ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990

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6060 HOUSE RESOURCES

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 123 (Jud)
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: Uniform Conservation Easement Act
Sponsor: Sturgulewski
Requestor: Senate Judiciary

Agency Affected: Fish and Game
BRU: Habitat
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Roland Shanks
Phone: 465-4100
Division: Commissioner's Office
Date: 3/15/89

Approved by Commissioner: Ronald O. Hollingsworth
Date: 3·15·89
Agency: Fish and Game

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

SB ____ -- ALASKA CONSERVATION EASEMENT BILL

WHAT WOULD THE BILL DO?

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

WHAT IS A CONSERVATION EASEMENT?

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

WHAT KIND OF EASEMENTS ARE WE TALKING ABOUT?

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

IS THIS A NEW IDEA?

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

WHY DO WE NEED A LAW TO DO THIS?

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

SB 52 is essentially verbatim from the Uniform Conservation Act which was drafted as a model law by the National Conference of Commissioners on Uniform State Laws.

WHAT ARE THE PUBLIC ADVANTAGES?

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

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

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

WHY WOULD A PRIVATE LANDOWNER WANT TO CREATE AN EASEMENT?

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

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

HOW LONG DOES AN EASEMENT LAST?

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

WHAT ABOUT PUBLIC ACCESS?

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

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

Keeping downtown in shape

Deal insures facade of Wendler Building

RON ZELLAR
Times Business Writer

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

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

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

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

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

The Wendler Building was built by merchant A.J. Wendler in 1913 as a grocery store with living quarters on the second floor. The grocery, situated at the corner of 4th Avenue and D Streets, was one of 92 businesses that opened on the city's main street the same year.

See Building, page B-1

Building

Continued from page B-1

The business was converted to a restaurant and bar by Wendler's daughter and was renamed Club 25. In 1983, the property was sold and the building donated to the city on the condition that it be moved. A renovation plan by a partnership that included Mundy was accepted by the city, which spent $47,000 to move the building to its present location.

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

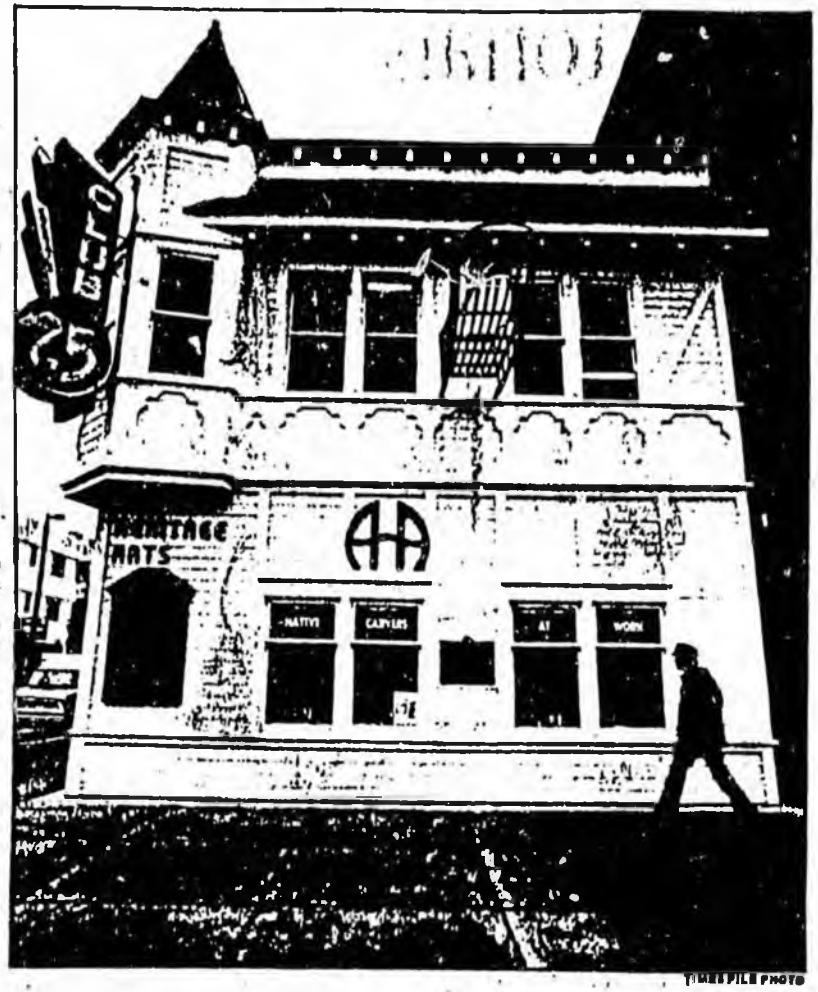
Donation of the air rights means no structure taller than the existing buildings can be built on the site.

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

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

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

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



TIMES FILE PHOTO

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

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

Anchorage Historic Properties plans an effort this year to get more buildings listed or declared eligible for listing if owners decide to pursue the designation.

Anchorage Historic Properties Inc. was formed by a $1.7 million voter initiative as part of the city's Project 88 program that also led to the construction of parks and public buildings.

The corporation uses the money as an endowment to protect historic properties and to operate a revolving loan fund. Hoffman said the organization is working to be self-supporting through earned revenues, memberships, contributions and project grants.

Introduced by: Anchorage Municipal Assembly

Date: November 16, 1988

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

RESOLUTION NO. ____

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

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

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

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

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

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

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

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

STATE OF ALASKA
THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M January 24, 1989

SUBJECT: Uniform Conservation Easement Act (SB 123)

TO: Senator Arliss Sturgulewski

FROM: Richard A. Bradley
Legislative Counsel

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

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

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

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

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

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

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

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

If I may be of further assistance, please advise.

RAB:kb
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Enclosure

UNIFORM LAWS ANNOTATED

Volume 12

Civil Procedural and Remedial Laws

1988
Cumulative Annual Pocket Part

Replacing 1987 pocket part in back of volume

DIRECTORY OF UNIFORM ACTS AND CODES
with
TABLES AND INDEX

See special pamphlet
which accompanies these Pocket Parts

ST. PAUL, MINN.
WEST PUBLISHING CO.

12 U.L.A.-Civil Proc. & Rem. Laws—1
1988 P.P.

UNIFORM CONSERVATION EASEMENT ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
Arizona	1985, c. 171	4–18–1985 *	A.R.S. §§ 33–271 to 33–276.
District of Columbia	D.C.Law 6–113	5–16–1986	D.C.Code 1981, §§ 45–2601 to 45–2605.
Indiana	1984, H.1074	9–1–1984	West's A.I.C. 32–5–2.6–1 to 32–5–2.6–7.
Maine	1985, c. 395	6–21–1985 *	33 MRSA §§ 476 to 479–B.
Minnesota.....	1985, c. 252	5–24–1985 *	M.S.A. §§ 84C.01 to 84C.05.
Mississippi.....	1986, c. 404	3–27–1986	Code 1972, §§ 89–19–1 to 89–19–13.
Nevada	1983, c. 291	5–13–1983*	N.R.S.111.390 to 111.400.
Texas.....	1983, c. 434	9–1–1983	V.T.C.A., Natural Resources Code §§ 183.001 to 183.005.
Wisconsin	1981, c. 261	4–27–1982	W.S.A. 700.40.

* Date of approval.

Historical Note

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

PREFATORY NOTE

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

The Act thus makes it possible for Owner to transfer a restriction upon the use of Blackacre to Conservation, Inc., which will be enforceable by Conservation and its successors whether or not Conservation has an interest in land benefitted by the restriction, which is assignable although unattached to any such interest in fact, and which has not arisen under circumstances where the traditional conditions of privity of estate and "touch and concern" applicable to covenants real are present. So, also, the Act enables the Owner of Heritage Home to obligate himself and future owners of Heritage to maintain certain aspects of the house and to have that obligation enforceable by Preservation, Inc., even though Preservation has no interest in property benefitted by the obligation. Further, Preservation may obligate itself to take certain affirmative actions to preserve the property. In each case, under the Act, the restrictions and obligations bind successors. The Act does not itself impose restrictions or affirmative duties. It merely allows the parties to do so within a consensual arrangement freed from common law impediments, if the conditions of the Act are complied with.

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

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

ENT ACT

Adopted

itutory Citation

1 to 33-276.
§§ 45-2601 to 45-2605.

-5-2.6-1 to 32-5-2.6-7.
to 479-B.
1 to 84C.05.
9-19-1 to 89-19-13.
111.400.
Resources Code §§ 183.001

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The easement alternative is favored in the Act for three reasons. First, lawyers and courts are most comfortable with easements and easement doctrine, less so with restrictive covenants and equitable servitudes, and can be expected to experience severe confusion if the Act opts for a hybrid fourth interest. Second, the easement is the basic less-than-fee interest at common law; the restrictive covenant and the equitable servitude appeared only because of then-current, but now outdated, limitations of easement doctrine. Finally, non-possessory interests satisfying the requirements of covenant real or equitable servitude doctrine will invariably meet the Act's less demanding requirements as "easements." Hence, the Act's easement orientation should not prove prejudicial to instruments drafted as real covenants or equitable servitudes, although the converse would not be true.

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

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

In addition, controls in the Act and in other state and federal legislation afford further assurance that the Act will serve the public interest. To begin with, the very adoption of the Act by a state legislature facilitates the enforcement of conservation easement serving the public interest. Other types of easements, real covenants and equitable servitudes are enforceable, even though their myriads of purposes have seldom been expressly scrutinized by state legislative bodies. Moreover, Section 1(2) of the Act restricts the entities that may hold conservation and preservation easements to governmental agencies and charitable organizations, neither of which is likely to accept them on an indiscriminate basis. Governmental programs that extend benefits to private donors of these easements provide additional controls against potential abuses. Federal tax statutes and regulations, for example, rigorously define the circumstances under which easement donations qualify for favorable tax treatment. Controls relating to real estate assessment and taxation of restricted properties have been, or can be, imposed by state legislatures to prevent easement abuses or to limit potential loss of local property tax revenues resulting from unduly favorable assessment and taxation of these properties. Finally, the American legal system generally regards private ordering of property relationships as sound public policy. Absent conflict with constitutional or statutory requirements, conveyances of fee or non-possessory interests by and among private entities is the norm, rather than the exception, in the United States. By eliminating certain outmoded easement impediments which are largely attributable to the absence of a land title recordation system in England centuries earlier, the Act advances the values implicit in this norm.

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

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

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

owners to compensation upon its exercise are determined not by this Act but by the adopting state's eminent domain code and related statutes.

General Statutory Notes

Arizona. The Arizona act is a substantial adoption of the major provisions of the Uniform Act, but contains numerous variations, omissions and additional matter which cannot be clearly indicated by statutory notes.

Indiana. Adds section as follows:

"32-5-2.6-7 Taxation

"For the purposes of IC 6-1.1, real property subject to a conservation easement shall be assessed and taxed on a basis that reflects the easement."

Mississippi. Adds a section as follows:

"§ 89-19-11. Capital improvements on property upon which easements have been granted.

"With the exception of 'Mississippi Landmarks,' as defined by the Antiquities Law of Mississippi (Section 39-7-1 et seq., Mississippi Code of 1972) and of properties entered in the National Register of Historic Places, no public money, derived either from a special fund or the General Fund, shall be expended for capital improvements on any real property upon which a conservation easement has been granted unless the conservation easement is perpetual, a governmental body is the holder of the easement and the capital improvements are solely for the use and benefit of such holder."

Nevada. The Nevada act is a substantial adoption of the major provisions of the Uniform Act, but contains numerous variations, omissions and additional matter which cannot be clearly indicated by statutory notes.

New York. Sections 49-0301 to 49-0311 of the New York Environmental Conservation Law do not constitute a substantial adoption of the Uniform Act, although they contain some similar provisions and have the same general purpose.

UNIFORM CONSERVATION EASEMENT ACT

1981 ACT

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

§ 1. [Definitions]

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

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

(2) "Holder" means:

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

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

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

COMMENT

Section 1 defines three central elements: What is meant by a conservation easement; who can be a holder; and who can possess a "third-party right of enforcement." Only those inter-

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fund or the General Fund, mprovements on any real vation easement has been easement is perpetual, a r of the easement and the for the use and benefit of

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ests held by a "holder," as defined by the Act, fall within the definitions of protected easements. Such easements are defined as interests in real property. Even if so held, the easement must serve one or more of the following purposes: Protection of natural or open-space resources; protection of air or water quality; preservation of the historical aspects of property; or other similar objectives spelled out in subsection (1).

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

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

Action in Adopting Jurisdictions

Variations from Official Text:

District of Columbia. Introductory material reads: "For the purposes of this act, the term:".

Maine. In subsec. (1), omits "or preserving the historical, architectural, archaeological, or cultural aspects".

In subsecs. (2)(ii) and (3), substitutes "nonprofit corporation" for "charitable corporation, charitable association".

Additionally, defines "real property" to include surface waters.

Mississippi. Section reads:

"For purposes of this chapter, the following words shall have the meaning ascribed herein unless the context otherwise requires:

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

"(2) 'Holder' shall mean either:

"(a) A governmental body empowered by the law of this state or the United States to hold an interest in real property; or

"(b) A private, nonprofit, charitable or educational corporation, association or trust, the purposes or powers of which include retaining or protecting the natural, scenic, historical or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, educational or open-space use, protecting natural features and resources, maintaining or enhancing air or water quality or preserving the natural, historical, architectural, archaeological or cultural aspects of real property which is the recipient or grantee of a conservation easement.

"(3) 'Third-party right of enforcement' shall mean a right granted in a conservation easement to a governmental body or private, nonprofit charitable corporation, association or trust, which is not a holder but which is eligible to be a holder, to enforce any of the terms of the conservation easement.

"(4) 'Person' shall mean any natural person or legal entity."

Texas. In subsec. (1), substitutes "designed to" for "the purposes of which include" (with conforming grammatical variations not affecting substance, e.g., "retain" for "retaining").

In subsec. (2)(ii), substitutes "created or empowered to" for "the purposes or powers of which include" (with conforming grammatical variations not affecting substance, e.g., "retain" for "retaining").

In subsec. (3), substitutes "that is eligible to be a holder but is not a holder" for ", which, although eligible to be a holder, is not a holder".

Adds subsec. (4) as follows: "'Servient estate' means the real property burdened by the conservation easement."

Wisconsin. In subsec. (1), inserts "preserving a burial site, as defined in s. 157.70(1)(b)," following "water quality,".

Library References

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

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

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

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

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

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

COMMENT

Section 2(a) provides that, except to the extent otherwise indicated in the Act, conservation easements are indistinguishable from easements recognized under the pre-Act law of the state in terms of their creation, conveyance, recordation, assignment, release, modification, termination or alteration. In this regard, subsection (a) reflects the Act's overall philosophy of bringing less-than-fee conservation interests under the formal easement rubric and of extending that rubric to the extent necessary to effectuate the Act's purposes given the adopting state's existing common law and statutory framework. For example, the state's requirements concerning release of conventional easements apply as well to conservation easements because nothing in the Act provides otherwise. On the other hand, if the state's existing law does not permit easements in gross to be assigned, it will not be applicable to conservation easements because Section 4(2) effectively authorizes their assignment.

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

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

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

Action in Adopting Jurisdictions

Variations from Official Text:

District of Columbia. Section reads:

"(a)(1) Except as otherwise provided in this act, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, provided that the recordation of any conservation easement as defined in section 2, or of any assignment, release, modification, termination, or other alteration of a conservation easement shall be exempt from the recordation tax imposed by section 303 of the District of Columbia Real Estate Deed Recordation Tax Act, approved March 2, 1962 (76 Stat. 12; D.C.Code, sec. 45-923), and from the transfer tax imposed by section 403 of the District of Columbia Revenue Act of 1980, effective September 13, 1980 (D.C.Law 3-92; D.C. Code, sec. 47-903).

"(2) The exemption provided for in subsection (2) of this section shall not apply if the consideration for the conservation easement exceeds $100 in value.

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

"(c) Except as provided in section 4(b), a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

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

"(e) A conservation easement is valid even under the following circumstances:

"(1) It is not appurtenant to an interest in real property;

"(2) It can be or has been assigned to another holder;

"(3) It is not of a character that has been recognized traditionally at common law;

"(4) It imposes a negative burden;

"(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

"(6) The benefit does not touch or concern real property; or

"(7) There is no privity of estate or of contract."

Maine. In subsec. (a), adds "created by written instrument" at the end thereof.

Subsec. (b) reads: "No right or duty in favor of or against a holder arises under a conservation easement unless it is accepted by the holder and no right in favor of a person

having a 3rd-party right of enforcement arises under a conservation easement unless it is accepted by any person having a 3rd-party right of enforcement."

Subsec. (c) reads:

"Except as provided in this subchapter, a conservation easement is unlimited in duration unless:

"A. The instrument creating it otherwise provides; or

"B. Change of circumstances renders the easement no longer in the public interest as determined in an action under section 478."

Adds a subsection which reads: "The instrument creating a conservation easement must provide in what manner and at what times representatives of the holder of a conservation easement or of any person having a 3rd-party right of enforcement shall be entitled to enter the land to assure compliance."

Mississippi. In subsec. (a), substitutes "affected in the same method and manner as other easements" for "affected in the same manner as other easements".

In subsec. (b), substitutes "no right of a person having a third-party right" for "no right in favor of a person having a third-party right".

In subsec. (c), inserts "its" following "unlimited in".

In subsec. (d), substitutes "the conservation easement" for "it" following "is not impaired by".

Texas. Subsec. (b) reads as follows: "A right or duty in favor of or against a holder and a right in favor of a person having a third-party right of enforcement does not arise under a conservation easement before its acceptance by the holder and the recordation of the acceptance."

In subsec. (c), substitutes "makes some other provision" for "otherwise provides".

In subsec. (d), substitutes "that exists in real property" for "in real property in existence" and omits "by it" following "impaired".

Adds subsections as follows:

"(e) A conservation easement must be created in writing, acknowledged and recorded in the deed records of the county in which the servient estate is located, and must include a legal description of the real property which constitutes the servient estate.

"(f) If land that has been subject to a conservation easement is no longer subject to such easement, an additional tax is imposed on the land equal to the difference, if any, between the taxes imposed on the land for each of the five years preceding the year in which the easement terminates and the taxes that would have been imposed had the land not been subject to a conservation easement in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due."

Wisconsin. Makes minor language changes not affecting substance.

Library References

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

§ 3. [Judicial Actions]

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

(1) an owner of an interest in the real property burdened by the easement;

(2) a holder of the easement;

(3) a person having a third-party right of enforcement; or

(4) a person authorized by other law.

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

COMMENT

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

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

The doctrine is applicable to real covenants and equitable servitudes in all states, but its application to easements is problematic in many states.

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

The Act leaves intact the existing case and statute law of adopting states as it relates to the modification and termination of easements and the enforcement of charitable trusts.

Action in Adopting Jurisdictions

Variations from Official Text:

Indiana. In subsec. (b), adds the following at the end thereof: ", or the termination of a conservation easement by agreement of the grantor and grantee."

Maine. Section reads:

"1. Action or intervention. An action affecting a conservation easement may be brought or intervened in by:

"A. An owner of an interest in the real property burdened by the easement;

"B. A holder of the easement; or

"C. A person having a 3rd-party right of enforcement.

"2. Intervention only. An action affecting a conservation easement may be intervened in by the State or a political subdivision of the State in which the real property burdened by the easement is located.

"3. Power of court. This subchapter does not affect the power of a court to enforce a conservation easement by injunction or proceeding in equity or to modify or terminate a conservation easement in accordance with principles of law and equity. A court may deny equitable enforcement of a conservation easement when it finds that change of circumstances has rendered that easement no longer in the public interest. If the court so finds, the court may allow damages as the only remedy in an action to enforce the easement.

No comparative economic test may be used to determine under this subsection if a conservation easement is in the public interest."

Mississippi. In subsec. (a), substitutes "Any action" for "An action".

Subsec. (a)(4) reads: "A person otherwise authorized and empowered by law."

In subsec. (b), inserts ", and shall not be construed to," following "This Act does not".

Texas. In subsec. (a)(4), inserts "some" following "authorized by".

Wisconsin. Makes minor language changes not affecting substance.

Library References

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

§ 4. [Validity]

A conservation easement is valid even though:

(1) it is not appurtenant to an interest in real property;

(2) it can be or has been assigned to another holder;

(3) it is not a of a character that has been recognized traditionally at common law;

(4) it imposes a negative burden;

(5) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) the benefit does not touch or concern real property; or

(7) there is no privity of estate or of contract.

COMMENT

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

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

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

Subsection (3) addresses the problem posed by the common law's recognition of easements that

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

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

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

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

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

Action in Adopting Jurisdictions

Variations from Official Text

District of Columbia. Omits this section.

Maine. In subsec. (1), inserts "or does not run with" following "to".

Adds a subsec. (8) which reads: "It does not run to the successor and assigns of the holder."

Mississippi. Introductory material reads: "A conservation easement shall be valid despite the following".

In subsec. (2), substitutes "It may be" for "It can be".

Texas. In subsec. (5), substitutes "on" for "upon" in both instances.

Wisconsin. Makes minor language changes not affecting substance.

Library References

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

§ 5. [Applicability]

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

(b) This Act applies to any interest created before its effective date if it would have been enforceable had it been created after its effective date unless retroactive application contravenes the constitution or laws of this State or the United States.

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

COMMENT

There are four classes of interests to which

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 9, 1989

SUBJECT: Conservation easements and their abuse: SB 123

TO: Senator Jan Faiks, Chair
Senate Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

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

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

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

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

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

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

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

Note some changes suggested.

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

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

If I may be of further assistance, please advise.

RAB:gc
WKG7/122

M E M O R A N D U M

TO: Senator Jan Faiks

FROM: John Reese

DATE: March 9, 1989

RE: S.B. 123

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

1. Elimination of properties from tax base, and

2. Ability of owner of property to control use of easement or even obtain return of easement by donation to a sham non-profit organization.

* * *

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

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

The controls are simple economics.

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

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

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

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

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

* * *

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

ALASKA STATE LEGISLATURE
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8

February 19, 1988

MEMORANDUM

TO: Representative Sam Cotten

ATTN: Ned Farquhar

FROM: Karen Oakley KO
Legislative Analyst

RE: Conservation Easements
Research Request 88.138

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

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

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

In summary, we found:

- The conservation easement is a well-established legal concept and is widely used throughout the United States as a means to protect scenic or other natural values of private land and to preserve historic structures.

- Because a conservation easement is held by a person, rather than by an adjacent parcel, the easement is considered to be held in gross. Under common law, an easement in gross cannot run with the land. To ensure that a conservation easement is enforceable in perpetuity, this common law deficiency must be corrected by statute.

- Alaska is one of only four states that does not have a conservation easement statute.

- State statutes typically specify: the purposes for which easements may be made; the types of organizations that are eligible to receive an easement; the duration of an easement; and the parties that are empowered to enforce the terms of an easement. In specifying the purposes, holders and enforcers of conservation easements, states vary considerably.

- Landowners that donate a conservation easement to a charitable organization are eligible for a federal income tax deduction. Landowners granting a conservation easement may also pay less local property tax due to decreased value of the parcel.

- Governments are the most common holders of conservation easements, and easements represent a cost-effective way for governments to protect the public value of private land. The revenue foregone by allowing conservation easements is considerably less than the cost of fee simple purchase of land.

- Native corporations are the major private landowners in Alaska. Conservation easements may provide a way to protect portions of these lands from development while still allowing subsistence use.

BACKGROUND

Easements in General

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

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

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

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

The Conservation Easement

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

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

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

Although the highway be... ...ication act had an important influence on the development of the cons... ...tion easement, the 1964 determination by the Internal Revenue Service ... the value of a conservation easement donated to a charitable organizati... ...s deductible for federal income tax purposes probably had an even greater ...fect.

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

CONSERVATION EASEMENT STATUTES IN OTHER STATES

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

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

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

1) Purpose. Some states may allow conservation easements to be used to achieve a broad range of objectives, while other states restrict the use of conservation easements to a few specifically defined purposes.

2) Duration. State statutes generally provide that conservation easements shall be in perpetuity or of unlimited duration, unless the parties provide otherwise in the document creating the restrictions. Some states set a minimum term of 10 to 15 years.[2]

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[1]The only states that have not adopted a conservation easement statute are Alaska, Hawaii, Kansas and Wyoming.

[2]Under the IRS code, the tax benefits from donating a conservation easement accrue only if the easement runs in perpetuity.

(3) Holders. State statutes fall into two categories with respect to the parties that are permitted to hold a conservation easement: those which allow only a government agency to receive an easement and those which also allow private nonprofit organizations to receive easements. Within these categories, there are many variations. For example, Mississippi allows only the Mississippi Commission on Wildlife Conservation to hold conservation easements. South Carolina allows a variety of governmental agencies to hold easements, but allows only one nonprofit organization, the Nature Conservancy, to hold conservation easements. In contrast, Utah allows any party entitled to own real property interests to hold a conservation easement.

(4) Enforcement. The success of a conservation easement in achieving its objective depends in part on enforcement of the terms of the agreement, and enforcement depends on having standing (and resources) to sue. Few state statutes clearly specify the categories of persons that have standing to enforce an agreement. The Uniform act recommends that four classes, including third parties, be granted standing.

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

TAX AND REVENUE CONSEQUENCES OF CONSERVATION EASEMENTS

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

Federal Income Tax Consequences

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

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

Qualified conservation purposes are defined as:

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

Real Property Tax Consequences

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

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

Valuation of Conservation Easements

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

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

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

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

Effect on Federal and Local Government Revenues

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

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

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

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

APPLICATION TO ALASKA

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

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

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

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

Attachments

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

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 123
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

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

Agency Affected: Community & Regional Affairs
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Jim Plasman

Prepared by: Jim Plasman, Deputy Director — Phone: 465-4750
Division: Municipal & Regional Assistance — Date: 4/14/89

Approved by Commissioner: Richard Wagner for David Hoffman — Date: 4/14/89
Agency: Community & Regional Affairs

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

APPENDIX C

Uniform Conservation Easement Act

National Conference of Commissioners on Uniform State Laws

Historical Note

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

Commissioners' Prefatory Note

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

The Act thus makes it possible for Owner to transfer a restriction upon the use of Blackacre to Conservation, Inc., which will be enforceable by Conservation and its successors whether or not Conservation has an interest in land benefited by the restriction, which is assignable although unattached to any such interest in fact, and which has not arisen under circumstances where the traditional conditions of privity of estate and "touch and concern" applicable to covenants real are present. So, also, the Act enables the Owner of Heritage Home to obligate himself and future owners of Heritage to maintain certain aspects of the house and to have that obligation enforceable by Preservation, Inc., even though Preservation has no interest in property benefited by the obligation. Further, Preservation may obligate itself to take certain affirmative actions to preserve the property. In each case, under the Act, the restrictions and obligations bind successors. The Act does not itself impose restrictions or affirmative duties. It merely allows the parties to do so within a consensual arrangement freed from common law impediments, if the conditions of the Act are complied with.

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

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

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

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

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

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

In addition, controls in the Act and in other state and federal legislation afford further assurance that the Act will serve the public interest. To begin with, the very adoption of the Act by a state legislature facilitates the enforcement of conservation easements serving the public interest. Other types of easements, real covenants, and equitable servitudes are enforceable, even though their myriad purposes have seldom been expressly scrutinized by state legislative bodies. Moreover, Section 1(2) of the Act restricts the entities that may hold conservation and preservation easements to governmental agencies and charitable organizations, neither of which is likely to accept them on an indiscriminate basis. Governmental programs that extend benefits to private donors of these easements provide additional controls against potential abuses. Federal tax statutes and regulations, for example, rigorously define the circumstances under which easement donations qualify for favorable tax treatment. Controls relating to real estate assessment and taxation of restricted properties have been, or can be, imposed by state legislatures to prevent easement abuses or to limit potential loss of local property tax revenues resulting from unduly favorable assessment and taxation of these properties. Finally, the American legal system generally regards private ordering of property relationships as sound public policy. Absent conflict with constitutional or statutory requirements, conveyances of fee or nonpossessory interests by and among private entities are the norm, rather than the exception, in the United States. By eliminating certain outmoded easement impediments which are largely attributable to the absence of a land-title recordation system in England centuries earlier, the Act advances the values implicit in this norm.

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

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

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

Uniform Conservation Easement Act, 1981 Act

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

Sec. 1. Definitions.

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

§1. [Definitions]

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

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

(2) "Holder" means:

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

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

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

Commissioners' Comment

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

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

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

Library References

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

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

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

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

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

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

Commissioners' Comment

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

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

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

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

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

Library References

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

§3. [Judicial Actions]

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

(1) an owner of an interest in the real property burdened by the easement;

(2) a holder of the easement;

(3) a person having a third-party right of enforcement; or

(4) a person authorized by other law.

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

Commissioners' Comment

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

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

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

The Act leaves intact the existing case and statute law

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

Library References

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

§4. [Validity]

A conservation easement is valid even though:

(1) it is not appurtenant to an interest in real property;

(2) it can be or has been assigned to another holder;

(3) it is not of a character that has been recognized traditionally at common law;

(4) it imposes a negative burden;

(5) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) the benefit does not touch or concern real property; or (7) there is no privity of estate or of contract.

Commissioners' Comment

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

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

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

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

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

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

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

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

Library References

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

§5. [Applicability]

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

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

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

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

Commissioners' Comment

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

It is the purpose of Section 5 to establish or confirm the validity of the first three classes of interests. Subsection (a) establishes the validity of the first class of interests, whether or not they are designated as conservation or preservation easements. Subsection (b) establishes the validity under the Act of the second class. Subsection (c) confirms the validity of the third class independently of the Act by disavowing the intent to invalidate any interest that does comply with other applicable law.

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

Library References

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

§6. [Uniformity of Application and Construction]

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

Library References

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

Introduced by: Mullen, Keene, McGahan, Crawford, Walli, Phillips & McLane
Date: February 2, 1988
Vote: Unanimous
Action: Adopted

KENAI PENINSULA BOROUGH

RESOLUTION 88-10

OPPOSING FINFISH MARICULTURE IN ALASKA.

WHEREAS, there is a proposal before the Alaska legislature that would allow finfish mariculture in Alaska, and

WHEREAS, commercial and sport fishing organizations on the Kenai Peninsula and in Alaska are opposed to the idea of fish farming for a variety of biological and economical reasons, and

WHEREAS, it remains unclear how Alaska would benefit from a salmon farming industry, and

WHEREAS, it is possible that money needed to launch a fish farming program in Alaska would come out of already reduced sportfish and commercial fish budgets to the detriment of existing users of fisheries resources in Alaska;

NOW THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. That the Kenai Peninsula Borough encourages the legislature of the State of Alaska to exclude salmon farming from any proposed mariculture legislation and to extend the current moratorium on the issuance of salmon farm permits indefinitely.

Section 2. That the Kenai Peninsula Borough encourages the legislature of the State of Alaska to carefully regulate mariculture programs related to shellfish, crustaceans, aquatic farming and other non-finfish mariculture projects in order to avoid conflict with other user groups.

Section 3. That the Kenai Peninsula Borough asks the legislature of the State of Alaska to be certain that funding for any type of mariculture industry in Alaska comes from budget areas other than already depleted commercial and sportfish budgets.

Section 4. That copies of this resolution be sent to Governor Cowper and all legislators.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 2nd DAY OF February, 1988.

Jonathan W. Sewall
Jonathan W. Sewall, Assembly President

ATTEST:

Joanne Bridley
Borough Clerk

SB 129

HOUSE COMMITTEE REPORT

(9)
Date Referred: April 26, 1989 FURTHER REFERRALS: FINANCE

Date of Committee Action: 4-27-89

The RESOURCES Committee considered: CSSB 129(FINANCE)

CS FOR SENATE BILL NO. 129 (Finance)
[MINING LEASES, CLAIMS, RENT & ROYALTIES]
"An Act relating to mining; and providing for an effective date."

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
[X] fiscal note(s) DNR 4-20-89
[ ] zero fiscal note(s) _____
[ ] zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
		X	
		X	

Chairman's Signature

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 129 (Finance)
PUBLISH DATE: 4/22/89

FISCAL NOTE

REQUEST:

Revision Date: 20-Apr-89
Title: An Act relating to rent and royalty payments for mining claims.
Sponsor: Senate Rules
Requestor: Governor

Agency Affected: Natural Resources
BRU: Mining Management
Management/Administration
Components: Mining Management
Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		35.9	37.0	38.2	39.4	40.8
TRAVEL		0.0	0.0	0.0	0.0	0.0
CONTRACTUAL		1.5	1.5	1.5	1.5	1.5
SUPPLIES		0.5	0.5	0.5	0.5	0.5
EQUIPMENT		4.0				
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	41.9	39.0	40.2	41.4	42.8
CAPITAL		240.0	0.0	0.0	0.0	0.0
REVENUE		750.0	750.0	770.0	770.0	800.0

FUNDING: (Thousands of Dollars)

GENERAL FUND		281.9	39.0	40.2	41.4	42.8
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	281.9	39.0	40.2	41.4	42.8

POSITIONS:

FULL-TIME		1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Gerald Gallagher
Phone: 762-2165
Division: Mining Management
Date: 20-Apr-89

Approved by Commissioner: Lennie Gorsuch
Date: 20-Apr-89
Agency: Department of Natural Resources

Distribution (by preparer):
Legislative Finance 4/21/89
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

This replaces previous DNR - FN + Nothing coming OCR

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

6(I) COMPROMISE

1. Rents and royalties will be paid on all state lands where mining activity is taking place.

2. Rents and royalties will be paid on all offshore mining leases.

3. The rental will be similar to the Governor's proposal in HB 99 except it will be capped at $2.50 rather than $5.00 and the rental will be set in statute rather than regulation.

0 - 5 years	$ .50 / acre
6 - 10 years	$ 1.00 / acre
11 or more	$ 2.50 / acre

The rental would be increased every 10 years based on the Anchorage Consumer Price Index.

4. Royalty - 3% on the net income

5. Reclamation

Section 7. AS 27.05 is amended by adding a new section to read:

27.05.250 RECLAMATION. (a) The commissioner shall require reclamation of state land from the effects of mining.

(b) The commissioner shall adopt regulations under this section and under AS 38 to implement (a) of this section. The regulations must require a miner to submit to the commissioner and receive approval on a reclamation plan before undertaking any mining activity. The regulations must also establish penalties for noncompliance with the regulations. On a determination by the Commissioner that a miner has failed to follow the reclamation plan, the commissioner shall require proof of financial responsibility before the miner undertakes any further mining activity.

(c) In order to provide to provide for an effective reclamation program, when adopting regulations under this section and AS 38, the commissioner shall consult with the commissioners of environmental conservation and fish and game.

(d) This section does not apply to reclamation carried out under AS 27.21.

Sec. 11. The commissioner of natural resources shall adopt the regulations required by AS 27.05.250, added by Sec. 7 of this Act, by July 1, 1991.

Sec. 14. Section 7 and 11 of this Act take effect June 1, 1990.

S B
139

HOUSE COMMITTEE REPORT

(9)

Date Referred: March 1, 1989 FURTHER REFERRALS: FINANCE

Date of Committee Action: 3-8-89

The RESOURCES Committee considered: CSSB 139(Res)

CS FOR SENATE BILL NO. 139 (Res) [EXTEND TASK FORCE ON GUIDING AND GAME] "An Act providing for retroactive extension of the termination date of the Task Force on Guiding and Game; increasing the membership of the Task Force on Guiding and Game; authorizing certain agencies to assist the Task Force on Guiding and Game; and providing for an effective date."

RECOMMENDS:

[✓] replacing with HCS CSSB 139 (RES) [✓] the same title [ ] a new title

[ ] the attached amendment(s)

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: RESOURCES letter of intent

ATTACHES NEW FISCAL NOTE(s):

[✓] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

APPROVES PREVIOUS:

[ ] fiscal note(s) published:

_____

[ ] zero fiscal notes(s) published:

_____

SIGNING DO PASS:

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

WITHDRAW NO REC

"

Chairman's signature

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

Letter of Intent
For
HCS CS SB 139 (Res)

It is the intent of the legislature that the task force established under the provisions of SB 139 shall consider the implications of the Owsichek decision issued by the Alaska Supreme Court on October 21, 1988 when developing the resource-based management system for allocating big game hunting opportunities among guide-outfitters.

It is the intent of the legislature that the foremost purpose of any management system should be the conservation of game resources. Any system that places restrictions on free market competition between guides must be based on clear findings that such restrictions are needed to prevent harmful impacts on game populations that cannot be prevented through licensing requirements, bag limits, seasonal restrictions, or other traditional game management tools that are now available to the state.

Without a constitutional amendment, a system would have to provide the broad access guaranteed by the common use clause of the constitution. The system would have to have access rights that are limited in duration, and the system would have to provide equal opportunity to all qualified guides when these rights are reassigned. In order to prevent the development of non-uniform policies by various federal, state, and private landowners, the system should have statewide applicability.

Cliff Davidson

Rep. Cliff Davidson
Co-Chair

Curt Menard

Rep. Curt Menard
Co-Chair

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION HCS CSSB 139(Res)
PUBLISH DATE

FISCAL NOTE

REQUEST:
Revision Date:
Title: An Act providing for retroactive extension of the termination date of the Task...
Sponsor: House Resources
Requestor: House Resources

Affect Agency Legislative Affairs Agency
BRU: Legislative Council
Components Council & Subcommittees

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	5.1	10.1	0	0	0	0
Travel	10.5	10.5	0	0	0	0
Contractual	3.0	3.0	0	0	0	0
Supplies	0	0	0	0	0	0
Equipment	0	0	0	0	0	0
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	*18.6	23.6	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	*18.6	23.6	0	0	0	0
Federal Fund						
Other						
TOTAL	*18.6	23.6	0	0	0	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	1	1	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)
* FY 89 funding will be requested in the supplemental bill.
The Task Force on Guiding and Game was established under the jurisdiction of the Legislative Council Committee. This bill version will add 2 members to the Task Force and extend the termination date of the Task Force to Jan. 15, 1990. The Task Force will be composed of 15 members, 3 from the Executive Branch, 2 legislators from the Legislative Branch and 10 public members.

Prepared By: Pamela Stoops, Director — Phone: 465-3850
Division: Administrative Services — Date: 3/8/89

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency — Date: 3/8/89

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

CONTINUATION OF FISCAL ANALYSIS

It is assumed that travel funds for this task force will be paid as follows:

3 Executive Branch members - absorbed within existing executive branch departments.

2 Legislative Branch members - absorbed within existing Legislative Operating Budget or Session Expenses.

10 Public members - paid by Legislative Council funds as projected below.

Projected expenses for the Task Force on Guiding and Game are as follows:

		FY 89		FY 90
Personal Services - Staff for the Task Force:				
	Secretary, Range 14, Step A--3 months 1/2 time	5,100	full-time	10,100
Travel-	2 trips @ 366 x 10 members	7,320		7,320
	2 days per diem ($80)			
	2 trips x 10 members	3,200		3,200
Contractual-	Advertising-Public Notices	3,000		3,000
		18,600		23,620

Supplies- Will come from existing Legislative Council and Legislative Operating supplies.

Equipment- Will come from existing Legislative Council and Legislative Operating equipment.

FY 89 costs are for one-half year.
FY 90 costs are for one-half year.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 139 (Res)
PUBLISH DATE: 2/14/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act providing for retroactive extension of the term. date of the Task Force on Guiding and Game...
Sponsor: Senate Resources
Requestor: Senate Resources

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	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 a separate page if necessary)

Prepared by: Jennifer Strickler, Administrative Officer
Phone: 465-2144
Division: Occupational Licensing
Date: February 15, 1989

Approved by Commissioner: Larry Merculieff
Date: 2/15/89
Agency: Commerce and Economic Development

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

DCED Note – CS (Res)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 139 (Res)
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: 2/15/89
Title: Retroactive extension of the termination date of the Task Force
Sponsor: Senate Resources
Requestor: Senator Fahrenkamp

Agency Affected: Public Safety
BRU: Fish & Wildlife Protection
Component: Enforcement

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 a separate page if necessary)

This bill continues the existence of the Task Force on Guiding and Game. No additional impact, beyond that already being incurred by DPS to participate in Task Force meetings, is anticipated.

Prepared by: Captain Conrad G. Seibel
Phone: 269-5509
Division: Fish & Wildlife Protection
Date: 2/15/89

Approved by Commissioner: Arthur English
Date: 2/15/89
Agency: Department of Public Safety

DPS (Enforcement) Note CS(Res)

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish & Game	Wildlife Conservation	SB 139	Resources Committee

SHORT TITLE OF BILL

Extension of Task Force on Guiding and Game

DEPARTMENT POSITION

Support

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Wayne Regelin	2/3/89	[signature]	2/3/89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Department of Public Safety Department of Commerce & Economic Development	Big game commercial service providers Resident and nonresident hunters using commercial services
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Unknown	Unknown

FISCAL IMPACT: ☒ NONE ☒ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The 1988 Legislature created a task force on guiding and game to recommend changes in the licensing of big game guides and outfitters. After creation of the task force, the Alaska Supreme Court ruled that guides could not be granted exclusive rights to guide in an area. The task force broadened their mission to examine ways to manage the guide/outfitter industry. The task force made numerous recommendations for change in the licensing of commercial users of big game that are reflected in SB 140. The task force did not have adequate time to formulate recommendations for a new management system.

ANALYSIS OF BILL/PROGRAM EFFECTS

Passage of this bill will result in extension of the task force on game and guiding until January 15, 1991. Membership on the task force will remain the same. The task force will devise potential solutions for administering the guide/outfitter industry on state lands and all other lands in Alaska. Solutions will be based on an area management system using existing game management unit boundaries and consideration of the abundance and distribution of big game resources.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

81-CC3 (Rev. 1-CC3)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB139 (RES) (b)
PUBLISH DATE: 2/16/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act extending Task force on guiding and game
Sponsor: Resources
Requestor: Senator Fahrenkamp

Agency Affected: Fish and Game
BRU: Wildlife Conservation
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: _____ Phone: 465-4190
Division: Wildlife Conservation Date: 2/15/89

Approved by Commissioner: _____ Date: 2/15/89
Agency: Fish and Game

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

DF+G (Wildlife) Note for CS (Res)

6-0399E
Utermohle
2/15/89

Original sponsor: Resources Committee

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 113 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act providing for retroactive extension of the termination date of the Task Force on Guiding and Game; increasing the membership of the Task Force on Guiding and Game; authorizing certain agencies to assist the Task Force on Guiding and Game; and providing for an effective date."

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

* Section 1. Section 14(d), ch. 160, SLA 1988, is repealed and re-enacted to read:

(d) The task force terminates on the earlier of

(1) January 15, 1990; or

(2) the date of enactment into law of

(A) a licensing system for hunting guides and other persons who provide services to hunters for the purpose of facilitating the harvest of big game; and

(B) a management system for allocating rights of access to big game to licensed guides.

* Sec. 2. Notwithstanding the qualifications for members of the Task Force on Guiding and Game set out in sec. 14(a), ch. 160, SLA 1988, the members of the task force on January 8, 1989, shall continue to serve until they resign or the task force is terminated.

* Sec. 3. Notwithstanding the number and composition of the Task Force on Guiding and Game set out in sec. 14(a), ch. 160, SLA 1988, the membership of the task force is increased by two additional members appointed by

the governor. Persons appointed to the task force under this section shall have expertise in research and analysis and, if possible, particular knowledge in resource management or allocation systems. Persons appointed to the task force under this section may not have a financial interest in any business involving or related to the commercial taking of game.

* Sec. 4. The Office of the Governor, office of management and budget, division of policy and the legislature's House Research Agency and Senate Advisory Council shall provide information, data, research, analysis, and technical assistance to the task force, as requested by the task force, for the purpose of developing a management system for allocating rights of access to big game to licensed guides.

* Sec. 5. Sections 1 - 4 of this Act are retroactive to January 8, 1989.

* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM February 22, 1989

SUBJECT: Committee amendment to draft CS HB 113(Res)

TO: Representative Curt Menard
Attn: Johanna Munson

FROM: George Utermohle
Legislative Counsel

You have asked how I would have drafted the amendment to the draft CS HB 113(Res) adopted by the House Resources Committee.

I would have drafted the amendment to read as follows:

Page 2, lines 1 - 5, after "governor.":

Delete all material.

Insert:

"Of the two persons appointed to the task force under this section, one person shall have expertise in research and analysis and, if possible, particular knowledge in resource management or allocation systems and may not have a financial interest in a business involving or related to the commercial taking of game and one person shall represent Native village landholders."

Please note that only the form of the amendment is changed in order to preserve clarity and consistency of style. The substance of the amendment would not be changed.

The amendment would look much different if the prohibition against a financial interest in the commercial taking of game also applied to the representative of Native village landholders.

A copy of the amendment actually adopted by the committee is attached for comparison.

If I may be of further assistance, please advise.

GU:mi:kb
I3/086

Attachment

AMENDMENT TO CS HB 113

pg. 2 line 1 : Delete - "Persons appointed"
Add - "The first appointee"

pg. 2 line 3 : Delete - "Persons appointed ~~to~~ to the task force under this section"
Add - "This appointee"

pg. 2 line 5 : Add - "The second appointee to the task force shall be a person who represents Native Village landholders," ~~and must be a Native~~

SB 153

HOUSE COMMITTEE REPORT

(9)
Date Referred: March 22, 1989 FURTHER REFERRALS: FINANCE

Date of Committee Action: 3-23-89

The RESOURCES Committee considered: SB 153

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

RECOMMENDATIONS:
[ ] be replaced with SB 153 [ ] 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)
[ ] fiscal impact _____
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____
[ ] zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
		✓	

Chairman's Signature

HOUSE COMMITTEE REPORT

(5)
Date Referred: March 8, 1989 FURTHER REFERRALS: RESOURCES
FINANCE

Date of Committee Action: 3\21\89

The COMMUNITY & REGIONAL AFFAIRS Committee considered: SB 153

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

RECOMMENDATIONS:
[ ] be replaced with ________ [ ] the same title / [ ] 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)
[ ] fiscal impact ________
[ ] zero fiscal note ________
[ ] zero with analysis ________

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) ________
[ ] zero fiscal note(s) ________
[ ] zero fn/analysis ________

SIGNING DO PASS:
Richard Foster
Cheri Davis
Eileen MacLean

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
[signature]		X	

Eileen P. MacLean
Chairman's signature

Southwest Alaska Municipal Conference

Putting Resources to Work For People

1007 West 3rd Avenue, Suite 201 • Anchorage, Alaska 99501 • (907) 274-7555

RESOLUTION NO. 89-01

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

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

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

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

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

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

PASSED THIS 22nd DAY OF January, 1989.

President

Attest

Alaska State Legislature

House of Representatives
Community & Regional Affairs

TABLE OF CONTENTS

SENATE BILL 153

****

Room 128, Capitol Building, P.O. Box V, Juneau, Alaska 99811 (907) 465-3882 or 465-4833

#1

Sen. Zharoff

BILL SUMMARY OF SB 153

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

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

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

#2

Sen. Zharoff

SECTIONAL ANALYSIS OF SENATE BILL 153

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

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

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

SECTION 4: Provides for an immediate effective date.

#3

STEVE COWPER, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

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

February 14, 1989

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

Dear Senator Zharoff:

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

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

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

Sincerely,

Royce Welton FOR

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

89-48

04-D2LH

		APPROPRIATION ITEMS	APPROPRIATION FUND SOURCES: GENERAL FUND	APPROPRIATION FUND SOURCES: OTHER FUNDS
	ALLOCATIONS			
* * * * * *	* * * * * *			
* * * * * DEPARTMENT OF REVENUE * * * * *				
* * * * * *	* * * * * *			
ALCOHOL BEVERAGE CONTROL BOARD (12 POSITIONS)		788,600	788,600	
SHARED TAXES AND LICENSE FEES		10,786,200	10,786,200	
AMUSEMENT AND GAMING TAX	60,200			
AVIATION FUEL TAX	161,900			
ELECTRIC AND TELEPHONE COOPERATIVE TAX	1,900,000			
LIQUOR LICENSE FEES	908,000			
FISHERIES TAX	7,785,200			
MUNICIPAL BOND BANK AUTHORITY (2 POSITIONS)		299,000		299,000
FY89 INTENT: IT IS THE INTENT OF THE LEGISLATURE THAT				
THE MUNICIPAL BOND BANK CAN COME BEFORE THE LEGISLATIVE				
BUDGET AND AUDIT COMMITTEE FOR ADDITIONAL CONTRACTUAL				
AUTHORITY IF EXISTING FUNDING IS NOT SUFFICIENT FOR				
ISSUING BONDS				
PERMANENT FUND CORPORATION (16 POSITIONS)		7,392,500		7,392,500
ALASKA HOUSING FINANCE CORPORATION (81 POSITIONS)		5,924,100		5,924,100
FY89 INTENT: IT IS THE INTENT OF THE LEGISLATURE THAT				
15 ADDITIONAL POSITIONS AND THE CONTRACTUAL SERVICES				
AUTHORIZED IN FISCAL YEARS 1988 AND 1989 FOR				
ADMINISTRATION OF FORECLOSED PROPERTIES SHOULD BE REVIEW				
ANNUALLY IN RELATION TO THEIR WORKLOAD. THESE POSITIONS				
ARE NOT INTENDED TO BE PERMANENT AS ARLC FORECLOSURES				
AND PROPERTY HOLDINGS DECREASE. IT IS THE INTENT OF THE				

DEPARTMENT OF REVENUE (CONT.)

LEGISLATURE THAT THE NUMBER OF CONTRACTUAL SERVICES ALSO DECREASE AND THE FIELD SUPPORT ENFORCEMENT FTES POSITIONS REVENUE OPERATIONS AUDIT INCOME AND EXCISE TAX-PETROLEUM

ADMINISTRATION

#5

RECEIVED

MEMORANDUM

STATE OF ALASKA

DEPARTMENT OF REVENUE

TO: Nancy Bennett
Director
Administrative Services

DATE: November 1, 1988

FILE NO: 6099I

TELEPHONE NO: 465-2320

THRU:

SUBJECT: FY 89 Raw Fish Supplemental

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

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

cc: Sandra Yadao
Shirley Minnich

STATE OF ALASKA
DEPARTMENT OF REVENUE
INCOME AND EXCISE AUDIT DIVISION

M E M O R A N D U M

TO: Nancy Bennett
Director
Administrative Services

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

DATE: January 13, 1989

SUBJECT: FY 89 Aviation Fuel
Supplemental Request

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

cc: Sandra Yadao
Brenda Vaughn
Shirley Minnick

JH:SEK:lr

fiscal year ending June 30, 1989.

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

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

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

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

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

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

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

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

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

"(c) The department shall prepare an application form for a credit under this section.

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

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

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

Article 3. General Provisions.

Sec. 43.75.130. Refund to local governments. (a) Except as provided in (d) of this section, the commissioner of revenue shall pay

(1) to each unified municipality and to each city located in the unorganized borough, 50 percent of the amount of tax revenue collected in the municipality from taxes levied under this chapter;

(2) to each city located within a borough, 25 percent of the amount of tax revenue collected in the city from taxes levied under this chapter; and

(3) to each borough

(A) 50 percent of the amount of tax revenue collected in the area of the borough outside cities from taxes levied under this chapter; and

(B) 25 percent of the amount of tax revenue collected in cities located within the borough from taxes levied under this chapter.

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

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

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

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

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

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

Chapter 40. Motor Fuel Tax.

Section

10. Tax on transfers or consumption of motor fuel and expenditure of proceeds
30. Refund for nonhighway use
35. Other refunds and credits
50. Refund claim by affidavit
60. Separate invoices
70. Refund warrants
80. Examination of books and records
85. Preservation of books and records
100. Definitions

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

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

Loading or unloading interstate freight in performance of obligation resting upon one other than interstate carrier as interstate commerce as regards local taxation, 10 ALR2d 651.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) The proceeds of the revenue from the tax on all motor fuels, except as provided in (e), (f) and (j) of this section, shall be deposited in a special highway fuel tax account in the state general fund. The legislature may appropriate funds from it for expenditure by the Department of Transportation and Public Facilities directly or as matched with available federal-aid highway money for maintenance of highways, construction of highway projects and ferries included in the program provided for in AS 19.10.150, including approaches, appurtenances and related facilities and acquisition of rights-of-way or easements, and other highway costs including surveys, administration, and related matters. All departments of the state government authorized to spend funds collected from taxes imposed by this chapter shall perform, when feasible, all construction or reconstruction projects by contract

#7

Resolution of the Alaska Municipal League

Resolution No. 89-36

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

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

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

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

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

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

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

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

- RESOLUTIONS OF SUPPORT

RECEIVED FEB 10 1989

Southwest Alaska Municipal Conference
Putting Resources to Work For People
1007 West 3rd Avenue, Suite 201 • Anchorage, Alaska 99501 • (907) 274-7555

RESOLUTION NO. 89-01

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

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

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

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

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

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

PASSED THIS 22nd DAY OF January, 1989.

James M. Selby
President

Mary Ann Weidema
Attest

FY 85 RAW FISH

SHARED REVENUE - CITIES AND BOROUGHS

		TOTAL # AMT POP FY85 SHARING	AMT SHARED	TOTAL # [illegible]
MUA 635	Anchorage Municipality	[illegible]	[illegible]	70,475.03
CBJ 496	Juneau	29 469.22	[illegible]	6,909.32
CIS 599	Sitka	216 [illegible]	[illegible]	93,773.68.
BBB 699	Bristol Bay Borough	1 407 777.62.	999 [illegible]	414,002.32
FNS 462	North Star Borough	412 20	[illegible]	174.06.
HAB 944	Haines Borough	[illegible]	102 [illegible]	42 952.39
KPB 465	Kenai Peninsula Borough	1 474 562.05	1,037,744 93	434,410.72
KGB 466	Ketchikan Gateway Borough	159 154.79	107 [illegible]	45 349.72
KIB 128	Kodiak Island Borough	1, 149 261.79	809 [illegible]	340,474 02
MAB 586	Matanuska-Susitna Borough	93.34	[illegible]	24.38
NSB 460	North Slope Borough			
NAB 168	NORTHWEST ARCTIC BOROUGH	10.36	7.29	3.07
AEB 138	ALEUTIANS EAST BOROUGH	9,523.58	6,[illegible]01	3,344.57
	TOTAL BOROUGHS	4,920,136.14	3,462,499.57	1,457,636.71
CIA 323	Akhiok			
CIA 322	Akiachak			
CIA 321	Akiak			
CIA 072	Akutan	376,494.36	244,269.54	132,224.82
CIA 693	Alakanuk			
CAL 596	Aleknagik			
CAL 597	Allakaket			
CIA 143	Ambler			
CAP 063	Anaktuvok Pass			
CIA 275	Anderson			
	Subtotal this page	[illegible]	[illegible]	132,224.82

SHARED REVENUE - CITIES AND BOROUGHS

CIA 461	Angoon			
CIA 062	Aniak	236.46	166.44	70.02
CIA 057	Anvik	904.08	636.38	267.70
CIA 565	Atmautluak			
COA 027	Atqasuk			
CIB 781	Barrow			
CIB 819	Bethel	30,055.48	21,156.05	8,999.43
CBM 320	Brevig Mission			
CBU 595	Buckland			
CIC 132	Chauthbaluk			
CIC 319	Chefornak			
CIC 202	Chevak			
COC 272	Chignik	282,144.27	202,824.77	85,319.50
CCP 269	Clark's Point	44,117.23	31,054.65	13,063.33
CCB 210	Cold Bay			
CIC 801	Cordova	810,732.13	570,574.35	240,157.78
CIC 492	Craig			
CID 317	Deering			
CDJ 475	Delta Junction			
CID 836	Dillingham	1,470.69	1,035.22	435.47
CID 072	Diomede			
CEA 594	Eagle			
CIE 061	Eek			
CIE 316	Ekwok			
CIE 593	Elim			

Subtotal this page 1,175,661.11 827,447.96 348,213.15

SHARED REVENUE - CITIES AND BOROUGHS

CIE 322	Emmonak			
CIF 635	Fairbanks	7.19	[illegible]	[illegible]
CFY 463	Fort Yukon			
CIF 201	Fortuna Ledge	9,411.44	6,624.71	2,786.73
CIG 271	Galena	1,633.87	1,149.26	483.61
CIG 231	Gambell			
CIG 315	Golovin			
CGB 110	Goodnews Bay			
CIG 200	Grayling			
CIH 871	Haines	297.71	209.56	88.15
CHC 590	Holy Cross			
CIH 724	Homer	169,922.24	119,509.26	50,412.98
CIH 254	Hoonah	47,310.71	33,308.00	14,002.71
CHB 589	Hooper Bay			
CIH 520	Houston			
CIH 314	Hughes			
CIH 852	Huslia			
CIH 230	Hydaburg			
CIK 111	Kachemak			
CIK 464	Kake	24,124.93	16,999.99	7,124.94
CIK 313	Kaktovik			
CIK 197	Kaltag			
CIK 927	Kasaan			
COK 301	Kasigluk			
CIK 891	Kenai	[illegible]	[illegible]	107,441.25

Subtotal this page [illegible] 462,204.03 182,373.09

SHARED REVENUE - CITIES AND BOROUGHS

CIK 709	Ketchikan	135,453.22	98,306.52	37,146.70
CIK 060	Kiana			
CKC 059	King Cove	574,007.31	372,415.94	201,591.3?
CIK 196	Kivalina			
CIK 229	Klawock	9,266.04	6,522.37	2,743.67
CIK 312	Kobuk			
CIK 916	Kodiak	580,678.22	619,909.40	260,768.9?
CIK 311	Kotlik			
CIK 679	Kotzebue	10.36	7.29	3.07
CIK 195	Kovuk			
CIK 228	Kovukuk			
CIK 088	Kupreanof			
CIK 133	Kwethluk			
CLB 218	Larsen Bay	5,042.56	3,449.46	1,593.10
CIL 199	Lower Kalskag			
CIM 310	Manokotak			
CMC 599	McGrath			
CIM 109	Mekoryuk	62.68	44.12	18.56
CMV 111	Mountain Village	26,827.35	18,883.77	7,943.58
CIN 309	Napakiak			
CIN 308	Napaskiak			
CIN 291	Nenana	836.00	588.46	247.54
CNS 226	New Stuyahok			
CIN 521	Newhalen			
CIN 194	Newtok			
	Subtotal this page	[illegible]	[illegible]	512,056.?

SHARED REVENUE - CITIES AND BOROUGHS

CIN 853	Nightmute			
CIN 085	Nikolai			
CIN 936	Nome			
CIN 174	Nondalton			
CIN 227	Noorvik			
CNP 676	North Pole			
CNU 598	Nuiqsut			
CIN 314	Nunapitchuk			
NCC 026	Nulato	545.51	393.79	151.72
COH 108	Old Harbor			
CIO 469	Ouzinkie			
CIP 644	Palmer			
CIP 470	Pelican	124,091.58	87,341.02	36,750.56
CIP 181	Petersburg	566,134.03	392,401.74	167,732.29
CIP 194	Pilot Station			
CIP 307	Platinum			
CPH 224	Point Hope			
CPA 471	Port Alexander			
CPH 306	Port Heiden			
CPL 107	Port Lions			
CIO 193	Quinhagak			
CIR 225	Ruby			
CRM 305	Russian Mission			
CSG 054	Saint George			
CSM 472	Saint Marys			
	Subtotal this page	690,741.12	496,136.74	204,604.38

SHARED REVENUE - CITIES AND BOROUGHS

CIS 192	Saint Michael	3,111.57	2,190.23	921.34
CSP 331	Saint Paul	144,729.91	101,917.52	42,812.39
CSP 978	Sand Point	167,222.23	109,529.08	57,693.15
CIS 106	Savoonga			
CIS 583	Saxman			
CIS 191	Scammon Bay			
CIS 058	Selawik			
CIS 624	Seldovia	12,500.00	8,798.75	3,701.25
COS 266	Seward	320,692.30	155,345.21	165,346.09
CIS 190	Shageluk			
CIS 189	Shaktoolik			
CSP 522	Sheldon Point			
CIS 105	Shishmaref			
CIS 188	Shungnak			
CIS 396	Skagway			
CIS 564	Soldotna			
CIS 187	Stebbins			
CIT 855	Tanana			
CIT 473	Teller			
CTS 272	Tenakee Springs	147.92	104.16	43.92
CTB 301	Thorne Bay			
CIT 854	Togiak	73,513.77	57,522.56	15,991.21
CTB 223	Toksook Bay	141.12	89.33	51.79
CIT 305	Tuluksak			
CIT 186	Tununak			
	Subtotal this page	401,331.32	273,513.31	127,817.51

SHARED REVENUE - CITIES AND BOROUGHS

CIU 258	Unalakleet			
CIU 215	Unalaska	944,291.94	664,687.10	279,604.8[illegible]
CIU 198	Upper Kalskag			
CIV 401	Valdez	165,[illegible]	116,418.01	49,971.[illegible]
CIW 222	Wainwright			
CIW 185	Wales			
CIW 159	Wasilla			
CWM 304	White Mountain			
CIW 474	Whittier	24,527.46	17,264.88	7,262.58
CIW 559	Wrangell	[illegible]	26,789.65	11,269.24
CI[illegible] 479	Yakutat	134,217.41	94,475.63	39,741.78

CITIES Subtotal -	Page 7	1,306,495.68	919,635.27	38[illegible],[illegible]50.41
	Page 6	601,921.38	414,513.80	187,407.58
	Page 5	690,761.12	496,126.74	[illegible]4,634.38
	Page 4	1,622,193.74	1,110,127.33	512,066.41
	Page 3	615,576.12	423,204.03	192,372.09
	Page 2	1,175,661.11	827,447.76	348,213.35
	Page 1	376,490.[illegible]	244,269.5[illegible]	132,224.[illegible]
Total Cities		[illegible]	[illegible]	[illegible]
Total Boroughs		4,9[illegible]	[illegible] 50	[illegible]
GRAND TOTAL		11,[illegible] 65	7,[illegible] 07	[illegible] 58

[redacted]

SB

176

HOUSE COMMITTEE REPORT

(9)
Date Referred: April 12, 1989 FURTHER REFERRALS:

Date of Committee Action: 4-27-89

The RESOURCES Committee considered: CSSB 176(FIN)

CS FOR SENATE BILL NO. 176 (Finance)
[BIG GAME HARVEST PERMITS AS PRIZES]
"An Act relating to auctions and raffles for bison harvest permits; and providing for an effective date."

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
[X] fiscal note(s) F+G 4-6-89
[X] zero fiscal note(s) Pub. Safety 3-21-89
[ ] zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend

Chairman's Signature

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 176
PUBLISH DATE: 176

FISCAL NOTE

REQUEST:

Revision Date: _____
Agency Affected: _____
Title: An Act Relating to the Use of Big Game Harvest Permits as Prizes for Fundraising.
BRU: Wildlife Conservation
Sponsor: Senator Frank
Components: _____
Requestor: Senate Resources Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE	0	$25.0	$30.0	$35.0	$35.0	$35.0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary) Passage of SB 176 would result in no additional expenditures by the department. There is a potential, however, for adding considerable funds to the Fish and Game Fund for subsequent expenditures by the Division of Wildlife Conservation.

Prepared by: Donald E. McKnight
Phone: 465-4190
Division: Wildlife Conservation
Date: April 6, 1989

Approved by Commissioner: Warren Olson, Asst. Commissioner
Date: April 6, 1989
Agency: Department of Fish and Game

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