

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990  
5779 HOUSE JUDICIARY 8672

HB

262

(7)

Date Referred: March 31, 1989

FURTHER REFERRALS: RESOURCES

Date of Committee Action: 4/25/89

The JUDICIARY Committee considered:

HB 262

HOUSE BILL NO. 262 [HIGH SEAS INTERCEPTION OF SALMON]  
"An Act relating to the high seas interception of salmon."

RECOMMENDATIONS:

[  ] be replaced with CS HB 262 [  ] 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) 3/31/89 J. H. 3/31/89 <sup>DPS</sup>

[  ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:  
(Check approp. column)

Do Not Pass

No Rec

Amend

Peter J. ...

David ...

Larry ...

...

...

...

...

...

...

...

SIGNING	Do Not Pass	No Rec	Amend
<u>...</u>		<input checked="" type="checkbox"/>	
<u>...</u>		<input checked="" type="checkbox"/>	

Peter J. ... / ...  
Chairman's Signature

Original sponsor: Rules/Governor

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 262 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the high seas interception of  
7 salmon."

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

9 \* Section 1. AS 16.10 is amended by adding new sections to read:

10 ARTICLE 10. HIGH SEAS INTERCEPTION OF SALMON.

11 Sec. 16.10.750. FINDINGS AND PURPOSE. (a) The legislature  
12 finds that

13 (1) the salmon fishing industry is among the state's larg-  
14 est industries and generates hundreds of millions of dollars and  
15 thousands of jobs each year; the salmon fishery is vitally important  
16 to commercial, subsistence, personal use, and sport fishing interests,  
17 and to the state's developing tourist industry;

18 (2) the state is committed to maintaining and enhancing its  
19 wild stocks of salmon by careful management, by initiating a 20-year  
20 rebuilding program, and by investing in the fishing industry;

21 (3) millions of Alaska salmon are being caught and injured  
22 by high seas fisheries that intercept salmon contrary to state, feder-  
23 al, or international law; the high seas interception of Alaska salmon  
24 defeats the state's management and rebuilding programs, deprives the  
25 state of a return on its investment in the fishing industry, and  
26 detrimentally affects subsistence and sport fishing uses of Alaska  
27 salmon;

28 (4) vessels that engage in the high seas interception of  
29 salmon can move relatively freely and undetected from region to region

1 in the North Pacific and thus are able to harvest whatever species is  
2 most readily available or most valuable; by moving farther westward, a  
3 greater proportion of the take is Asian salmon; moving eastward re-  
4 sults in a greater proportion of the take being Alaska salmon; al-  
5 though there is intermixing of Asian and North American salmon stocks,  
6 scientific evidence proves that even a minimal harvest of salmon  
7 within the migratory range of each species will contain Alaska salmon;

8 (5) the illegal taking of salmon detrimentally affects the  
9 Alaskan fishing industry; the illegal taking of Alaska salmon is of  
10 primary concern because of the direct and immediate effect on the  
11 state; in addition, the illegal taking of Asian salmon is also of  
12 concern because depletion of those stocks will ultimately result in a  
13 shifting of high seas fishing efforts, both legal and illegal, to  
14 Alaska salmon;

15 (6) high seas interception of salmon occurs beyond the  
16 exclusive economic zone of the United States, or through incursion  
17 within the exclusive economic zone and the state's territorial sea, by  
18 vessels that are usually not registered in this state; moreover, these  
19 vessels are not based in Alaska and can thus avoid detection more  
20 easily than Alaska-based vessels; as a practical matter, it is ex-  
21 tremely difficult to directly or indirectly regulate the vessels  
22 themselves; it is therefore necessary to prohibit activities within  
23 the state that give aid, comfort, and financial incentives to high  
24 seas interception of salmon.

25 (b) The purpose of AS 16.10.750 - 16.10.800 is to prevent re-  
26 sources, facilities, and expertise within the state from being avail-  
27 able to promote or facilitate the high seas interception of salmon or  
28 the making of intercepted salmon ready for or accessible to world  
29 markets.

1           Sec. 16.10.760.   TRAFFICKING IN INTERCEPTED SALMON.   (a) A  
2 person commits the offense of trafficking in intercepted salmon if the  
3 person

4           (1) buys, sells, trades, processes, or possesses salmon, or  
5 attempts to buy, sell, trade, process, or possess salmon, with reck-  
6 less disregard that the salmon has been, or will be, obtained by high  
7 seas interception;

8           (2) provides financing, premises, equipment, supplies,  
9 services, power, or fuel used to buy, sell, trade, process, or possess  
10 salmon, with reckless disregard that the salmon has been, or will be,  
11 obtained by high seas interception; or

12           (3) acts as a broker or middleman, or otherwise acts on  
13 behalf of another party, to arrange for or negotiate, or attempts to  
14 arrange for or negotiate, the purchase, sale, trade, processing, or  
15 possession of salmon, with reckless disregard that the salmon has  
16 been, or will be, obtained by high seas interception.

17           (b) Trafficking in intercepted salmon is a class C felony.

18           Sec. 16.10.770.   FALSIFICATION RELATED TO HIGH SEAS INTERCEPTION  
19 OF SALMON.   (a) A person commits the offense of falsification related  
20 to high seas interception of salmon if the person creates, utters, or  
21 possesses a written instrument related to salmon, or makes an asser-  
22 tion for the purpose of having a written instrument related to salmon  
23 created, uttered, or accepted, with reckless disregard that the salmon  
24 was obtained by high seas interception and that the written instrument  
25 or assertion conveys misleading or untrue information about the owner-  
26 ship, possession, processing, origin, destination, route of shipping,  
27 type, condition, or time, place, and manner of the taking of the  
28 salmon.

29           (b) In this section

1 (1) "utter" has the meaning given in AS 11.46.580(b);

2 (2) "written instrument" has the meaning given in AS 11.-  
3 46.580(b) and includes ships' logs and papers, bills of lading and  
4 sale, documents relating to processing, shipping, and customs, and  
5 information stamped on or affixed to cans, crates, containers,  
6 freight, or a means of storage or packaging.

7 (c) Falsification related to high seas interception of salmon is  
8 a class C felony.

9 Sec. 16.10.780. ASSISTING A VESSEL IN HIGH SEAS INTERCEPTION OF  
10 SALMON. (a) A person commits the offense of assisting a vessel in  
11 high seas interception of salmon if, with reckless disregard that a  
12 vessel is in possession of salmon obtained by high seas interception  
13 or that the owner or operator of the vessel intends to engage in the  
14 imminent interception of salmon, the person

15 (1) moves persons, cargo, or other property to or from the  
16 vessel;

17 (2) services or repairs the vessel or its equipment;

18 (3) provides the vessel with power, supplies, equipment, or  
19 fuel;

20 (4) provides the vessel with information, other than weath-  
21 er reports, capable of aiding the high seas interception of salmon or  
22 frustrating or avoiding detection, including communicating the move-  
23 ments, intentions, or activities of state or federal law enforcement  
24 officials or other fishing vessels; or

25 (5) is in charge of a docking facility, harbor, or anchor-  
26 age, and permits the vessel to dock or anchor, or to remain docked or  
27 anchored.

28 (b) It is an affirmative defense, as defined in AS 11.81.900(b),  
29 to a violation of this section, if the person honestly and reasonably

1 believed that the assistance provided to the vessel was necessary for  
2 humanitarian or environmental purposes.

3 (c) In this section

4 (1) "environmental purpose" means the intent to prevent or  
5 minimize adverse ecological effects to water quality;

6 (2) "humanitarian purpose" means the intent to provide  
7 medical services for a sick or injured person, or to prevent the loss  
8 of human life;

9 (3) "owner or operator of the vessel" means a person who

10 (A) has an ownership interest in the vessel;

11 (B) has authority to control or direct the vessel's  
12 activities; or

13 (C) physically operates a vessel or its equipment.

14 (d) Assisting a vessel in high seas interception of salmon is a  
15 class A misdemeanor.

16 Sec. 16.10.790. FINES. Notwithstanding the provisions of  
17 AS 12.55.035(b) and (c), a person convicted of an offense under  
18 AS 16.10.760 - 16.10.780 may be sentenced to pay a fine not exceeding  
19 the greater of

20 (1) \$100,000;

21 (2) three times the pecuniary gain realized by the person  
22 as a result of the offense; or

23 (3) if the person is convicted under AS 16.10.760, two  
24 times the fair market value of the salmon involved or contemplated in  
25 the commission of the offense.

26 Sec. 16.10.800. DEFINITIONS. In AS 16.10.750 - 16.10.800

27 (1) "high seas interception," "interception," or a similar  
28 term, means the unauthorized catching, taking, or harvesting of salmon  
29 for other than sport, subsistence, or personal use purposes,

1 throughout the migratory range of each species, by a vessel not regis-  
2 tered under the laws of this state;

3 (2) "process" means affecting the condition or location of  
4 salmon, including preparation, packaging, storage, refrigeration, or  
5 transportation;

6 (3) "reckless disregard" has the meaning given for "reck-  
7 lessly" in AS 11.81.900(a);

8 (4) "salmon" means Pacific salmon and steelhead, and parts  
9 of Pacific salmon and steelhead, whether mature or immature, processed  
10 or unprocessed; and

11 (5) "unauthorized" means contrary to a statute or regu-  
12 lation of the United States or the state, or to a treaty or interna-  
13 tional fishery agreement, or in violation of a foreign law.

go1029hE✓  
Utermohle  
4/20/89

Original sponsor: Rules/Governor

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 262 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the high seas interception of  
7 salmon."

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

9 \* Section 1. AS 16.10 is amended by adding new sections to read:

10 ARTICLE 10. HIGH SEAS INTERCEPTION OF SALMON.

11 Sec. 16.10.750. FINDINGS AND PURPOSE. (a) The legislature  
12 finds that

13 (1) the salmon fishing industry is among the state's larg-  
14 est industries and generates hundreds of millions of dollars and  
15 thousands of jobs each year; the salmon fishery is vitally important  
16 to commercial, subsistence, personal use, and sport fishing interests,  
17 and to the state's developing tourist industry;

18 (2) the state is committed to maintaining and enhancing its  
19 wild stocks of salmon by careful management, by initiating a 20-year  
20 rebuilding program, and by investing in the fishing industry;

21 (3) millions of Alaska salmon are being caught and injured  
22 by high seas fisheries that intercept salmon contrary to state, feder-  
23 al, or international law; the high seas interception of Alaska salmon  
24 defeats the state's management and rebuilding programs, deprives the  
25 state of a return on its investment in the fishing industry, and  
26 detrimentally affects subsistence and sport fishing uses of Alaska  
27 salmon;

28 (4) vessels that engage in the high seas interception of  
29 salmon can move relatively freely and undetected from region to region

1 in the North Pacific and thus are able to harvest whatever species is  
2 most readily available or most valuable; by moving farther westward, a  
3 greater proportion of the take is Asian salmon; moving eastward re-  
4 sults in a greater proportion of the take being Alaska salmon; al-  
5 though there is intermixing of Asian and North American salmon stocks,  
6 scientific evidence proves that even a minimal harvest of salmon  
7 within the migratory range of each species will contain Alaska salmon;

8 (5) the illegal taking of salmon detrimentally affects the  
9 Alaskan fishing industry; the illegal taking of Alaska salmon is of  
10 primary concern because of the direct and immediate effect on the  
11 state; in addition, the illegal taking of Asian salmon is also of  
12 concern because depletion of those stocks will ultimately result in a  
13 shifting of high seas fishing efforts, both legal and illegal, to  
14 Alaska salmon;

15 (6) high seas interception of salmon occurs beyond the  
16 exclusive economic zone of the United States, or through incursion  
17 within the exclusive economic zone and the state's territorial sea, by  
18 vessels that are usually not registered in this state; moreover, these  
19 vessels are not based in Alaska and can thus avoid detection more  
20 easily than Alaska-based vessels; as a practical matter, it is ex-  
21 tremely difficult to directly or indirectly regulate the vessels  
22 themselves; it is therefore necessary to prohibit activities within  
23 the state that give aid, comfort, and financial incentives to high  
24 seas interception of salmon.

25 (b) The purpose of AS 16.10.750 - 16.10.800 is to prevent re-  
26 sources, facilities, and expertise within the state from being avail-  
27 able to promote or facilitate the high seas interception of salmon or  
28 the making of intercepted salmon ready for or accessible to world  
29 markets.

1           Sec. 16.10.760.   TRAFFICKING IN INTERCEPTED SALMON.   (a) A  
2 person commits the offense of trafficking in intercepted salmon if the  
3 person

4           (1) buys, sells, trades, processes, or possesses salmon, or  
5 attempts to buy, sell, trade, process, or possess salmon, with reck-  
6 less disregard that the salmon has been, or will be, obtained by high  
7 seas interception;

8           (2) provides financing, premises, equipment, supplies,  
9 services, power, or fuel used to buy, sell, trade, process, or possess  
10 salmon, with reckless disregard that the salmon has been, or will be,  
11 obtained by high seas interception; or

12           (3) acts as a broker or middleman, or otherwise acts on  
13 behalf of another party, to arrange for or negotiate, or attempts to  
14 arrange for or negotiate, the purchase, sale, trade, processing, or  
15 possession of salmon, with reckless disregard that the salmon has  
16 been, or will be, obtained by high seas interception.

17           (b) Trafficking in intercepted salmon is a class C felony.

18           Sec. 16.10.770.   FALSIFICATION RELATED TO HIGH SEAS INTERCEPTION  
19 OF SALMON.   (a) A person commits the offense of falsification related  
20 to high seas interception of salmon if the person creates, utters, or  
21 possesses a written instrument related to salmon, or makes an asser-  
22 tion for the purpose of having a written instrument related to salmon  
23 created, uttered, or accepted, with reckless disregard that the salmon  
24 was obtained by high seas interception and that the written instrument  
25 or assertion conveys misleading or untrue information about the owner-  
26 ship, possession, processing, origin, destination, route of shipping,  
27 type, condition, or time, place, and manner of the taking of the  
28 salmon.

29           (b) In this section

1 (1) "utter" has the meaning given in AS 11.46.580(b);

2 (2) "written instrument" has the meaning given in AS 11.-  
3 46.580(b) and includes ships' logs and papers, bills of lading and  
4 sale, documents relating to processing, shipping, and customs, and  
5 information stamped on or affixed to cans, crates, containers,  
6 freight, or a means of storage or packaging.

7 (c) Falsification related to high seas interception of salmon is  
8 a class C felony.

9 Sec. 16.10.780. ASSISTING A VESSEL IN HIGH SEAS INTERCEPTION OF  
10 SALMON. (a) A person commits the offense of assisting a vessel in  
11 high seas interception of salmon if, with reckless disregard that a  
12 vessel is in possession of salmon obtained by high seas interception  
13 or that the owner or operator of the vessel intends to engage in the  
14 imminent interception of salmon, the person

15 (1) moves persons, cargo, or other property to or from the  
16 vessel;

17 (2) services or repairs the vessel or its equipment;

18 (3) provides the vessel with power, supplies, equipment, or  
19 fuel;

20 (4) provides the vessel with information, other than weath-  
21 er reports, capable of aiding the high seas interception of salmon or  
22 frustrating or avoiding detection, including communicating the move-  
23 ments, intentions, or activities of state or federal law enforcement  
24 officials or other fishing vessels; or

25 (5) is in charge of a docking facility, harbor, or anchor-  
26 age, and permits the vessel to dock or anchor, or to remain docked or  
27 anchored.

28 (b) It is an affirmative defense, as defined in AS 11.81.900(b),  
29 to a violation of this section, if the person honestly and reasonably

1 believed that the assistance provided to the vessel was necessary for  
2 humanitarian or environmental purposes.

3 (c) In this section

4 (1) "environmental purpose" means the intent to prevent or  
5 minimize adverse ecological effects to water quality;

6 (2) "humanitarian purpose" means the intent to provide  
7 medical services for a sick or injured person, or to prevent the loss  
8 of human life.

9 (d) Assisting a vessel in high seas interception of salmon is a  
10 class A misdemeanor.

11 Sec. 16.10.790. FINES. Notwithstanding the provisions of  
12 AS 12.55.035(b) and (c), a person convicted of an offense under  
13 AS 16.10.760 - 16.10.780 may be sentenced to pay a fine not exceeding  
14 the greater of

15 (1) \$100,000;

16 (2) three times the pecuniary gain realized by the person  
17 as a result of the offense; or

18 (3) if the person is convicted under AS 16.10.760, two  
19 times the fair market value of the salmon involved or contemplated in  
20 the commission of the offense.

21 Sec. 16.10.800. DEFINITIONS. In AS 16.10.750 - 16.10.800

22 (1) "high seas interception," "interception," or a similar  
23 term, means the unauthorized catching, taking, or harvesting of salmon  
24 for other than sport, subsistence, or personal use purposes, through-  
25 out the migratory range of each species, by a vessel not registered  
26 under the laws of this state;

27 (2) "process" means affecting the condition or location of  
28 salmon, including preparation, packaging, storage, refrigeration, or  
29 transportation;

1           (3) "reckless disregard" has the meaning given for "reck-  
2 lessly" in AS 11.81.900(a);

3           (4) "salmon" means Pacific salmon and steelhead, and parts  
4 of Pacific salmon and steelhead, whether mature or immature, processed  
5 or unprocessed; and

6           (5) "unauthorized" means contrary to a statute or regu-  
7 lation of the United States or the state, or to a treaty or interna-  
8 tional fishery agreement, or in violation of a foreign law.

1 IN THE HOUSE

~~BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR~~

2

CS FOR HOUSE BILL NO. 262 ( )

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the high seas interception of  
7 salmon."

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

9 \* Section 1. AS 16.10 is amended by adding new sections to read:

10 ARTICLE 10. HIGH SEAS INTERCEPTION OF SALMON.

11 Sec. 16.10.750. FINDINGS AND INTENT. (a) The legislature finds *that*  
12 ~~the following:~~

13 (1) The salmon fishing industry is among <sup>*the state's*</sup> Alaska's largest  
14 industries and generates hundreds of millions of dollars and thousands  
15 of jobs each year; <sup>*fishing*</sup> The fishery is vitally important to commercial,  
16 subsistence, personal use, and sport <sup>*fishing*</sup> interests, and to the state's  
17 developing tourist industry;

18 (2) <sup>*the state*</sup> ~~Alaska~~ is committed to maintaining and enhancing its  
19 wild stocks of salmon by careful management, by initiating a 20-year  
20 rebuilding program, and by investing in the fishing industry;

21 (3) Millions of Alaska salmon are being caught and injured  
22 by high seas <sup>*fisheries that are intercept salmon*</sup> interception which is ~~contrary to~~ state, federal, or  
23 international law; <sup>*of Alaska salmon*</sup> This high seas interception <sup>*of Alaska salmon*</sup> defeats the state's  
24 management and rebuilding programs, deprives the state of a return on  
25 its investment in the fishing industry, and detrimentally affects  
26 subsistence and sport <sup>*fishing*</sup> <sup>*uses*</sup> of Alaska salmon

27 (4) Vessels that engage in the high seas interception of  
28 salmon can move relatively freely and undetected from region to region  
29 in the North Pacific <sup>*fishing*</sup> and <sup>*are thus*</sup> able to harvest whatever species is

1 most readily available or most valuable. By moving farther westward,  
2 a greater proportion of <sup>the take is</sup> Asian salmon ~~are taken~~; moving eastward re-  
3 sults in a greater proportion of the take being Alaska salmon<sub>x</sub>; ~~Al-~~  
4 though there is intermixing of Asian and <sup>North</sup> American salmon stocks,  
5 scientific evidence proves that even a minimal harvest of salmon  
6 within the migratory range of each species will contain Alaska salmon<sub>x</sub>;

7 (5) The illegal taking of any Pacific salmon detrimentally  
8 affects the Alaska fishing industry<sub>x</sub>; The illegal taking of Alaska  
9 salmon is of primary concern because of the direct and immediate  
10 effect on <sup>the state</sup> Alaska<sub>x</sub>; In addition, the illegal taking of Asian salmon is  
11 also of concern because depletion of those stocks will ultimately  
12 result in a shifting of high seas fishing efforts, both legal and  
13 illegal, to Alaska salmon<sub>x</sub>;

14 (6) High seas interception <sup>of salmon occurs</sup> ~~is committed~~ beyond the exclu-  
15 sive economic zone of the United States, or through <sup>incursions</sup> ~~excursions~~ within  
16 <sup>submarine economic and the state's</sup> the zone, ~~including within Alaska's~~ territorial sea, by vessels that  
17 are usually not registered in this state<sub>x</sub>; Moreover, these vessels are  
18 not based in Alaska and can thus avoid detection more easily than  
19 Alaska-based vessels<sub>x</sub>; As a practical matter, it is extremely diffi-  
20 cult to directly or indirectly regulate the vessels themselves<sub>x</sub>; It is  
21 therefore necessary to <sup>prohibit</sup> ~~regulate~~ activities within the <sup>state</sup> ~~State~~ of Alaska  
22 <sup>that</sup> ~~which~~ give aid, comfort, and financial incentives to high seas inter-  
23 ception <sup>of salmon</sup>;

AS 16.10.750 - 16.10.900

24 (b) The purpose of ~~this chapter~~ is to prevent resources, facil-  
25 ities, and expertise within the <sup>state</sup> ~~State~~ of Alaska from being available  
26 to promote or facilitate the <sup>high seas</sup> ~~interception~~ of Pacific salmon or the  
27 making of <sup>intercepted</sup> ~~the~~ salmon ready for or accessible to world markets.

28 Sec. 16.10.760. TRAFFICKING IN INTERCEPTED SALMON. (a) A  
29 person commits the offense of trafficking in intercepted salmon if the

1 person

2 (1) buys, sells, trades, processes, or possesses salmon, or  
3 attempts to buy, sell, trade, process, or possess salmon, with reck-  
4 less disregard that the salmon has been, or will be, obtained by high  
5 seas interception;

6 (2) provides financing, premises, equipment, supplies,  
7 services, power, or fuel used to <sup>buy</sup> ~~purchase~~, sell, trade, process, or  
8 possess salmon, with reckless disregard that the salmon has been, or  
9 will be, obtained by high seas interception; or

10 (3) acts as a broker or middleman, or otherwise acts on  
11 behalf of another party, to arrange for or negotiate, or attempts to  
12 arrange for or negotiate, the purchase, sale, trade, processing, or  
13 possession of salmon, with reckless disregard that the salmon has  
14 been, or will be, obtained by high seas interception.

15 (b) Trafficking in intercepted salmon is a class C felony.

16 Sec. 16.10.770. FALSIFICATION RELATED TO HIGH SEAS INTERCEPTION  
17 OF SALMON. (a) A person commits the offense of falsification related  
18 to high seas interception of salmon if the person creates, utters, or  
19 possesses a written instrument related to salmon, or makes an asser-  
20 tion for the purpose of having ~~such~~ a written instrument created,  
21 uttered, or accepted, with reckless disregard that the salmon was  
22 obtained by <sup>high seas</sup> interception and that the written instrument or assertion  
23 conveys misleading or untrue information about the ownership, pos-  
24 session, processing, origin, destination, route of shipping, type,  
25 condition, or time, place, and manner of the taking of the salmon.

26 (b) ~~As used~~ in this section

27 (1) "utter" has the meaning given in AS 11.46.580(b)(~~X~~);

28 (2) "written instrument" has the meaning given in  
29 AS 11.46.580(b)(~~X~~) and specifically includes ships' logs and papers.

1 bills of lading and sale, documents relating to processing, shipping,  
2 and customs, and ~~any~~ information stamped on or affixed to cans,  
3 crates, containers, freight, or ~~any~~<sup>a</sup> means of storage or packaging.

4 (c) Falsification related to high seas interception of salmon is  
5 a class C felony.

6 Sec. 16.10.780. ASSISTING A VESSEL IN HIGH SEAS INTERCEPTION OF  
7 SALMON. (a) A person commits the offense of assisting a vessel in  
8 high seas interception of salmon if, with reckless disregard that a  
9 vessel is in possession of salmon obtained by <sup>high seas</sup> interception or that the  
10 person ~~in charge~~<sup>A</sup> of the vessel intends to engage in the imminent  
11 interception of salmon, the ~~defendant~~<sup>person</sup>

12 (1) moves cargo or other property to or from the vessel;

13 (2) services or repairs the vessel or its equipment;

14 (3) provides the vessel with power, supplies, equipment, or  
15 fuel;

16 (4) provides the vessel with information, other than weath-  
17 er reports, capable of aiding the high seas interception of salmon or  
18 frustrating or avoiding detection, including communicating the move-  
19 ments, intentions, or activities of state or federal law enforcement  
20 officials or other fishing vessels; or

21 (5) is ~~a person~~ in charge of a docking facility, harbor, or  
22 anchorage, and permits the vessel to dock or anchor, or to remain  
23 docked or anchored.

24 (b) It is an affirmative defense, as defined in AS 11.81.-  
25 900(b) ~~(X)~~, to a violation of this section, if the person honestly and  
26 reasonably believed that the assistance provided to the vessel was  
27 necessary for humanitarian or environmental purposes.

28 (c) ~~As used~~ in this section ~~X~~

29 (1) ~~X~~ "environmental purpose" <sup>means the intent</sup> ~~is one designed~~ to prevent

1 or minimize adverse ecological effects to water quality;  
2 (2) ~~a~~ "humanitarian purpose" <sup>means the intent</sup> ~~is one~~ designed to provide  
3 medical services for a sick or injured person, or to prevent the loss  
4 of human life.

5 (d) Assisting a vessel in high seas interception of salmon is a  
6 class A misdemeanor.

7 Sec. 16.10.790. FINES. ~~(a)~~ Notwithstanding the provisions of  
8 AS 12.55.035(b), <sup>and (c)</sup> a person convicted of an offense under <sup>AS 16.10.760-16.10.780</sup> ~~this chapter~~  
9 may be sentenced to pay a fine ~~which is~~ <sup>that not exceeding</sup> the greater of

- 10 (1) \$100,000;
- 11 (2) three times the pecuniary gain realized by the <sup>salmon</sup> ~~defen-~~  
12 ~~dant~~ as a result of the offense; or
- 13 (3) if the <sup>salmon</sup> ~~defendant~~ is convicted under AS 16.10.750, two  
14 times the fair market value of the salmon involved or contemplated in  
15 the commission of the offense.

16 Sec. 16.10.800. DEFINITIONS. ~~As used in~~ AS 16.10.750 -  
17 16.10.800 X

- 18 (1) ~~"Alaska salmon" means salmon that spawn in fresh or~~  
19 ~~estuarine waters of Alaska;~~
- 20 (2) ~~"exclusive economic zone" has the meaning given in~~  
21 ~~16 U.S.C. 1802;~~
- 22 (3) ~~"high seas interception," "interception," or a similar~~  
23 ~~term, means the unauthorized catching, taking, or harvesting of~~  
24 ~~salmon, throughout the migratory range of each species, by a vessel~~ <sup>other than for sport, personal use, or</sup> ~~subject~~  
25 ~~not registered under the laws of this state;~~ <sup>purpose</sup>
- 26 (2) ~~with~~ "with reckless disregard" has the meaning given for  
27 "recklessly" in AS 11.81.900(a) X;
- 28 (3) ~~with~~ "procession <sup>of</sup> salmon" means affecting the condition or  
29 location of salmon, including preparation, packaging, storage,

1 refrigeration, or transportation;

2 (4) ~~65~~ "salmon" means Pacific salmon and steelhead, and parts  
3 of Pacific salmon and steelhead, whether mature or immature, processed  
4 or unprocessed; and

5 (5) ~~67~~ "unauthorized" means contrary to a statute or regu-  
6 lation of the United States or ~~the State~~ <sup>the State</sup> of Alaska, or to a treaty or  
7 international fishery agreement, or in violation of ~~any~~ <sup>a</sup> foreign law.

**Article 6. Definitions.****Section  
900. Definitions**

**Sec. 11.81.900. Definitions.** (a) For purposes of this title unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(b) In this title, unless otherwise specified or unless the context requires otherwise,

(1) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO

CRIMINAL DIVISION CENTRAL OFFICE  
P.O. BOX KC  
JUNEAU, ALASKA 99811-0310  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5593  
PHONE: (907) 279-7424

April 17, 1989

The Honorable Peter Goll  
The Honorable Max Gruenberg  
Alaska House of Representatives  
P.O. Box V  
Juneau, Alaska 99811

Re: CS HB 262 ( )

Dear Representatives Goll and Gruenberg:

The purpose of this letter is to respond to comments about HB 262 from the legislative affairs agency, which were contained in a April 14 memorandum to Representative Goll attached to a draft committee substitute. The points raised in the memorandum primarily relate to the definition of the term "high seas interception". As explained below, no significant changes in the proposed committee substitute are required. The five points raised were as follows:

1. The first point raised in the memorandum was that it is often the "retention" of salmon, rather than the initial taking, which is illegal, and that the definition of "high seas interception" should therefore be changed to prohibit retention.

The phrase "catching, taking, or harvesting" in the definition is based on similar language in the federal Magnuson Act. The critical language, however, in the proposed definition is the word "unauthorized". If the incidental "catching" of salmon is authorized, then it does not become "high seas interception" until the salmon has been illegally retained, i.e., "unauthorized ... taking or harvesting". In my opinion, "unauthorized retention" is a narrower phrase than "unauthorized catching, taking, or harvesting", and I see no valid reason to deviate from the federal language.

2. The second issue is whether the definition of "high seas interception" should exclude the state's territorial seas and inland waters because sport fishermen might be subject to the law. If this change were made, the prosecution would be required to prove beyond a reasonable doubt not only that the salmon was taken beyond state waters, but also that the person who trafficked in the salmon or who assisted a vessel, was aware of that risk. Since it

may be difficult to prove exactly where the salmon was caught, the definition should not be changed as recommended by the legislative affairs agency.

However, just so there is no confusion on this point, it might be worthwhile to add the phrase "other than for sport, personal use, or subsistence purposes," to the definition of "high seas interception". It can be inserted on page five of the committee substitute, on line 22 following the word "species,".

3. The third point was that the definition of "high seas interception" excludes vessels registered in Alaska that might also be involved in illegal interception. One reason for excluding Alaska-registered vessels is explained in paragraph six of the legislative findings on page two: it is easier for unregistered vessels (those which cannot legally fish in Alaska waters) to escape detection. Another reason is that state-registered vessels do not appear to be a significant part of the problem of high seas interception. Finally, unless state-registered vessels are excluded, an Alaskan fisherman would be engaged in "high seas interception" by violating any one of the many state fishing laws, such as straying too far over the line (even unintentionally) into a closed area.

4. The fourth point made in the legislative affairs memorandum was that a person cooperating with law enforcement officials could be "theoretically subject" to prosecution for assisting a vessel. At common law, a person who acts at the direction of a law enforcement officer does not possess the "general criminal intent" necessary for prosecution. In Alaska that concept has been codified in AS 11.81.420. In other words, a tow truck operator who hauls away a stolen car at the direction of a police officer cannot be prosecuted for possessing stolen property; an informant who buys drugs at the direction of the police cannot be prosecuted for possession of narcotics; a person who assists a police officer in making an arrest cannot be prosecuted for assault. Similarly, a tugboat operator who guides a Coast Guard-seized fishing vessel into port, or the harbormaster "who provides services or docking facilities to this seized vessel" could not be prosecuted.

5. The final point was that the section on fines specifies a fixed amount and that judges do not have the discretion to impose a lesser fine. This comment is based on a reading of the phrase "may be sentenced" which is entirely too narrow, and I believe the current wording gives courts discretion to impose any fine up to the amount specified. However, I have no objection to substituting the words "not exceeding" for "that is" on page five, line 11, of the committee substitute, so that the wording is precisely the same as in AS 12.55.035(c).

The Honorable Peter Goll  
The Honorable Max Gruenberg  
CS HB 262 ( )

April 17, 1989  
Page 3

I have also reviewed the technical drafting changes made in the committee substitute, and I disagree with two:

a. Page three, line 22: the word "such" should be put back in following the word "having", otherwise the phrase "related to salmon" would have to be repeated following the words "written instrument" on line 22.

b. Page four, line 13: for clarity the word "person" should be changed back to "defendant" because two different persons are mentioned in the previous four lines.

Finally, there are three other changes which should be made, one of which I mentioned during my brief testimony before the committee:

c. Page four, line 14: the word "persons," should be added following the word "moves".

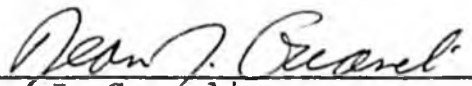
d. Page five, line 16: the statutory reference should be to "AS 16.10.760" instead of "AS 16.10.750".

e. Page five, line 26: the word "person" should be defined to include corporations and other similar entities. Although the definition of "person" in AS 11.81.900(b) includes a corporation, the word is not defined in AS 16.05.940, the general definition section in Title 16, and therefore it would be prudent to do so.

If you or any member of your staffs have questions about the bill, please call me.

Sincerely,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:   
Dean J. Guaneli  
Assistant Attorney General

# Indictments delivered in salmon scam

## Feds net 3 companies, 19 people in smuggling ring

SAN FRANCISCO (AP) — A federal grand jury Wednesday indicted three companies and 19 people allegedly involved in an elaborate scam to smuggle 1.5 million pounds of illegally caught salmon into the United States, repackage it and sell it in Japan.

The indictments for conspiracy, smuggling and other charges ended a 2½-year investigation into a scheme officials said was designed to circumvent a treaty between the United States, Japan and Canada. That treaty limits the importation of salmon into each country to the amount harvested and exported by the others.

The fishermen, based in Tai-

wan and working with others in Singapore, Hong Kong and the United States, took the salmon unlawfully on the high seas and imported, boxed and packaged it as a product of Japan to the port of San Francisco, said U.S. Attorney Joseph P. Russoniello.

The salmon was then taken to Oakland and transported to Bellingham, Wash., where it was re-labeled and reboxed as product of the United States, to be shipped frozen to Japan for sale there at prices three to five times higher than U.S. prices.

"This rather elaborate

scheme involved fish brokers, processors and fisheries, as well as the fishermen," Russoniello said.

The operation was "particularly insidious," Russoniello said, because it threatened the supply of salmon originating off the North American coast from Alaska to Canada, Washington, Oregon and California.

"When you put together the prospect of this unchartered, unregulated fishing with the (Alaskan oil spill) catastrophe we've experienced, you can see that in the future all of this supply could

be depleted and we would lose this very precious natural resource," Russoniello said.

Dr. William Evans, assistant secretary of commerce and administrator of the National Oceanic and Atmospheric Administration, called the indictments "a very significant event."

"We look at this as a conservation issue," he said. "These are salmon that we can't manage."

The illegal salmon catches also hurt the United States economically, he said.

"With Japan we have one of

the few positive trade balances in the area of fisheries that we have with any countries," he said. "This kind of illegal activity eats very seriously into that market for American fishermen. We have a number of other (cases) that are being worked on and one of the things we're pushing for, with customs and the departments of justice, state and commerce, is to make sure that we shut down this kind of activity once and for all."

The salmon scam investigation began with the seizure of 580,000 pounds of fish 2½ years

ago and represents "the tip of the iceberg" of illegal fishing, said John Hensley, assistant regional commissioner of U.S. Customs.

"We are going to pursue with vigor these trans-shipments of illegal fish," he said.

Fifty thousand pounds of the 580,000 pounds seized were distributed to the poor and needy in the San Francisco Bay area, through the San Jose Food Bank, and the rest was sold on the open market, Russoniello said. That 580,000 pounds had a wholesale value in the United States of \$1.67 million, he said.

"We do not believe this (illegal fishing) is the tip of the iceberg. See Salmon, page B-4

## Salmon: 19 indicted in alleged scam

Continued from page B-1

gal fishing) has stopped as a result of the investigation that's been done," he said. "We have very serious concerns that even as we stand here today people may be planning for the future unlawful harvesting of salmon. We hope they get the message that we're not going to let up on

this."

Evans said most of the illegal salmon originated off the North American coast and were taken incidental to gill net fishing for squid on the high seas.

"There are thousands of nautical miles of gill net spread across the ocean for the purposes of catching squid," he said. "However, there's a very, very high in-

cidental take of salmon. The salmon, because of Taiwanese law, cannot be packaged and sold to the world's biggest market, Japan. Therefore, this very elaborate scheme was developed in order to circumvent this."

Among those named in the indictments were Wescon Trading International Inc. of San Bruno, Calif., an importer-exporter and

broker of seafood. Its president, Kunioki Takayama, and two subsidiaries, Aqua Meal Co. and Mustika Hawaii Corp, were mentioned but not indicted. Also indicted was Kenichi Haramoto of Fuji Express Co. in South San Francisco.

Haramoto is a U.S. citizen and Takayama is a permanent resident, Russoniello said.

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

cc  
94B262

March 31, 1989

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

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the high seas interception of salmon. These provisions are needed so that the State of Alaska can do everything within its authority to prevent persons within this state from furthering the illegal high seas taking of one of the state's most valuable renewable resources.

Although the federal Magnuson Act may preempt much of the field of high seas fishery regulation, the State of Alaska has broad latitude to prohibit conduct occurring wholly within its territorial jurisdiction. Therefore, this proposed bill is not in conflict with federal law. A section-by-section description of the bill follows.

Proposed AS 16.10.750 sets out legislative findings to establish a basis for legislation in this area. These findings adopt the position taken by the federal government, that the mobility of the high seas fishing fleets and the intermixing of salmon species make high seas interception an international concern, and that the salmon-producing countries in the North Pacific have a legitimate interest in the preservation of each other's salmon stocks. By making findings in this area, it relieves the state of having to prove which precise species has been taken in any specific instance.

Proposed AS 16.10.760 is intended to prohibit trafficking in intercepted salmon by covering a wide range of conduct engaged in by dealers in illegal salmon products and the persons who assist them. The phrase "will be obtained by high seas interception" is intended to cover those situations in which the salmon that is the subject of the trafficking has not yet been harvested but the circumstances cause the person to be aware of a risk that it will be taken by high seas interception.

The word "attempts" is used in this provision to prohibit conduct that constitutes a "substantial step" toward commission of the offense and to treat such a person as a principal. Thus, entering into a contract would constitute a completed offense, whether it is viewed as buying or selling, or merely an attempt to buy or sell. However, it is not intended that a completed, formal contract be proven in order to establish an "attempt," but only that a substantial step was taken. Offers to buy or to sell that do not rise to the level of a substantial step are adequately dealt with by the "solicitation" provisions in AS 11.16 and AS 11.31.110.

In situations in which the offer is actually completed or in which the deal goes far enough so that an attempt can be proven, class C felony penalties provide up to five years imprisonment. This is the same penalty that would be provided under current Alaska theft statutes for someone who steals more than \$500 of salmon, and is also consistent with penalties under the Lacey Act, which governs federal fish and game violations. However, under current law, these tough federal felony penalties do not apply to much of the high seas interception of salmon.

Instead, lower penalties under the Magnuson Act (six months maximum imprisonment) currently apply to much of the conduct covered by this proposed bill. The reason for this is that the Lacey Act specifically does not apply to any activity regulated by a fishery management plan under the Magnuson Act. Thus, to the extent that these proposed state laws are violated because of a violation of Magnuson (see the proposed definition of "high seas interception"), the Lacey Act will not apply and the applicable felony penalties can only come from state law. This bill will help fill that gap.

Proposed AS 16.10.770 prohibits falsification of documents that makes it difficult to discover the true origin of illegally taken high seas salmon. This offense is comparable to forgery in many ways and in fact borrows the definitions of certain terms in the criminal forgery statutes. Like forgery of contracts or public records, it is also proposed to be a class C felony.

Proposed AS 16.10.780 is the final criminal statute in this bill. It prohibits the use of shore-based resources and facilities from being used to aid vessels that engage in the high seas interception of salmon, except in emergency circumstances. There is a potential overlap between this section and the "trafficking" provisions in proposed AS 16.10.750, since both would apply to a person who provides supplies or services to process or possess intercepted salmon. However this section is intended to specifically apply to those who provide services to vessels, even if the

vessel has also the capability to operate as a processing plant.

This section is consistent with the principle of necessity in AS 11.81.320 by providing an "affirmative defense" if the assistance was rendered for humanitarian or environmental purposes. An affirmative defense is one that must be proven by the defendant by a preponderance of the evidence. Without such a provision it would be extremely difficult for the state to prove that the defendant did not believe that the assistance was necessary, especially in cases in which the vessel has already left port.

Because shore-based service providers might be considered to be less "culpable," this offense is proposed to be a class A misdemeanor, which provides up to one year imprisonment.

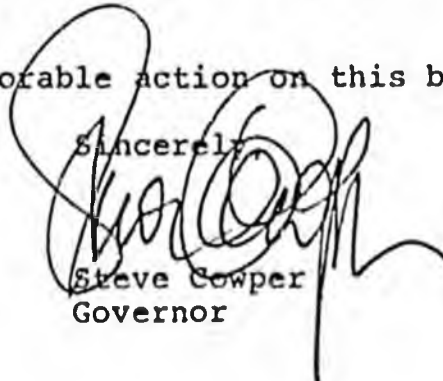
Proposed AS 16.10.790 provides a special type of fine for offenses created under the bill so as to take the profit motive out of this type of activity. In general, the bill establishes a fine which is the greater of (1) \$100,000, (2) triple the profit, or (3) with "trafficking" offenses under proposed AS 16.10.760, double the value of the salmon contemplated in the deal.

The standard criminal code provisions levy a fine of three times the pecuniary gain, but only if the defendant is an organization. This separate provision for fines is therefore proposed because the present \$50,000 limit for individuals convicted of class C felonies and the \$5,000 limit for class A misdemeanors will not provide a sufficient financial deterrent.

Proposed AS 16.10.800 provides needed definitions for terms used in this bill.

I urge your prompt and favorable action on this bill.

Sincerely,



Steve Cowper  
Governor

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: An Act relating to the high  
seas interception of salmon  
Sponsor: Rules Committee  
Requestor: Governor

Agency Affected: Fish and Game  
BRU: Commercial Fisheries, Sport  
Fish, Subsistence  
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						
<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	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

Prepared by: Robert C. Clasby Phone: 465-4210  
Division: Commercial Fisheries Date: 3/22/89  
Approved by Commissioner: Orville Pillensworth Date: 3-22-89  
Agency: \_\_\_\_\_

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

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Public Safety  
 Title: High seas interception of  
salmon BRU: Fish & Wildlife Protection  
 Sponsor: Rules Committee Component: \_\_\_\_\_  
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

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	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach separate page if necessary)

Enforcement of these new provisions will be undertaken as part of the Division of Fish and Wildlife Protection's ongoing efforts to enforce regulations regarding Alaska's fishing industry. Greater resources would allow us to provide increased enforcement, but this bill would not itself have additional fiscal impact on the Division.

Prepared by: Gavie A. Horetski, Deputy Commissioner Phone: 465-4322  
 Division: Office of the Commissioner Date: 3/22/89

Approved by Commissioner: Arthur English Date: 3/22/89  
 Agency: Department of Public Safety

HB

263

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act establishing arbitration commission...Valdez oil discharge..."  
 Sponsor: Repr. Pettyjohn  
 Requestor: Repr. Pettyjohn  
 Agency Affected: Department of Law  
 BRU: Legal Services  
 Components: Operations

**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	-0-	500.0	500.0	500.0	500.0	500.0
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>500.0</b>	<b>500.0</b>	<b>500.0</b>	<b>500.0</b>	<b>500.0</b>

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

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

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	-0-	500.0	500.0	500.0	500.0	500.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

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

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

Please see the attached analysis.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: April 12, 1989

Approved by Commissioner: Douglas B. Bailey, Attorney General Date: April 12, 1989  
 Agency: Department of Law

**Distribution (by preparer):**

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 263

This bill would establish a special arbitration commission for claims related to the Valdez oil discharge disaster, which occurred after the grounding of the Exxon Valdez on Blye Reef, March 24, 1989.

Currently, claims of this nature can proceed under the state's existing Uniform Arbitration Act, AS 09.43.010 - 09.43.180, provided that all of the parties to a dispute agree to resolve the dispute through arbitration.

The bill, however, differs from the Uniform Act in two important respects. First, Section 1 provides that the five arbitrator members of the commission are to be appointed by the governor. Under existing statute, arbitrators are selected by the parties to a dispute or, if they are unable to do so, selection is made by the court.

Second, Section 4 requires that an arbitration award by the commission must provide that the arbitrators' expenses and fees, together with other expenses, including counsel fees, incurred in the conduct of the arbitration, shall be paid by the person against whom the claim is brought. Here, the bill is unclear as to the paying party when there is no arbitration award. As appointees of the governor, it might be assumed that the arbitrators' expenses and fees, in this circumstance, are to be paid by the governor. Furthermore, when a claim before the commission is, after lengthy proceedings, substantially reduced, it appears that all of the arbitrators' expenses and fees will be paid by the person against whom the claim is brought. Under the existing Act, arbitrators' expenses and fees are usually prorated between the parties, depending upon the arbitrators' findings.

As mentioned previously, Section 4 also requires that arbitration awards include the cost of attorney's fees. Here again, under the existing Act, attorney's fees are not ordinarily awarded where matters are submitted to arbitration. The existing method is consistent with the strong public policy favoring arbitration, which would be seriously undercut if a party could obtain attorney's fees merely by filing a complaint as an initial step in the arbitration process. To the extent the bill mandates the payment of attorney's fees, it is probably inconsistent with that public policy. Certainly, it will invite unnecessary, and in some cases, even unmeritorious claims.

Because Section 3 preserves the voluntary nature of arbitration contained in the Uniform Arbitration Act, which provides that both sides must agree to submit the dispute to the arbitration process, it is unlikely that a person from whom damages are sought will willingly agree to go to arbitration due to the "no fault" claims process that is provided to claimants in Section 4.

It is likely, however, that the state will also be subject to claims under the provisions of the proposed Act. The Department of Law would be responsible for representing and defending agencies and

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 263

department's against whom claims may be brought. In such events, the state would be responsible for paying the claims awarded against it, and the state would be responsible for paying arbitrators' expenses and fees, and for paying claimants' attorney's fees when damage awards are made against the state.

It is not possible to accurately predict these costs in advance. However, they will probably be substantial and could cost hundreds of thousands of dollars per year. The current fee for an individual arbitrator is \$ 150.00 per hour plus expenses. Most arbitration proceedings require three arbitrators, although proceedings can be conducted with fewer than three arbitrators, if the parties agree to a smaller number. Attorneys representing claimants customarily charge similar fees. What cannot be predicted at this time is the extent to which the state might be responsible for these costs. The department therefore request \$ 500,000 to pay for arbitrators' expenses and special fees, and claimants' attorney fees, for which it might be responsible, if the arbitration commission is established. This request does not include obligations that might become the responsibility of the Office of the Governor, on those occasions when a claim is heard, but no award is made. This request also does not include the cost of damage awards made against the state, which would be subject to future consideration and appropriation by the legislature.



April 5, 1989

Representative Gruenberg  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

RE: HB 263

Dear Representative Gruenberg:

I fully support the passage of HB 263. Businesses and individuals in Prince William Sound and along our Southcentral coast will be heavily impacted by the oil spill. Many of them will not be able to economically survive long enough to pursue litigation. The proposed arbitration commission is an excellent idea.

I would like to make a couple of suggestions to improve the bill and settle some ambiguities. The following are some ideas which I would like to have you consider:

- 1) Line 14 should be amended to read: "member of the American Arbitration Association or a Certified Public Accountant." The vast majority of the work of this commission will be analyzing and interpreting financial and tax information. Most of this information will be in poor form. The claimants will present oral information that conflicts with written information. This is common and as CPAs we are accustomed to asking questions and determining the proper amounts. A mix of arbitrators and CPAs would be preferable.
- 2) Nothing in the bill indicates how damages are computed. Some general guidelines should be included. The commission should develop its own rules based on general guidelines, case precedent, accounting and tax standards.

The commission has a big problem that is going to be difficult to work with. Many people in the rural communities live in a cash economy. They may claim income from wages or 1099s on their tax returns, but they rarely claim cash received for small jobs and fishing. My sense of the size of the cash economy is that it is very large and very important. Compensation for reported income will probably not help the region significantly. The IRS probably has a better understanding of the magnitude of the problem.

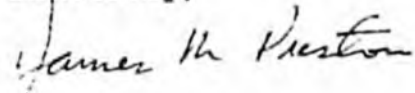
Representative Gruenberg  
April 5, 1989  
Page 2

Even if the legislature was to reward tax evasion by allowing compensation to individuals who operated in the cash economy, computing damages will be almost impossible. People with unreported income tend to hide it well, and only extensive and time consuming auditing could verify their estimates. Should the commission require an IRS audit in some circumstances?

- 3) Another factor is the validity of reported information. The commission should probably require a power of attorney from the claimants in order to obtain copies of tax returns from the IRS. I am sure that some people will be less than honest in their claims. The oil companies will need some protections built into the procedures. Should an oil company representative be on the commission?

I will assist you in addressing these issues if you would like. This is an important bill. If it doesn't work well then the political and economic repercussions will be severe.

Sincerely,



James M. Preston

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCHY STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

MEMORANDUM

April 12, 1989

SUBJECT: Arbitration under the TAPS  
liability fund, HB 263

TO: Representative Fritz Pettyjohn

FROM: Terri Lauterbach *TL*  
Legislative Counsel

I have discovered some new information that might be relevant as you consider your options in relation to HB 263, a bill that would establish a special arbitration commission for Valdez disaster claims.

That new information relates to the federal Trans-Alaska Pipeline Liability Fund, the \$100,000,000 fund that may be sued for claims arising from discharges of oil that was carried through the pipeline and later carried by tankers. The Fund regulations provide for binding arbitration of claims if the parties to a claim agree.

The time line for claims filed against the Fund might also interest you. According to regulations in the Code of Federal Regulations, the Fund is supposed to be currently advertising its claims procedures (15 - 20 days after the incident). After a person presents a claim, the claim is sent to the responsible company where it is supposed to be paid within 90 days. If it is not paid, the claimant can file against the Fund or go to court. If a claim is presented to the Fund, the Fund must decide the claim within 120 days. 43 C.F.R. 29.1 - 29.13.

It is during the time the claim is being considered by the responsible company that arbitration is an option. So, it appears to me that arbitration is available to claimants under federal law without a special commission. Of course, arbitration is also available under state law without a special commission, by submission of a dispute to an

Representative Fritz Pettyjohn  
Page 2  
April 12, 1989

arbitrator under AS 09.43 (Uniform Arbitration Act),  
referred to in HB 263.

If, in your judgment, you believe a special arbitration  
commission would better serve the interests of the people of  
the state than either the federally authorized arbitration  
or the procedures already available under AS 09.43, then  
HB 263 is an appropriate vehicle. But I thought you would  
want to know that binding arbitration is authorized under  
the federal law.

If I can be of further assistance, please let me know.

TL:gc  
WKG9/053

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

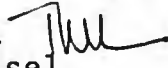
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 30, 1989..

SUBJECT: Arbitration of Valdez disaster claims  
(Work Order No. 6-1124)

TO: Representative Fritz Pettyjohn

FROM: Terri Lauterbach   
Legislative Counsel

Enclosed is a draft of your bill establishing a special arbitration commission for Valdez oil spill claims.

As you have probably heard, there is a federal law that has set up a special fund for claims based on oil discharges from vessels carrying crude oil that flowed through the Trans-Alaska Pipeline System. Strict liability, up to a maximum of \$100 million per incident, is imposed under the federal law unless the owner or operator of the vessel or the fund administrator can prove the damages were caused by negligence of a government entity or the damaged party. If claims exceed that amount, each claim is reduced proportionately. The unpaid portion of a claim may be pursued under other applicable law, which may or may not require proof of negligence.

I do not know if a claim must be pursued under federal law before other remedies are pursued. So, I do not know precisely when arbitration by your special commission would be appropriate. However, since it seems likely that total claims arising from the Valdez disaster will exceed \$100 million, arbitration by the special commission will eventually be appropriate even if a claim must be pursued under the federal law first. As a practical matter, Exxon will probably not agree to arbitration until the \$100 million federal fund is depleted.

Representative Fritz Pettyjohn  
Page 2  
March 30, 1989

I have enclosed a copy of the entire chapter of federal law related to the pipeline. The most pertinent section begins on page 509. If I can be of further assistance, please let me know.

TL:gc  
WKG8/094

Enclosure

## CHAPTER 34—TRANS-ALASKA PIPELINE

- Sec.
1651. Congressional findings and declaration.
1552. Authorizations for construction.
- (a) Congressional declaration of purpose.
  - (b) Issuance, administration, and enforcement of rights-of-way, permits, leases, and other authorizations.
  - (c) Applicability of statutes governing rights-of-way for pipelines through Federal lands; other statutory terms and conditions; waiver of procedural requirements; supersedure of administrative authorizations for construction.
  - (d) National Environmental Policy Act of 1969 by-passed; issuance of authorizations for construction and operation not to be subject to judicial review; time limits on charges of invalidity or unconstitutionality; jurisdiction; hearings; review.
  - (e) Amendment or modification of rights-of-way, permits, leases, or other authorizations.
1653. Liability for damages.
- (a) Activities along or in vicinity of pipeline right-of-way; strict liability; limitation on liability; subrogation; emergency subsistence and other aid; exemption for State of Alaska.
  - (b) Control and removal of pollutants at expense of right-of-way holder.
  - (c) Discharges of oil from vessels loaded at terminal facilities of pipeline; strict liability; limitation on liability; apportionment of liability; establishment and operation of Trans-Alaska Pipeline Liability Fund.
1654. Antitrust laws.
1655. Roads and airports.

### § 1651. Congressional findings and declaration

The Congress finds and declares that:

(a) The early development and delivery of oil and gas from Alaska's North Slope to domestic markets is in the national interest because of growing domestic shortages and increasing dependence upon insecure foreign sources.

(b) The Department of the Interior and other Federal agencies, have, over a long period of time, conducted extensive studies of the technical aspects and of the environmental, social, and economic impacts of the proposed trans-Alaska oil pipeline, including consideration of a trans-Canada pipeline.

(c) The earliest possible construction of a trans-Alaska oil pipeline from the North Slope of Alaska to Port Valdez in that State will make the extensive proven and potential reserves of low-sulfur oil available for domestic use and will best serve the national interest.

(d) A supplemental pipeline to connect the North Slope with a trans-Canada pipeline may be needed later and it should be studied now, but it should not be regarded as an alternative for a trans-Alaska pipeline that does not traverse a foreign country.

(Pub.L. 93-153, Title II, § 202, Nov. 16, 1973, 87 Stat. 584.)

Historical Note

Short Title. Section 201 of Pub.L. 93-153 provided that: "This title [which enacted this chapter] may be cited as the 'Trans-Alaska Pipeline Authorization Act'."

Separability of Provisions. Section 411 of Pub.L. 93-153 provided that: "If any provision of this Act [enacting this chapter, section 1456a of this title, and section 3512 of Title 44, Public Printing and Documents, amending section 1608 of this title, sections 45, 46, 53, and 56 of Title 15, Commerce and Trade, section 185 of Title 30, Mineral Lands and Mining, section 3502 of Title 44, and section 391a of Title 46, Shipping, and enacting provisions set out as notes under sections 1608 and 1651 of this title, section 1904 of Title 12, Banks and Banking, section 45 of Title 15, section 791a of Title 16, Conservation, and section 1221 of Title 33, Navigation and Navigable Waters] or the applicability thereof is held invalid the remainder of this Act shall not be affected thereby."

North Slope Crude Oil; Report on Equitable Allocation. Pub.L. 94-586, § 18, Oct. 22, 1976, 90 Stat. 2916, directed that the President, within 6 months of Oct. 22, 1976, determine special expediting procedures necessary to insure the equitable allocation of North Slope crude oil to the Northern Tier States of Washington, Oregon, Idaho, Montana, Illinois, Indiana, and Idaho to carry out the provisions of section 410 of Pub.L. 93-153 [set out below], and to report his findings to Congress, such report to include a statement demonstrating the impact that the delivery system would have on reducing the dependency of New England and the Middle Atlantic States on foreign oil imports.

Trans-Canada Pipeline; Negotiations With Canada; Feasibility Study. Title III (sections 301 to 303) of Pub.L. 93-153 authorized the President to enter into negotiations with the Government of Canada to determine Canadian willingness to permit construction of pipelines or other transportation systems across its territory to bring gas and oil from Alaska's North Slope to the United States; the need for intergovernmental agreements to protect interests of any parties involved with construction, operation, and maintenance of such natural gas or oil transportation systems; terms and conditions for construction across Canadian territory; desirability of joint studies to insure environmental protection, reduce regulatory uncertainty, and insure meeting energy requirements; quantity of oil and gas for which Canada would guarantee

transit; and acquisition of other energy sources so as to make unnecessary the shipment of oil from the Alaska pipeline by tanker into the Puget Sound area. The President was to report to Congress on actions taken and recommendations for further action. In addition, the Secretary of the Interior was to investigate, and to report to Congress within 2 years of Nov. 16, 1973, as to the feasibility of oil or gas pipelines from the North Slope of Alaska to connect with a pipeline through Canada that would deliver oil or gas to United States markets. Nothing in Title III was to limit the authority of the Secretary or any other Federal official to grant a gas or oil pipeline right-of-way or permit, which that official was otherwise authorized by law to grant.

Exclusion of Persons From Trans-Alaska Pipeline Activities on Basis of Race, Creed, Color, National Origin, or Sex Prohibited. Section 403 of Pub.L. 93-153 provided that: "The Secretary of the Interior shall take such affirmative action as he deems necessary to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving, or participating in any activity conducted under, any permit, right-of-way, public land order, or other Federal authorization granted or issued under title II [this chapter]. The Secretary of the Interior shall promulgate such rules as he deems necessary to carry out the purposes of this subsection and may enforce this subsection, and any rules promulgated under this subsection, through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964 [section 2000d et seq. of Title 42]."

Equitable Allocation of North Slope Crude Oil. Section 410 of Pub.L. 93-153 provided that: "The Congress declares that the crude oil on the North Slope of Alaska is an important part of the Nation's oil resources, and that the benefits of such crude oil should be equitably shared, directly or indirectly, by all regions of the country. The President shall use any authority he may have to insure an equitable allocation of available North Slope and other crude oil resources and petroleum products among all regions and all of the several States."

Legislative History. For legislative history and purpose of Pub.L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417.

Yupik  
Inhlokuk, N.Y.

of-way, permits,  
pipelines through  
ons; waiver of  
ative authoriza-  
ed; issuance of  
to be subject to  
r unconstitution-  
leases, or other  
; strict liability;  
istence and other  
f-way holder.  
ilities of pipeline;  
ment of liability;  
e Liability Fund.  
s from Alaska's  
rest because of  
on insecure for-  
agencies, have,  
of the technical  
impacts of the  
of a trans-Can-  
oil pipeline from  
e will make the  
oil available for  
with a trans-Can-  
ow, but it should  
ine that does not

## § 1652. Authorizations for construction

### (a) Congressional declaration of purpose

The purpose of this chapter is to insure that, because of the extensive governmental studies already made of this project and the national interest in early delivery of North Slope oil to domestic markets, the trans-Alaska oil pipeline be constructed promptly without further administrative or judicial delay or impediment. To accomplish this purpose it is the intent of the Congress to exercise its constitutional powers to the fullest extent in the authorizations and directions herein made and in limiting judicial review of the actions taken pursuant thereto.

### (b) Issuance, administration, and enforcement of rights-of-way, permits, leases, and other authorizations

The Congress hereby authorizes and directs the Secretary of the Interior and other appropriate Federal officers and agencies to issue and take all necessary action to administer and enforce rights-of-way, permits, leases, and other authorizations that are necessary for or related to the construction, operation, and maintenance of the trans-Alaska oil pipeline system, including roads and airstrips, as that system is generally described in the Final Environmental Impact Statement issued by the Department of the Interior on March 20, 1972. The route of the pipeline may be modified by the Secretary to provide during construction greater environmental protection.

### (c) Applicability of statutes governing rights-of-way for pipelines through Federal lands; other statutory terms and conditions; waiver of procedural requirements; supersedure of administrative authorizations for construction

Rights-of-way, permits, leases, and other authorizations issued pursuant to this chapter by the Secretary shall be subject to the provisions of section 185 of Title 30, as amended by Pub.L. 93-153, (except the provisions of subsections (h)(1), (k), (q), (w)(2), and (x)); all authorizations issued by the Secretary and other Federal officers and agencies pursuant to this chapter shall include the terms and conditions required, and may include the terms and conditions permitted, by the provisions of law that would otherwise be applicable if this chapter had not been enacted, and they may waive any procedural requirements of law or regulation which they deem desirable to waive in order to accomplish the purposes of this chapter. The direction contained in subsection (b) of this section shall supersede the provisions of any law or regulation relating to an administrative determination as to whether the authorizations for construction of the trans-Alaska oil pipeline shall be issued.

### (d) National Environmental Policy Act of 1969 by-passed; Issuance of authorizations for construction and operation not to be subject to judicial review; time limits on charges of invalidity or unconstitutionality; jurisdiction; hearings; review

The actions taken pursuant to this chapter which relate to the construction and completion of the pipeline system, and to the applications filed in connection therewith necessary to the pipeline's operation at full capacity, as described in the Final Environmental Impact Statement of the Department of the Interior, shall be taken without further action under the National

ALASKA STATE LIBRARY  
 200 Y State Capital  
 30011

Environmental Policy Act of 1969 [42 U.S.C.A. § 4321 et seq.] and the actions of the Federal officers concerning the issuance of the necessary rights-of-way, permits, leases, and other authorizations for construction and initial operation at full capacity of said pipeline system shall not be subject to judicial review under any law except that claims alleging the invalidity of this section may be brought within sixty days following November 16, 1973, and claims alleging that an action will deny rights under the Constitution of the United States, or that the action is beyond the scope of authority conferred by this chapter, may be brought within sixty days following the date of such action. A claim shall be barred unless a complaint is filed within the time specified. Any such complaint shall be filed in a United States district court, and such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such claim whether in a proceeding instituted prior to or on or after November 16, 1973. Such court shall not have jurisdiction to grant any injunctive relief against the issuance of any right-of-way, permit, lease, or other authorization pursuant to this section except in conjunction with a final judgment entered in a case involving a claim filed pursuant to this section. Any review of an interlocutory or final judgment, decree, or order of such district court may be had only upon direct appeal to the Supreme Court of the United States.

(e) Amendment or modification of rights-of-way, permits, leases, or other authorizations

The Secretary of the Interior and the other Federal officers and agencies are authorized at any time when necessary to protect the public interest, pursuant to the authority of this section and in accordance with its provisions, to amend or modify any right-of-way, permit, lease, or other authorization issued under this chapter.

(Pub.L. 93-153, Title II, § 203, Nov. 16, 1973, 87 Stat. 584, Pub.L. 98-620, Title IV, § 402(46), Nov. 8, 1984, 98 Stat. 3360)

Historical Note

**References in Text.** The National Environmental Policy Act of 1969, referred to in subsec. (d), is Pub.L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (section 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables volume.

**1984 Amendment.** Subsec. (d) Pub.L. 98-620 struck out provision that any such proceeding had to be assigned for hearing at the earliest possible date, had to take precedence over all other matters pending on the docket of the district court at that time, and

had to be expedited in every way by such court.

**Effective Date of 1984 Amendment.** Amendment by Pub.L. 98-620 not to apply to cases pending on Nov. 8, 1984, see section 403 of Pub.L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

**Legislative History.** For legislative history and purpose of Pub.L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417. See also, Pub.L. 98-620, 1984 U.S. Code Cong. and Adm. News, p. 570.

Cross References

Roads and airports, see section 1655 of this title

EX-100

Environmental Policy Act

nsive  
erest  
aska  
ve or  
ent of  
in the  
ew of

terior  
ke all  
leases,  
struc-  
ystem,  
in the  
of the  
ied by  
protec-

Federal

rsuant  
section  
ions of  
by the  
chapter  
e terms  
wise be  
ive any  
rable to  
irection  
sions of  
n as to  
pipeline

e of  
to

onstruc-  
filed in  
acity, as  
arument  
National

Short supply controls, domestically produced crude oil, see section 2406 of the Appendix to Title 50, War and National Defense

#### Federal Practice and Procedure

Relationship to lower federal court jurisdiction, see Wright, Miller & Cooper, Jurisdiction 2d § 3526.

#### West's Federal Forms

Preliminary injunctions and temporary restraining orders, matters pertaining to, see § 5271 et seq  
 Supreme Court jurisdiction on appeal, see § 121 et seq

#### West's Federal Practice Manual

Rights-of-way, see § 5449

#### Notes of Decisions

##### 1. Purpose

The intent of this section which vests exclusive jurisdiction over certain disputes in the United States district courts was to limit

litigation that would delay construction of the pipeline. *Alaska Pipeline Service Co. v. U.S.*, 1980, 624 F.2d 1005, 224 Ct.Cl. 240.

### § 1653. Liability for damages

(a) Activities along or in vicinity of pipeline right-of-way; strict liability; limitation on liability; subrogation; emergency subsistence and other aid; exemption for State of Alaska

(1) Except when the holder of the pipeline right-of-way granted pursuant to this chapter can prove that damages in connection with or resulting from activities along or in the vicinity of the proposed trans-Alaskan pipeline right-of-way were caused by an act of war or negligence of the United States, other government entity, or the damaged party, such holder shall be strictly liable to all damaged parties, public or private, without regard to fault for such damages, and without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or other natural resources relied upon by Alaska Natives, Native organizations, or others for subsistence or economic purposes. Claims for such injury or damages may be determined by arbitration or judicial proceedings.

(2) Liability under paragraph (1) of this subsection shall be limited to \$50,000,000 for any one incident, and the holders of the right-of-way or permit shall be liable for any claim allowed in proportion to their ownership interest in the right-of-way or permit. Liability of such holders for damages in excess of \$50,000,000 shall be in accord with ordinary rules of negligence.

(3) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(4) Upon order of the Secretary, the holder of a right-of-way or permit shall provide emergency subsistence and other aid to an affected Alaska Native, Native organization, or other person pending expeditious filing of, and determination of, a claim under this subsection.

Legislative Reference Library  
 P.O. Box 7, State Capitol  
 Juneau, Alaska 99811

(5) Where the State of Alaska is the holder of a right-of-way or permit under this chapter, the State shall not be subject to the provisions of this subsection, but the holder of the permit or right-of-way for the trans-Alaska pipeline shall be subject to this subsection with respect to facilities constructed or activities conducted under rights-of-way or permits issued to the State to the extent that such holder engages in the construction, operation, maintenance, and termination of facilities, or in other activities under rights-of-way or permits issued to the State.

(b) Control and removal of pollutants at expense of right-of-way holder

If any area within or without the right-of-way or permit area granted under this chapter is polluted by any activities conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder.

(c) Discharges of oil from vessels loaded at terminal facilities of pipeline; strict liability; limitation on liability; apportionment of liability; establishment and operation of Trans-Alaska Pipeline Liability Fund

(1) Notwithstanding the provisions of any other law, if oil that has been transported through the trans-Alaska pipeline is loaded on a vessel at the terminal facilities of the pipeline, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by this subsection, shall be strictly liable without regard to fault in accordance with the provisions of this subsection for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as the result of discharges of oil from such vessel.

(2) Strict liability shall not be imposed under this subsection if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under this subsection with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such party.

(3) Strict liability for all claims arising out of any one incident shall not exceed \$100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first \$14,000,000 of such claims that are allowed. Financial responsibility for \$14,000,000 shall be demonstrated in accordance with the provisions of section 1321(p) of Title 33 before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to \$100,000,000. If the total claims allowed exceed \$100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or state law.

INDEX

TRANS-ALASKA PIPELINE

on 2d  
271 et  
of the  
Co v  
1 240  
ation  
ion  
suant  
: from  
eline  
United  
all be  
ard to  
ected  
relied  
nce or  
mined  
ited to  
ay or  
nership  
amages  
igence.  
to this  
ce of a  
the law  
permit  
Alaska  
ling of.

(4) The Trans-Alaska Pipeline Liability Fund is hereby established as a non-profit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

(5) The operator of the pipeline shall collect from the owner of the oil at the time it is loaded on the vessel a fee of five cents per barrel. The collection shall cease when \$100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below \$100,000,000.

(6) The collections under paragraph (5) shall be delivered to the Fund. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the Fund.

(7) The provisions of this subsection shall apply only to vessels engaged in transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States. Strict liability under this subsection shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

(8) In any case where liability without regard to fault is imposed pursuant to this subsection and the damages involved were caused by the unseaworthiness of the vessel or by negligence, the owner and operator of the vessel, and the Fund, as the case may be shall be subrogated under applicable State and Federal laws to the rights under said laws of any person entitled to recovery hereunder. If any subrogee brings an action based on unseaworthiness of the vessel or negligence of its owner or operator, it may recover from any affiliate of the owner or operator, if the respective owner or operator fails to satisfy any claim by the subrogee allowed under this paragraph.

(9) This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

(10) If the Fund is unable to satisfy a claim asserted and finally determined under this subsection, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to approval of the Secretary.

(11) For purposes of this subsection only, the term "affiliate" includes—

(A) Any person owned or effectively controlled by the vessel owner or operator; or

(B) Any person that effectively controls or has the power effectively to control the vessel owner or operator by—

(i) stock interest, or

(ii) representation on a board of directors or similar body, or

(iii) contract or other agreement with other stockholders, or

Legislative Information Library  
 P.O. Box 7 - State Capitol  
 Juneau, Alaska 99801

(iv) otherwise; or

(C) Any person which is under common ownership or control with the vessel owner or operator.

(12) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.

(Pub. L. 93-153, Title II, § 204, Nov. 16, 1973, 87 Stat. 586.)

Historical Note

Delegation of Functions. Functions of the President under section 1321(p)(1) to (2) of Title 33, Navigation and Navigable Waters, as incorporated by reference in subsec. (c)(3) of this section, relating to the demonstration of financial responsibility for vessels carrying oil loaded from the Trans-Alaska pipeline, delegated to the Secretary of the Department

in which the Coast Guard is operating. See Ex. Ord. No. 12418, § 4, May 5, 1983, 48 FR 20891 set out as a note under section 1321 of Title 33.

Legislative History. For legislative history and purpose of Pub. L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417.

West's Federal Practice Manual

Right-of-way, see § 5449

Code of Federal Regulations

Liability fund, see 43 CFR 29.1 et seq.

Oil pollution, financial responsibility, see 33 CFR 131.1 et seq.

Library References

Health and Environment ¶25.5(3)

CJS Health and Environment §§ 91 et seq., 106 et seq., 129 et seq.

Notes of Decisions

- Claims within section 1
- Strict liability
- Generally 2
- Construction accidents 3
- Pollution clean-up 4

1. Claims within section

This section was intended to deal with environmental risks of the pipeline but did not cover ordinary personal injury and wrongful death claims unconnected with any environmental injury, in view of fact that, although literal interpretation indicated contrary result, overwhelming evidence of legislative history indicated that chapter was intended to deal with environmental accidents rather than ordinary torts. *Heppner v. Alyeska Pipeline Service Co.*, C.A. Alaska 1981, 605 F.2d 606.

2. Strict liability—Generally

Provisions of this chapter were designed to establish the permit holders of the pipeline right-of-way as strictly liable for a broad

range of damages to the land, fish, wildlife, air, water, and the subsistence lifestyle of the Alaskan Native. *Jordan v. Amerada Hess Corp.*, D.C. Alaska 1979, 479 F.Supp. 573.

3. — Construction accidents

This section was intended to render permit holders strictly liable for environmental harm, but was not intended to hold permit holders strictly liable for all damages of any kind that occurred "in connection with" or "in the vicinity of the proposed trans-Alaska pipeline right-of-way," and, hence, was not a basis for holding defendant oil companies strictly liable in action arising from injuries allegedly sustained in an automobile accident that occurred in vicinity of Alaska pipeline or in wrongful death action arising as a result of a construction accident in Alaska pipeline right-of-way. *Jordan v. Amerada Hess Corp.*, D.C. Alaska 1979, 479 F.Supp. 573.

4. — Pollution clean-up

This chapter barred pipeline service company from recovering from the United States for

Note 4

the cost of cleaning up oil discharged from the pipeline into navigable waters due to the fault of a party; this chapter made the pipeline company absolutely liable for any pollution resulting from operation of the pipeline and prevailed over the earlier enacted Water Pollution Control Act, section 1321(i)(1) of Title 33, which provides that the owner or

operator of the facility that caused pollution may recover its cleanup costs from the United States if the oil discharged was caused by a third party and did not involve any fault of the owner or operator. *Alyeska Pipeline Service Co. v. U.S.*, 1981, 649 F.2d 831, 227 Ct Cl 297, certiorari denied 102 S.Ct. 505, 454 U.S. 964, 70 L.Ed 2d 380

§ 1654. Antitrust laws

The grant of a right-of-way, permit, lease, or other authorization pursuant to this chapter shall grant no immunity from the operation of the Federal anti-trust laws.

(Pub L. 93-153, Title II, § 205, Nov. 16, 1973, 87 Stat. 588.)

Historical Note

References in Text. The Federal antitrust laws, referred to in text, are classified generally to chapter 1 (section 1 et seq.) of Title 15, Commerce and Trade.

Legislative History. For legislative history and purpose of Pub. L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417.

§ 1655. Roads and airports

A right-of-way, permit, lease, or other authorization granted under section 1652(b) of this title for a road or airstrip as a related facility of the trans-Alaska pipeline may provide for the construction of a public road or airstrip.

(Pub L. 93-153, Title II, § 206, Nov. 16, 1973, 87 Stat. 588.)

Historical Note

Legislative History. For legislative history and purpose of Pub. L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417.

REGULATING MATERIALS LIBRARY  
200 BOY Y. State Capitol  
1973

CF  
Sec.  
1701  
1702  
  
1711  
  
1712  
  
  
  
  
1713. Sa  
(a)  
(b)  
(c)  
(d)  
(e)  
(f)  
(g)  
  
1714. WII  
(a)  
(b)  
  
(c)  
(d)  
  
(e) I  
(f) I  
  
(g) F  
(h) P  
(i) C  
  
(j) A  
  
(k) A

6-1124E  
Lauterbach  
4/8/89

Original sponsors: Pettyjohn, Collins,  
Menard, et al.

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 263 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a special arbitration commission  
7 for claims related to the Valdez oil discharge disas-  
8 ter; and providing for an effective date."

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

10 \* Section 1. VALDEZ DISASTER ARBITRATION COMMISSION. (a) There is  
11 established the Valdez Disaster Arbitration Commission consisting of five  
12 members appointed by the governor to serve at the governor's pleasure.

13 (b) A member of the commission must, at the time of appointment, be a  
14 member of the American Arbitration Association.

15 (c) If the governor determines that the caseload of the commission  
16 warrants, the governor may establish additional five-member panels under  
17 this section. Each panel has the powers and duties of the commission, as  
18 described in this Act.

19 \* Sec. 2. DUTIES OF THE COMMISSION. Upon a properly presented request  
20 under sec. 3 of this Act, the commission shall hold hearings and make  
21 awards for claims arising from the Valdez oil discharge disaster.

22 \* Sec. 3. PRESENTATION OF CLAIMS. (a) A person who has a claim for  
23 damages or the costs of containment and cleanup arising from the Valdez oil  
24 discharge disaster may apply to the commission in writing for arbitration  
25 of the claim. A person may present a claim for a specific damage or cost,  
26 limited in type or the time period to which the claim relates, and assert  
27 other claims at other times or in other forums.

28 (b) If the commission determines that the person from whom damages  
29 and costs are sought agrees to arbitration of the claim by the commission,

1 the commission shall proceed under sec. 4 of this Act.

2 (c) If the commission determines that the person from whom damages  
3 and costs are sought does not agree to arbitration of the claim by the com-  
4 mission, the commission shall promptly notify the claimant.

5 \* Sec. 4. ARBITRATION PROCEDURES. (a) Arbitration by the commission  
6 is governed by AS 09.43.010 - 09.43.180 (Uniform Arbitration Act), except  
7 as provided in this Act.

8 (b) An arbitration award by the commission must provide that the  
9 arbitrators' expenses and fees and the claimant's reasonable expenses,  
10 including reasonable attorney fees, incurred in the conduct of the arbitra-  
11 tion, shall be paid by the person against whom the claim is brought.

12 \* Sec. 5. DEFINITIONS. In this Act

13 (1) "commission" means the Valdez Disaster Arbitration Commis-  
14 sion;

15 (2) "Valdez oil discharge disaster" means the incident involving  
16 the discharge of crude oil after the grounding of the Exxon Valdez south of  
17 Valdez on March 24, 1989; the discharge of ballast water from another  
18 tanker on the subsequent weekend in order to accommodate the transfer of  
19 crude oil from the Exxon Valdez to the second tanker; and attendant con-  
20 tainment and cleanup actions.

21 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).  
22  
23  
24  
25  
26  
27  
28  
29

6-1124E  
Lauterbach  
4/8/89

Original sponsors: Pettyjohn, Collins,  
Menard, et al.

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 263 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a special arbitration commission  
7 for claims related to the Valdez oil discharge disas-  
8 ter; and providing for an effective date."

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

10 \* Section 1. VALDEZ DISASTER ARBITRATION COMMISSION. (a) There is  
11 established the Valdez Disaster Arbitration Commission consisting of five  
12 members appointed by the governor to serve at the governor's pleasure.

13 (b) A member of the commission must, at the time of appointment, be a  
14 member of the American Arbitration Association.

15 (c) If the governor determines that the caseload of the commission  
16 warrants, the governor may establish additional five-member panels under  
17 this section. Each panel has the powers and duties of the commission, as  
18 described in this Act.

19 \* Sec. 2. DUTIES OF THE COMMISSION. Upon a properly presented request  
20 under sec. 3 of this Act, the commission shall hold hearings and make  
21 awards for claims arising from the Valdez oil discharge disaster.

22 \* Sec. 3. PRESENTATION OF CLAIMS. (a) A person who has a claim for  
23 damages or the costs of containment and cleanup arising from the Valdez oil  
24 discharge disaster may apply to the commission in writing for arbitration  
25 of the claim. A person may present a claim for a specific damage or cost,  
26 limited in type or the time period to which the claim relates, and assert  
27 other claims at other times or in other forums.

28 (b) If the commission determines that the person from whom damages  
29 and costs are sought agrees to arbitration of the claim by the commission,

1 the commission shall proceed under sec. 4 of this Act.

2 (c) If the commission determines that the person from whom damages  
3 and costs are sought does not agree to arbitration of the claim by the com-  
4 mission, the commission shall promptly notify the claimant.

5 \* Sec. 4. ARBITRATION PROCEDURES. (a) Arbitration by the commission  
6 is governed by AS 09.43.010 - 09.43.180 (Uniform Arbitration Act), except  
7 as provided in this Act.

8 (b) An arbitration award by the commission must provide that the  
9 arbitrators' expenses and fees and the claimant's reasonable expenses,  
10 including reasonable attorney fees, incurred in the conduct of the arbitra-  
11 tion, shall be paid by the person against whom the claim is brought.

12 \* Sec. 5. DEFINITIONS. In this Act

13 (1) "commission" means the Valdez Disaster Arbitration Commis-  
14 sion;

15 (2) "Valdez oil discharge disaster" means the incident involving  
16 the discharge of crude oil after the grounding of the Exxon Valdez south of  
17 Valdez on March 24, 1989; the discharge of ballast water from another  
18 tanker on the subsequent weekend in order to accommodate the transfer of  
19 crude oil from the Exxon Valdez to the second tanker; and attendant con-  
20 tainment and cleanup actions.

21 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).  
22  
23  
24  
25  
26  
27  
28  
29

Sec. 09.40.310. Third party claims. If the property taken is claimed by any person other than the defendant, and that person makes an affidavit of title to the property or the right to the possession of it, stating the grounds of the title or right, and serves it upon the peace officer taking the property while the property is still in the peace officer's custody, the peace officer may release the property unless the plaintiff, on demand of the officer, indemnifies the peace officer against the third party claim by a written undertaking approved by the clerk of court and executed by sufficient sureties. (§ 24.06 ch 101 SLA 1962)

NOTES TO DECISIONS

Stated in First Nat'l Bank v. Zawodny, Sup. Ct. Op. No. 1976 (File No. 4188), 602 P.2d 1254 (1979).

Chapter 43. Arbitration.

Article

- 1. Uniform Arbitration Act (§§ 09.43.010 — 09.43.180)
- 2. Arbitration of Small Claims (§§ 09.43.190 — 09.43.220)

Article 1. Uniform Arbitration Act.

Section	Section
10. Arbitration agreements valid; application of article	100. Fees and expenses of arbitration
20. Proceedings to compel or stay arbitration	110. Confirmation of an award
30. Appointment of arbitrators by court	120. Vacating an award
40. Majority action by arbitrators	130. Modification or correction of award by court
50. Hearing	140. Judgment or decree on award
60. Representation by attorney	150. Applications to court
70. Witnesses, subpoenas, depositions	160. Appeals
80. Award	170. Court, jurisdiction
90. Modification of award by arbitrators	180. Short title

Cross references. — For court rule provision on arbitration and award as an affirmative defense, see Civ. R. 8(c).

NOTES TO DECISIONS

Public policy in Alaska favors arbitration as a means of resolving disputes without court interference. Arctic Contractors v. State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977), aff'd on other grounds, Sup. Ct. Op. No. 1557, 573 P.2d 1385 (1978).

And is demonstrated by adoption of this article. — Alaska's strong public policy in favor of arbitration is demonstrated by the adoption of this article. Modern Constr., Inc. v. Barce, Inc., Sup. Ct. Op. No. 1336 (File No. 3060), 556 P.2d 528 (1976).

motor  
s of a  
Aurora  
File No.

ic Slope  
197 (D).

Fidalgo  
38 (File

t take  
e peace  
e effect  
e prosecu-  
lant, if  
y sum  
1 SLA

ors, Inc.,  
93, 409

defen-  
ire the  
having  
clerk of  
hey are  
e prop-  
yment  
gainst

ure,  
of it  
cly  
use  
to

i-

2

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

motor  
s of a  
Aurora  
File No.

ic Slope  
197 (D)

Fidalgo  
38 (File)

take  
peace  
effect  
rosecu-  
lant, if  
y sum  
1 SLA

ors, Inc.  
93), 408

defen-  
ire the  
having  
clerk of  
hey are  
ie prop-  
ayment  
against

osure.  
rt of it  
ublicly  
l cause  
ty into

ace of  
onsibue  
ie party  
e neces-

**Sec. 09.40.310. Third party claims.** If the property taken is claimed by any person other than the defendant, and that person makes an affidavit of title to the property or the right to the possession of it, stating the grounds of the title or right, and serves it upon the peace officer taking the property while the property is still in the peace officer's custody, the peace officer may release the property unless the plaintiff, on demand of the officer, indemnifies the peace officer against the third party claim by a written undertaking approved by the clerk of court and executed by sufficient sureties. (§ 24.06 ch 101 SLA 1962)

NOTES TO DECISIONS

Stated in *First Nat'l Bank v. Zawodny*,  
Sup. Ct. Op. No. 1976 (File No. 4188), 602  
P.2d 1254 (1979).

**Chapter 43. Arbitration.**

**Article**

- 1. Uniform Arbitration Act (§§ 09.43.010 — 09.43.180)
- 2. Arbitration of Small Claims (§§ 09.43.190 — 09.43.220)

**Article 1. Uniform Arbitration Act.**

**Section**

- 10. Arbitration agreements valid; appli-  
cation of article
- 20. Proceedings to compel or stay arbi-  
tration
- 30. Appointment of arbitrators by court
- 40. Majority action by arbitrators
- 50. Hearing
- 60. Representation by attorney
- 70. Witnesses, subpoenas, depositions
- 80. Award
- 90. Modification of award by arbitrators

**Section**

- 100. Fees and expenses of arbitration
- 110. Confirmation of an award
- 120. Vacating an award
- 130. Modification or correction of award  
by court
- 140. Judgment or decree on award
- 150. Applications to court
- 160. Appeals
- 170. Court jurisdiction
- 180. Short title

**Cross references.** — For court rule pro-  
vision on arbitration and award as an  
affirmative defense, see Civ. R. 8(c).

NOTES TO DECISIONS

**Public policy in Alaska favors arbi-  
tration as a means of resolving disputes  
without court interference.** *Arctic  
Contractors v. State*, Sup. Ct. Op. No. 1420  
(File Nos. 2595, 2657), 564 P.2d 30 (1977),  
aff'd on other grounds, Sup. Ct. Op. No.  
1557, 573 P.2d 1385 (1978).

**And is demonstrated by adoption of  
this article.** — Alaska's strong public pol-  
icy in favor of arbitration is demonstrated  
by the adoption of this article. *Modern  
Constr., Inc. v. Barce, Inc.*, Sup. Ct. Op. No.  
1336 (File No. 3060), 556 P.2d 528 (1976).

**Freedom to contract for arbitration terms.** — In the absence of statutory restrictions, parties are free to contract for

the terms of arbitration they desire. Board of Educ. v. Ewig, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1960).

**Collateral references.** — 5 Am. Jur. 2d, Arbitration and Award, § 1 et seq.

6 C.J.S., Arbitration, § 1 et seq.

Resolving real estate disputes through arbitration, 27 Am. Jur. Trials, pp. 621-678.

Validity of state statutory provisions for arbitration of labor disputes, as against the objection of delegation of legislative power without setting up adequate standards to guide the administrative agency, 9 ALR2d 871.

Quotient arbitration award or appraisal, 20 ALR2d 958.

Matters arbitrable under arbitration provisions of collective labor contract, 24 ALR2d 752.

Equity jurisdiction to determine valuation, where arbitration or appraisal has failed, under long-term lease providing for appraisal of premises and fixing rental value at stated intervals, 26 ALR2d 744.

Arbitrator's viewing or visiting premises or property alone as misconduct justifying vacation of award, 27 ALR2d 1160.

Laches or statute of limitations as bar to arbitration under agreement, 37 ALR2d 1125.

Arbitration provisions of employment contract providing for severance or dismissal pay, 40 ALR2d 1052.

Contract providing that it is governed by or subject to rules or regulations of a particular trade, business, or association as incorporating agreement to arbitrate, 41 ALR2d 872.

Validity and effect of arbitration agreement provision that, upon one party's failure to appoint arbitrator, controversy may be determined by arbitrator appointed by other party, 47 ALR2d 1346.

Arbitrator's consultation with outsider or outsiders as misconduct justifying vacation of award, 47 ALR2d 1362.

Effect of vacancy through resignation, withdrawal, or death of one of multiple arbitrators on authority of remaining arbitrators to render award, 49 ALR2d 900.

Constitutionality of arbitration statutes, 55 ALR2d 432.

Death of party to arbitration agreement before award as revocation or termination of submission, 63 ALR2d 754.

Arbitration of disputes within close corporation, 64 ALR2d 643.

Construction and application of provisions of general arbitration statutes excluding from their operation contracts for labor or personal services, 64 ALR2d 1336.

Disqualification of arbitrator by court or stay of arbitration proceedings prior to award, on ground of interest, bias, prejudice, collusion, or fraud of arbitrators, 65 ALR2d 755.

Power of president of corporation to commence or to carry on arbitration proceedings, 65 ALR2d 1321.

Power of arbitrators to award injunction, 70 ALR2d 1055.

Dissolved corporation's power to participate in arbitration proceedings, 71 ALR2d 1121.

Agreement to arbitrate future controversies as binding on infants, 78 ALR2d 1292.

Covenant in lease to arbitrate, or to submit to appraisal, as running with the leasehold so as to bind assignee, 81 ALR2d 804.

Necessity that arbitrators, in making awards, make specific or detailed findings of fact or conclusions of law, 82 ALR2d 969.

Time for impeaching arbitration award, 85 ALR2d 779.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contained in contract, 91 ALR2d 936.

Appealability of order or decree compelling or refusing to compel arbitration, 94 ALR2d 1071.

Discovery in aid of arbitration proceedings, 98 ALR2d 1247.

Enforcement of contractual arbitration clause as affected by expiration of contract prior to demand for arbitration, 5 ALR3d 1008.

Confirming or setting aside award. appealability of judgment confirming or setting aside arbitration award, 7 ALR3d 608.

Availability and scope of declaratory judgment actions in determining rights of parties, or powers and exercise thereof by arbitrators, under arbitration agreements, 12 ALR3d 854.

Board 2048  
se cor-  
provi-  
stitutes  
tracts  
LR2d  
ourt or  
ior to  
preju-  
rs, 65  
com-  
pro-  
junc-  
rtici-  
LR2d  
ature  
s, 78  
sub-  
the  
LR2d  
iking  
lings  
LR2d  
ward,  
tract  
ause  
com-  
tion.  
pro-  
tion  
ract  
R3d  
ard:  
g or  
R3d  
tory  
ts of  
f by  
nts,

Validity and effect, and remedy in respect, of contractual stipulation to submit disputes to arbitration in another jurisdiction, 12 ALR3d 892.

Validity and construction of provision for arbitration of disputes as to alimony or support payments, or child visitation or custody matters, 18 ALR3d 1264.

Municipal corporation's power to submit to arbitration, 20 ALR3d 569.

Validity and enforceability of provision for binding arbitration, and waiver thereof, 24 ALR3d 1325.

Necessity and sufficiency of notice of and hearing in proceedings before appraisers and arbitrators appointed to determine amount of loss, 25 ALR3d 680.

Delay in asserting contractual right to arbitration as precluding enforcement thereof, 25 ALR3d 1171.

Waiver, or estoppel to assert, substantive right or right to arbitrate as question for court or arbitrator, 26 ALR3d 604.

Breach or repudiation of collective labor contract as subject to, or as affecting right to enforce, arbitration provision in contract, 29 ALR3d 688.

Breach or repudiation of contract as affecting right to enforce arbitration clause therein, 32 ALR3d 377.

Participation in arbitration proceedings as waiver of objections to arbitrability, 33 ALR3d 1242.

Power of arbitrator to correct, or power of court to correct or resubmit, nonlabor award because of incompleteness or failure to pass on all matters submitted, 36 ALR3d 939.

Setting aside arbitration award on ground of interest or bias of arbitrators, 56 ALR3d 697.

Construction and effect of contractual or statutory provisions fixing time within which arbitration award must be made, 56 ALR3d 815.

Liability of parties to arbitration for costs, fees, and expenses, 57 ALR3d 633.

Privileged nature of communications

made in course of grievance or arbitration procedure provided for by collective bargaining agreement, 60 ALR3d 1041.

State court's power to consolidate arbitration proceedings, 64 ALR3d 528.

Validity and construction of statutes or ordinances providing for arbitration of labor disputes involving public employees, 68 ALR3d 885.

Demand for or submission to arbitration as affecting enforcement of mechanics' lien, 73 ALR3d 1042.

Filing of mechanics' lien or proceeding for its enforcement as affecting right to arbitration, 73 ALR3d 1066.

Refusal of arbitrators to receive evidence, or to permit briefs or arguments, on particular issues as grounds for relief from award, 75 ALR3d 132.

Admissibility of affidavit or testimony of arbitrator to impeach or explain award, 80 ALR3d 155.

Modern status of rules respecting concurrence of all arbitrators as condition of binding award under private agreement not specifying unanimity, 83 ALR3d 996.

Arbitration of medical malpractice claims, 84 ALR3d 375.

Arbitrator's power to award punitive damages, 83 ALR3d 1037.

Statute of limitations as bar to arbitration under agreement, 94 ALR3d 533.

Conflict of laws as to validity and effect of arbitration provision in contract for purchase or sale of goods, products, or services, 95 ALR3d 1145.

Defendant's participation in action as waiver of right to arbitration of dispute involved therein, 98 ALR3d 767.

Appealability of state court's order or decree compelling or refusing to compel arbitration, 6 ALR4th 652.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contained in contract, 11 ALR4th 774.

Validity of statute or rule providing for arbitration of fee disputes between attorneys and their clients, 17 ALR4th 993.

**Sec. 09.43.010. Arbitration agreements valid; application of article.** A written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration a subsequent controversy between the parties is valid, enforceable and irrevocable, except upon grounds which exist at law or in equity for the revocation of a contract. However, AS 09.43.010 — 09.43.180 do not apply to a labor-management contract unless they are incorporated into the contract by reference or their application is provided for by statute. (§ 1 ch 232 SLA 1968; am § 3 ch 113 SLA 1972)

**Cross references.** — For arbitration agreements under Public Employment Relations Act, see AS 23.40.200(f).

**Legislative history reports.** — For report on ch. 232, SLA 1968 (HB 212 am FCC), see 1968 House Journal, p. 861.

#### NOTES TO DECISIONS

**Section applicable to option to arbitrate.** — An option to arbitrate in a written contract is a provision in a written contract to submit a controversy to arbitration and is thus literally within the meaning of this section which states that such a provision is valid. *Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs.*, Sup. Ct. Op. No. 2598 (File No. 6736), 656 P.2d 1184 (1983).

Cited in *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978); *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978); *City of Fairbanks v. Rice*, Sup. Ct. Op. No. 2354 (File No. 4951), 628 P.2d 565 (1981); *Masden v. University of Alaska*, Sup. Ct. Op. No. 2421 (File No. 5291), 633 P.2d 1374 (1981).

**Sec. 09.43.020. Proceedings to compel or stay arbitration.** (a) On application of a party showing an agreement described in AS 09.43.010, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue and if the agreement is found to exist shall order arbitration.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. The issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if no agreement is found to exist. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue subject to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under (a) of this section, the application shall be made in that court. Otherwise the application may be made in any court of competent jurisdiction.

(d) An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application for the order has been made under this section or, if the issue is severable, the stay may be with respect to the issue only.

(e) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or because a fault or ground for the claims sought to be arbitrated has not been shown. (§ 1 ch 232 SLA 1968)

#### NOTES TO DECISIONS

**Arbitrability to be determined prior to rendition of award.** — This section provides for court determination of the issue of arbitrability prior to rendition of

an award and before the parties have subjected themselves to the effort and expense of arguing the merits of the dispute to the panel. *University of Alaska v. Modern*

Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Possibility of waiver or estoppel where party fails to seek court review of the arbitrators' decision on arbitrability until after rendition of award. — See University of Alaska v.

Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Applied in Anchorage Daily News, Inc. v. Anchorage Times Publishing Co., Sup. Ct. Op. No. 2393 (File No. 4966), 631 P.2d 500 (1981).

**Sec. 09.43.030. Appointment of arbitrators by court.** If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method of appointment is provided, or if the agreed method fails or for any reason cannot be followed, or when before the hearing an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. (§ 1 ch 232 SLA 1968)

**Sec. 09.43.040. Majority action by arbitrators.** The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by AS 09.43.010 — 09.43.180. (§ 1 ch 232 SLA 1968)

**Sec. 09.43.050. Hearing.** Unless otherwise provided by the agreement,

(1) the arbitrators shall set a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing; appearance at the hearing waives the notice; the arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date; the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a properly notified party to appear;

(2) the parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing;

(3) the hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award; if, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals shall continue with the hearing and determination of the controversy. (§ 1 ch 232 SLA 1968)

**Sec. 09.43.060. Representation by attorney.** A party has the right to be represented by an attorney at a proceeding or hearing under this chapter. A waiver of the right before the proceeding or hearing is ineffective. (§ 1 ch 232 SLA 1968)

**Sec. 09.43.070. Witnesses, subpoenas, depositions.** (a) The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and have the power to administer oaths. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the superior court. (§ 1 ch 232 SLA 1968)

**Sec. 09.43.080. Award.** (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed by the agreement or, if not so fixed, within the time the court orders on application of a party. The parties may extend the time in writing either before or after the expiration of the time. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of the objection before the delivery of the award to that party. (§ 1 ch 232 SLA 1968)

#### NOTES TO DECISIONS

The law favors arbitration with a minimum of court interference. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Whenever possible an arbitration award rendered in the form required by this section is presumptively valid and shall be upheld without inquiry into the merit of the dispute. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Subsection (a) sets out the minimum requirements as to the form of an

award. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Written findings and conclusions not required. — The language in subsection (a) does not require the arbitrators to submit written findings of fact or conclusions of law. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Authority to fashion remedies. — There is ample authority for the proposition that arbitrators generally have authority to fashion any remedy necessary to the resolution of the dispute. *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

**Sec. 09.43.090. Modification of award by arbitrators.** On application to the arbitrators by a party or, if an application to the court by

a party is pending under AS 09.43.110 — 09.43.130 on submission to the arbitrators by the court under the conditions the court may order, the arbitrators may modify or correct the award upon the grounds stated in AS 09.43.130(a)(1) and (3), or for the purpose of clarifying the award. An application to the arbitrators by a party shall be made within 20 days after delivery of the award to the applicant. Written notice of the application shall be given promptly to the opposing party, stating that objections to the application must be served within 10 days from the notice. A modified or corrected award is subject to the provisions of AS 09.43.110 — 09.43.130. (§ 1 ch 232 SLA 1968)

#### NOTES TO DECISIONS

Superior court authorized to order clarification. — This section clearly authorizes the superior court to return an award to the arbitrators for clarification. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

**Sec. 09.43.100. Fees and expenses of arbitration.** Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award. (§ 1 ch 232 SLA 1968)

#### NOTES TO DECISIONS

Ordinarily attorney's fees are not awarded where matters are submitted to arbitration. This is consistent with the strong public policy favoring arbitration, which would be seriously undercut if a party could obtain attorney's fees merely by filing a complaint as an initial step in the arbitration process. *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978). Award of attorney's fees held proper. — See *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978).

**Sec. 09.43.110. Confirmation of an award.** Upon application of a party, the court shall confirm an award unless within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130. (§ 1 ch 232 SLA 1968)

#### NOTES TO DECISIONS

Applied in *Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs.*, Sup. Ct. Op. No. 2598 (File No. 6736), 656 P.2d 1184 (1983).

**Sec. 09.43.120. Vacating an award.** (a) On application of a party, the court shall vacate an award if

(1) the award was procured by fraud or other undue means;

(2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;

(3) the arbitrators exceeded their powers;

(4) the arbitrators refused to postpone the hearing upon sufficient cause being shown for postponement or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as to prejudice substantially the rights of a party; or

(5) there was no arbitration agreement and the issue was not adversely determined in proceedings under AS 09.43.020 and the party did not participate in the arbitration hearing without raising the objection.

(b) The fact that the relief is such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(c) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant. However, if the application is predicated upon corruption, fraud or other undue means by either the opposing party or an arbitrator, it shall be made within 90 days after the grounds are known or should have been known.

(d) In vacating the award on grounds other than those stated in (a)(5) of this section the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of a provision in the agreement, by the court in accordance with AS 09.43.030, or, if the award is vacated on grounds set out in (a)(3) or (4) of this section, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with AS 09.43.030. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(e) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award. (§ 1 ch 232 SLA 1968)

#### NOTES TO DECISIONS

This section and AS 09.43.130 define the superior court's power to review and either vacate or modify an arbitration award. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

An arbitrator's misconstruction of a contract is not open to judicial review,

except on questions of arbitrability. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

No review for gross errors. — The "fraud or other undue means" standard of this section does not authorize review for gross errors. *Alaska State Hous. Auth. v.*

a party,

as a new-  
judging

efficient  
a mate-  
contrary  
lly the

as not  
e party  
e objec-

not be  
ing or

0 days  
, if the  
means  
within  
vn.

ted in  
e new  
nce of  
th AS  
or (4)  
rators  
e with  
s the  
from

lify or  
, (§ 1

ibility.  
Pleas,  
3208,

— The  
lard of  
ew for  
uth. v.

Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

There is a substantial difference between procurement of an award by fraud or other undue means and an award in which the arbitrators have allegedly made large mistakes. The former instances connote affirmative wrongdoing by a party to the arbitration and often by an arbitrator; gross error carries no such connotation. Moreover, fraud or undue means in the procurement of an award does not require a review on the merits of the controversy; a review for gross errors is a review on the merits. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

**Proceedings not reviewable for evidentiary sufficiency.** — Since arbitration proceedings are not required by statute or by the rules of the American Arbitration Association to be conducted on the record, it is not possible to review them for evidentiary sufficiency. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

This article evinces a strong public policy in favor of arbitration. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

The power of arbitrators are confined to those conferred upon them by the arbitration agreement, subject, of course, to further limitations imposed by the law of the jurisdiction. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

A particular claim may be arbitrable although it is not so designated by "clear and unequivocal" contract language. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Ambiguous contract terms may be construed in favor of arbitrability where such construction is not obviously contrary to the parties' intent, especially where the party contesting arbitrability drafted the contract. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

**Claim not arbitrable.** — Where the parties have clearly agreed to arbitrate only those "disputes arising in connection with this contract" a particular claim is not arbitrable if it is nowhere mentioned in the contract. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

The question of whether the arbitrator exceeded his power in ordering monetary damages can be appealed. *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

**Question on review.** — When an award is attacked under this article on the grounds that the arbitrators exceeded their powers through erroneous interpretation of the contract, the reviewing court should determine whether the construction of the contract made by the arbitrators is a reasonably possible one that can seriously be made in the context in which the contract was made. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Stated affirmatively, if all fair and reasonable minds would agree that the construction of the contract made by the arbitrators was not possible under a fair interpretation of the contract, then the court would be bound to vacate or refuse to confirm the award. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

**Arbitrators' interpretation entitled to significant weight.** — The arbitrators' interpretation of what is submitted to them is entitled to significant weight. *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Arbitrators generally need not follow applicable law when deciding issues. — The general rule in both statutory and common-law arbitration is that arbitrators need not follow otherwise applicable law when deciding issues properly before them, unless they are commanded to do so by the terms of the arbitration agreement. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

**Authority to fashion remedies.** — There is ample authority for the proposition that arbitrators generally have authority to fashion any remedy necessary to the resolution of the dispute. *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Arbitrators held not to have exceeded their powers by awarding compensation based upon the claims of a party's subcontractors, who were not parties to the contract. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Right to object to the alleged bias of an arbitrator was waived where the objecting party did not raise the matter at

the arbitration hearing. *Alaska State Hous. Auth. v. Riley Pleas. Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Cited in *Kodiak Oilfield Haulers, Inc. v. Local 879, Hotel Union*, Sup. Ct. Op. No. 2471 (File No. 5758), 641 P.2d 11 (1982).

Applied in *Masden v. University of Alaska*, Sup. Ct. Op. No. 2421 (File No. 5291), 633 P.2d 1374 (1981).

### Sec. 09.43.130. Modification or correction of award by court.

(a) On application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if

(1) there was an evident miscalculation of figures or an evident mistake in the description of a person, thing or property referred to in the award;

(2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award. (§ 1 ch 232 SLA 1968)

### NOTES TO DECISIONS

This section and AS 09.43.120 define the superior court's power to review and either vacate or modify an arbitration award. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

An arbitrator's misconstruction of a contract is not open to judicial review, except on questions of arbitrability. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Proceedings not reviewable for evidentiary sufficiency. — Since arbitration proceedings are not required by statute or by the rules of the American Arbitration Association to be conducted on the record, it is not possible to review them for evidentiary sufficiency. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct.

Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Error calling for modification or correction must be manifestly clear. — Given the presumption that arbitration awards rendered in proper form are valid and the "evident mistake" prerequisite language of subsection (a), it follows that the error which calls for modification or correction of an arbitration award must be manifestly clear. *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Arbitrators' interpretation entitled to significant weight. — The arbitrators' interpretation of what is submitted to them is entitled to significant weight. *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Alaska State  
s. Inc. Sup. Ct.  
1208, 586 P.2d

Haulers, Inc. v.  
up. Ct. Op. No.  
P.2d 11 (1982).

University of  
2421 File No.  
1).

d by court.  
copy of the  
award if  
an evident  
ferred to in

submitted to  
the merits of

fecting the

and correct  
as modified  
d as made.  
ined in the  
h 232 SLA

8), 586 P.2d

ation or cor-  
ly clear. —  
t arbitration  
rm are valid  
prerequisite  
follows that  
dification or  
ard must be  
Medical &  
Ct. Op. No.  
1320 (1976).  
on entitled  
arbitrators'  
submitted to  
ant weight.  
al Clinic v.  
13 (File No.

**Sec. 09.43.140. Judgment or decree on award.** Upon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered in conformity with the award and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent to the application, and disbursements may be awarded by the court. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

**Award of attorney's fees held proper.** — See *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976). Cited in *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1125 (1978).

**Sec. 09.43.150. Applications to court.** An application to the court under AS 09.43.010 — 09.43.180 shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action. (§ 1 ch 232 SLA 1968)

**Cross references.** — For court rules on service of motions and service procedures, see Civ. R. 77(a) and Civ. R. 5.

**Sec. 09.43.160. Appeals.** (a) An appeal may be taken from  
(1) an order denying an application to compel arbitration made under AS 09.43.020;  
(2) an order granting an application to stay arbitration made under AS 09.43.020(b);  
(3) an order conforming or denying confirmation of an award;  
(4) an order modifying or correcting an award;  
(5) an order vacating an award without directing a rehearing; or  
(6) a judgment or decree entered under the provisions of AS 09.43.010 — 09.43.180.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (§ 1 ch 232 SLA 1968)

**Sec. 09.43.170. Court, jurisdiction.** In AS 09.43.010 — 09.43.180, the term "court" means the superior court of this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the superior court to enforce the agreement under AS 09.43.010 — 09.43.180 and to enter judgment on an award under the agreement. (§ 1 ch 232 SLA 1968)

**Sec. 09.43.180. Short title.** AS 09.43.010 — 09.43.180 may be cited as the Uniform Arbitration Act. (§ 1 ch 232 SLA 1968; am § 1 ch 94 SLA 1972)

40.050

s are to  
section;

quired  
ivalent  
lex and

on of a  
to the  
2 SLA  
87; am

hat year  
o change  
ember of  
nce base  
r "April"

ice on a  
Corp. v.  
No. 3154  
987)

ached,  
of the  
ached,  
nt has  
deliver  
ch the  
te in a  
ed, the  
ibed in  
after-  
of the

subsequent recording. Whenever the lien is discharged, it is the duty of the recorder, when requested, to record the transcript of an order, entry of satisfaction of judgment, or other proceeding of record whereby it appears that the lien has been discharged. (§ 7.05 ch 101 SLA 1962)

Revisor's notes. — Minor word because of the enactment of ch. 161, SLA changes related to the recording of documents were made in this section in 1988.

### Chapter 43. Arbitration.

#### Article

1. Uniform Arbitration Act (§§ 09.43.160, 09.43.170)

#### NOTES TO DECISIONS

Cited in City of Valdez v. 18.99 acres, Sup. Ct. Op. No. 2834 (File No. 6940), 686 P.2d 682 (1984).

#### Article 1. Uniform Arbitration Act.

##### Section

- 160. Appeals
- 170. Court, jurisdiction

Sec. 09.43.160. Appeals. (a) An appeal may be taken from (1) an order denying an application to compel arbitration made under AS 09.43.020;

(2) an order granting an application to stay arbitration made under AS 09.43.020(b);

(3) an order confirming or denying confirmation of an award;

(4) an order modifying or correcting an award;

(5) an order vacating an award without directing a rehearing; or

(6) a judgment or decree entered under the provisions of AS 09.43.010 — 09.43.180.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (§ 1 ch 232 SLA 1968)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Sec. 09.43.170. Court, jurisdiction. In AS 09.43.010 — 09.43.180, the term "court" means the court with jurisdiction in this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under AS 09.43.010 — 09.43.180 and to enter judgment on

an award under the agreement. (§ 1 ch 232 SLA 1968; am § 4 ch 38 SLA 1987; am § 4 ch 38 SLA 1987)

**Effect of amendments.** — The 1987 amendment substituted "court with jurisdiction in" for "superior court of" in the first sentence and deleted "superior" preceding "court" in the second sentence.

## Chapter 45. Actions Relating to Real Property.

### Article

1. Adverse Claims and Boundary Disputes (§§ 09.45.010, 09.45.015)
2. Forcible Entry and Detainer (§ 09.45.090)
4. Nuisances (§ 09.45.235)
5. Partition (§ 09.45.480)
6. Recovery of Possession (§ 09.45.720)
7. Trespass (§§ 09.45.730 — 09.45.735)
9. Miscellaneous Provisions (§§ 09.45.790 — 09.45.795)
10. Earthslide Relief Act (§§ 09.45.840, 09.45.845)

### Article 1. Adverse Claims and Boundary Disputes.

#### Section

10. Action to quiet title
15. Presumption in certain cases

**Sec. 09.45.010. Action to quiet title.** A person in possession of real property, or a tenant of that person, may bring an action against another who claims an adverse estate or interest in the property for the purpose of determining the claim. (§ 6.01 ch 101 SLA 1962)

**Editor's notes.** — This section is set out above to correct a minor error in the main pamphlet.

**Sec. 09.45.015. Presumption in certain cases.** (a) A conveyance of land after April 7, 1958, that, at the time the conveyance was made, adjoined a highway reservation listed in section 1 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958), is presumed to have conveyed land up to the center-line of the highway subject to any highway reservation created by Public Land Order 601 and any highway easement created by Public Land Order 1613.

(b) The burden of proof in litigation involving land adjoining a highway reservation created by Public Land Order 601 or a highway easement created by Public Land Order 1613 is on the person who claims that the conveyance did not convey an interest in land up to the center-line of the highway. (§ 2 ch 141 SLA 1986)

HB

268

Written testimony by Jan Strandberg, ACS  
on proposed CSHB 268 (Judiciary)

The supreme court has very limited comments on the proposed Judiciary Committee substitute.

First, a majority of the court endorses the adoption of the American Bar Association standards which open to the public those proceedings that take place after the filing of formal charges.

The entire court has three concerns that it has asked me to discuss:

- (1) Retired judges should come within the commission's jurisdiction only when they are acting in their judicial capacities as pro tem judges.
- (2) The bill should take care of the conflicts it now has with Article IV, Section 10 of the Alaska Constitution which grants the commission authority only to recommend sanctions to the supreme court, and not to impose sanctions itself. See In re Inquiry Concerning a Judge, 762 P.2d 1292 (Alaska 1988).
- (3) Finally, the court recommends that the Commission's probable cause standard be defined in the statute and that it be similar to the present grand jury standard: that all evidence taken together would warrant a sanction.

This would provide knowledge of the standard to the public as well as to the judges under consideration for discipline at the time formal charges are filed.

# HOUSE COMMITTEE REPORT

(7)

Date Referred: February 12, 1990

FURTHER REFERRALS:

Date of Committee Action: 3-5-90

The JUDICIARY Committee considered:

HB 268

HOUSE BILL NO. 268

COMMISSION ON JUDICIAL CONDUCT

"An Act relating to the Commission on Judicial Conduct."

### RECOMMENDATIONS:

- be replaced with CS HB 268 (Jud)  the same title  
 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 impact \_\_\_\_\_  
 zero fiscal note \_\_\_\_\_  
 zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_  
 zero fiscal note(s) AK. Commission Judicial Conduct  
 zero fn/analysis \_\_\_\_\_

### SIGNING DO PASS:

SIGNING:  
(Check approp. column)

Do Not Pass No Rec Amend

Robert Jones  
Michael Rosenberg  
John Danner  
John Egan  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

	Do Not Pass	No Rec	Amend
<u>Terry Maston</u>		<input checked="" type="checkbox"/>	
<u>Mike Keller</u>		<input checked="" type="checkbox"/>	
_____			
_____			
_____			
_____			
_____			
_____			

Michael Rosenberg Robert Jones  
Chairman's Signature

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Alaska Commission  
 Title: Act relating to the BRU: on Judicial Conduct  
Commission on Judicial  
Conduct  
 Sponsor: Judiciary Components: \_\_\_\_\_  
 Requestor: State Affairs

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

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

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

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

**FUNDING: (Thousands of Dollars)**

General Funds	-0-	-0-	-0-	-0-	-0-	-0-
Federal Funds	-0-	-0-	-0-	-0-	-0-	-0-
Other						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS:**

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Marla N. Greenstein, Executive Director  
 Division: Alaska Comm'n on Judicial Conduct  
 Approved by: Marla N. Greenstein, Executive Director  
 Agency: Alaska Comm'n on Judicial Conduct

Phone: \_\_\_\_\_  
 Date: 2-5-90  
 Date: 2-5-90

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

Original sponsor(s): Judiciary Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 268 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Commission on Judicial Con-  
7 duct and to the Alaska Supreme Court's power to  
8 discipline judges."

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

10 \* Section 1. AS 15.58.050 is amended to read:

11 Sec. 15.58.050. INFORMATION AND RECOMMENDATIONS ON JUDICIAL  
12 OFFICERS. No later than August 7 of the year in which the state  
13 general election will be held, the judicial council shall file with  
14 the lieutenant governor a statement including information about each  
15 supreme court justice, court of appeals judge, superior court judge,  
16 and district court judge who will be subject to a retention election.  
17 The statement shall reflect the evaluation of each justice or judge  
18 conducted by the judicial council according to law and shall contain a  
19 brief statement describing each public reprimand, public censure, or  
20 suspension received by the judge under AS 22.30.011(d) [(3) OR (4)]  
21 during the period covered in the evaluation. A statement may not  
22 exceed 600 words.

23 \* Sec. 2. AS 22.30.010 is amended to read:

24 Sec. 22.30.010. COMMISSION ON JUDICIAL CONDUCT. The Commission  
25 on Judicial Conduct shall consist of nine members as follows: three  
26 persons who are justices or judges of state courts, elected by the  
27 justices and judges of the state courts; three members who have prac-  
28 ticed law in this state for 10 years, appointed by the governor from  
29 nominations made by the governing body of the organized bar and

1 subject to confirmation by a majority of the members of the legisla-  
2 ture in joint session; and three citizens who are not judges, retired  
3 judges, or members of the state bar, appointed by the governor and  
4 subject to confirmation by a majority of the members of the legisla-  
5 ture in joint session. Commission membership terminates if a member  
6 ceases to hold the position that qualified that person for appoint-  
7 ment. A person may not serve on the commission and on the judicial  
8 council simultaneously. A quorum of the commission must include at  
9 least one person who is a justice or judge, at least one person ap-  
10 pointed by the governor who has practiced law in the state for 10  
11 years, and at least one citizen member who is not a justice, judge, or  
12 member of the state bar. The commission shall elect one of its mem-  
13 bers to serve as chairman for a term prescribed by the commission. A  
14 vacancy shall be filled by the appointing power for the remainder of  
15 the term.

16 \* Sec. 3. AS 22.30.011(a) is amended to read:

17 (a) The commission shall on its own motion or on receipt of a  
18 written complaint inquire into an allegation that a judge

19 (1) has been convicted of a crime punishable as a felony  
20 under state or federal law or convicted of a crime that involves moral  
21 turpitude under state or federal law;

22 (2) suffers from a disability that seriously interferes  
23 with the performance of judicial duties and that is or may become  
24 permanent;

25 (3) within a period of not more than six years before the  
26 filing of the complaint or before the beginning of the commission's  
27 inquiry based on its own motion [START OF THE CURRENT TERM], committed  
28 an act or acts that constitute

29 (A) wilful misconduct in office;

1 (B) wilful and persistent failure to perform judicial  
2 duties;

3 (C) conduct prejudicial to the administration of  
4 justice;

5 (D) conduct that brings the judicial office into  
6 disrepute; or

7 (E) conduct in violation of the code of judicial  
8 conduct; or

9 (4) is habitually intemperate.

10 \* Sec. 4. AS 22.30.011(b) is amended to read:

11 (b) After preliminary informal consideration of an allegation,  
12 the commission may exonerate the judge, informally and privately  
13 admonish the judge, or recommend counseling. Upon a finding of proba-  
14 ble cause, the commission shall [MAY] hold a formal hearing on the  
15 [AN] allegation [UNDER '(a) OF THIS SECTION]. A hearing under this  
16 subsection [SECTION] is public. Proceedings and records pertaining to  
17 proceedings that occur before the commission holds a public hearing on  
18 an allegation are confidential, subject to the provisions of  
19 AS 22.30.060(b) [A HEARING UNDER AS 44.62.310(d) AND IS PRIVATE UNLESS  
20 A PUBLIC HEARING IS REQUESTED BY THE JUDGE].

21 \* Sec. 5. AS 22.30.011(d) is amended to read:

22 (d) The commission shall [MAY], after a hearing held under (b)  
23 of this section,

24 (1) exonerate the judge of the charges; or

(2) [INFORMALLY AND PRIVATELY ADMONISH THE JUDGE OR RECOM-  
MEND COUNSELING;

(3) REPRIMAND THE JUDGE PUBLICLY OR PRIVATELY;

(4) refer the matter to the supreme court with a recommen-  
dation that the judge be reprimanded, suspended, removed, or retired

1 from office or publicly or privately censured by the supreme court.

2 \* Sec. 6. AS 22.30.060(b) is amended to read:

3 (b) All proceedings, records, files, and reports of the commis-  
4 sion are confidential and disclosure may not be made except

5 (1) upon waiver in writing by the judge at any stage of the  
6 proceedings;

7 (2) if the subject matter or the fact of the filing of  
8 charges has become public, in which case the commission may issue a  
9 statement in order to confirm the pendency of the investigation, to  
10 clarify the procedural aspects of the proceedings, to explain the  
11 right of the judge to a fair hearing, or to state that the judge  
12 denies the allegations; or

13 (3) upon filing of formal charges, in which case only the  
14 charges, the subsequent formal hearing, and the commission's ultimate  
15 decision and minority report, if any, are [SHALL BECOME] public; even  
16 after formal charges are filed, the deliberations of the commission  
17 concerning the case are confidential.

18 \* Sec. 7. AS 22.30 is amended by adding a new section to read:

19 Sec. 22.30.068. MINORITY REPORTS. A member of the commission  
20 who believes that the commission failed to impose an appropriate  
21 disciplinary measure after a hearing under AS 22.30.011(b) may submit  
22 a report recommending a different disciplinary measure. The report  
23 shall accompany the majority report and may be submitted by the member  
24 to the chief justice of the supreme court, the attorney general, and  
25 the chair of the senate and house judiciary committees.

26 \* Sec. 8. AS 22.30.070(b) is amended to read:

27 (b) On recommendation of the commission [OR AFTER AN APPEAL  
28 UNDER AS 22.30.011(e)], the supreme court may reprimand, publicly or  
29 privately censure, or suspend a judge from office without salary when

1 in the United States the judge pleads guilty or no contest or is found  
2 guilty of a crime punishable as a felony under state or federal law or  
3 of a crime that involves moral turpitude under state or federal law.  
4 If the conviction is reversed, suspension terminates, and the judge  
5 shall be paid the judge's salary for the period of suspension. If the  
6 judge is suspended and the conviction becomes final, the supreme court  
7 shall remove the judge from office.

8 \* Sec. 9. AS 22.30.070(c) is amended to read:

9 (c) On recommendation of the commission [OR AFTER AN APPEAL  
10 UNDER AS 22.30.011(e)], the supreme court may (1) retire a judge for  
11 disability that seriously interferes with the performance of duties  
12 and that is or may become permanent, and (2) reprimand, publicly or  
13 privately censure, or remove a judge for action occurring not more  
14 than six years before the commencement of the judge's current term  
15 which constitutes wilful misconduct in the office, wilful and persis-  
16 tent failure to perform duties, habitual intemperance, conduct preju-  
17 dicial to the administration of justice, or conduct that brings the  
18 judicial office into disrepute. The effective date of retirement  
19 under (1) of this subsection is the first day of the month coinciding  
20 with or after the date that the supreme court files written notice  
21 with the commissioner of administration that the judge was retired for  
22 disability. A duplicate copy of the notice shall be filed with the  
23 judicial council.

24 \* Sec. 10. AS 22.30.080(2) is amended to read:

25 (2) "judge" means a justice of the supreme court, a judge  
26 of the court of appeals, a judge of the superior court, or a judge of  
the district court who is the subject of an investigation or proceed-  
ing under sec. 10, art. IV, Constitution of the State of Alaska and  
this chapter, including a justice or judge who is serving in a full-

1 time, part-time, permanent, or temporary position.

2 \* Sec. 11. AS 22.30.011(e) and 22.30.011(f) are repealed.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

*called for final 3/6/90 3:40*

6-1132R  
Lauterbach  
3/6/90

Original sponsor(s): Judiciary Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 268 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Commission on Judicial Con-  
7 duct and to the Alaska Supreme Court's power to  
8 discipline judges."

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

10 \* Section 1. AS 15.58.050 is amended to read:

11 Sec. 15.58.050. INFORMATION AND RECOMMENDATIONS ON JUDICIAL  
12 OFFICERS. No later than August 7 of the year in which the state  
13 general election will be held, the judicial council shall file with  
14 the lieutenant governor a statement including information about each  
15 supreme court justice, court of appeals judge, superior court judge,  
16 and district court judge who will be subject to a retention election.  
17 The statement shall reflect the evaluation of each justice or judge  
18 conducted by the judicial council according to law and shall contain a  
19 brief statement describing each public reprimand, public censure, or  
20 suspension received by the judge under AS 22.30.011(d) [(3) OR (4)]  
21 during the period covered in the evaluation. A statement may not  
22 exceed 600 words.

23 \* Sec. 2. AS 22.30.010 is amended to read:

24 Sec. 22.30.010. COMMISSION ON JUDICIAL CONDUCT. The Commission  
25 on Judicial Conduct shall consist of nine members as follows: three  
26 persons who are justices or judges of state courts, elected by the  
27 justices and judges of the state courts; three members who have prac-  
28 ticed law in this state for 10 years, appointed by the governor from  
29 nominations made by the governing body of the organized bar and

1 subject to confirmation by a majority of the members of the legisla-  
2 ture in joint session; and three citizens who are not judges, retired  
3 judges, or members of the state bar, appointed by the governor and  
4 subject to confirmation by a majority of the members of the legisla-  
5 ture in joint session. Commission membership terminates if a member  
6 ceases to hold the position that qualified that person for appoint-  
7 ment. A person may not serve on the commission and on the judicial  
8 council simultaneously. A quorum of the commission must include at  
9 least one person who is a justice or judge, at least one person ap-  
10 pointed by the governor who has practiced law in the state for 10  
11 years, and at least one citizen member who is not a justice, judge, or  
12 member of the state bar. The commission shall elect one of its mem-  
13 bers to serve as chairman for a term prescribed by the commission. A  
14 vacancy shall be filled by the appointing power for the remainder of  
15 the term.

16 \* Sec. 3. AS 22.30.011(a) is amended to read:

17 (a) The commission shall on its own motion or on receipt of a  
18 written complaint inquire into an allegation that a judge

19 (1) has been convicted of a crime punishable as a felony  
20 under state or federal law or convicted of a crime that involves moral  
21 turpitude under state or federal law;

22 (2) suffers from a disability that seriously interferes  
23 with the performance of judicial duties and that is or may become  
24 permanent;

25 (3) within a period of not more than six years before the  
26 filing of the complaint or before the beginning of the commission's  
27 inquiry based on its own motion (START OF THE CURRENT TERM), committed  
28 an act or acts that constitute

29 (A) wilful misconduct in office;

1 (B) wilful and persistent failure to perform judicial  
2 duties;

3 (C) conduct prejudicial to the administration of  
4 justice;

5 (D) conduct that brings the judicial office into  
6 disrepute; or

7 (E) conduct in violation of the code of judicial  
8 conduct; or

9 (4) is habitually intemperate.

10 \* Sec. 4. AS 22.30.011(b) is amended to read:

11 (b) After preliminary informal consideration of an allegation,  
12 the commission may exonerate the judge, informally and privately  
13 admonish the judge, or recommend counseling. Upon a finding of proba-  
14 ble cause, the commission shall [MAY] hold a formal hearing on the  
15 [AN] allegation [UNDER (a) OF THIS SECTION]. A hearing under this  
16 subsection [SECTION] is public. Proceedings and records pertaining to  
17 proceedings that occur before the commission holds a public hearing on  
18 an allegation are confidential, subject to the provisions of  
19 AS 22.30.060(b) [A HEARING UNDER AS 44.62.310(d) AND IS PRIVATE UNLESS  
20 A PUBLIC HEARING IS REQUESTED BY THE JUDGE].

21 \* Sec. 5. AS 22.30.011(d) is amended to read:

22 (d) The commission shall [MAY], after a hearing held under (b)  
23 of this section,

24 (1) exonerate the judge of the charges; or

25 (2) [INFORMALLY AND PRIVATELY ADMONISH THE JUDGE OR RECOM-  
26 MEND COUNSELING;

27 (3) REPRIMAND THE JUDGE PUBLICLY OR PRIVATELY;

28 (4) refer the matter to the supreme court with a recommen-  
29 dation that the judge be reprimanded, suspended, removed, or retired

1 from office or publicly or privately censured by the supreme court.

2 \* Sec. 6. AS 22.30.060(b) is amended to read:

3 (b) All proceedings, records, files, and reports of the commis-  
4 sion are confidential and disclosure may not be made except

5 (1) upon waiver in writing by the judge at any stage of the  
6 proceedings;

7 (2) if the subject matter or the fact of the filing of  
8 charges has become public, in which case the commission may issue a  
9 statement in order to confirm the pendency of the investigation, to  
10 clarify the procedural aspects of the proceedings, to explain the  
11 right of the judge to a fair hearing, or to state that the judge  
12 denies the allegations; or

13 (3) upon filing of formal charges, in which case only the  
14 charges, the subsequent formal hearing, and the commission's ultimate  
15 decision and minority report, if any, are [SHALL BECOME] public; even  
16 after formal charges are filed, the deliberations of the commission  
17 concerning the case are confidential.

18 \* Sec. 7. AS 22.30 is amended by adding a new section to read:

19 Sec. 22.30.068. MINORITY REPORTS. A member of the commission  
20 who believes that the commission failed to impose an appropriate  
21 disciplinary measure after a hearing under AS 22.30.011(b) may submit  
22 a report recommending a different disciplinary measure. The report  
23 shall accompany the majority report and may be submitted by the member  
24 to the chief justice of the supreme court, the attorney general, and  
25 the chair of the senate and house judiciary committees.

26 \* Sec. 8. AS 22.30.070(b) is amended to read:

27 (b) On recommendation of the commission (OR AFTER AN APPEAL  
28 UNDER AS 22.30.011(e)), the supreme court may reprimand, publicly or  
29 privately censure, or suspend a judge from office without salary when