

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6583 SENATE RESOURCES

987

GATEWAY
HOMEOWNERS ASSOCIATION
2410 EAGLE RIVER ROAD
EAGLE RIVER, AK 99577
907-694-6946

file

2/6/90

Representatives Curt Menard and Cliff Davidson, Co-Chairmen
House Resources Committee
Alaska State Legislature
P.O. Box V (M.C. 3100)
Juneau, Alaska 99811

Dear Representative Menard and Davidson:

I am writing on behalf of the Gateway Homeowners Association, to request your support of House Bill 450. This bill would authorize the Department of Natural Resources to issue easements or rights-of-way across state parks or recreation facilities for access to private property. At the present time, the Department has no such authority.

Members of the Gateway Homeowners Association own homes and property on an old homestead at the end of Eagle River Road within Chugach State Park. The homestead and many of the homes in our area predate the establishment of the park.

In 1980, the State of Alaska purchased a 5 acre tract of land which was part of the original homestead. The old Paradise Haven Lodge (now the Eagle River Visitor Center) was located on this land as well as the original homestead access road which members of our Association have used for access to their property for over 20 years. Unfortunately, the deed by which Chugach State Park acquired this property did not reserve an easement protecting the legal rights of access that members of our Association previously enjoyed.

We now are faced with a situation where it is nearly impossible to refinance and/or sell our properties because we do not have legal access. In fact, the Alaska Housing Finance Corporation recently refused to finance a home in our area.

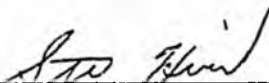
In an attempt to cure our legal access problems, we applied for a right-of-way with the Division of Land and Water Management. Our application was rejected on the grounds that the DNR did not have

authority to convey property rights on park property. Chugach State Park, also lacking this authority, can only issue us a non-compatible use permit. Such a permit is a poor solution to our problem.

The only alternative we (and others similarly so situated) have to gain legal access to our homes and property is for the legislature to authorize the Department of Natural Resources to grant easements and rights-of-way across state parks or recreational facilities. This can be accomplished by the passage of House Bill 450.

We would very much appreciate your assistance and support. Please feel free to contact me if you would like any additional information regarding this matter.

Sincerely,



Stu Hirsh, President

copies: Sam Cotton
George G. Jacko, Jr.
Mike Davis
Walt Furnace
Richard Foster
Bill Hudson
Mike Navarre
Bert M. Sharp

HB

452

6-0829J
Cook
3/27/90

Original sponsor(s): Rules/Legislative Council

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 452 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the office of the ombudsman and
7 to the powers and duties of the ombudsman."

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

9 * Section 1. AS 24.55.040(b) is amended to read:

10 (b) If the term of an ombudsman expires without the appointment
11 of a successor under this chapter, the incumbent ombudsman may con-
12 tinue in office until a successor is appointed. If the ombudsman
13 dies, resigns, becomes ineligible to serve, or is removed or suspended
14 from office, the person appointed as [DEPUTY OMBUDSMAN BECOMES] acting
15 ombudsman under AS 24.55.070(a) serves until a new ombudsman is ap-
16 pointed for a full term.

17 * Sec. 2. AS 24.55.070(a) is amended to read:

18 (a) The ombudsman shall [MAY] appoint a person to serve as
19 acting [DEPUTY] ombudsman in the absence of the ombudsman. The om-
20 budsman shall also appoint assistants and clerical personnel necessary
21 to carry out the provisions of this chapter.

22 * Sec. 3. AS 24.55.070(b) is amended to read:

23 (b) The ombudsman may delegate to the [DEPUTY OR] assistants any
24 of the ombudsman's duties except those specified in AS 24.55.190 and
25 24.55.200, however, during the ombudsman's absence from the principal
26 business offices, the ombudsman may delegate the duties specified in
27 AS 24.55.190 and 24.55.200 to the acting ombudsman [DEPUTY] for the
28 duration of the absence. The duties specified in AS 24.55.190 and
29 24.55.200 shall be performed by the acting [DEPUTY] ombudsman when

1 serving [AS ACTING OMBUDSMAN] under AS 24.55.040(b).

2 * Sec. 4. AS 24.55.080(a) is repealed and reenacted to read:

3 (a) Subject to restrictions and limitations imposed by the
4 executive director of the Legislative Affairs Agency, the administra-
5 tive facilities and services of the Legislative Affairs Agency, in-
6 cluding computer, data processing, and teleconference facilities, may
7 be made available to the ombudsman to be used in the management of the
8 office of the ombudsman and to carry out the purposes of this chapter.

9 * Sec. 5. AS 24.55.080(c) is amended to read:

10 (c) The ombudsman shall submit a budget for each fiscal year to
11 the Alaska Legislative Council [FINANCE COMMITTEES OF THE LEGISLATURE]
12 and the council shall annually submit an estimated budget to the
13 governor for information purposes in the preparation of the executive
14 budget. After reviewing and approving, with or without modifications,
15 the budget submitted by the ombudsman, the council shall submit the
16 approved budget to the finance committees of the legislature.

17 * Sec. 6. AS 24.55.090 is amended to read:

18 Sec. 24.55.090. PROCEDURE. (a) The ombudsman shall, by regula-
19 tions adopted under the Administrative Procedure Act (AS 44.62),
20 establish procedures for receiving and processing complaints, conduct-
21 ing investigations, [AND] reporting findings, and ensuring that confi-
22 dential information obtained by the ombudsman in the course of an
23 investigation will not be improperly disclosed.

24 (b) The [HOWEVER, THE] ombudsman may not charge fees for the
25 submission or investigation of complaints.

26 * Sec. 7. AS 24.55.130 is amended by adding a new subsection to read:

27 (c) Notice given under this section may be oral but the om-
28 budsman shall state in writing the reasons for not investigating a
29 complaint if requested by the complainant.

1 * Sec. 8. AS 24.55.140 is amended to read:

2 Sec. 24.55.140. NOTICE TO THE AGENCY. If the ombudsman decides
3 to investigate a complaint, the ombudsman shall notify the agency of
4 the intention to investigate unless the ombudsman believes that ad-
5 vance notice will unduly hinder the investigation or make it ineffec-
6 tual. Notice given under this section may be oral or written, at the
7 discretion of the ombudsman.

8 * Sec. 9. AS 24.55.160 is amended to read:

9 Sec. 24.55.160. INVESTIGATION PROCEDURES. (a) In an inves-
10 tigation, the ombudsman may

11 (1) make inquiries and obtain information considered neces-
12 sary;

13 (2) enter without notice to inspect the premises of an
14 agency, but only when agency personnel are present; [AND]

15 (3) hold private hearings; and

16 (4) notwithstanding other provisions of law, have access at
17 all times to records of every state agency, including confidential
18 records, except sealed court records, production of which may only be
19 compelled by subpoena, and except for records of active criminal
20 investigations and records that could lead to the identity of
21 confidential police informants.

22 (b) The ombudsman shall maintain confidentiality with respect to
23 all matters and the identities of the complainants or witnesses coming
24 before the ombudsman except insofar as disclosures may be necessary to
25 enable the ombudsman to carry out duties and to support recommenda-
26 tions. However, the ombudsman may not disclose a confidential record
27 obtained from an agency.

28 * Sec. 10. AS 24.55.170(a) is amended to read:

29 (a) Subject to the privileges that [WHICH] witnesses have in the

1 courts of this state, the ombudsman may compel by subpoena, at a
2 specified time and place the

3 (1) [COMPEL BY SUBPOENA, AT A SPECIFIED TIME AND PLACE,
4 THE] appearance and sworn testimony of a person who the ombudsman
5 reasonably believes may be able to give information relating to a
6 matter under investigation; and

7 (2) production by [COMPEL] a person of a record or object
8 that [, BY SUBPOENA, TO PRODUCE DOCUMENTS, PAPERS, OR OBJECTS WHICH]
9 the ombudsman reasonably believes may relate to the matter under
10 investigation.

11 * Sec. 11. AS 24.55.180 is amended to read:

12 Sec. 24.55.180. CONSULTATION [WITH AGENCY]. Before giving an
13 opinion or recommendation that [WHICH] is critical of an agency or
14 person, the ombudsman shall consult with that agency or person. The
15 ombudsman may make a preliminary opinion or recommendation available
16 to the agency or person for review, but the preliminary opinion or
17 recommendation is confidential and may not be disclosed to the public
18 by the agency or person.

19 * Sec. 12. AS 24.55.190 is amended by adding a new subsection to read:

20 (c) The report provided under (a) of this section is confiden-
21 tial and may not be disclosed to the public by the agency. The om-
22 budsman may disclose the report under AS 24.55.200 only after provid-
23 ing notice that the investigation has been concluded

24 (1) to the agency; and

25 (2) if the investigation was conducted in response to a
26 complaint, to the complainant under AS 24.55.210.

27 * Sec. 13. AS 24.55.310 is amended to read:

28 Sec. 24.55.310. CONFLICT OF INTEREST. The ombudsman, the acting
29 [DEPUTY] ombudsman and their professional staff are subject to AS 39.-

1 50 (conflict of interest).

2 * Sec. 14. AS 24.55.320 is amended to read:

3 Sec. 24.55.320. MUNICIPALITIES AND SCHOOL DISTRICTS. A
4 municipality or school district may [BY ORDINANCE] elect to become
5 subject to the jurisdiction of the ombudsman appointed under this
6 chapter. If a municipality or school district so elects, it shall
7 notify the ombudsman of that election and shall thereafter be con-
8 sidered an agency for the purposes of this chapter. If a municipality
9 or school district subjects itself to the jurisdiction of the ombuds-
10 man, the municipality or school district shall pay its pro rata share
11 of the cost of the operation of the office of the ombudsman based on
12 the number of complaints or the case load emanating from that munic-
13 ipality or school district, as prescribed by the ombudsman. If a
14 municipality or school district elects to remove itself from the
15 jurisdiction of the ombudsman, it [SHALL DO SO BY ORDINANCE,] shall
16 notify the ombudsman of that election and shall not thereafter be
17 considered an agency for the purposes of this chapter. A municipality
18 that elects to become subject to the jurisdiction of the ombudsman or
19 to remove itself from that jurisdiction must do so by ordinance. A
20 school district that elects to become subject to the jurisdiction of
21 the ombudsman or to remove itself from that jurisdiction must do so by
22 resolution.

23 * Sec. 15. AS 24.55.330 is amended by adding a new paragraph to read:

24 (4) "record" means a document, paper, memorandum, book,
25 letter, file, drawing, map, plat, photo, photographic file, motion
26 picture, film, microfilm, microphotograph, exhibit, magnetic or paper
27 tape, punched card, or other item developed or received under law or
28 in connection with the transaction of official business, but does not
29 include an attorney's work product, material that is confidential as a

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privileged communication between an attorney and client under rules adopted by the supreme court, or confidential oil and gas geological and geophysical data.

MEMORANDUM

TO: Senator Bettye Fahrenkamp
FROM: Staff *jh*
DATE: March 21, 1990

SUMMARY OF CHANGES IN SENATE RESOURCES CS HB 452

<u>Page</u>	<u>Lines</u>	<u>Statute Reference</u>	<u>Summary of Changes</u>
2	9-17	24.55.080(c)	This change was requested by Senator Frank. It brings the Ombudsman's budget under the purview of the Legislative Council for purposes of review and submission to the Finance Committee.
3	26-27	24.55.160(b)	This change was proposed by the Ombudsman, to clarify in statute that confidential information received by the Ombudsman in the course of an investigation may not be disclosed by the Ombudsman.
5	29	through	This change was proposed by the Ombudsman as the result of a request by the Public Defender that items that would be considered falling under the attorney-client privilege be excluded from the purview of the Ombudsman.
6	2	24.55.330	
6	2-3	24.55.330	In order to ensure the highest possible confidentiality of oil and gas geophysical and geological data, this is here excluded from the purview of the Ombudsman.



State of Alaska
ombudsman

Duncan C. Fowler

Reply to:

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Anchorage, AK 99510-2636
(907) 563-3673
(800) 478-2624

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Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970

P.O. Box 74358
Fairbanks, AK 99707
(907) 452-4001
(800) 478-3257

March 9, 1990

Senator Steve Frank
Senate Finance Committee
Post Office Box V
Juneau, Alaska 99811-3100

RE: CSHB 452(SA)am

Dear Senator *DF* Frank:

You asked my opinion about amending the Ombudsman Act to require my budget submission be given to the Legislative Council each year. Current law requires submission be directly to the House and Senate Finance Committees for review. I not only see advantages to your suggestion but support it.

I surveyed other states with legislative ombudsman to learn their practice. Nebraska and Iowa ombudsman do submit their budgets to bodies similar to our council. Hawaii does not have a council but is establishing one in response to recommendations by the National Council on State Legislatures. The Hawaii Ombudsman will have her budget reviewed by the new body.

Personally, I would enjoy the opportunity to work more closely with the legislative leadership. I believe it would benefit both this office and the work of the legislature if more members of the legislature understood and could support the work we do. This has not always been the case.

I would be happy to answer any additional questions you may have regarding the impact of your amendment on our operation. We both know it is important this office remain a nonpartisan and independent agency. This reputation allows our work to be viewed as credible by both the public and those agencies we investigate.

Sincerely,

Duncan C. Fowler
Ombudsman

DCF:pjc



State of Alaska
ombudsman

Duncan C. Fowler

March 26, 1990

Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee
Post Office Box V
Juneau, Alaska 99811-3100

RE: CSHB-452(SA) am,
Proposed Amendments

Dear Senator Fahrenkamp:

During the past two weeks several questions have been raised about a provision in HB 452 intended to guarantee ombudsman access to confidential documents. It is the intent of this legislation to clarify that access issue. It is important that the ombudsman maintain the authority needed to fulfill its responsibility as the legislatures independent investigating agency to review citizen complaints about government. Access to information is a key to that ability.

Over the past 15 years, the issue of ombudsman access to various kinds of information has been challenged many times. In fact, it is the single most common reason Attorney General (AG) opinions have been issued about the ombudsman. It is curious that the agency responsible for providing legal advice to the executive branch is also in the position of determining which documents the legislatures ombudsman may review thru its opinions. But, with few exceptions, AG opinions have supported our access. AG opinions did cause this office to implement tight regulations relating to ombudsman handling of confidential information. This has resulted in access to confidential personnel and child protection files. Currently, two opinions of this nature are pending completion by the AG's office.

Thru out the world, ombudsman offices have been given wide sweeping investigative authority. It has been the intent of their legislative bodies that the ombudsman should be a powerful fact finder but they have typically balanced these powers with two common themes. First although ombudsman offices have subpoena power and access to confidential information and documents, *they may not release the contents of those confidential documents or information to those not authorized by law.* Second, although the ombudsman has great investigative power, it may only *recommend* changes to government practices. It can not force an agency to implement those recommendations. A program manager must be convinced that an ombudsman recommendation will improve the fairness or operation of an agency before implementing it. That assures that an over zealous ombudsman could not force an agency to implement an inappropriate or illegal recommendation.

There is always concern that those with access to confidential data can abuse that privilege. Existing state criminal law, AS 11.56.860 (attached), provides for harsh penalties

Reply to:

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(800) 478-3257

March 26, 1990

to a "public servant" who misuses that information *even after leaving their office*. They are liable for a \$5,000 fine and 1 year in jail. Additionally, ombudsman staff are exempt employees. Misuse of confidential information would be considered a serious violation of office policy and violations would result in termination. Should the appointed ombudsman violate this law, the legislature has the power in AS 24.55.050 to remove that person from office through a roll call vote for misconduct.

AMENDMENTS

Two AMENDMENTS are offered to further allay concerns about this offices' handling of confidential information. The first is offered to make it clear in the Alaska Ombudsman Act that the ombudsman is not a source for obtaining confidential information it obtained from agencies. This amendment, essentially adds a sentence to AS 24.55.160(b). It would read:

"(b) The ombudsman shall maintain confidentiality with respect to all matters and the identities of the complainants or witnesses coming before the ombudsman except insofar as disclosures may be necessary to enable the ombudsman to carry out duties and to support recommendations. However, the ombudsman may not disclose a confidential record obtained from an agency."

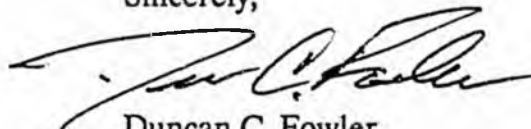
John Salemi, Alaska's Public Defender was concerned the proposed bill would let the ombudsman review materials which could potentially place defense attorneys in violation of the Rules of Court relating to the Lawyer-Client Privilege. We have agreed the following language added to Section 14 of this bill would resolve that problem:

Page 5 line 14, after the word "product" add "or material privileged under court rule relating to the lawyer-client privilege."

This language would allow defense attorneys such as those in the Public Defender's office or Office of Public Advocacy to protect records they believed were covered under the Alaska Rules of Court. Additionally, in the unlikely event a dispute ever arose regarding a particular file or record, the court could quickly determine if the record met the definition as set out by the Alaska Rules of Court.

I will be calling your office before the meeting in case you have questions about this bill. I am anxious to work with you and the committee to assist the passage of this bill. I would appreciate your support of what I believe to be important improvements to Alaska's Ombudsman Act.

Sincerely,



Duncan C. Fowler
Ombudsman

DCF:pjc
Enclosure

Article 6. Abuse of Public Office.

Section

850. Official misconduct

860. Misuse of confidential information

Collateral references. — 63 Am. Jur. 2d, Public Officers and Employees, §§ 346-359.

67 C.J.S., Officers, §§ 120-126, 255-263.

Infamous crime or one involving moral turpitude constituting disqualification to hold public office, 52 ALR2d 1314.

Official oppression, what constitutes offense of, 33 ALR2d 1007.

Personal liability of policeman, sheriff, or similar peace officer or his bond, for injury suffered as a result of failure to enforce law or arrest law breaker, 41 ALR3d 700.

Removal of public officer for misconduct during previous term, 42 ALR3d 691.

Validity and construction of statute authorizing grand jury to submit report concerning public servant's noncriminal misconduct, 63 ALR3d 586.

Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 ALR4th 614.

Sec. 11.56.850. Official misconduct. (a) A public servant commits the crime of official misconduct if, with intent to obtain a benefit or to injure or deprive another person of a benefit, the public servant

(1) performs an act relating to the public servant's office but constituting an unauthorized exercise of the public servant's official functions, knowing that that act is unauthorized; or

(2) knowingly refrains from performing a duty which is imposed upon the public servant by law or is clearly inherent in the nature of the public servant's office.

(b) Official misconduct is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Sec. 11.56.860. Misuse of confidential information. (a) A person who is or has been a public servant commits the crime of misuse of confidential information if the person

(1) learns confidential information through employment as a public servant; and

(2) while in office or after leaving office, uses the confidential information for personal gain or in a manner not connected with the performance of official duties other than by giving sworn testimony or evidence in a legal proceeding in conformity with a court order.

(b) As used in this section, "confidential information" means information which has been classified confidential by law.

(c) Misuse of confidential information is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Section

900. Defini

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A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 452 (SA) am

Page 2, line 29:

Delete "AS 24.55.160(a)"

Insert "AS 24.55.160"

Page 3, line 1, before "(a)":

Insert "Sec. 24.55.160. INVESTIGATION PROCEDURES."

Page 3, after line 12:

Insert

"(b) The ombudsman shall maintain confidentiality with respect to all matters and the identities of the complainants or witnesses coming before the ombudsman except insofar as disclosures may be necessary to enable the ombudsman to carry out duties and to support recommendations. However, the ombudsman may not disclose a confidential record obtained from an agency."

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 452 (SA) am

Page 5, line 14, after "product":

Insert "or material that is confidential as a privileged communication between an attorney and client under rules adopted by the supreme court"

April 28, 1990

Honorable Bettye Fahrenkamp
Alaska State Legislature
P.O. Box V (MS3100)
Juneau, Alaska 99801

Re; HB 450 Sam Cotten re: easements State Parks
Proposed additional language (d) AS 41.21.020

Dear Senator Fahrenkamp,

Thank you and your committee for your interest in our circumstances and litigation with the State concerning an easement through our Rabbit Creek property located within the boundaries of the Chugach State Park.

It is our understanding that you were shocked to learn that the State would bring such an action against a private citizen. We hasten to assure you that our interest in the proposed addition to the above bill was that of public concern and not a special interest.

The litigation has been in progress now for over a year and a half and is currently pending a trial date. Our costs to defend this clearly unconstitutional attempt to obtain property without compensation has cost us over \$100,000 in attorney fees and months of our own full time efforts in research.

We have been made aware that the State intends this to be a test case to determine if the State can acquire property for public use by threat of litigation or in actuality through the courts, by various theories of adverse possession (without compensation).

This is clearly a dangerous precedent for all property owners near, bordering or within State lands. This could apply to large Native holdings as well as the little 5 acre tract that has been in private ownership for 30, 40 or more years!

The State has sued us, under not one, but every known theory of adverse possession to obtain our property except the constitutionally correct method of eminent domain. This "shotgun" approach, to date, has been permitted by the court, requiring us to research back in detail some 30 years of the property history.

This has resulted in an expensive and complex litigation of very simple facts at issue. Regardless of an outcome favorable to the state as to adverse possession, they

will still face the final determination of a public taking without compensation as being constitutional and a very limited use of the property contrary to the needs and compatibility of Park use.

This will create further expenses for the State and damages to us in a continued cloud of our title which makes our investment unmarketable.

We are concerned something must be done by the legislature to minimize future conflicts between the State and private owners that result in expensive and frustrating litigation such as we are experiencing.

We are no match for the States' unlimited power and financial resources regardless of the merits. Little guy like us can be defeated by the sheer financial burden of defending such litigation. Our case is only one small example of the problem. There are similar horror stories past and present.

We negotiated for four and one half years to effect a trade with the state. Expenses of over \$125,000 were incurred in attorney fees alone, only to discover at the time of the final contract, the State had made a deal with Rogners' Eagle River Ski Resort Project for one of the same parcels offered and accepted by us months before Rogners Proposal was even submitted!

Mr. Neil Johansen was very misleading in his testimony on the proposed additional language. He apparently stated the proposed language would be special interest to our benefit only, which is not the case. I also understand he stated he was going to purchase the easement implying that such arrangement were forthcoming which is not true.

The loss of a portion of the property for the easement he desires would destroy the value of the entire 160 acre parcel to the highest and best use, and therefore is not a satisfactory solution for us.

The entire parcel should be purchased and included as park for public enjoyment. This has always been Neil Johansens position. According to him, he has been unable to accomplish this through his budget system. The unique qualities of the parcel with numerous beautiful waterfalls, which are not found elsewhere in proximity of Anchorage, would be a great asset to the Chugach Park for Alaskans and tourists alike.

Senator, you and your committee expressed a desire to resolve the situation administratively. There is several

possibilities, of which I am sure you are already aware, that could be pursued if there is interest.

One could be legislative action and appropriation for an outright purchase and inclusion as park. This public desire has been well demonstrated and expressed.

Another could be the existing authority of the DNR Commissioner to make such a purchase on behalf of the Park. An appropriation would be required, and could be so designated for the specific purpose. Action by both the Commissioner and an appropriation this session is not unrealistic and would be necessary under the circumstances.

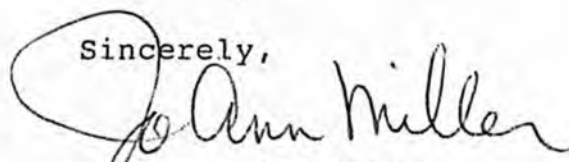
Perhaps the most expedient and simple solution and within the authority of the Department of Law, would be an out of court settlement. As you know, such settlement by the State would not require an immediate legislative appropriation.

Direct contact with Doug Baily as to this solution might be of benefit to both the State and ourselves to negate this ridiculous ongoing farce which merely keeps adding expense and frustration for all concerned. The litigation outcome will not accomplish acquisition of the property as desired by both the Park Department and the public.

In any event, even if one of these solutions were effected now to assist us, it would not resolve the possibilities of this happening to someone else. We therefore urge and implore you to consider legislation in the future for public protection.

We can not begin to express our appreciation for your interest, concern and willingness to assist in this matter. Resolution of this situation to a satisfactory conclusion at this time would be a great service to the State, public and ourselves. We thank you for your efforts.

Sincerely,



Jo Ann & Bob Miller

P.O. Box 220770
Anchorage, Alaska
99522

(907) 783 2874

Encl:

CC: Honorable Steve Cowper; Governor
Edgar Paul Boyko, Esq.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

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

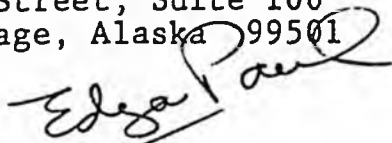
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BOYKO, BREEZE & FLANSBURG

September 25, 1989

Edgar Paul Boyko, Esq.
Boyko, Breeze, and Flansburg
840 K Street, Suite 100
Anchorage, Alaska 99501



Re: Joanne Miller

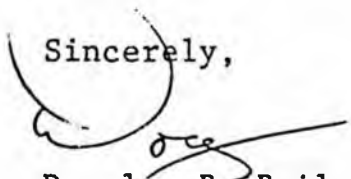
Dear Mr. Boyko:

I have had two letters during recent weeks from our friend and your client, Joanne Miller, relating to her difficulties on her property above Rabbit Creek. Since the matter is in litigation, I have elected to reply to you.

I have watched the developments of the saga of the Miller property in the version reported by the newspapers for some years. While I'm sure the matter of the litigation is troubling to them, as it would to be anyone, I am most concerned with her suggestions of inappropriate conduct by lawyers working for the state. In the event that you concur with Joanne's evaluation, I would appreciate your letting me know the particulars involved. However, prior to making an independent inquiry, I would prefer to have a lawyers analysis of the problem as one step removed from the view of the litigant.

I would be pleased to discuss this matter and other matters involving the Department of Law in which you have recently indicated an interest at such time as our visits to Anchorage next coincide.

Sincerely,



Douglas B. Baily
Attorney General

BOYKO, BREEZE & FLANSBURG

LAW OFFICES

EDGAR PAUL BOYKO
ROBERT A. BREEZE
RONALD D. FLANSBURG
ROBERT J. BRECKBERG

OF COUNSEL:
JOHN W. BREEZE
M. J. EIRO
JULIUS J. JOHNSON
HUGH S. DUDY

November 15, 1989

Honorable Douglas B. Baily
Attorney General
P.O. Box K-State Capitol
Juneau, AK 99811-0300

Re: Jo Ann Miller
Case No. 3AN88-10139 Civil

PERSONAL & CONFIDENTIAL

Dear General Doug:

This letter is in response to your letter of September 25, regarding the above-referenced case.

I do appreciate very much your courtesy in contacting me about these communications. I am, moreover, somewhat hesitant to address the matter, since my knowledge of it is almost entirely based on information received from my associate, Robert Breckberg and from the Millers. I have carefully timed my response so as to make it after oral argument in the case on pending summary judgment motions, but before any rulings thereon, since I wanted to give Assistant Attorney General Ken Powers, the principal representative of the Department of Law in this litigation, every reasonable opportunity to clear up what we perceive to have been the state's mishandling of the Aldrich matter discussed in detail below. I was also quite concerned about the facts set forth in Mrs. Miller's letters, alleging inappropriate conduct by members of the department; and although I had no advance notice of her direct communication with you, I have since looked into the matter and have come to agree, at least tentatively, with the various points raised in her two letters.

It should be noted, that the Millers have performed extensive personal labor in the preparation of this case, acting as de facto investigators or paralegals, to help keep their costs in this complex and expensive litigation as low as possible, so they are far more aware of the details of the case than most clients

Honorable Douglas B. Baily
November 15, 1989
page 2

would be.

After extensive discovery and full scale litigation for just over one year, several facts stand out:

First, the state's claimed reason behind the filing of this lawsuit is inconsistent with the facts developed through discovery. Thus, for instance, representatives of the State claimed (in newspaper accounts) that the suit was brought because of a report of "gun play" having erupted in a dispute over the contested right-of-way. Discovery revealed that the decision to sue had been made months prior to the date on which this incident is alleged to have happened. Incidentally, although there was supposed to have been an investigation by State Troopers, no charges of any kind were brought arising out of the alleged gun incident, which the Millers categorically deny ever took place. The state also has claimed that it would become immediately aware of any on-site developments in the Rabbit Creek Valley area, yet the Millers moved their trailer off of the site, closed the fences, and landscaped the former "road", without the state being aware of those details for periods ranging from weeks to months.

This lack of knowledge by the state appears to have led to time consuming and expensive litigation, in two separate attempts by the state to obtain temporary restraining orders, neither of which had merit and neither of which was granted. Although the Millers have continued to permit people to go across their property, their landscaping efforts have been interfered with lately, with someone hauling a chain saw and gas to cut through alders for approximately 1300 feet along the former "road bed". Since there is a locked state gate over ½ mile from the beginning of the landscaped area, it would appear that there may have been some "unofficial" state involvement in this particular damage to the Miller property, just as some "unofficial" state actions had to be present to have the first letter to you, by Jo Ann Miller, given to Craig Medred of the Anchorage Daily News, enabling the state to continue to try its case in the press, as it has from the time of the first false press reports, referred to above, concerning the claimed reason for the suit.

Second, the state failed to check with the original homesteader (Eddie Beroldo) concerning his road closing habits prior to the initiation of the suit, notwithstanding the fact that state officials were aware at the time, of allegations that he had closed the "road" annually. It appears that some assistant attorney general jumped the gun, and filed a lawsuit,

Honorable Douglas B. Baily
November 15, 1989
page 3

without adequate investigation of the facts. Since we have been informed that Mr. Powers is a close social friend of at least some of the people who live in the area, it has been suggested to us that perhaps some personal concerns may have outweighed the state's interest, or the interest of justice, involving a potential Rule 11 issue.

Third, in several off-the-record comments to me and to my associate, Robert Breckberg, Mr. Powers has made various intemperate statements; e.g., he indicated that regardless of what happens in the law suit, the state would eventually take the land in question from the Millers; and he has accused them and their former attorney, G. Kent Edwards, of "fraud", in their dealings with the Municipality, on the land involved in this case.

Fourth, representatives of the state have repeatedly misstated facts in various pleadings or arguments. The most troubling instance involves the Aldrich matter discussed in some detail below. Another example was presented by certain printed outlines displayed by Mr. Powers during oral argument on the cross-motions for summary judgment, asserting numerous facts favorable to the state to be "undisputed". These claims of undisputed issues were inaccurate and had to be known as such to Mr. Powers. Yet another instance is the claim made in pleadings filed, that the state's protest to the Bureau of Land Management (BLM) to an Indian allotment involving land down the valley towards Anchorage from the Miller land was not disallowed on the merits, but was merely dismissed as untimely, thus avoiding the effect of such adjudication on the issues in this case. In reality, the protest was summarily dismissed as substantially unfounded; and a subsequent appeal was thereafter dismissed as untimely. There is a substantial difference between these two sets of procedural steps, which is significant, considering the issue in the BLM protest involved the same alleged "road" here in question, as well as the lands adjacent to the Millers (collateral estoppel). These last two items appear to be in violation of DR 7-102 (a)(5).

Fifth, a certain questionnaire and cover letter circulated widely by the state in June do not appear to be appropriate to us. We have requested all replies which may be received to these circulars, copies of which were attached to Jo Ann Miller's July 7, 1989 letter to you. Mr. Powers has been unwilling to take a position on whether or not he will provide them or even use them.

Honorable Douglas B. Baily
November 15, 1989
page 4

I am advised that this questionnaire and cover letter circulated to the public are biased and misleading. They imply that force was used throughout the summer by the Millers. The state claims to represent the "public", yet the state repeatedly has restricted motorized access to that same public, and in its later pleadings in the summary judgment proceedings, is also now raising an alternative access issue, i.e., access for state employees alone, not for the public. The letter and questionnaire also are based on the assumption that "public access" is a given fact, while in reality, this is what the lawsuit is all about. The questionnaire also falsely claims (#9) that the Millers somehow blocked the "trailhead" which is over ½ mile down the valley towards Anchorage. I have also been informed that while the Millers were on-site, that numerous people who were out walking were carrying firearms. Since there is no way to tell the identity of the Millers or their caretakers from the state's documents, any answers the state receives may well rely on erroneous assumptions. Copies of the questionnaire and cover letter are once again attached, for your convenience.

Sixth, the Aldrich matter referred to above raises considerable concern on our part. An affidavit was prepared by the attorney general's office for one Harold Aldrich to sign, claiming that there had never been any gates or closures at the then Beroldo (now Millers) property line. This affidavit, duly executed by the witness, was filed by the State as an exhibit (Exhibit 37), in support of one of the state's motions for partial summary judgment, and in opposition to the Millers motion for partial summary judgment. Yet, in 1963, at a hearing on his homestead application in Rabbit Creek Valley (which was denied, along with his trade and manufacturing site application, due in part to lack of faith by the examiner in the veracity of Mr. Aldrich's various claims) Mr. Aldrich specifically complained (in a statement under oath), of the gates above him (i.e., at Beroldo's property line) being closed and causing him problems. We know that an investigator for the attorney general's office had reviewed that file in late 1988 and it is believed that copies of the files were made for that investigator, since parts of the BLM files show up as state exhibits. Therefore, the Assistant Attorney General who authorized the filing of what appears to be a perjured affidavit by Aldrich, knew or should have known of these direct contradictions.

When the BLM files were reviewed by the Millers, the discrepancy in the sworn testimony in 1963 (when anyone could have gone up and looked at the gates), and the Aldrich affidavit

Honorable Douglas B. Baily
November 15, 1989
page 5

prepared and filed by the state became apparent. Thereafter, a deposition of Mr. Aldrich was scheduled. At that deposition he retracted his claim of "no gates" and admitted that his affidavit was in error, and that he had indeed discussed that fact with Mr. Powers. Prior to our confronting Mr. Aldrich with the discrepancy of his sworn testimony during the deposition, Mr. Powers made no attempt to correct the inaccurate information, on which the state's motion for partial summary judgment and its opposition to the Millers' motion for partial summary judgment relies in part. Nor has he done anything yet to either admit it or otherwise bring it to the Court's attention, or in any manner attempt to justify his actions and the misleading document filed with the Court.

It is significant to note that photographs taken by Mr. Aldrich (at the time in question) showing the gate at the Beroldo property line, were provided to the state and through the state to the Millers after Mr. Aldrich's deposition. No attempt has been made by Mr. Powers to correct the court records to reflect the errors that seriously taint the affidavit of Mr. Aldrich, even though he was invited to do so through the written comments in the Millers Reply and Opposition and by verbal statements by me at the oral argument on the various pending summary judgment motions on October 13, 1989. A single oblique acknowledgment of any problem with the false Aldrich affidavit is contained in footnote 2 of the state's Reply to Defendants' Opposition to State's Motion for Partial Summary Judgment, which states in part: "Although the Millers have stooped to great depths" (sic) to attack on (sic) Mr. Aldrich's credibility, Reply and Opp. at 7-9, the court cannot resolve issues of credibility on summary judgment." In this regard, allow me to observe in passing, if anyone "stooped to great depth", it was whoever attempted to perpetuate this attempted clumsy deception of the court and counsel. If we, as private attorneys had dared to pull a stunt like that, the disciplinary machinery of the State Bar would, by now, be in full swing, I'm sure. You may want to review the question of how Mr. Power's conduct is to be regarded in light of the provisions of DR 7-102(A)(4), (6) and (8) and (B)(2).

This case has been troubling to me and Mr. Breckberg ever since we became involved. Mr. Powers has indicated repeatedly that the suit, in effect, is primarily a negotiating tool. In fact, after several years, the negotiations between the Millers and the state for acquisition of the property broke down due to the state raising, (for the first time in July 1988), the prescriptive easement issue, which we believe to be specious.

Honorable Douglas B. Baily
November 15, 1989
page 6

If the suit was indeed brought as a negotiation ploy, or in response to notice given to the state by the Millers that they had a prospective buyer, then the action, from its inception, may be in violation of DR 7-102(A)(1). We have come to the reluctant conclusion, based on the peculiar circumstances outlined above, that this entire suit was ill thought out before it was initiated, did not have the adequate inquiry required by Civil Rule 11 before it was filed, and was not instituted or maintained in good faith, notwithstanding any contrary self-serving assertion on the part of Mr. Powers or some of the folks in the Division of Parks.

Since you were thoughtful enough to express your concerns on this, we have taken the liberty to respond fully to your inquiry. We appreciate in advance, your time and trouble and giving this your attention.

If you have any further questions, or if I can be of any assistance to you in this matter, please feel free to contact me.

Respectfully yours,

BOYKO, BREEZE & FLANSBURG

By:



Edgar Paul Boyko

EPB/spd
Enclosures

cc: Kenneth Powers, Esq.
Robert & Jo Ann Miller

P.S. We are enclosing a courtesy copy for the use of Mr. Powers, but presume that it is better protocol to forward it through you.

H B

456

SENATE COMMITTEE REPORT

DATE: 5/4/90

FURTHER: Finance

DATE TURNED INTO OFFICE: 5-5-90

Resources Committee considered CS SSB 456 (Finance)

Act relating to the fisheries business tax and to the allocation of certain fisheries business tax receipts to certain municipalities by the Department of Community and Regional Affairs; efd

and recommended:

- replace with _____ CS _____ same title
- or adopt _____ CS _____ new title
- attached amendment(s) technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

fiscal note(s) _____ Dept/Date: _____

fiscal note(s) CRA, Rev Dept/Date: _____

zero fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

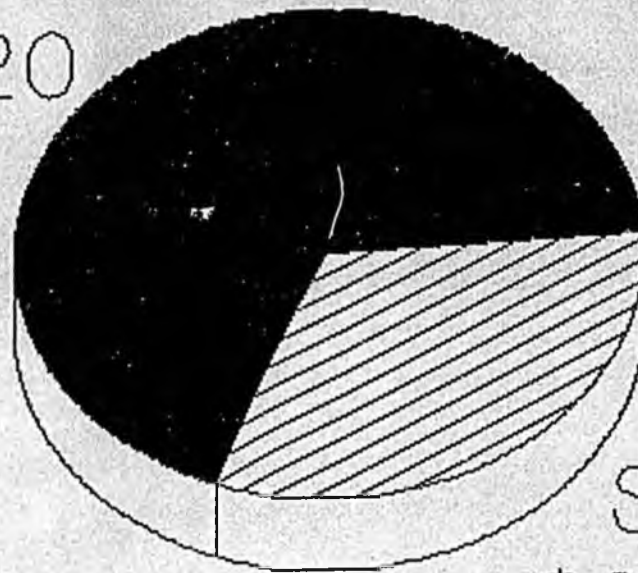
[Handwritten signatures]

[Handwritten signatures: "No Rec", "Curtis Stupelian", "No Rec"]

[Handwritten signature]
Chair: Signature and Recommendation

Fish Taxes FY 1986

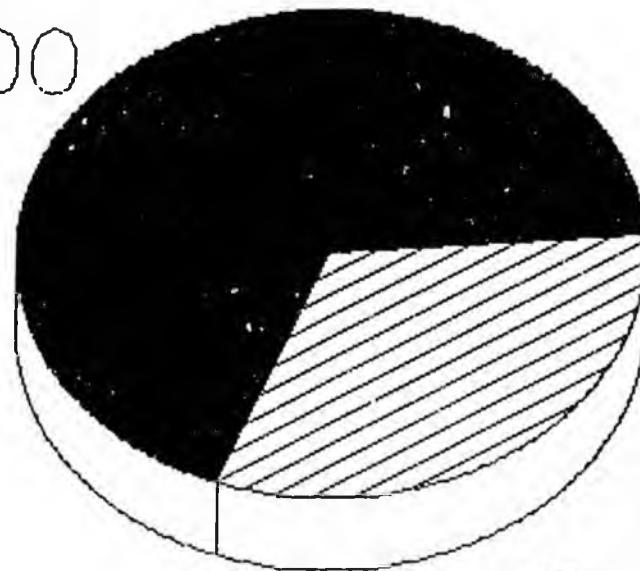
Gen. Fund
\$14,348,020



Shared
\$6,781,110

Fish Taxes FY 1987

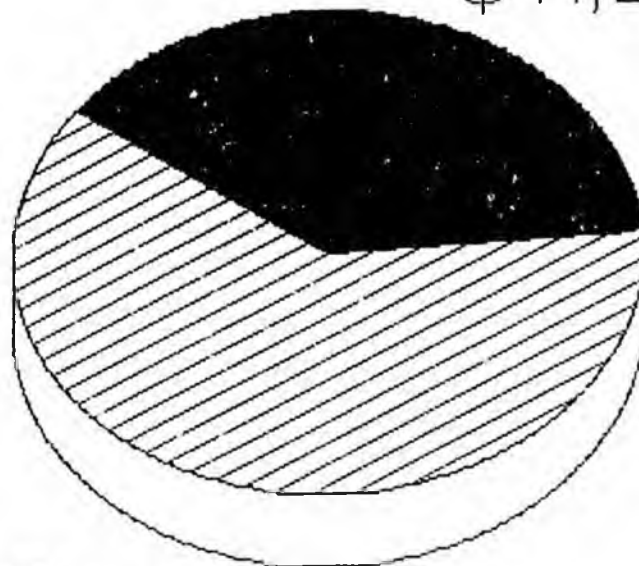
Gen. Fund
\$18,348,500



Shared
\$8,676,554

Fish Taxes FY 1988

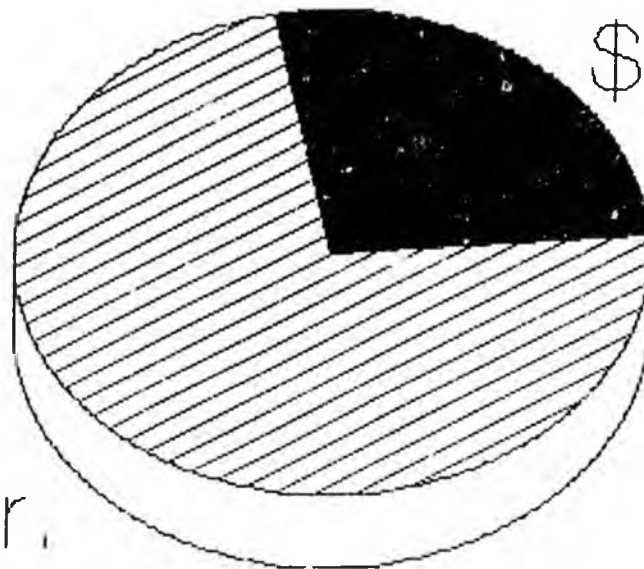
Gen. Fund
\$11,214,360



Ord. & Shr.
\$18,176,020

Fish Taxes FY 1989

Gen. Fund
\$11,037,670



Ord. & Shr.
\$30,366,560

PREPARED BY
INCOME & EXCISE AUDIT DIV
4-5-90



CITY OF DILLINGHAM

P.O. Box 889
Dillingham, Alaska 99576

CITY HALL	(907) 842-5211
TELEX	(907) 842-5691
FIRE RESCUE	(907) 842-2288
PLANNING	(907) 842-5203
PUBLIC WORKS	(907) 842-5148

POLICY POSITION - H.B. 456

Mr. Chairman, members of the House Finance Committee, my name is Joe McGill and I am the Mayor of Dillingham. I am here today to testify in favor of H.B. 456.

For the past five legislative sessions, one the City's top legislative priorities has been the issue of sharing raw fish taxes collected from floating processors with local governments impacted by those processing activities.

Perhaps some brief background information on this issue would be helpful in framing the public policy issues surrounding this matter. Since statehood it has been the policy of the State of Alaska to share raw fish taxes with incorporated communities in or near the area in which the fishery resource is harvested and processed.

When the original tax sharing statute was originally implemented, the vast majority of fish processing facilities were located onshore. However, with the passage of time, advent of new technology, and changing economics of fishery resource processing, an ever-increasing amount of processing is taking place offshore--outside of municipal boundaries. The net effect of this trend is that onshore communities--which serve as staging areas for the offshore processing activities--bear the brunt of the impacts created by the processing activities. However, the impacted communities do not receive any of the taxes paid to the State by the offshore processors. We believe this an inequitable situation which must be addressed.

Further, as a matter of public policy, we believe that any bill which passes the Legislature should incorporate the following basic distribution plan:

Incorporated governments located within ADF&G commercial fishery management areas which are impacted by a fishery should be eligible for any funds which would be distributed under this bill. We urge the Committee to consider adopting the distribution plan utilized by the Department of Community and Regional Affairs under the pilot project program of several years ago.

In closing, the City of Dillingham wishes to express its

strong support for the passage of H.B. 456 which includes our proposed distribution plan. We also wish to stress that legislation patterned after our proposal would accomplish the following public policy objectives:

1. It would correct a long-standing inequity in current law which adversely affect local governments which absorb the impacts created by offshore processors, but receive no financial assistance to cope with those impacts.

2. It holds the promise of giving local governments access to a long-term, stable source of income which will exist long after Prudhoe Bay revenues have dried up.

3. It discourages the recent trend by local governments to implement "creative alternatives" to capture tax revenues from floating processors, such as annexing bay with boundaries drawn to include areas where floating processors now operate.

In the Community and Regional Affairs Committee and in the Resources Committee there have been concerns expressed regarding the fiscal impact of this legislation. In addition, there have been concerns expressed about the impact of the onshore fish tax credit for construction of processing facilities. It is our understanding the fish tax credit program will end next year. Therefore, to ease the Committee's potential concern about fiscal impact on the State Treasury, we suggest a delayed effective date on the bill to July 1, 1991 or July 1, 1992.

Mr. Chairman, members of the Committee, the City thanks you for giving us the opportunity to testify on this important bill.



STATE OF ALASKA
HOUSE OF REPRESENTATIVES

BILL ANALYSIS CSSSHB 456 (FIN)

House Bill 456 expands the sharing of fisheries business tax revenues to additional municipalities and increases funds to communities already receiving shared revenues.

The new funds will be derived from currently unshared fish taxes collected from processors located outside municipal boundaries.

Under current law, all processors must pay a fisheries business tax to the state. Taxes collected from firms processing fish inside municipal boundaries are shared 50/50 with the community.

In FY 89, these taxes totalled \$41.3 million.

Of this, \$31.4 million came from fish processed within municipal boundaries, with \$15.7 million shared with those municipalities.

The balance, \$9.9 million, was from fish processed outside municipalities.

Under this bill, half of these remaining revenues would be shared with impacted communities to help mitigate the costs of providing municipal services to fishermen and the fishing industry.

The Department of Community and Regional Affairs would allocate the funds among the fisheries management areas of the state (page 3, line 7).

The formula for apportionment uses the ratio of the weight of fish sold in a management area (production value: page 3, line 11) to the total production value for all management areas.

The department, after allocating the funds to be distributed in a management area, will distribute the funds among the municipalities in that area based on either demonstrated impacts of fisheries business activities (page 2, line 15), based on commercial fishing vessel days (page 2, line 12) or based on both.

The municipality will be responsible for providing the necessary information to the department. The department will have two years to develop the criteria to be used to allocate funds (page 3, line 24).



ALASKA COMMERCIAL FISHERIES REGIONS AND AREAS

REGION I: SOUTHEASTERN: Dixon Entrance to Cape Suckling

Areas: A. Juneau & Yakutat
 B. Ketchikan
 C. Petersburg
 D. Sitka

REGION II: CENTRAL: State Third Judicial Division Northern Boundary to Cape Suckling to Cape Douglas to Cape Newenham

Areas: E. Prince William Sound
 H. Cook Inlet
 T. Bristol Bay (salmon and herring catch; all fish and shellfish production)

REGION III: ARCTIC-YUKON-KUSKOKWIM (AYK): North of State Third Judicial Division Northern Boundary which ends at the west at Cape Newenham including Nunivak, St. Matthew, and St. Lawrence Islands

Areas: W. Kuskokwim
 X. Kotzebue
 Y. Yukon
 Z. Norton Sound

REGION IV: WESTERN: Cape Douglas to Unimak Pass to Cape Newenham including Kodiak and Aleutian Islands

Areas: K. Kodiak
 L. Chignik
 M. Alaska Peninsula
 O. Dutch Harbor
 Q. Bering Sea
 R. Adak & W. Aleutians
 T. Bristol Bay (fish other than salmon and herring catch; and shellfish catch)

The Alaska Municipal League supports establishment of a program to share fisheries business tax proceeds from offshore processors with affected municipalities to mitigate the impacts of the fisheries on the provision of local services.

Coastal municipalities must provide additional governmental services because of the impact of seafood processors, both within and outside municipal boundaries. It is important that tax receipts from all types of processors be shared with the municipalities affected by their operations.

Under the provisions of AS 43.75, Fisheries Taxes, all processors must pay a fisheries business tax to the State. Only the portion of the tax collected as a result of processing activity that takes place within municipal boundaries is shared with municipalities. This is intended to help offset the demands on local services resulting from the influx of people, demand for utilities, increased use of health facilities, additional call for law enforcement, and other impacts that result from the fish harvesting and processing activities. The formula for distribution of these tax revenues is based on the revenue generated from fisheries business operations occurring within municipal boundaries. The municipalities get 50 percent, and the State retains 50 percent. Shared fisheries tax revenues are a substantial source of revenue for many local governments: in FY 89, for example, 53 municipalities received over \$15.7 million, with shares ranging from as little as \$52.50 to over \$1.7 million (Bristol Bay Borough and Kodiak Island Borough).

Current statutes provide that the revenue generated from fish processing plants located outside municipal boundaries goes entirely to the State and is not shared with local governments, in spite of the fact that the activities of these processors do impact local governments. Many municipalities have to provide additional services as a result of offshore processing operations outside their borders, for instance health services, garbage hauling, and expanded law enforcement activities. These impacts can be significant to municipalities and their taxpayers, especially in proportion to the level of service provided to their permanent municipal population. However, the State, which does not provide services at the local level, receives the tax receipts from the processors operating outside municipal boundaries.

In FY 1989, the total tax liability of processors was \$41.3 million. Of this, \$31.4 million was attributable to processing activity that took place within municipal boundaries (resulting in a \$15.7 million distribution to municipalities). The balance, \$9.9 million, was attributable to processors operating outside municipalities and

was retained by the State. If this had been shared 50/50 with affected municipalities, local governments would have received up to \$4.95 million to help mitigate the additional costs of providing services to processors and their employees.

The League supports a program that would share the fisheries business tax revenues generated from processors located outside municipal boundaries with those communities that can demonstrate an effect on municipal operations resulting from the processors' activities. During FY 86, the Department of Community and Regional Affairs conducted a pilot project to allocate revenues from offshore processing activities to municipalities, and legislation (HB 314/SB 454) was introduced in 1988 that would have made such a program permanent. The impact of offshore processors on local government operation is, if anything, increasing, and municipalities, which must provide services to such processors, should be given a share of the revenue received by the State from them.

NOTE: Senator Zharoff is planning to introduce legislation (copy attached) that would establish a program to share fisheries business tax revenue collected from processors outside municipal boundaries with affected municipalities.

ALASKA CONFERENCE OF MAYORS

Rep. Wallis

217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

APR 27 REC'D

April 27, 1990

*put in
H.F. file
pb*

The Honorable Tim Kelly
President of the Senate

and

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
Post Office Box V
Juneau, Alaska 99811

RE: HB 456 - Offshore Fisheries Business Tax

Dear Mr. President and Mr. Speaker:

The Alaska Conference of Mayors strongly supports HB 456, which would share 50 percent of the portion of the fisheries business tax collected from processors operating outside municipal boundaries currently collected by the State with municipalities that are affected by the fishing industry. The legislation would not require additional taxes, but instead redistribute 50 percent of existing taxes back to municipalities that provide services to the fishing industry (docks, harbors, water, sewer, public safety, solid waste, health, etc.).

Additionally, the program would share these funds as originally intended with all municipalities which are affected by the fishing industry. The legislation would authorize funds (approximately \$4 million) to be distributed on a priority basis to those communities with large fishing fleets but with no processing, and are, therefore, not eligible for funds under the current fisheries business tax program.

On behalf of the Alaska Conference of Mayors which met today, April 27, 1990, in Juneau, I urge your support and passage of CS HB 456 (CRA).

Sincerely,



Mayor Willie Goodwin
President

cc: House Finance Committee
Representative Peter Goll

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to the fisheries
 business tax....."
 Sponsor: Representative Goll
 Requestor: _____

Agency Affected: Community & Regional Affairs
 BRU: Local Government Assistance
 Components: Statewide Assistance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES			23.1	23.1	24.0	24.0
TRAVEL			2.0	2.0	2.0	2.0
CONTRACTUAL			3.0	3.0	3.0	3.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	28.1	28.1	29.0	29.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	28.1	28.1	29.0	29.0
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	28.1	28.1	29.0	29.0

POSITIONS:

FULL-TIME						
PART-TIME	-0-	-0-	1	1	1	1
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

There is no fiscal effect for FY 90.

Prepared by: Jim Plasman, Deputy Director
 Division: Municipal & Regional Assistance
 Approved by Commissioner: David Hoffmann
 Agency: Community & Regional Affairs

Phone: 465-4750
 Date: 4/30/90
 Date: 4-30-90

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

Position Title Grants Administrator			No. of Positions 1	Range/Step 17 A	Barg. Unit GGU
Time Status Part-time	Staff Months 6 months		Location Juneau		Election District
			Justification		
Type of Expenditure			Amount		
1			2		3
Salary			17.4		
Benefits			5.0		
Premium Pay					
Other					
Total Personal Services					22.4
Travel					2.0
Contractual					3.0
Commodities					
Equipment					1.0
Other					
Total Cost					28.4
Funding Source for Total Cost					
Federal Receipts 1002					
G. F. Match 1003					
General Fund 1004					28.4
I-A Receipts 1006					
CIP Receipts 1061					
Other					

This position will administer the tax sharing program. The amount of work associated with the program does not justify a full-time position.

**Request For
New Position**

Agency Community & Regional Affairs
 BRU Local Government Assistance
 Component Statewide Assistance

Page 2 of 2
 Revised Date

FY 91

HB

476

DATE: 4/28/90

FURTHER: Finance

DATE TURNED INTO OFFICE: 4/30/90

Resources

Committee considered

CSHB 476 (Resources)

"An Act relating to members of the Board of Fisheries and the Board of Game."

and recommended:

replace with _____ CS
 or adopt _____ CS

same title
 new title
 technical title change (HB only)

attached amendment(s)
 Resources letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

fiscal note(s) _____ Dept/Date: _____

fiscal note(s) _____ Dept/Date: _____

zero fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

[Signatures]

[Signature]

[Signature]
Chair: Signature and Recommendation

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act relating to members of
the Board of Fisheries and the Board..."
Sponsor: Davidson
Requestor: _____

Agency Affected: _____
BRU: Boards of Fisheries and Game
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL	134.0	134.0	134.0	134.0	134.0	134.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	134.0	134.0	134.0	134.0	134.0	134.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	134.0	134.0	134.0	134.0	134.0	134.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No FY 90 impact. See attached.

Prepared by: Laird A. Jones
Division: Boards

Phone: 465-4110
Date: 04/11/90

Approved by Commissioner: [Signature]
Agency: Fish and Game

Date: 04/11/90

Distribution (by preparer):

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

CSHB 476 BOARDS OF FISHERIES AND GAME

BOARD OF FISHERIES (7 MEMBERS)

Current

89 DAYS AT \$150 PER DAY	\$ 93,450
3 DAYS AT \$100 PER DAY	2,100
TOTAL	\$ 95,550

Proposal

89 DAYS AT RANGE 22, STEP A - \$189	\$117,747
3 DAYS AT 1/2 RANGE 22, STEP A - \$95	1,995
92 DAYS AT \$100 PER DAY PER DIEM	64,400
TOTAL	\$184,142

Increased costs resulting for Board of Fisheries \$ 88,592

BOARD OF GAME (7 MEMBERS)

Current

45 DAYS AT \$150 PER DAY	\$ 47,250
3 DAYS AT \$100 PER DAY	2,100
TOTAL	\$ 49,350

Proposal

45 DAYS AT RANGE 22, STEP A - \$189	\$ 59,536
3 DAYS AT 1/2 RANGE 22, STEP A - \$95	1,995
48 DAYS AT \$100 PER DAY PER DIEM	33,600
TOTAL	\$ 95,131

Increased costs resulting for Board of Game \$ 45,781

GRAND TOTAL \$134,373

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An act relating to members of
 the Boards of Fisheries and Game."
 Sponsor: Governor
 Requestor: _____

Agency Affected: Fish and Game
 BRU: Boards of Fish and Game
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL	145.1	145.1	145.1	145.1	145.1	145.1
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	145.1	145.1	145.1	145.1	145.1	145.1
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	145.1	145.1	145.1	145.1	145.1	145.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No FY 90 impact.

Prepared by: Beverly D. Reume *Beverly Reume*
 Division: Administration

Phone: 465-4120
 Date: 3-21-90

Approved by Commissioner: Walter J. Wilson *Walter J. Wilson*
 Agency: Fish and Game

Date: 3/22/90

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

SB 369 BOARDS OF FISHERIES AND GAME

BOARD OF FISHERIES - 7 MEMBERS

CURRENT

83 DAYS AT \$150 PER DAY	\$87,150	
22 DAYS AT \$100 PER DAY	\$15,400	
TOTAL		\$102,550

PROPOSED

105 DAYS AT \$150 PER DAY HONORARIUM	\$110,250	
105 DAYS AT \$125 PER DAY PER DIEM	\$91,875	
TOTAL		\$202,125

INCREASED COSTS RESULTING FROM SB 369 FOR BOARD OF FISHERIES \$99,575

BOARD OF GAME - 7 MEMBERS

CURRENT

38 DAYS AT \$150 PER DAY	\$39,900	
10 DAYS AT \$100 PER DAY	\$7,000	
TOTAL		\$46,900

PROPOSED

49 DAYS AT \$150 PER DAY HONORARIUM	\$50,400	
48 DAYS AT \$125 PER DAY PER DIEM	\$42,000	
TOTAL		\$92,400

INCREASED COSTS RESULTING FROM SB 369 FOR BOARD OF GAME \$45,500

GRAND TOTAL \$145,075

39.26.020

§ 39.27.010

PUBLIC OFFICERS AND EMPLOYEES

§ 39.27.011

Sec. 39.27.010. Basic salary schedule. [Repealed, § 12 ch 80 SLA 1978. For current law covering the subject matter, see AS 39.27.011.]

Sec. 39.27.011. Salary schedule. (a) The following monthly basic salary schedule is approved as the pay plan for classified and partially exempt employees in the executive branch of the state government who are not members of a collective bargaining unit established under the authority of the Public Employment Relations Act and employees of the legislature under AS 24.10 and AS 24.20:

Range No.	Step A	Step B	Step C	Step D	Step E	Step F
05	1,387	1,425	1,467	1,507	1,552	1,593
06	1,467	1,507	1,552	1,593	1,639	1,687
07	1,552	1,593	1,639	1,687	1,740	1,793
08	1,639	1,687	1,740	1,793	1,845	1,903
09	1,740	1,793	1,845	1,903	1,965	2,020
10	1,845	1,903	1,965	2,020	2,082	2,145
11	1,965	2,020	2,082	2,145	2,217	2,286
12	2,082	2,145	2,217	2,286	2,365	2,445
13	2,217	2,286	2,365	2,445	2,531	2,623
14	2,365	2,445	2,531	2,623	2,715	2,818
15	2,531	2,623	2,715	2,818	2,910	3,020
16	2,715	2,818	2,910	3,020	3,129	3,242
17	2,910	3,020	3,129	3,242	3,353	3,468
18	3,129	3,242	3,353	3,468	3,582	3,717
19	3,353	3,468	3,582	3,717	3,831	3,974
20	3,582	3,717	3,831	3,974	4,095	4,246
21	3,831	3,974	4,095	4,246	4,379	4,537
22	4,095	4,246	4,379	4,537	4,687	4,859
23	4,379	4,537	4,687	4,859	5,021	5,209
24	4,687	4,859	5,021	5,209	5,385	5,568
25	5,021	5,209	5,385	5,568	5,773	5,990
26	5,209	5,385	5,568	5,773	5,990	6,206
27	5,385	5,568	5,773	5,990	6,206	6,442
28	5,568	5,773	5,990	6,206	6,442	6,666
29	5,773	5,990	6,206	6,442	6,666	6,901
30	5,990	6,206	6,442	6,666	6,901	7,144

(b) [Repealed, § 38 ch 3 SLA 1980.]

(c) If a state officer or employee is appointed a deputy department head or a division director and, at the time of appointment, the officer or employee is receiving a salary higher than that set for the position to which appointment has been made, the officer or employee is entitled to continue receiving the higher salary. This subsection does not apply to the salary of a person appointed to a position other than a deputy department head or a division director. (§ 12 ch 148 SLA 1976; am § 1 ch 92 SLA 1977; am §§ 1, 16 ch 80 SLA 1978; am §§ 1, 16, 30,

SENATE RESOURCES COMMITTEE LETTER OF INTENT
CS HB 476 (Resources)

In passing CS HB 476 (Res), the Senate Resources Committee acknowledges the serious situation which has evolved regarding the personal sacrifices required of those who serve on the Alaska Boards of Fish and Game, and our desire to find ways to ease this situation.

The Resources Committee supports Alaska's system of strong, autonomous, lay Boards of Fish and Game. The state has been very fortunate that dedicated qualified individuals have always been willing to serve on the Boards of Fish and Game. But serving on these two boards is so different from serving on other state boards and commissions, and the demands of time, stress and personal expense are becoming so extreme, that a number of measures will need to be taken in order to make it possible for these boards to continue to function effectively as lay boards.

By slightly increasing the compensation received by the board members, CSHB 476 begins to address part of the hardship created by the very long regulatory meetings of the boards, and the large number of total days members must be away from home and jobs, and paying for hotels and restaurants. However, we believe that increased monetary compensation for board members is only one step towards solving the hardships that extended meetings cause to the board members, the public, and governmental staff and operations.

We urge the Boards of Fish and Game to pursue methods of "streamlining" their functions in ways which will not damage the quality of their decision-making or the public input process. The following are several areas which we would encourage the boards to consider:

- * The Board of Fish might be able to revise the schedule under which they consider regulatory areas to a minimum three year cycle, instead of the current two-year cycle. This may be effective in reducing the average number of meeting days required per year. It would be especially important to maintain a very clear and workable method for taking particular issues up earlier if the need (not necessarily an emergency) arises, and to assure the public that this mechanism is in place.

The Board of Game currently has a fairly well established set of regulatory cycles, but may benefit from reviewing them to see if any could be extended.

- * In recent years the boards have made an effort to set the submission deadlines for proposals as far in advance of regulatory meetings as feasible. We see that as an effective means of avoiding last minute "knee-jerk" proposals and encourage this practice whenever stable conditions make it appropriate.
- * When boards issue their "call for proposals" before a meeting, keep the scope of the areas to be considered as narrow and explicit as possible.
- * In conjunction with above item, the boards might consider prioritizing their work load by listing the areas of proposals to be taken up into categories ranging from crucial management issues down to very optional decisions. By giving notice of which category proposals will be in, the boards could take up the imperative categories for certain at the upcoming meeting, while retaining the option to simply not hear the lower priority items, or to hold them over for a future meeting, if time runs short.
- * Discontinue the practice of accepting and publishing proposals from lone individuals. Instead, for any proposal to be included in the process, require that it be sponsored either by a local Fish and Game advisory committee OR by 25 people. The names of all of the co-sponsors would then be printed with the proposal in the proposal book. This would ensure that there is a least a small constituency for every proposal before it is printed thousands of times, distributed statewide, and takes up the time of the board for consideration.
- * We recognize the potential benefits of board access to additional data for decision-making, particularly socio-economic data. This could be accomplished by either the creation of an additional staff position or with funding for contractual research. Either way, it would be desirable to have the research under the direction of the boards themselves. We would urge the boards to consider the value of such research, and how it might best be accomplished, and to report back to the Legislature.

We appreciate the dedication and hard work of past and present members of the Boards of Fish and Game, and encourage their efforts to seek ways to more efficiently handle their ever-increasing work load.

Signed,

Sen. Bettye Fahrenkamp, Chairman

Sen. Dick Eliason

Sen. Jay Kerttula

Sen. Fred Zharoff

Sen. Steve Frank

Sen. Arliss Sturgulewski

Sen. Rick Halford

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, RESOURCES COMMITTEE
119 N. CUSHMAN STREET, SUITE 201
FAIRBANKS, ALASKA 99701
OFFICE (907) 452-4882
HOME (907) 456-2899



Senate

WHILE IN JUNEAU
PO. BOX V
JUNEAU, ALASKA 99811
CAPITOL, ROOM 125
OFFICE (907) 465-3834
HOME (907) 780-6027

SENATE RESOURCES COMMITTEE LETTER OF INTENT CS HB 476 (Resources)

In passing CS HB 476 (Res), the Senate Resources Committee acknowledges the serious situation which has evolved regarding the personal sacrifices required of those who serve on the Alaska Boards of Fish and Game, and our desire to find ways to ease this situation.

The Resources Committee supports Alaska's system of strong, autonomous, lay Boards of Fish and Game. The state has been very fortunate that dedicated qualified individuals have always been willing to serve on the Boards of Fish and Game. But serving on these two boards is so different from serving on other state boards and commissions, and the demands of time, stress and personal expense are becoming so extreme, that a number of measures will need to be taken in order to make it possible for these boards to continue to function effectively as lay boards.

By slightly increasing the compensation received by the board members, CSHB 476 begins to address part of the hardship created by the very long regulatory meetings of the boards, and the large number of total days members must be away from home and jobs, and paying for hotels and restaurants. However, we believe that increased monetary compensation for board members is only one step towards solving the hardships that extended meetings cause to the board members, the public, and governmental staff and operations.

We urge the Boards of Fish and Game to pursue methods of "streamlining" their functions in ways which will not damage the quality of their decision-making or the public input process. The following are several areas which we would encourage the boards to consider:

- * The Board of Fish might be able to revise the schedule under which they consider regulatory areas to a minimum three year cycle, instead of the current two-year cycle. This may be effective in reducing the average number of meeting days required per year. It would be especially important to maintain a very clear and workable method for taking particular issues up earlier if the need (not necessarily an emergency) arises, and to assure the public that this mechanism is in place.

The Board of Game currently has a fairly well established set of regulatory cycles, but may benefit from reviewing them to see if any could be extended.

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 8, 1990

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

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a sponsor substitute for SB 369, relating to members of the boards of fisheries and game. The sponsor substitute adds sec. 3 to the bill without changing the original sections. See my January 8, 1990 transmittal letter (1990 Senate Jour. 1998) for a description of the original bill.

Section 3 has two purposes. First, it sets the amount of per diem available to members of the Board of Fisheries and the Board of Game at the same level as other boards and commissions, and adds a \$400 honorarium in recognition of the fact that many members of these boards forego substantial income while serving on the board. Without this increase in compensation, we believe that we cannot attract the interest of the leaders in the fishing industry and leaders in game management in serving on the respective boards. \$400 a day is the amount currently paid to members of the North Pacific Fishery Management Council.

Section 3 also limits the honorarium to the first 50 days of board meetings in a calendar year. We believe that this should provide an incentive to the boards to complete their business within that time limit. The Board of Fisheries itself has informed us that, with its current workload, 40 days each year should be adequate.

Sincerely,

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

Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act relating to members of the Boards of Fisheries and Game."
Sponsor: RULES Committee
Requestor: Governor

Agency Affected: Fish and Game
BRU: Boards of Fisheries and Game
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL	220.5	225.0	225.0	225.0	225.0	225.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	220.5	225.0	225.0	225.0	225.0	225.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	220.5	225.0	225.0	225.0	225.0	225.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No FY 90 impact.

Prepared by: Beverly Reaume *Beverly Reaume* Phone: 465-4120
Division: Administration Date: 02/06/90

Approved by Commissioner: Warren W. Wiley *Warren W. Wiley* Date: 02/06/90
Agency: Fish and Game

Distribution (by preparer):

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

SB 369 BOARDS OF FISHERIES AND GAME

CURRENT (14 BOARD MEMBERS)

65 DAYS AT \$150 PER DAY \$136,500

15 DAYS AT \$100 PER DAY \$21,000

TOTAL \$157,500

PROPOSED (14 BOARD MEMBERS)

50 DAYS AT \$400 PER DAY HONORARIUM \$280,000

50 DAYS AT \$80 PER DAY PER DIEM \$56,000

30 DAYS AT \$100 PER DAY PER DIEM \$42,000

TOTAL \$378,000

INCREASED COSTS RESULTING FROM SB 369 \$220,500



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 8, 1990

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

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to membership on the Board of Fisheries and the Board of Game. This bill was recommended by a committee of representatives of both boards, the Department of Fish and Game, and the governor's Fisheries Board Review Committee. The intention of that group was to recommend changes to make the two boards freer from any appearance of bias on the part of its members, and to make it clear that the governor has the authority to remove a board member who violates fish and game laws.

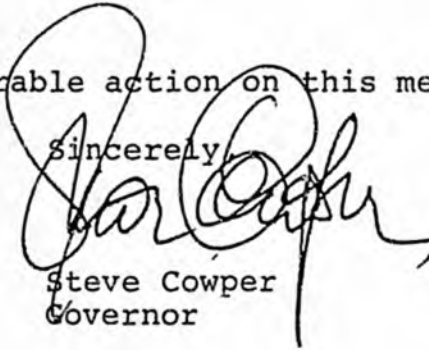
The first section of the bill amends AS 16.05.221 to affirm that any member of one of the boards who has an interest, financial or personal, in a matter before that board, is required to disclose the interest as provided for in AS 39.52.220 of the Executive Branch Ethics Act. Although such disclosure is already a legal requirement, placing it in AS 16.05.221 would emphasize the applicability of the conflict-of-interest provisions of the Executive Branch Ethics Act.

The second section of the bill, amending AS 16.05.280, clarifies that the governor may remove any member of the boards who is convicted of violating a fish and game law or regulation. There has been some confusion in the past about whether such a violation constituted misconduct in office or otherwise presented grounds for removal. Under this amendment, removal following a conviction is not automatic, but is left to the discretion of the governor, and the board

member may present evidence in his or her own behalf in order to convince the governor that removal is not warranted.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the word "Sincerely,".

Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act Relating to Members
 of Boards of Fish and Game"
 Sponsor: Governor
 Requestor: Governor

Agency Affected: Fish and Game
 BRU: All
 Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS : (Attach a separate page if necessary)

Enactment of this legislation will make it clear that violation of a fish and game law or regulation may be sufficient reason for the Governor to remove a member of the Board of Fisheries or Board of Game. It will have no fiscal impact on the Department of Fish and Game.

Prepared by: Warren W. Wiley Phone: 465-4100
 Division: Commissioner's Office Date: 12/26/89

Approved by Commissioner: *Warren W. Wiley* Date: 12/26/89
 Agency: Department of Fish and Game

Distribution (by preparer):

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

AGENTS CONTINUING EDUCATION MODEL REGULATION

Table of Contents

Section I	Authority
Section II	Purpose
Section III	Applicability
Section IV	Exemptions
Section V	Educational Requirements
Section VI	Compliance
Section VII	Penalty

Section I. Authority.

This regulation is promulgated pursuant to the authority granted to the Commissioner by Section(s) (insert applicable sections(s)) of the Insurance Law.

Section II. Purpose.

The purpose of this regulation is to establish requirements and standards for continuing education programs for natural persons licensed to solicit or sell insurance.

Section III Applicability.

This regulation shall apply to resident persons licensed to engage in the sale of the following types of insurance:

1. Life insurance, annuity contracts, variable annuity contracts and variable life insurance.
2. Sickness, accident and health insurance.
3. All lines of property and casualty insurance.
4. All other lines of insurance for which an examination is required for licensing.

Drafting Note: This regulation is not intended to include non-resident agents. Adoption of the model regulation by all states would in effect require all non-resident agents to comply with the requirements. States may want to consider inclusion of non-residents consistent with their reciprocity practices.

Section IV. Exceptions.

This regulation shall not apply to those natural persons holding resident licenses for any kind or kinds of insurance for which an examination is not required by the law of this state, nor shall it apply to any such limited or restricted license as the Commissioner may exempt.

Section V. Educational Requirements.

(A) Resident persons licensed to sell insurance and not exempt under Section IV hereof shall annually satisfactorily complete such courses or programs of instruction as may be approved by the Commissioner in the minimum number of classroom hours as follows:

- (1) Any person holding a license issued for (a) life and/or health insurance, or (b) property and/or casualty insurance, or (c) any combination thereof, issued subsequent to the effective date of this regulation shall during each of the first four 12-month periods following the date of its original issue satisfactorily complete courses or programs of instruction or attend seminars equivalent to a minimum of 25 classroom hours of instruction, with a maximum of 100 accumulated classroom hours for the 48 month period.
- (2) Any person holding a license issued for (a) life and/or health insurance, or (b) property and/or casualty insurance, or (c) any combination thereof, issued prior to the effective date of this regulation, or who has complied with Subsection A.I. above, shall for each 12-month period satisfactorily complete courses or programs of instruction or attend seminars equivalent to 15 classroom hours of instruction.

- (B) The courses or programs of instruction successfully completed which shall be deemed to meet the Commissioner's standards for continuing educational requirements and the number of classroom hours for which they are equivalent are:
- (1) Any part of the Life Underwriter Training Council Life Course Curriculum -- 50 hours; Health Course -- 25 hours.
 - (2) Any part of the American College "CLU" diploma curriculum -- 30 hours.
 - (3) Any part of the Insurance Institute of America's program in general insurance -- 25 hours.
 - (4) Any part of the American Institute for Property and Liability Underwriters' Chartered Property Casualty Underwriter (CPCU) professional designation program -- 30 hours.
 - (5) Any part of the Certified Insurance Counselor program -- 25 hours.
 - (6) Any insurance related course approved by the Commissioner taught by an accredited college or university per credit hour granted -- 15 hours.
 - (7) Any course or program of instruction or seminar developed and/or sponsored by any authorized insurer, recognized agents association or insurance trade association or any independent program of instruction, shall, subject to the approval of the Commissioner, qualify for the equivalency of the number of classroom hours assigned thereto by the Commissioner.
 - (8) Any correspondence course approved by the Commissioner shall qualify for the equivalency of the number of classroom hours assigned thereto by the Commissioner.
- (C) A person teaching any approved course of instruction or lecturing at any approved seminar shall qualify for the same number of classroom hours as would be granted to a person taking and successfully completing such course, seminar or program.

Section VI. Compliance.

- (A) Any person previously licensed to sell insurance whose license was not in effect on the effective date of this regulation shall comply with all of the terms and requirements of Section V(A)(1) of this regulation.
- (B) Any person previously licensed to sell insurance whose license was in effect on the effective date of this regulation, or who has complied with Section V(A)(1), shall comply with all of the terms and requirements of Section V(B)(2) of this regulation, even though such person may, subsequent to the effective date of the regulation, become licensed for an additional kind or kinds of insurance.
- (C) Excess classroom hours accumulated during any one year period may be carried forward to the next year.
- (D) For good cause shown, the Commissioner may grant an extension of time during which the requirements imposed by Section V(A) may be completed, but such extension of time shall not exceed the period of one year.
- (E) Every person subject to this regulation shall furnish, in a form satisfactory to the Commissioner, written certification as to the courses, programs or seminars of instruction taken and successfully completed by such person. Such certification shall be executed by or on behalf of the sponsoring organization.

Section VII. Penalty.

Any person failing to meet the requirements imposed upon him by this regulation and who has not been granted an extension of time within which to comply pursuant to Section VI hereof, or who has submitted to the Commissioner a false or fraudulent certificate of compliance

therewith shall, after a hearing thereon which hearing may be waived by such person, be subjected to the suspension of all licenses issued for any kind or kinds of insurance, and no further license shall be issued to such person for any kind or kinds of insurance until such time as such person shall have demonstrated to the satisfaction of the Commissioner that he has complied with all of the requirements of this regulation and all other laws applicable thereto.

Drafting Note: The following enabling statute was drafted by the NAIC Task Force on Continuing Education for those states which do not have the authority, under present laws, to adopt the regulation on continuing education, but is not an official NAIC Model Act:

"Be it enacted by the legislation of the State of _____: (Adopt citation and formal portions to local requirements and statutes).

For the protection of the people of this state, the Commissioner shall not permit a person to continue as licensed to sell insurance pursuant to _____, or _____ (insert appropriate agent's licensing statutes) unless such person has demonstrated, to the satisfaction of the Commissioner, that in addition to meeting the standards contained in the above enumerated sections for the issue of such license such person has continued to meet such additional educational requirements as the Commissioner may prescribe by regulation adopted pursuant hereto for the purpose of maintaining or improving such person's insurance skills or knowledge."

Legislative History (all references are to the Proceedings of the NAIC).

1978 Proc. II 31, 34, 265, 275, 277-279 (adopted).

Model Regulation Service - July 1989

AGENTS CONTINUING EDUCATION MODEL REGULATION

The date in parentheses is the effective date of the legislation or regulation, with latest amendments.

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Alabama	NO ACTION TO DATE	
Alaska	NO ACTION TO DATE	
Arizona	NO ACTION TO DATE	
Arkansas		HB 1243 (1989).
California	NO ACTION TO DATE	
Colorado	NO ACTION TO DATE	
Connecticut	NO ACTION TO DATE	
Delaware		DEL. INS. REG. 47 (1985/1986); <u>See also</u> DEL. CODE ANN. tit. 18 § 1725 (1959/1984) and INS. BULL. 85-2 & 85-3 (1985); BULL. 87-10 (1988).
D.C.	NO ACTION TO DATE	
Florida	FLA. STAT. § 626.2815 (1989).	
Georgia		GA. CODE ANN. § 33-23-11 (1981) GA. ADMIN. COMP. ch 120-2-2-.15 (1982); <u>See</u> <u>also</u> Directive 82-EX-3.
Guam	NO ACTION TO DATE	
Hawaii	NO ACTION TO DATE	
Idaho		IDAHO INS. REG. 53 [IDAPA 18.A.53] (1987); BULL. 88-4 (1988)
Illinois		ILL. ADMIN. REG. tit. 50 § 3119 (1985).
Indiana	NO ACTION TO DATE	

Model Regulation Service - October 1988

AGENTS CONTINUING EDUCATION MODEL REGULATION

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Iowa		IOWA ADMIN. CODE §§ 191-11.1 to 191-11.11 (1982/1985).
Kansas		KAN. STAT. ANN. §§ 40-240a to 40-240e (1976/1988).
Kentucky	KY. REV. STAT. ANN. 304.9-295 (1986/1988).	
Louisiana	NO ACTION TO DATE	
Maine	NO ACTION TO DATE	
Maryland		MD. ADMIN. CODE tit. 9 subtit. 30 ch. 74 §§.01 to .12 (1987).
Massachusetts	MASS. GEN. LAWS ch. 175 § 177E (1982).	<u>See also</u> 211 CODE of MASS. REGS. 50:01 to 50:08 (1987).
Michigan	NO ACTION TO DATE	
Minnesota		MINN. INS. REG. §§ 2725.0100 to 2725.0240 (1985/1987).
Mississippi	MISS INS. REG. L A & H 80-002 (1980) (Life and health only).	
Missouri		MO. REV. STAT. § 375.020 (1988).
Montana	NO ACTION TO DATE	
Nebraska		NEB. REV. STAT. §§ 44-3901 to 44-3908 (1982/1985); <u>See also</u> NEB. ADMIN. R. tit. 210 ch. 38 (1983).
Nevada		NEV. REV. STAT. 683A.270 (4) (1981) (Commissioner given authority to promulgate regulation).

Model Regulation Service - October 1989

AGENTS CONTINUING EDUCATION MODEL REGULATION

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
New Hampshire	N.H. ADMIN. CODE INS. 1302.01 to 1302.11 (1986/1988).	
New Jersey	NO ACTION TO DATE	
New Mexico		N.M. STAT. ANN. 59A-12-26 (1985/1989); N.M. INS. REGS. Ch. 59A Art. 12 Rule 1 (1985) [SCC-85-11].
New York	NO ACTION TO DATE	
North Carolina		N.C. GEN. STAT. §§ 58-635 to 58-636 (1989) (Commissioner may adopt regulation).
North Dakota		N.D. CENT. CODE §§ 26.1-26-31.1 to 26.1-26-31.5 (1985/1987); N.D. ADMIN. CODE § 45-02-04 (1986/1989).
Ohio	NO ACTION TO DATE	
Oklahoma		OKLA. INS. REGS. Part VI RULE 36-14-1 (1989).
Oregon		OR. ADMIN. R. 836-71-600 to 836-71-645 (1978).
Pennsylvania	NO ACTION TO DATE	
Puerto Rico		P.R.R. RULE LII (1983).
Rhode Island	R.I. GENERAL LAWS §§ 27-3.2-1 to 27-3.2-10 (1989) (Eff. 6-1-90) (Some is model).	
South Carolina	NO ACTION TO DATE	

Model Regulation Service - October 1988

AGENTS CONTINUING EDUCATION MODEL REGULATION

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Tennessee	TENN. ADMIN. COMP. ch. 0780-1-42 (1980) (Life and health agents only).	
Texas		28 TEX. ADMIN. CODE §§ 19.1001 to 19.1011 (1988).
Utah	NO ACTION TO DATE	
Vermont	NO ACTION TO DATE	
Virgin Islands	NO ACTION TO DATE	
Virginia	NO ACTION TO DATE	
Washington		WASH. ADMIN. CODE R. §§ 284-17-200 to 284-17-320 (1980/1987). (New regulation pending 1988); WASH. REV. CODE ANN. § 48.17.150 (1947/1979); <u>See also</u> BULL. 87-2 (1987).
West Virginia	NO ACTION TO DATE	
Wisconsin	NO ACTION TO DATE	
Wyoming	NO ACTION TO DATE	

HB

541

DATE: 4/30/90

FURTHER: Finance

DATE TURNED INTO OFFICE: 5-6-90

Resources Committee considered CSHB 541 (Finance)

GUIDELINES FOR LITIGATION SETTLEMENT

and recommended:

- replace with 5 CS HB 541 (Res)
- or adopt _____ CS _____
- attached amendment(s)
- _____ letter of intent adopted

- same title
- new title
- technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

fiscal note(s) _____ Dept/Date: _____

zero fiscal note(s) _____

appropriation-no fiscal note

APPROVES PREVIOUS:

fiscal note(s) _____ Dept/Date: LBA

zero fiscal note(s) _____

Governor's bill w/fiscal note

SIGNING DO PASS:

[Signature] (x CKM crew)

OTHER RECOMMENDATIONS:

[Signature] No Rec

[Signature] No Rec

[Signature] No Rec

[Signature] No Rec

Chair: Signature and Recommendation

Dept of Law

Offered: 4/23/90
Referred: Rules

6-1806M

Original sponsor(s): REP. COTTEN, Navarre, Davidson

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 541 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to certain agreements, compromises,
7 and settlements entered into by the Departments of
8 Natural Resources and Revenue; to legislative audit
9 of those departments and the release of a report of
10 the audits, that may include or refer to confidential
11 information, to the legislature and public; and to
12 collection and payments of royalties from state
13 resources, the interest rate on unpaid taxes and
14 royalties from state resources, and the interest
15 rate on overpaid taxes."

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

17 * Section 1. AS 05.15.095(c) is amended to read:

18 (c) A delinquent fee bears interest at the rate set by
19 AS 43.05.225(1) [AS 43.05.225].

20 * Sec. 2. AS 24.20.271 is amended to read:

21 Sec. 24.20.271. POWERS AND DUTIES. The legislative audit divi-
22 sion shall

23 (1) conduct a performance post-audit of boards and com-
24 missions designated in AS 44.66.010 and of those programs and activ-
25 ities of agencies subject to termination as determined in the manner
26 set out in AS 44.66.020 and 44.66.030, and submit the audit, together
27 with a written report, not later than the first day of the regular
28 session of the legislature convening in each year set out with refer-
29 ence to boards, commissions, or agency programs whose activities are

1 subject to termination as prescribed in AS 44.66;

2 (2) audit at least once every three years the books and
3 accounts of all custodians of public funds and all disbursing officers
4 of the state;

5 (3) at the direction of the Legislative Budget and Audit
6 Committee, conduct performance post-audits on any agency of state
7 government;

8 (4) cooperate with state agencies by offering advice and
9 assistance as requested in establishing or improving the accounting
10 systems used by state agencies;

11 (5) require the assistance and cooperation of all state
12 officials and other state employees in the inspection, examination,
13 and audit of state agency books and accounts;

14 (6) have access at all times to the books, accounts, re-
15 ports, or other records, whether confidential or not, of every state
16 agency;

17 (7) ascertain, as necessary for audit verification, the
18 amount of agency funds on deposit in any bank as shown on the books of
19 the bank; a [NO] bank may not be held liable for making information
20 required under this paragraph available to the legislative audit
21 division;

22 (8) complete studies and prepare reports, memoranda, or
23 other materials as directed by the Legislative Budget and Audit Com-
24 mittee;

25 (9) have direct access to any information related to the
26 management of the University of Alaska and have the same right of
27 access as exists with respect to every other state agency;

28 (10) periodically

29 (A) conduct a performance audit of the tax functions

1 of the Department of Revenue; and

2 (B) submit the audit to the legislature not later than
3 the first day of the ^{next} regular legislative session:

4 (1) annually

5 (A) conduct an audit of the resolution of disputed
6 royalties by the Department of Natural Resources and ^{resolution of} disputed
7 taxes by the Department of Revenue; ^{under AS 43.05.060 & AS 43.05.070}

8 (B) prepare a report summarizing the results of the
9 audit ^{that may contain information made confidential by AS 43.-}
10 05.230 and a version of the report edited for the public; and

11 [(C) submit the audit and the unedited report prepared
12 under (B) of this paragraph] to the legislature not later than the
13 first day of the ^{next} regular legislative session.

Insert
OPTION I lang.

14 * Sec. 3. AS 34.45.470(a) is amended to read:

15 (a) A person who fails to pay or deliver property within the

16 time prescribed by this chapter may be required to pay to the depart-

17 ment interest at the [ANNUAL] rate calculated under AS 43.05.225(1)

18 [AS 43.05.225] on the property or the value of it from the date the

19 property should have been paid or delivered.

20 * Sec. 4. AS 38.05.035 is amended by adding new subsections to read:

21 (g) If the department enters into negotiations to compromise or

22 settle a dispute between the department and a person as to a royalty

23 or net profit payment involving a claim that totals, with applicable

24 [penalty and] interest, \$10,000,000 or more ~~and that relates to a calen-~~
25 ~~dar year that is five or more years before the current year,~~ the com-
26 missioner shall, not later than 14 days after commencement of nego-
27 tiations, advise the governor that negotiations have commenced, and
28 shall provide notice to the governor at least once during each
29 subsequent 30-day period that the negotiations continue.

1 (h) If the department proposes to compromise or settle a dispute
 2 between the department and a person as to a royalty or net profit
 3 payment involving a claim that totals, with applicable [penalty and]
 4 interest, \$10,000,000 or more and that relates to a calendar year that
 5 is five or more years before the current year, the commissioner may
 6 not enter into an agreement to compromise or settle the dispute *without*

7 ~~without first securing and reviewing an independent appraisal of the effects of the proposed compromise or settlement; the independent appraisal~~

10 (A) may be made by a person who is an employee of the
 11 department or who is engaged by contract to complete the apprai-
 12 sal, but may not be made by a person who has been involved in
 13 preparing the proposed compromise or settlement;

14 (B) must specify the objectives of the department's
 15 negotiations; and

16 (C) must review the proposed compromise or settlement
 17 (i) to ensure that it meets the objectives speci-
 18 fied; and

19 (ii) to determine whether it adversely affects
 20 other litigation to which the state is a party; and

21 (2) unless at least 14 days pass between the day the com-
 22 missioner receives the proposed compromise or settlement agreement and
 23 ~~the day the commissioner executes that agreement.~~

24 (i) The commissioner may not enter into a settlement or compro-
 25 mise of a dispute between the department and a person as to a royalty
 26 or net profit payment if the settlement or compromise provides that
 27 information relevant to the settlement or compromise, or the terms of
 28 the settlement or compromise, are confidential beyond the confiden-
 29 tiality otherwise provided for by law.

1 (j) The commissioner shall maintain for review full documenta-
2 tion of a settlement or compromise of a dispute between the department
3 and a person as to a royalty or net profit payment.

4 * Sec. 5. AS 38.05.145 is amended by adding new subsections to read:

5 (c) Payment of the royalty to the state under the provisions of
6 AS 38.05.145 - 38.05.181 becomes due on the date and in the manner
7 specified in the lease or in a regulation adopted by the commissioner.

8 (d) If royalty to which the state is entitled under AS 38.05.180
9 is not paid when it becomes due under (c) of this section [and the
10 total amount of royalty due exceeds \$1,000,000] notwithstanding
11 AS 09.30.070, the royalty bears interest at the rate of five percent-
12 age points above the annual rate charged member banks for advances by
13 the 12th Federal Reserve District, as established on the first day of
14 each calendar quarter, compounded quarterly.

15 * Sec. 6. AS 43.05.060 is amended by adding new subsections to read:

16 (b) If the department enters into negotiations to resolve a tax
17 dispute between the department and a taxpayer involving a claim that
18 totals, with applicable penalty and interest, \$10,000,000 or more ~~and~~
19 ~~that relates to a calendar year that is five or more years before the~~
20 ~~current year~~, the commissioner shall, not later than 14 days after
21 commencement of negotiations, advise the governor that negotiations
22 have commenced, and shall provide notice to the governor at least once
23 during each subsequent 30-day period that the negotiations continue.

24 (c) If the department proposes to enter into an agreement under
25 (a) of this section to resolve a tax dispute between the department
26 and a taxpayer involving a claim that totals, with applicable penalty
27 and interest, \$10,000,000 or more ~~and that relates to a calendar year~~
28 ~~that is five or more years before the current year~~, the commissioner
29 may not enter into the agreement

without first reviewing the proposed agreement or settlement with the governor.

1 ~~(1) without first securing and reviewing an independent ap-~~
2 praisal of the effects of the proposed agreement; the independent
3 appraisal

4 (A) may be made by a person who is an employee of the
5 department or who is engaged by contract to complete the ap-
6 praisal, but may not be made by a person who has been involved in
7 preparing the proposed agreement;

8 (B) must specify the objectives of the department's
9 negotiations; and

10 (C) must review the proposed resolution

11 (i) to ensure that it meets the objectives speci-
12 fied; and

13 (ii) to determine whether it adversely affects
14 other litigation to which the state is a party; and

15 (2) unless at least seven days pass between the day the
16 commissioner receives the proposed agreement and the day the commis-
17 sioner executes that agreement

18 (d) In making an agreement under (a) of this section, neither
19 the department nor the attorney general may agree that information
20 relevant to the agreement, or the terms of the agreement, are confi-
21 dential beyond the confidentiality otherwise provided for by law. The
22 department must maintain for review full documentation of the
23 agreement.

24 * Sec. 7. AS 43.05.070 is amended by adding new subsections to read:

25 (c) If the department enters into negotiations to compromise or
26 settle a tax dispute between the department and a taxpayer involving a
27 claim that totals, with applicable penalty and interest, \$10,000,000
28 or more and that relates to a calendar year that is five or more years
29 before the current year, the commissioner shall, not later than 14

1 days after commencement of negotiations, advise the governor that
2 negotiations have commenced, and shall provide notice to the governor
3 at least once during each subsequent 30-day period that the
4 negotiations continue.

5 (d) If the department proposes to compromise or settle a tax
6 dispute between the department and a taxpayer involving a claim that
7 totals, with applicable penalty and interest, \$10,000,000 or more and
8 that relates to a calendar year that is five or more years before the
9 ~~current year~~, the commissioner may not enter into the agreement ~~without~~
10 ~~first reviewing the proposed agreement or settlement with the governor.~~
11 ~~without first securing and reviewing an independent ap-~~
12 ~~praisal of the effects of the proposed compromise or settlement agree-~~
13 ~~ment; the independent appraisal~~

14 (A) may be made by a person who is an employee of the
15 department or who is engaged by contract to complete the ap-
16 praisal, but may not be made by a person who has been involved in
17 preparing the proposed compromise or settlement agreement;

18 (B) must specify the objectives of the department's
19 negotiations; and

20 (C) must review the proposed compromise or settlement
21 (i) to ensure that it meets the objectives speci-
22 fied; and

23 (ii) to determine whether it adversely affects
24 other litigation to which the state is a party; and

25 (2) unless at least seven days pass between the day the
26 commissioner receives the proposed compromise or settlement agreement
27 and the day the commissioner executes that agreement.

28 (e) In compromising a tax or penalty under this section, neither
29 the department nor the attorney general may agree that information
relevant to the compromise, or the terms of the compromise, are

1 confidential beyond the confidentiality otherwise provided for by law.
2 The department must maintain for review full documentation of the
3 compromise.

4 * Sec. 8. AS 43.05.225 is amended to read:

5 Sec. 43.05.225. INTEREST ON TAXES. Unless otherwise provided,
6 when a tax levied in this title is not paid on or before the date
7 prescribed for its payment, [BECOMES DELINQUENT] it bears interest at
8 the rate of

9 (1) 12 percent a year [if the total amount of the tax owed
10 by the taxpayer does not exceed \$1,000,000; or] under AS 05.15.095(c)
11 AS 34.45.470(a), and AS 47.23.025

12 (2) five percentage points above the annual rate charged
13 member banks for advances by the 12th Federal Reserve District, as
14 established on the first day of each calendar quarter, compounded
15 quarterly, [if the total amount of the tax owed by the taxpayer exceeds
16 \$1,000,000]

17 * Sec. 9. AS 43.05.280(a) is amended to read:

18 (a) Interest shall be allowed and paid on any overpayment of a
19 tax under this title at the rates [RATE] prescribed in AS 43.05.225.]

20 * Sec. 10. AS 47.23.025 is amended to read:

21 Sec. 47.23.025. RATES OF INTEREST. The rate of interest imposed
22 under AS 47.23.020(a)(2)(C) shall equal the rate imposed under AS 43.-
23 05.225(1) [AS 43.05.225] or a lesser rate that is the maximum rate of
interest permitted to be imposed under federal law.

Original sponsor(s): REP. COTTEN, Navarre, Davidson, Gruenberg, Boyer, Sharp

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 541 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to certain agreements, compromises,
7 and settlements entered into by the Departments of
8 Natural Resources and Revenue; to legislative audit
9 of those departments and the release of a report of
10 the audits, that may include or refer to confidential
11 information, to the legislature and public; and to
12 collection and payments of royalties from state
13 resources, the interest rate on unpaid taxes and
14 royalties from state resources, and the interest rate
15 on overpaid taxes."

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

17 * Section 1. AS 05.15.095(c) is amended to read:

18 (c) Until June 30, 1991, a [A] delinquent fee bears interest at
19 the rate set by AS 43.05.225. After June 30, 1991, a delinquent fee
20 bears interest at the rate of 12 percent a year.

21 * Sec. 2. AS 24.20.271 is amended to read:

22 Sec. 24.20.271. POWERS AND DUTIES. The legislative audit divi-
23 sion shall

24 (1) conduct a performance post-audit of boards and com-
25 missions designated in AS 44.66.010 and of those programs and activ-
26 ities of agencies subject to termination as determined in the manner
27 set out in AS 44.66.020 and 44.66.030, and submit the audit, together
28 with a written report, not later than the first day of the regular
29 session of the legislature convening in each year set out with

1 reference to boards, commissions, or agency programs whose activities
2 are subject to termination as prescribed in AS 44.66;

3 (2) audit at least once every three years the books and
4 accounts of all custodians of public funds and all disbursing officers
5 of the state;

6 (3) at the direction of the Legislative Budget and Audit
7 Committee, conduct performance post-audits on any agency of state
8 government;

9 (4) cooperate with state agencies by offering advice and
10 assistance as requested in establishing or improving the accounting
11 systems used by state agencies;

12 (5) require the assistance and cooperation of all state
13 officials and other state employees in the inspection, examination,
14 and audit of state agency books and accounts;

15 (6) have access at all times to the books, accounts, re-
16 ports, or other records, whether confidential or not, of every state
17 agency;

18 (7) ascertain, as necessary for audit verification, the
19 amount of agency funds on deposit in any bank as shown on the books of
20 the bank; a [NO] bank may not be held liable for making information
21 required under this paragraph available to the legislative audit
22 division;

23 (8) complete studies and prepare reports, memoranda, or
24 other materials as directed by the Legislative Budget and Audit Com-
25 mittee;

26 (9) have direct access to any information related to the
27 management of the University of Alaska and have the same right of
28 access as exists with respect to every other state agency;

29 (10) periodically

1 (A) conduct a performance audit of the tax functions
2 of the Department of Revenue; and

3 (B) submit the audit to the legislature not later than
4 the first day of the next regular legislative session;

5 (11) annually

6 (A) conduct an audit of the resolution of disputed
7 royalties by the Department of Natural Resources and the resolu-
8 tion of disputed taxes by the Department of Revenue under AS 43.-
9 05.060 and 43.05.070; and

10 (B) prepare a report summarizing the results of the
11 audit and submit the audit and the report to the legislature not
12 later than the first day of the next regular legislative session;
13 the legislative auditor may disclose information made confiden-
14 tial by AS 45.05.230 to a committee of the legislature meeting in
15 executive session if the committee has adopted procedures to
16 protect the confidentiality of the information.

17 * Sec. 3. AS 34.45.470(a) is amended to read:

18 (a) Until June 30, 1991, a [A] person who fails to pay or
19 deliver property within the time prescribed by this chapter may be
20 required to pay to the department interest at the annual rate calcu-
21 lated under AS 43.05.225 on the property or the value of it from the
22 date the property should have been paid or delivered. After June 30,
23 1991, a person who fails to pay or deliver property within the time
24 prescribed by this chapter may be required to pay to the department
25 interest at the rate of 12 percent a year on the property or the value
26 of it from the date the property should have been paid or delivered.

27 * Sec. 4. AS 38.05.035 is amended by adding new subsections to read:

28 (g) If the department enters into negotiations to compromise or
29 settle a dispute between the department and a person as to a royalty