies.

cc: Sandra Yadao  
Brenda Vaughn  
Shirley Minnick

JH:SEK:lr

1 fiscal year ending June 30, 1989.

2 \* Sec. 7. The sum of \$46,600 is appropriated from the general fund to  
3 the Department of Revenue to refund additional aviation fuel revenue to the  
4 Municipality of Anchorage under AS 43.40.010 for the period of January 1,  
5 1984 through June 30, 1988.

6 \* Sec. 8. The sum of \$3,411,200 is appropriated from the general fund  
7 to the Department of Revenue to refund additional fiscal year 1989 fisher-  
8 ies tax revenue under AS 43.75.130.

9 \* Sec. 9. The sum of \$7,776,400 is appropriated from the following  
10 funding sources to the Department of Education for the public school foun-  
11 dation program for the fiscal year ending June 30, 1989:

12	General Funds	\$5,499,100
13	PL 81-874 Funds	2,277,300

14 \* Sec. 10. The sum of \$700,000 is appropriated from the general fund to  
15 the Department of Health and Social Services, adult public assistance  
16 program, for costs associated with increased caseloads and cost-of-living  
17 adjustments for the fiscal year ending June 30, 1989.

18 \* Sec. 11. The sum of \$136,600 is appropriated from the general fund to  
19 the Department of Health and Social Services, postmortem examination pro-  
20 gram, to pay for unmet costs of examinations and burials ordered by the  
21 courts for the fiscal year ending June 30, 1989.

22 \* Sec. 12. The sum of \$3,032,100 is appropriated to the Department of  
23 Health and Social Services, medicaid facilities program, to pay for costs  
24 associated with increased caseloads and price increases for the fiscal year  
25 ending June 30, 1989, from the following sources:

26	Federal Receipts	\$1,515,100
27	General Fund Match	1,517,000

28 \* Sec. 13. The sum of \$1,723,900 is appropriated to the Department of  
29 Health and Social Services, medicaid non-facilities program, to pay for

5.032

§ 43.75.034

REVENUE AND TAXATION

§ 43.75.130

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"(c) The department shall prepare an application form for a credit under this section. disapprove an application for a credit under this section not later than 60 days after receiving the application."

"(d) The department shall approve or

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**Sec. 43.75.034. Tax credit report [Repealed effective February 15, 1992].** Not later than the 15th legislative day of each regular legislative session the Department of Revenue, in conjunction with the Department of Commerce and Economic Development, shall submit to the legislature a report on the fisheries business tax credit program under AS 43.75.032. The report shall describe the expenditures for which a credit was approved during the previous tax year and, if possible, the increase in employment and processing capacity by the fisheries businesses for which the credit was approved. ( § 2 ch 79 SLA 1986; r § 8 ch 79 SLA 1986)

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**Postponed repeal. — Section 8, ch. 79, SLA 1986 repeals this section, effective February 15, 1992.**

Article 3. General Provisions.

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Section  
130. Refund to local governments  
133. Provision of information to municipalities

Section  
140. Definitions

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**Sec. 43.75.130. Refund to local governments.** (a) Except as provided in (d) of this section, the commissioner of revenue shall pay  
(1) to each unified municipality and to each city located in the unorganized borough, 50 percent of the amount of tax revenue collected in the municipality from taxes levied under this chapter;  
(2) to each city located within a borough, 25 percent of the amount of tax revenue collected in the city from taxes levied under this chapter; and  
(3) to each borough  
(A) 50 percent of the amount of tax revenue collected in the area of the borough outside cities from taxes levied under this chapter; and  
(B) 25 percent of the amount of tax revenue collected in cities located within the borough from taxes levied under this chapter.

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(b) For purposes of this section, tax revenue collected under AS 43.75.015 from a person entitled to a credit under AS 43.75.032 shall be calculated as if the person's tax had been collected without applying the credit.

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(c) [Repealed effective January 1, 1992] Within 60 days after a credit is approved under AS 43.75.032 for a capital expenditure involving a shore-based fisheries business facility or cooperative seafood industrial park located or to be located in a municipality, the municipality may adopt an ordinance directing the department to reduce the municipality's refund under this section over a period of not more

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§ 43.35.140

REVENUE AND TAXATION

§ 43.40.010

**Sec. 43.35.140. Gambling not legalized.** AS 43.35.100 — 43.35.150 do not legalize gambling. (§ 4 ch 116 SLA 1949; am § 1 ch 53 SLA 1951)

**Cross references.** — For limitations on authorized gaming activities, see AS 05.15.180.

**Sec. 43.35.150. Violations and penalties.** (a) It is unlawful for a person to (1) distribute in the state a punchboard for which the license tax provided in AS 43.35.100 — 43.35.150 is not paid; or (2) maintain for use, or permit the use of, in a place or premises occupied by the person a punchboard upon which the license stamp is not affixed.

(b) A person violating a provision of AS 43.35.100 — 43.35.150 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500. (§ 5 ch 116 SLA 1949; am § 1 ch 53 SLA 1951)

### Chapter 40. Motor Fuel Tax.

#### Section

- 10. Tax on transfers or consumption of motor fuel and expenditure of proceeds
- 30. Refund for nonhighway use
- 35. Other refunds and credits
- 50. Refund claim by affidavit

#### Section

- 60. Separate invoices
- 70. Refund warrants
- 80. Examination of books and records
- 85. Preservation of books and records
- 100. Definitions

**Collateral references.** — 71 Am. Jur. 2d, State and Local Taxation, §§ 616 — 634; 53 Am. Jur. 2d, Licenses, §§ 30, 46 — 58.

State tax on or in respect of goods shipped in interstate commerce to consignee for sale on consignor's account without previous sale or order for purchase, 4 ALR2d 244.

Loading or unloading interstate freight in performance of obligation resting upon one other than interstate carrier as inter-

state commerce as regards local taxation, 10 ALR2d 651.

State taxation of motor carriers as affected by commerce clause, 17 ALR2d 421.

Power of legislature to remit, release, or compromise tax claim, 28 ALR2d 1425.

Financial hardship or inability to pay taxes as rendering inapplicable statutes denying remedy by injunction against assessment or collection of tax, 65 ALR2d 550.

**Sec. 43.40.010. Tax on transfers or consumption of motor fuel and expenditure of proceeds.** (a) There is levied a tax of eight cents a gallon on all motor fuel sold or otherwise transferred within the state, except that

(1) the tax on aviation gasoline is four cents a gallon,

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon, and

(3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon.

(b) There is levied a tax of eight cents a gallon on all motor fuel consumed by a user, except that

(1) the tax on aviation gasoline consumed is four cents a gallon,

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon, and

(3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon.

(c) Every dealer who sells or otherwise transfers motor fuel in the state shall collect the tax at the time of sale, and remit the total tax collected during each calendar month of each year to the department by the last day of each succeeding month. Every user shall likewise remit the tax accrued on motor fuel actually used by the user during each month. If the monthly tax return is timely filed, one percent of the total monthly tax due, limited to a maximum of \$100, may be deducted and retained to cover the expense of accounting and filing the monthly tax return. At the time the remittance is made, each dealer or user shall submit a statement to the department showing all fuel which the dealer or user has distributed or used during the month.

(d) *[Repealed, § 3 ch 166 SLA 1976.]*

(e) Sixty per cent of the proceeds of the revenue from the taxes on aviation fuel, excluding the amount determined to have been spent by the state in its collection, shall be refunded to a municipality owning and operating or leasing and operating an airport in the proportion that the revenue was collected at the municipal airport. All other proceeds of the taxes on aviation fuel shall be paid into a special aviation fuel tax account in the state general fund. The legislature may appropriate funds from this account for aviation facilities.

(f) The proceeds from the revenue from the tax on motor fuel used in boats and watercraft of all descriptions shall be deposited in a special watercraft fuel tax account in the general fund. The legislature may appropriate from this account for water and harbor facilities.

(g) The proceeds of the revenue from the tax on all motor fuels, except as provided in (e), (f) and (j) of this section, shall be deposited in a special highway fuel tax account in the state general fund. The legislature may appropriate funds from it for expenditure by the Department of Transportation and Public Facilities directly or as matched with available federal-aid highway money for maintenance of highways, construction of highway projects and ferries included in the program provided for in AS 19.19.150, including approaches, appurtenances and related facilities and acquisition of rights-of-way or easements, and other highway costs including surveys, administration, and related matters. All departments of the state government authorized to spend funds collected from taxes imposed by this chapter shall perform, when feasible, all construction or reconstruction projects by contract

**Resolution of the Alaska Municipal League**

**Resolution No. 89-36**

**A RESOLUTION URGING THE LEGISLATURE TO PASS A  
SUPPLEMENTAL APPROPRIATION FOR FULL FUNDING  
OF THE RAW FISH TAX PROGRAM**

WHEREAS, under the provisions of AS 43.75.130, the State of Alaska annually remits a share of raw fish tax revenues to the municipalities from which the tax was collected, and

WHEREAS, the amount of these revenues, as provided in the statute, is based on the actual raw fish taxes collected from processors located within a given municipality, and

WHEREAS, the State of Alaska has failed to return the full amount to the municipalities as provided in the statutes, and

WHEREAS, the State Legislature failed to appropriate sufficient monies to fund the Raw Fish Tax Program;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the Alaska State Legislature to pass a supplemental appropriation fully funding the Raw Fish Tax Program and TO authorize prompt remittance of the balance due the affected municipalities.

BE IT FURTHER RESOLVED that the Alaska Municipal League requests the State to adopt legislation, regulations, and policies that will ensure the appropriation of the full share of Raw Fish Tax revenues due municipalities by August 1 of each year.

*Adopted at Annual Business Meeting o November 18, 1988 o Fairbanks, Alaska*

*RESOLUTIONS OF SUPPORT*



RECEIVED FEB 10 1989

# Southwest Alaska Municipal Conference

*Putting Resources to Work For People*

1007 West 3rd Avenue, Suite 201 • Anchorage, Alaska 99501 • (907) 274-7355

## RESOLUTION NO. 89-01

A RESOLUTION SUPPORTING THE TIMELY DISTRIBUTION OF FISHERIES BUSINESS TAX TO MUNICIPALITIES.

WHEREAS, the current system of allocating Alaska Business Fisheries Tax requires annual legislative appropriation; and

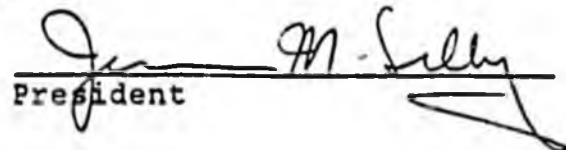
WHEREAS, if the Department of Revenue underestimates the amount of shared tax revenue and the legislature then appropriates a lesser amount than actually due, such as occurred in FY 1988, local governments must wait until the following legislative session to receive funding; and

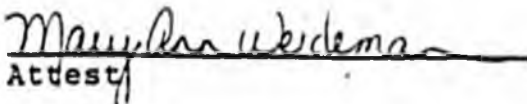
WHEREAS, this delay in revenues causes an unnecessary burden for communities expecting these revenues.

NOW, THEREFORE, BE IT RESOLVED THAT the Southwest Alaska Municipal Conference, representing cities in Bristol Bay, the Aleutians, the Pribilof Islands, and Kodiak urges the Alaska State Legislature to immediately appropriate funds to reimburse local governments for FY 1988 state shared Fisheries Business Taxes.

BE IT FURTHER RESOLVED, THAT the Southwest Alaska Municipal Conference requests the Alaska Legislature to amend State statute to allow the appropriation of 50% of fisheries business taxes collected to municipalities and boroughs no later than August 1 of the year following the year in which it was collected, according to the formula outlined in AS 43.375, without direct legislative approval.

PASSED THIS 22<sup>nd</sup> DAY OF January, 1989.

  
President

  
Attest

Representing Bristol Bay, The Pribilofs, Kodiak and the Aleutians.

FY 85 RAW FISH  
 SHARED REVENUE - CITIES AND BOROUGHS

	TOTAL #	AMT POP	AMT SHARED	TOTAL #
	FY 85 SHARING			
MUA 635 Anchorage Municipality	55	110,000.00	117,500.00	70,475.03
CBJ 496 Juneau	22	469.82	16,519.70	6,949.32
CIS 599 Sitka	216	421.50	222,000.09	93,573.68
BBB 699 Bristol Bay Borough	1	407,745.62	490,244.24	416,042.29
FNS 462 North Star Borough		412.00	200.00	124.06
HAB 944 Haines Borough		120,422.01	102,226.62	42,452.39
KPB 465 Kenai Peninsula Borough	1	474,563.05	1,037,244.92	426,119.12
KGB 466 Ketchikan Gateway Borough		152,154.79	107,205.06	45,349.73
KIB 128 Kodiak Island Borough	1	142,261.73	202,200.70	200,474.02
MAB 586 Matanuska-Susitna Borough		22.34	54.96	24.38
NSB 460 North Slope Borough				
NAB 168 NORTHWEST ARCTIC BOROUGH		10.36	7.29	2.17
NER 138 ALEUTIANS EAST BOROUGH		9,523.58	6,172.01	3,244.57
<b>TOTAL BOROUGHS</b>		<b>4,920,136.14</b>	<b>3,422,279.50</b>	<b>1,457,421.71</b>

CIA 323 Akhiok				
CIA 322 Akiachak				
CIA 321 Akiak				
CIA 072 Akutan	376	494.36	244,269.54	132,224.82
CIA 693 Alakanuk				
CAL 596 Aleknaqik				
CAL 597 Allakaket				
CIA 143 Ambler				
CAP 063 Anaktuvok Pass				
CIA 275 Anderson				

Subtotal this page 376 494.36 244,269.54 132,224.82

SHARED REVENUE - CITIES AND BOROUGHS

CIA 461	Anqoon			
CIA 062	Aniak	236.46	116.44	70.03
CIA 057	Anvik	904.08	636.38	267.70
CIA 565	Atmautluak			
COA 027	Atgasuk			
CIB 781	Barrow			
CIB 819	Bethel	30,055.48	21,156.05	8,999.43
CBM 320	Brevig Mission			
CBU 595	Buckland			
CIC 132	Chauthbaluk			
CIC 319	Chefornak			
CIC 202	Chevak			
COC 272	Chignik	282,144.27	202,824.77	85,319.50
CCP 269	Clark's Point	44,117.23	31,054.65	13,063.33
CCB 210	Cold Bay			
CIC 801	Cordova	310,732.13	570,574.35	240,157.78
CIC 492	Craig			
CID 317	Deering			
COJ 475	Delta Junction			
CID 836	Dillingham	1,470.67	1,035.82	435.44
CID 072	Diomedes			
CEA 594	Eagle			
CIE 061	Eek			
CIE 316	Ekwok			
CIE 593	Elim			

Subtotal this page 1175,631.11 8,274,417.96 308,213.65

SHARED REVENUE - CITIES AND BOROUGHS

CIE 322	Emmonak			
CIF 635	Fairbanks	7.19	5.06	3.13
CFY 463	Fort Yukon			
CIF 201	Fortuna Ledge	9,411.44	3,634.71	5,786.73
CIG 271	Galena	1,633.27	1,149.16	483.61
CIG 231	Gambell			
CIG 315	Golovin			
CGB 110	Goodnews Bay			
CIG 200	Grayling			
CIH 871	Haines	297.71	209.56	88.15
CHC 590	Holy Cross			
CIH 724	Homer	162,922.24	119,509.26	50,413.98
CIH 254	Hoonah	47,310.70	33,308.00	14,002.70
CHB 599	Hooder Bay			
CIH 520	Houston			
CIH 314	Hughes			
CIH 852	Huslia			
CIH 230	Hvdaburg			
CIK 111	Kachemak			
CIK 464	Kake	24,124.33	16,927.99	7,196.34
CIK 313	Kaktovik			
CIK 197	Kaltag			
CIK 927	Kasaan			
COX 301	Kastigluk			
CIK 891	Kenai	225,271.12	230,414.22	107,441.75

Subtotal this page 415,574.12 433,204.02 192,272.00

SHARED REVENUE - CITIES AND BOROUGHS

CIK 709	Ketchikan	125,453.22	48,206.52	37,146.70
CIK 060	Kiana			
CKC 059	King Cove	574,007.31	272,415.94	201,571.37
CIK 196	Kivalina			
CIK 229	Klawock	9,266.04	3,522.37	3,743.67
CIK 312	Kobuk			
CIK 916	Kodiak	820,672.22	619,909.40	260,768.86
CIK 311	Kotlik			
CIK 679	Kotzebue	10.36	7.29	3.27
CIK 195	Kovuk			
CIK 228	Kovukuk			
CIK 088	Kupreanof			
CIK 133	Kwethluk			
CLB 218	Larsen Bay	5,042.51	3,449.41	1,593.10
CIL 199	Lower Kalskag			
CIM 310	Manokotak			
CMC 599	McGrath			
CIM 109	Mekoryuk	62.62	44.12	12.56
CMV 111	Mountain Village	26,927.25	18,882.74	7,943.50
CIN 309	Napaklak			
CIN 308	Napasklak			
CIN 291	Nenana	836.00	522.41	217.54
CNC 226	New Stuyahok			
CIN 521	Newhalen			
CIN 194	Newtok			

Subtotal this page 1,622,102.44 1,100,211.22 512,056.41

SHARED REVENUE - CITIES AND BOROUGHS

CIN 853	Nightmute			
CIN 085	Nikolai			
CIN 936	Nome			
CIN 174	Nondalton			
CIN 227	Noorvik			
CNP 676	North Pole			
CNU 598	Nuqsut			
CIN 314	Nunapitchuk			
NCC 026	Nulato	545.51	383.33	162.18
COH 108	Old Harbor			
CIO 469	Ouzinkie			
CIP 644	Palmer			
CIP 470	Pelican	124,021.53	37,341.02	86,680.51
CIP 181	Petersburg	516,134.03	399,401.74	116,732.29
CIP 194	Pilot Station			
CIP 307	Platinum			
CPH 224	Point Hope			
CPA 471	Port Alexander			
CPH 306	Port Heiden			
CPL 107	Port Lions			
CIO 193	Quinhagak			
CIR 225	Ruby			
CRM 305	Russian Mission			
CSG 054	Saint George			
CSM 472	Saint Marys			
Subtotal this page		630,761.12	495,123.74	234,134.30

SHARED REVENUE - CITIES AND BOROUGHS

CIS 192	Saint Michael	3,111.57	2,190.23	921.34
CSP 331	Saint Paul	144,729.96	101,917.58	42,812.38
CSP 978	Sand Point	117,222.23	109,529.05	59,693.15
CIS 106	Savoonga			
CIS 583	Saxman			
CIS 191	Scammon Bay			
CIS 058	Selawik			
CIS 624	Seldovia	15,500.00	2,798.75	3,701.25
COS 266	Seward	220,692.30	155,245.31	165,746.9
CIS 190	Shageluk			
CIS 189	Shaktolik			
CSP 522	Sheldon Point			
CIS 105	Shishmaref			
CIS 188	Shunonak			
CIS 396	Skadway			
CIS 564	Soldotna			
CIS 187	Stebbins			
CIT 855	Tanana			
CIT 473	Teller			
CTS 212	Tenakee Springs	147.92	104.16	43.02
CTB 301	Thorne Bay			
CIT 854	Tootlak	75,512.00	50,522.56	15,741.21
CTB 223	Toksook Bay	141.12	92.55	41.49
CIT 305	Tuluksak			
CIT 186	Tununak			

Subtotal this page 2,212,221.33 2,116,512.71 1,274,407.52

SHARED REVENUE - CITIES AND BOROUGHS

CIU 258	Unalakleet			
CIU 215	Unalaska	244,291.94	664,687.10	279,604.86
CIU 198	Upper Kalskag			
CIU 401	Valdez	165,229.22	116,412.51	40,971.27
CIW 222	Wainwright			
CIW 185	Wales			
CIW 159	Wasilla			
CWM 304	White Mountain			
CIW 474	Whittier	24,527.46	17,264.52	7,262.52
CIW 559	Wrangell	22,052.59	26,752.65	11,269.24
CIY 479	Yakutat	124,217.41	91,475.63	22,741.72

CITIES Subtotal - Page 7	1,306,425.68	919,635.27	1,326,250.41
Page 6	601,221.22	414,512.90	127,407.52
Page 5	690,761.12	426,126.74	224,624.22
Page 4	1,622,103.74	1,110,127.23	512,056.41
Page 3	615,576.12	432,204.02	192,372.09
Page 2	1,175,161.11	927,447.26	248,213.25
Page 1	276,494.26	244,269.24	122,224.22

Total Cities	11,219,212.45	8,449,024.07	2,441,225.52
Total Boroughs			
<b>GRAND TOTAL</b>	<b>11,219,212.45</b>	<b>8,449,024.07</b>	<b>2,441,225.52</b>

FISH TAX SUPPLEMENTAL BY DISTRICT

<u>DIST</u>	<u>COMMUNITY</u>	<u>AMOUNT</u>
A	Ketchikan Gateway Borough	45,349.73
A	City of Ketchikan	37,146.70
A	Petersburg	167,732.29
A	Wrangell	<u>11,269.24</u>
	Total Dist A	261,497.96
B	Sitka	93,773.68
B	Haines Borough	43,452.39
B	Haines	88.15
B	Hoonah	14,008.70
B	Kake	7,146.94
B	Klawock	2,743.67
B	Pelican	36,740.56
B	Tenakee Springs	43.82
B	Yakutat	<u>39,741.78</u>
	Total Dist B	237,739.69
C	Juneau	<u>6,949.32</u>
	Total Dist C	6,949.32
D	Kenai Peninsula Borough	436,618.12
D	Homer	50,413.98
D	Kenai	107,441.85
D	Seldovia	<u>3,701.25</u>
	Total Dist D	598,175.20
E	Mat-Su Borough	24.38
E	Cordova	240,157.78
E	Seward	65,346.99
E	Valdez	48,971.97
E	Whittier	<u>7,262.58</u>
	Total Dist E	361,763.70
F-I	Anchorage	<u>70,475.03</u>
	Total Dist F-I	70,475.03
J	Nenana	<u>247.54</u>
	Total Dist J	247.54

FISH TAX SUPPLEMENTAL BY DISTRICT

K	Fairbanks North Star Borough	124.06
K	Fairbanks	<u>2.13</u>
	Total Dist K	126.19
L	Northwest Arctic Borough	3.07
L	Kotzebue	3.07
L	St. Michael	<u>921.34</u>
	Total Dist L	927.48
M	Aniak	70.02
M	Anvik	267.70
M	Bethel	8,899.43
M	Fortuna Ledge	2,786.73
M	Galena	483.61
M	Mekoryuk	18.56
M	Mountain Village	7,943.58
M	Nulato	161.53
M	Toksook Bay	<u>41.79</u>
	Total Dist M	20,672.95
N	Bristol Bay Borough	416,848.28
N	Kodiak Island Borough	340,474.08
N	Aleutians East Borough	3,344.57
N	Akutan	132,224.82
N	Chignik	85,319.52
N	Clark's Point	13,063.33
N	Dillingham	435.47
N	King Cove	201,591.37
N	Kodiak	260,768.82
N	Larsen Bay	1,593.10
N	St. Paul	42,872.28
N	Sand Point	58,693.15
N	Togiak	15,786.96
N	Unalaska	<u>279,604.84</u>
	Total Dist N	1,852,620.59
	Statewide Total	3,411,195.65



**SENATOR FRED F. ZHAROFF**  
**ALASKA STATE LEGISLATURE**

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259  
DURING SESSION  
P.O. BOX V, JUNEAU, ALASKA 99911 • (907) 465-3473 • 465-3474

**DISTRICT N**

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PIIILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

**TO:** Representative Eileen MacLean, Chair  
House C&RA Committee

**FROM:** Senator Fred F. Zharoff *Fred F. Zharoff*

**DATE:** March 13, 1989

**SUBJ:** SB 153

SB 153, which I sponsored, "An Act making a supplemental appropriation to the Department of Revenue for reimbursement to municipalities under the fisheries tax refund program and the aviation fuel revenue sharing; and providing for an effective date." passed the Senate on March 6 and was referred to the House Community & Regional Affairs with further referrals to Resources and Finance.

The intent of SB 153 is to reimburse to communities, as expeditiously as possible, the funds they are entitled to from state collected revenues under the fisheries tax and aviation fuel revenue sharing programs. The FY 89 budget passed by the legislature in 1988 did not authorize the Department of Revenue to distribute all the fish tax revenues municipalities were entitled to due to an underestimation of the amount of fish taxes that would be collected by the state under this program by the Department of Revenue. Therefore, this bill would allow the DOR to distribute the remaining amount due to communities.

The Aviation Fuel Tax Revenue Sharing program portion of the bill allows the DOR to share with the Municipality of Anchorage funds under this program that the DOR did not anticipate receiving in FY 89 at Merrill Field and therefore no legislative authorization to distribute these funds to Anchorage was given during the 1988 session.

Since many communities based their municipal budgets on receiving all they were entitled to under these programs, I am hopeful that this bill will move quickly through the legislature. These supplemental appropriations are included in sections 7 and 8 of the governor's supplemental bill, CSHB 154(FIN), as it passed out of House Finance last week. CSHB 154(FIN) is currently in the House Rules Committee.

Rep. MacLean  
March 8, 1989  
Page Two

Again, my intent is to reimburse communities the funds they are entitled to as soon as possible. I did not want these funds tied up until the end of session with the governor's supplemental appropriations bill. Should the governor's supplemental move quickly through both bodies, SB 153 may not be necessary, but I would like to keep SB 153 moving in the event that the governor's supplemental is stalled somewhere in the process.

Therefore, I respectfully request that SB 153 be scheduled for a hearing at your earliest possible convenience or waived to the next committee of referral since this is mainly a financial matter.

Enclosures: Back-up info

S B

1 6 2

# HOUSE COMMITTEE REPORT

(5)

Date Referred: May 8, 1989

FURTHER REFERRALS:

Date of Committee Action: 4/9/89

The COMMUNITY & REGIONAL AFFAIRS Committee considered: CSSB 162 (FINANCE)

CS FOR SENATE BILL NO. 162 (Finance)

"An Act authorizing the Alaska Housing Finance Corporation to establish a simplified refinancing mortgage loan purchase program; and providing for an effective date."

**RECOMMENDATIONS:**

- be replaced with \_\_\_\_\_  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact \_\_\_\_\_
- zero fiscal note \_\_\_\_\_
- zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) Revenue 5/91
- zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

**SIGNING:**  
(Check approp. column)

	Do Not Pass	No Rec	Amf
--	----------------	--------	-----

*Richard J. ...*  
*Chris Davis*  
*Eileen P. MacLean*


*Eileen P. MacLean*  
 Chairman's Signature

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

Bill Version: SB 162  
Publish Date: 2/6/89

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act reviving the simplified  
refinancing mortgage loan purchase program  
Sponsor: Rules Committee  
Requestor: Governor

Agency Affected: Department of Revenue  
BRU: Alaska Housing Finance Corporation  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	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
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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 for analysis.

Prepared By: Margaret Nelson  
Division: Alaska Housing Finance Corporation

Phone: 564-9321  
Date: February 1, 1989

Approved by Commissioner: [Signature]  
Agency: Department of Revenue

Date: 2/3/89

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

Changes in the CS (Fin) have no fiscal effect. This fiscal note is appropriate.  
SFC: 5/6/89

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 6, 1989

The Honorable Tim Kelly  
President of the Senate  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill reviving the simplified refinancing mortgage purchase program of the Alaska Housing Finance Corporation (AHFC). This bill would revive, unchanged, and continue in effect, a program that provides statutory authority for the second phase of the home ownership assistance program, commonly known as HOAP II.

When the simplified refinance program was enacted in 1987, the legislature limited the effective period of the program to 18 months. Sec. 9, ch. 41, SLA 1987. However, because of the rapid implementation of HOAP II, AHFC was unable to request an extension of AS 18.56.102 during the final session of the Fifteenth Alaska State Legislature. Therefore, the section was repealed in December 1988.

I urge your prompt and favorable action on this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper".

Steve Cowper  
Governor

Governor's Letter



520 East 34th St.  
Anchorage, AK 99503  
(907) 561-1900  
P.O. Box 101020  
Anchorage, AK 99510

TO: Tom Behan April 26, 1989  
Chief Executive Officer/  
Executive Director

FROM: Margaret Nelson  
Special Assistant Public Information Officer

RE: SB 162

For 18 months in 1987 and 1988, AHFC had authority to do simplified refinancing of AHFC loans. With that authority AHFC was able to operate the Home Owners' Assistance Program. That program ended in 1988. The results as of April 19, 1989, are as follows:

Total Loans Approved: 7,236 \$722.6 million  
329 remaining to close

Average savings per borrower: \$170 per month  
Total savings all borrowers: \$1.1 million per month  
(This money is available for spending elsewhere in the economy.)

Preliminary figures indicate that under HOAP, AHFC saved 1,619 Alaskan households from foreclosure resulting in a possible savings of \$64.8 million to investors (Fannie Mae, MGIC and AHFC) assuming an average loss of \$40,000 each if they had gone to foreclosure.

If SB 162 is approved, AHFC could continue to offer savings to Alaskan homeowners and investors as the opportunities arise.