

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6944 HOUSE JUDICIARY

18



**STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS**

DEPARTMENT Commerce & Econ. Dev.	DIVISION: Banking, Securities & Corporations	BILL NUMBER HB 231	SPONSOR Rep. Moyer
SHORT TITLE OF BILL Presidents and other chief executive officers of banks			
DEPARTMENT POSITION Strongly support passage			
PREPARED BY Willis F. Kirkpatrick	DATE 4/5/91	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 4/5/91

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUP(S) AFFECTED BY BILL State-Chartered Banks
ORGANIZATIONAL SUPPORT FOR BILL State Banks	ORGANIZATIONAL OPPOSITION TO BILL None

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND LEGISLATIVE INTENT

AS 06.05.437(a) of the Alaska Banking Code was amended in 1978 to provide that a president or CEO who was appointed by the Board of Directors has a voice on the board as a member. This amendment was not consistent with Section 06.05.435 which requires a board member to be elected. This bill corrects this inconsistency by allowing the appointment of the president or CEO and gives the appointee voice on the board without standing for election.

ANALYSIS OF BILL PROGRAM EFFECTS

Section 1 - Causes the president of a bank or other chief officer responsible for the management of a bank to become a member of the Board of Directors not subject to election requirements of AS 06.05.435.

AMENDMENTS PROPOSED

None proposed.

WFK/KP/dg19255D-3/040591 ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

HB 231: "An Act relating to the presidents and other chief executive officers of banks."

The department strongly supports passage of HB 231. This legislation will clear up confusion created by an amendment in AM, Sec. 29, Ch. 169, SLA 1978, which intended to give the president a voice in overall management via board membership. This 1978 amendment has inadvertently created a question as to whether or not a president of a bank has to be elected by shareholders as a board member because of his appointment as president (head of management) of the bank.

Mr. Kirkpatrick, Director of the Division of Banking, Securities and Corporations, has taken a position that it would be unwise for the management head of a bank to solicit votes to maintain his position. It could appear that there would be some pressure of influence by those who seated him. Mr. Kirkpatrick's policy letter dated February 21, 1991 concerning this subject is attached.

Glenn A. Olds
Glenn A. Olds, Commissioner
Date: 4/8/91

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 231

Revision Date: _____ Department Affected: Commerce & Economic Dev.
 Title: Presidents and other chief executive officers of banks BRU: Banking, Securities & Corporations
 Sponsor: Rep. Moyer Component: Banking
 Requestor: _____ COMPONENT SERIAL NO.

1	2	3	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Willis

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521
 Division: Banking, Securities & Corporations Date: 4/5/91
 Approved by Commissioner: Glenn A. Olds *Glenn A. Olds* Ass. Comm.
 Agency: Department of Commerce & Economic Development Date: 4/5/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 231

Revision Date: _____ Department Affected: Commerce & Economic Dev.
 Title: Presidents and other chief BRU: Banking, Securities & Corporations
executive officers of banks Component: Banking
 Sponsor: Rep. Moyer
 Requestor: _____ COMPONENT SERIAL NO.

1	2	3	3
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Willis

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521
 Division: Banking, Securities & Corporations Date: 4/5/91
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Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HB

232

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

August 28, 1990

SUBJECT: Statutes relating to derelict and abandoned vessels

TO: Representative Cliff Davidson
ATTN: Jay Nelson

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a list of statutes relating to derelict and abandoned vessels.

There is relatively little state statutory law dealing with disposition of derelict and abandoned vessels. The bulk of the law dealing with vessels is a function of federal admiralty law which would not be reflected in state statutes.

Enclosed is a copy of AS 30.30. AS 30.30 contains the only statutes directly relating to procedures for the disposition of derelict and abandoned vessels. Other statutes, such as AS 34.45 (copy enclosed), may be implicated at certain stages of proceedings to dispose of a vessel depending on the facts and nature of the particular case, but in the absence of a specific case it is difficult to determine which statutes may be relevant.

Also enclosed is a bill introduced by Governor Sheffield in 1986 to reform AS 30.30. An important concern of Governor Sheffield's bill was the need to ensure the constitutionality of procedures for disposing of derelict and abandoned vessels by providing adequate protection for the due process rights of vessel owners.

If I can provide further assistance, please contact me.

GU:lmb
90-0019.lmb

CC: Corky McCorkle
Harbor Master
Kodiak

HB 525

Introduced: 1/29/86
Referred: State affairs,
Transportation and Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 525

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to abandoned vessels; and providing
7 for an effective date."

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

9 * Section 1. AS 30.30.010 is amended to read:

10 Sec. 30.30.010. ABANDONMENT OF VESSEL UNLAWFUL. (a) A person
11 may not store or leave a vessel in a wrecked, junked, or substantially
12 dismantled condition or abandoned upon any public water, or at a port
13 or harbor, [OF THE STATE,] without the consent of the agency having
14 jurisdiction of the water, port, or harbor, or docked or otherwise
15 left at any private property without the consent of the owner or
16 occupant of the property.

17 (b) A [THE DEPARTMENT OR A] peace officer may remove a [DERE-
18 LICT] vessel from public water, or at a port or harbor, in any in-
19 stance when the vessel obstructs or threatens to obstruct navigation,
20 contributes to air or water pollution, or in any other way constitutes
21 a danger or potential danger to the environment, to port or harbor
22 facilities, or to other vessels.

23 (c) This section may not be construed to contravene any applica-
24 ble federal law or regulation.

25 (d) A person who violates this section, upon conviction, is
26 guilty of a misdemeanor and is punishable by a fine of not more than
27 \$500, or by imprisonment for a period of not more than six months, or
28 by both.

29 * Sec. 2. AS 30.30.020 is amended to read:

1 Sec. 30.30.020. CUSTODY [DISPOSITION] OF CERTAIN [ABANDONED]
2 VESSELS. A vessel that has been left unattended for a continuous
3 period of more than 30 days and is upon public water or at a port or
4 harbor without the consent of the agency having jurisdiction of the
5 water, port, or harbor, or is docked or otherwise left at any [IN THE
6 WATERS OF THE STATE OR ON PUBLIC PROPERTY, OR IS ON] private property
7 without authorization of the owner or occupant of the property, may be
8 taken into custody by [THE DEPARTMENT OR] a peace officer and disposed
9 of [BY THE DEPARTMENT] under this chapter.

10 * Sec. 3. AS 30.30 is amended by adding new sections to read:

11 Sec. 30.30.051. FORFEITURE OF VESSELS. (a) A vessel that is
12 removed from public water or a port or harbor, under AS 30.30.010(b),
13 or an unattended vessel that is taken into custody under AS 30.30.020,
14 is subject to forfeiture under AS 30.30.051 -- 30.30.057.

15 (b) Within 10 days after a vessel's removal under AS 30.30.-
16 010(b) or taking into custody under AS 30.30.020, the commissioner of
17 public safety or a municipal law enforcement agency shall make an
18 inventory of the vessel and its gear, equipment, cargo, and any other
19 property aboard, and shall estimate their value.

20 (c) Within 30 days after a vessel's removal under AS 30.30.-
21 010(b) or taking into custody under AS 30.30.020, the commissioner of
22 transportation and public facilities, or a municipality, shall give
23 notice of the seizure. The notice must be sent to the last known
24 address of any person known to have an interest in the vessel or whose
25 interest in the vessel is ascertainable from official registration
26 numbers, licenses, or other federal, state, or municipal numbers on
27 the vessel.

28 (d) No sooner than 45 days after the removal or taking into
29 custody, and no sooner than 21 days after notice has been sent under

1 (c) of this section, an action may be filed by the commissioner of
2 transportation and public facilities, or a municipality, in the supe-
3 rior court.

4 (e) Within 30 days after filing the action, the commissioner of
5 transportation and public facilities, or a municipality, shall serve
6 process in the manner provided in the rules of civil procedure.

7 (f) After service of process under (e) of this section, a person
8 claiming an interest in the vessel shall file an answer within the
9 time permitted for answering complaints under the applicable rules of
10 civil procedure. The answer must include the nature of the claimant's
11 interest in the vessel, the date that it was acquired, the considera-
12 tion paid, and the circumstances under which it was acquired. If an
13 answer is not filed within the required time the vessel is forfeited
14 by default without further proceedings or showings.

15 (g) A claimant may, at any time before the court hearing, peti-
16 tion the court for release of a vessel, and its gear, equipment,
17 cargo, and other property aboard, removed under AS 30.30.010(b) or
18 taken into custody under AS 30.30.020, if the claimant

19 (1) has filed a timely answer under this section; or

20 (2) before the initiation of a forfeiture action, files a
21 notice of claim setting out the nature of the claimant's interest in
22 the vessel, the date that it was acquired, the consideration paid, and
23 the circumstances under which it was acquired.

24 (h) The court may release the vessel, and its gear, equipment,
25 cargo, and other property aboard, if a claimant provides a bond or
26 other valid equivalent security equal to twice the estimated value of
27 the vessel, gear, equipment, cargo, and other property.

28 Sec. 30.30.054. NATURE OF PROCEEDING AGAINST VESSEL. (a) The
29 plaintiff in a proceeding filed under AS 30.30.051 may seek (1) the

1 forfeiture of a vessel, and its gear, equipment, cargo, and other
2 property aboard; (2) the recovery of any unpaid harbor user fees, and
3 compensation for damage, if any, caused by the vessel to public port
4 or harbor facilities; (3) the costs of removal under AS 30.30.010(b)
5 or taking into custody under AS 30.30.020; (4) interest on fees and
6 compensation; and (5) costs and attorney fees actually and necessarily
7 incurred in the action.

8 (b) The court, after a hearing, may order forfeiture of the
9 vessel and other property, and the payment of any amount authorized by
10 this section. However, a vessel is not forfeited until the owner or
11 other persons having an interest in the vessel have had an opportunity
12 to pay the monetary judgment under conditions specified by the court.

13 (c) If a bond or equivalent security has been provided for the
14 release of the vessel and other property under AS 30.30.051, the
15 security must be returned upon payment of any monetary judgment under
16 this section or upon the return of the vessel and other property.

17 Sec. 30.30.057. DISPOSAL OF FORFEITED VESSELS. (a) A vessel
18 and other property forfeited to the state under AS 30.30.051 --
19 30.30.057 must be disposed of by the commissioner of administration in
20 accordance with applicable law. The commissioner of administration
21 may, consistent with other applicable law,

22 (1) destroy the vessel and other property; or
23 (2) sell the vessel and other property, and use the pro-
24 ceeds for payment of all proper expenses of the proceedings for for-
25 feiture and sale, including expenses of seizure, custody, and court
26 costs, and for payment for any damage to public port or harbor facil-
27 ities.

28 (b) A vessel and other property forfeited to a municipality
29 under AS 30.30.051 -- 30.30.057 must be disposed of in accordance with

1 municipal ordinance and other applicable law. The municipality may,
2 consistent with other applicable law,

3 (1) destroy the vessel and other property; or

4 (2) sell the vessel and other property, and use the pro-
5 ceeds for payment of all proper expenses of the proceedings for for-
6 feiture and sale, including seizure, custody, and court costs, and for
7 payment for any damage to public port or harbor facilities.

8 * Sec. 4. AS 30.30.160 is amended to read:

9 Sec. 30.30.160. REGULATIONS. The department may [SHALL] adopt
10 regulations under the Administrative Procedure Act (AS 44.62) to
11 implement, interpret, or make more specific its powers and duties
12 under [CARRY OUT THE PROVISIONS OF] this chapter.

13 * Sec. 5. AS 30.30.040 -- 30.30.100 are repealed.

14 * Sec. 6. This Act takes effect immediately in accordance with AS 01.-
15 10.070(c).

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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Mail Stop 3101

MEMORANDUM

February 19, 1991

SUBJECT: Sectional Summary of Work Order 7LS0500; An Act relating to sunken and abandoned vessels and cargo

TO: Representative George Jacko

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is a sectional summary of Work Order 7LS0500.

A sectional summary of a bill is not an authoritative interpretation of a bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends the powers of home rule municipalities in regard to sunken and abandoned vessels.

Section 2 of the bill adds a new section to AS 29.35 relating to the regulation of sunken and abandoned vessels by municipalities.

Section 3 of the bill adds a new section to AS 30.30 that makes it a class A misdemeanor to recklessly sink, or cause to be sunk, a vessel or cargo of a vessel.

Section 4 of the bill adds a new section to AS 30.30 that makes it a class B misdemeanor to knowingly abandon, or cause to be abandoned, a vessel or cargo of a vessel.

Section 5 of the bill adds a new section to AS 30.30 that describes what is an abandoned vessel for the purposes of AS 30.30.011 - 30.30.091.

Section 6 of the bill adds two new sections to AS 30.30 relating to the removal and custody of sunken or abandoned vessels on state or municipal land or water.

Sec. 30.30.031.

Subsection (a) requires a person who owned, controlled, or had custody of a sunken or abandoned vessel or cargo to remove the vessel or cargo from state or

Sectional analysis

municipal land or water within 30 days unless the person receives permission from the state or municipality and to restore state or municipal land or water damaged by the sinking or abandonment. Subsection (b) provides that the state or municipality may grant temporary or permanent permission in writing to leave a vessel or cargo in place.

Subsection (c) provides that only the Department of Environmental Conservation may grant permission to leave a hazardous substance on or within land or water in the state.

Subsection (d) provides that a person who receives permission to leave a vessel or cargo in place is still liable for damages that result from the presence of the vessel or cargo.

Subsection (e) provides that the state or municipality is not liable for damages arising from the presence of a vessel or cargo on state or municipal land or water, even though the state or municipality gave permission to leave the vessel or cargo in place.

Subsection (f) sets out the steps that the state or a municipality may take if a vessel or cargo remains on state or municipality land or water without permission, including legal action for damages and costs of removal of the vessel or cargo and restoration of the land or water.

Subsection (g) provides that the state or a municipality may assign its right to recover the cost of removing a vessel or cargo from state or municipal land and restoring the land and water to a person who agrees to, and actually does, remove the vessel or cargo and restore the land and water.

Subsection (h) sets out who is considered to be the owner of a sunken or abandoned vessel or cargo.

Sec. 30.30.035 provides that sunken and abandoned vessels and cargo may be taken into the custody of the state, a municipality, or a peace officer.

Section 7 of the bill amends AS 30.30.040 relating to the notice that must be given to the owner of a sunken or abandoned vessel or cargo that has been taken into custody by the state or a municipality.

Section 8 of the bill amends AS 30.30.050 relating to the sale of a vessel or cargo that is in the custody of the state or a municipality.

Section 9 of the bill amends AS 30.30.060 relating to possession of a sunken or abandoned vessel or cargo by a person who has an interest in the vessel or cargo before the vessel or cargo is disposed of by the state.

Section 10 of the bill amends AS 30.30.080 relating to the effect of a sale of a sunken or abandoned vessel by the state or a municipality.

Representative George Jacko

February 19, 1991

Page 3

Section 11 of the bill adds a new section to AS 30.30 setting out the jurisdiction of the Department of Transportation and Public Facilities and the Department of Natural Resources and municipalities in implementing AS 30.30.011 - 30.30.091.

Section 12 of the bill amends AS 30.30.160 by providing that the state departments may adopt regulations to carry out the provisions of AS 30.30.

Section 13 of the bill amends the definitions of terms used in AS 30.30.

Section 14 of the bill sets out provisions prescribing how AS 30.30 as amended by this Act, is to be applied to vessels and cargo currently sunk or abandoned in the state and to those that will be sunk or abandoned in the future.

Section 15 of the bill repeals various section of AS 30.30.

Section 16 of the bill provides that the bill takes effect immediately after becoming law.

GU:lmb:pl
91-053.lmb



MAR 19 1991

PORT OF KODIAK - HARBOR DEPARTMENT

POST OFFICE BOX 1397, KODIAK, ALASKA 99615

TELEPHONE (907) 486-8080 / 486-8085

FAX (907) 486-8090

March 15, 1991

Representative George Jacko
P.O. Box "V"
Juneau, AK. 99811

RE: PROPOSED LEGISLATION ON ABANDONED VESSELS

Dear Rep. Jacko:

I have been working with Mel Stephens, City Attorney, and concur with his recommendations and ask you to consider his input. Vessels that cause harbor masters considerable problems are those users who fail to pay moorage fees.

Once it gets to the point where we deny the vessel use of harbor facilities, we are literally handcuffed from that point on. Currently there is no lawful authority to move these vessels from municipal Port and Harbor facilities to another location without assuming full responsibility for the vessel.

Your review and support in this proposed legislation would be gratefully appreciated. This will give us the necessary legislation to enforce this problem.

Should you have any questions concerning this matter please feel free to call me at any time.

Sincerely,

PORT OF KODIAK

G.V. "Corky" McCorkle
HARBORMASTER/PORT ADMINISTRATOR

GVM/km

CC: Sen. Fred Zharoff
Rep. Cliff Davidson
Doug Ensley
George Utermohle
City Manager

MELVIN M. STEPHENS, II
A PROFESSIONAL CORPORATION
ATTORNEY AT LAW
104 CENTER AVENUE, SUITE 206
P. O. BOX 1129
KODIAK, ALASKA 99615
TELEPHONE (907) 486-3143

MEMORANDUM

TO: George V. McCorkle, Harbormaster
FROM: Melvin M. Stephens, II *HMS*
RE: Jacko Proposed Legislation on Abandoned Vessels
Date: March 14, 1991

Representative Jacko's working draft of a proposed house bill relating to sunken and abandoned vessels and cargo is a laudable attempt to address this issue, but there are certain aspects of this draft which give me some concern and in other respects I feel it could be improved by amendments which would broaden its scope somewhat.

I am concerned about sections 1 and 2 of the proposed draft, which would have the effect of requiring the City of Kodiak and all other home rule municipalities to be governed by this legislation. In combination with section 11, which appears to restrict municipal jurisdiction over sunken and abandoned vessels to those vessels which are "on municipal land, including municipal tide and submerged land," I fear these sections may actually make it more difficult for you to address problems associated with derelict, abandoned and sunken vessels within the port of Kodiak. I would prefer to see section 1 deleted entirely and section 11 amended so as to explicitly state that nothing in this bill is intended to restrict a home rule municipality from regulating derelict, abandoned and sunken vessels within ports and harbors operated by that municipality.

I also note that section 5 of the bill establishes a relatively restricted definition of an abandoned vessel. While this is a carry-over from current law, I feel this bill would be improved with the addition of a new subsection (2)(E) to proposed section 30.30.025 to read as follows:

(E) The owner or operator of the vessel is more than 30 days delinquent in moorage charges owed to the state of a municipality.

The point of such an amendment would be to allow you to treat as "abandoned" those vessels which are simply left at city mooring facilities in spite of specific written directives by your office requiring those vessels to be removed due to longstanding arrearages in their moorage accounts.

George V. McCorkle

-2-

March 14, 1991

If you care to pass these comments on to the office or committee within the legislature which is working on this problem, please feel free to do so. I am sure your own observations concerning the nature of the problems which you face would also be of value to those who are working on this legislation.

corky.314

April 2, 1991

Representative George Jacko
Alaska State House of Representatives
P. O. Box V
Juneau, Alaska 99811

APR 9 1991

Dear Representative Jacko,

I applaude you for your introduction of legislation that would assist in the removal of beached vessels along Alaska's coast line.

I have been a resident of St. Paul Island for more than five years. During that time I have watched the increasing fishing industry activity. It is, of course, very helpful to the economy of this small community. But there are discouraging side effects to the environment and the beauty of the Island.

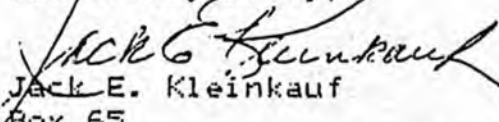
During the past five years, the shores of St. Paul Island have been fouled by rusting hulks of beached fishing industry vessels. Probably the only attraction that these shipwrecks is to the visitors when we try to verify the strength of the Bering Sea and the many storms that occur here.

The All Alaska, a processor, is a good example of another part of the fishing industry - greed. The skipper of this craft had plenty of warning about the impending storm. Yet he chose not to shut down his operation until it was too late. Now we have this dubious monument of that greed resting on the most beautiful beach on the Island. Not only is it an eyesore, but, still filled with rotting crab, it poses a hazard to the health of both the sea and to man.

The Terminator is an example of pure neglect. Its pilot fell asleep on the bridge. The Monarch demonstrated foolhardiness when the skipper tried to sail a sea covered with ice. That one required the Coast Guard to employ a helicopter to remove the crew, two of which nearly lost their lives when the vessel beached and the waves washed them from the deck on to the ice and rocks. And the Ocean Clipper, whose crew demonstrated lack of knowledge of the Island waters when it tried to anchor in a treacherous eddy. The anchor failed and the boat was tossed on the rocks where it remained for a year and then was redeposited directly on one of the fur seal rookeries.

These are a few examples of the problem found on just one island. I am sure many more may be found elsewhere. There are few places where the fishing industry has improved the quality of life in ways other than financial. Your proposed legislation is a huge step toward making the industry more responsible for the actions of uncaring, neglectful and greedy vessel operators and crews.

Yours very truly,


Jack E. Kleinkauf
Box 65
St. Paul Island, Alaska 99660

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

April 3, 1991

The Honorable Richard Foster, Chair
House Transportation Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Foster:

Subject: HB 232, which relates to sunken and abandoned vessels and cargo.

Position: The department of natural resources supports this bill, but recommends a clarifying amendment.

Background: Shipwrecks on state tidelands often contain hazardous materials such as oil and ammonia, or methane gas produced from a cargo of rotting fish. Shipwrecks that have no historic value impair other uses of the tidelands and are attractive nuisances that generate liabilities for the state. Shippers often abandon a wrecked ship because it is too expensive to remove. Currently, litigation is the only means for removal of an abandoned shipwreck. During the often lengthy litigation process, the wrecked vessel and its value can continue to deteriorate and the ship can become even more difficult to remove.

This bill would allow the tideland owners (state or municipal governments) to require removal of sunken or abandoned vessels and cargo, unless the agency with jurisdiction decides otherwise. It provides penalties for noncompliance with cleanup requirements, and allows the agency with jurisdiction to take custody of the vessel and cargo, and clean up the wreck site, as necessary. The bill also authorizes lawsuits to recover ship wreck removal and cleanup costs.

Recommendation: Clarify Section 11, by rewriting as follows, to make the law retroactive for cargo as well as vessels, and to ensure that future wrecks are protected by state historic preservation laws:

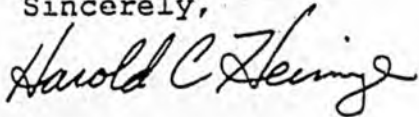
Sec. 30.30.099. APPLICABILITY. (a) Except as provided in (b) of this section, AS 30.30.031 - 30.30.099 apply to all vessels and cargo of vessels sunk or abandoned before, on or after the effective date of this act. The successor in interest of the person who owned, controlled, or had custody of a vessel or cargo of a vessel subject to this subsection at the time the vessel was sunk or abandoned is subject to AS 30.30.031 - 30.30.099.

(b) AS 30.30.031 - 30.30.099 do not apply to sunk or abandoned vessels or cargo designated as historic monuments, sites,

properties, locations, or remains under AS 41.35.010 -
41.5.240.

Please let me know if you would like additional information related
to this bill.

Sincerely,



Harold C. Heinze
Commissioner

enclosures

cc: Committee Members
Representative Jacko
Representative Navarre
Bruce Kendall, Legislative Liaison, Office of the Governor



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

Boyer

April 9, 1991

APR 11 1991

Honorable George Jacko, Jr.
Alaska House of Representatives
Box V
Juneau, Alaska 99811

Dear Mr. Jacko:

Thank you for providing us with a copy of HB 232 which relates to removal of sunken or abandoned vessels.

The National Marine Fisheries Service has been concerned with the number of vessels which have been grounding in or near fur seal rookeries in the Pribilof Islands. As the ports on St Paul and St. George develop, the number of vessels using the nearshore waters will increase. To date there has been no legal mechanism to compel vessel owners to remove vessels which have grounded in the Pribilofs. We have shared our concern with island leaders but to date there has been little either group could do.

We are, therefore, very pleased to see that the State is proposing a statute which will require the removal of sunken or abandoned vessels or cargos from the lands or waters of Alaska. By this letter the Alaska Region, National Marine Fisheries, wishes to indicate its support for this approach.

If you have any questions in the matter please call Dr. Steven Zimmerman or Mr. Bradley Hanson of my staff at 586-7235.

Sincerely,

for *James W. Brooks*
Steven Pennoyer, Director
Alaska Region



TRESPASS NOTICE AND ORDER TO QUIT

TO:

All Alaskan Seafoods Inc.
An Alaska Corporation
311 Mill Bay Road
Kodiak, AK 99615

Lloyd W. Canon, Registered Agent and/or

Other persons owning or having an interest in the vessel M.V All Alaskan.

Under AS 38.05.020 and 38.05.035, the director of the state division of land and water managment has the authority and responsibility to manage and control state property and may issue orders to carry out that function. By virtue of the authority delegated to this office by the director, YOU ARE HEREBY NOTIFIED:

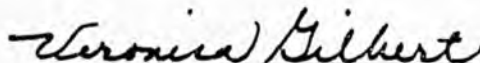
1. The M/V All Alaskan is aground on tidelands of the State of Alaska; namely near the northeast point of St. Paul Island, Alaska.

2. Your failure to remove the M/V All Alaskan constitutes an unauthorized remaining unlawfully upon the premises of the State of Alaska, namely the tidelands at the northeast point of St. Paul Island.

3. Your use and occupancy is unauthorized and contrary to law. Accordingly,

4. YOU ARE HEREBY ORDERED to quit your use and occupancy and to vacate the premises immediately and remove the M/V All Alaskan.

5. YOU ARE FURTHER ORDERED to remove all personal property and structures from the premises within thirty (30) days of this notice, including equipment, debris or other items of anything kind whatsoever.



Veronica Gilbert
Regional Manager
Division of Land Water
Management

CERTIFICATE OF SERVICE

On this date a correct copy of the TRESPASS NOTICE AND ORDER TO QUIT was mailed to the All Alaska Seafoods, Inc., by depositing the same in the U.S. Mail at Anchorage, Alaska, postage prepaid.

April 11, 1990
Date

Barbara L. Isenak
Signature

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 11, 1990

OFFER OF SETTLEMENT & COMPROMISE
PROTECTED UNDER EVIDENCE RULE 408

Mr. Doug Fryer, Esq.
Mikkelboug, Bronz, Wells & Fryer
1001 Fourth Avenue, Suite 3300
Seattle, WA 98154

Mr. William Wuestenfeld, Esq.
Sandberg & Smith
310 K Street, Suite 500
Anchorage, AK 99501

Re: State of Alaska v. All Alaskan Seafoods

Gentlemen:

In a past conversation, Mr. Fryer inquired as to the State's position as to possible settlement of this matter. After receiving your recent offer of judgment of only \$25,000, we would like to share with you the state's view of this case.

As you know, the Alaska Department of Natural Resources manages the state tidelands upon which the All Alaskan is grounded. The unauthorized presence of the All Alaskan on state tidelands is a continuing trespass on state property and accordingly the Department of Natural Resources demands the removal of the wreck. How this is accomplished is a matter for All Alaska Seafoods and its insurers. The Department would be willing to review any proposals by your clients or their underwriters as to how to effectively and economically remove the wreck. ~~Such a plan would have to be approved by DNR, the Department of Fish and Game, the Department of Environmental Conservation and appropriate federal agencies.~~ ~~Such a plan would have to be approved by DNR, the Department of Fish and Game, the Department of Environmental Conservation and appropriate federal agencies.~~ If an acceptable removal operation can be completed, DNR would be willing to drop its trespass and nuisance damage claims resulting from the grounding.

As to the pollution/natural resource claims as a result of the spill, the state would be willing to settle these claims for the base oil spill penalties under AS 46.03.758 and state response costs. State response costs are relatively small in the neighborhood of \$5,000.

According to the figures supplied by All Alaskan Seafoods to the U.S. Coast Guard and ADEC at least 43,250 gallons of diesel fuel were released to the environment. Under the regulations

REPLY TO:

1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

Dept of law

APR 27 1990

implementing the oil spill penalty provisions of AS 46.03.758, the waters near the grounding are designated as a critical marine environment. 18 AAC 75.520(1)(E) & (F). The base penalty for oil spills into a critical marine environment is \$2.50 a gallon. 18 AAC 75.570(1). Applying the toxicity, degradability and dispersability factors for marine diesel in 18 AAC 75.540 et. seq. to the base penalty (\$2.50 x .466) produces a net per gallon spill penalty of \$1.17. Using this figure, the total penalty for a spill of 43,250 gallons is \$50,602.50.

In light of your indisputable liability for oil spill penalties in excess of \$50,000, your offer of judgment is clearly inadequate even ignoring the fact that your client refuses to remove the All Alaskan from state lands. Moreover, the state believes it has a strong case that the spill resulted from gross negligence, thereby subjecting All Alaskan Seafoods to five times the base penalty or \$253,012.50. See AS 46.03.758(b)(2).

In the interests of resolving this matter without further litigation, the state is willing to settle this matter for its costs and the basic oil spill penalties, if All Alaska Seafoods will remove the wreck. The state is willing to negotiate a reasonable time frame for removal but is adamant in its position that this environmental blight be removed from its property.

As to your position that your marine protection and indemnity insurers are only obligated to remove the wreck if compelled to do so by a court injunction, we call your attention to Continental Oil Co. v. Bonanza Corp., 706 F.2d 1365 (4th Cir. 1983). In Continental Oil, the court held that an order by a government official to remove a wreck fell within the "compulsory by law" P & I policy provisions for wreck removal. In case there is any doubt in your mind as to the state's position, we enclose an order from the Division of Land & Water Management directly you to remove the M/V All Alaskan from state lands.¹ See also Seaboard Shipping v. Jocharanne Tugboat Corp., 461 F.2d 500, 504 (2d Cir. 1972) ("compulsory removal" met when pursuant to government order the wreck must be removed). If your P & I insurers insist in their

¹ Even without an order from a governmental official, the Continental court held that this condition was met "when a reasonable owner, fully informed, would conclude that failure to remove would likely expose him to liability imposed by law sufficiently great in amount and probability of occurrence to justify the expense of removal." Id. at 1372; see Zurich Ins. Co. v. Pateman, 692 F. Supp. 371, 377-80 (D.N.J. 1987). In light of your liabilities for continuing trespass, nuisance and per day penalties for violation of numerous state environmental statutes, failure to remove the vessel clearly exposes you to liability of such magnitude to justify the expense of removal.

unreasonable refusal to provide coverage, we suggest in light of the rapidly developing law of insurance bad faith in Alaska that your remedy is to remove the vessel and pursue a first party bad faith action against your insurer. See State Farm Fire & Casualty Co. v. Nicholson, 777 P.2d 1152 (Alaska 1989).

In sum, your failure to remove the All Alaskan is simply unjustified. The state is willing to fully litigate this matter, if necessary, to ensure removal. However, in the interests of resolving this dispute without further litigation, the state is willing to settle this matter along the lines discussed above.

If your clients are interested in such a settlement, I would appreciate hearing from you within two weeks of receipt of this letter. If your client's reaction is positive, we can then set up a time frame for your preparing a plan of operations and obtaining approvals from the appropriate state agencies.

Sincerely,

DOUGLAS B. BAILY
Attorney General



By: Breck C. Tostevin
Assistant Attorney General

Enclosure

cc: ✓ Gary Gustafson, DNR/DLWM
Bill H. Lamoreaux, ADEC/SCRO
Bruce Erickson, ADEC/AWDO
Lance Trasky, ADFG/Habitat

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 232

Revision Date: 28-Mar-91 Department Affected: Natural Resources
 Title: Shipwrecks Act BRU: Land & Water Management
 Components: Land & Water Management
 Sponsor: Representative Jacko
 Requestor: House Transportation COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact: 0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Salli Slaughter Phone: 762-2692
 Division: Land & Water Date: 28-Mar-91

Approved by Commissioner: Harold Heinze Date: 28-Mar-91
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HB 232
Shipwrecks Act*

Section Analysis
March 26, 1991

* An Act relating to sunken and abandoned vessels and cargo; and providing for an effective date.

Summary: There is currently limited power in ports and harbors to effect the cleanup of wrecked or abandoned vessels. This act expands that authority to other state or municipal land, and includes cargo. It requires the removal of sunken or abandoned vessels and cargo unless the agency having jurisdiction gives permission to do otherwise, and provides penalties for non-compliance. It authorizes the appropriate agency to clean up the land if necessary, and to take custody of the vessel or cargo and sell it. It also authorizes a lawsuit to be filed to recover costs (plus double damages, if the vessel is 58 feet or over). In short, it ensures that state tidelands are cleaned-up, and limits the state's liability without protracted litigation.

Section 1. Broadens the powers of home rule municipalities to include AS 29.35.085 (sunken or abandoned vessels).

Section 2. Provides a cross reference for municipalities to regulate sunken or abandoned vessels under AS 30.30.

Section 3. Requires a person who wants to sink a vessel or cargo to get permission from the department or municipality having jurisdiction. To do so without permission is a class A misdemeanor.

Section 4. Knowing abandonment of a vessel or cargo is a class B misdemeanor.

Section 5. Defines abandonment.

Section 6. Requires a person who owns, controlled or had custody of the vessel or cargo when it was sunk to remove it and restore the state or municipal land within 30 days unless they have permission to do otherwise from the appropriate agency. It limits the agency's liability, even if permission to leave the vessel has been granted.

It also allows the appropriate agency to effect clean up and bring a court action against the appropriate person to recover costs and civil penalties (twice the costs of removal and restoration if the vessel is more than 58 feet overall). This section also allows the agency to assign its rights to recover costs to a third party in order to have the vessel removed (the civil penalty may not be assigned).

Defines owner.

It allows the agency or a peace officer to take custody of the vessel or cargo (immediately, if it threatens life, public safety, property, the environment, etc.). It also states that vessels and cargo taken into custody are subject to disposal, except for timber subject to AS 45.50.210-.325 (log brands and abandoned/ salvage logs).

Section 7. Expands existing section regarding notice to owners that custody has been taken to include all state or municipal tidelands (it currently only covers harbors), and to cover cargo as well.

Section 8. Expands existing section regarding public auction of the vessel to include cargo and expand the allowable time for repossession from 20 days to 30. Adds cross reference to the notice provision above.

Section 9. Amends an existing section that states that a third party having an interest in the vessel or cargo may take possession before the date of auction. The amendment expands the section to apply to all state and municipal tidelands, and adds a bonding requirement for removal and restoration (the section already requires a bond sufficient to cover the value of the vessel or cargo).

Section 10. Amends existing section stating that a bill of sale transfers the agency's interest to apply to municipalities as well.

Section 11. Defines areas of jurisdiction: DOT/PF has jurisdiction in ports and harbors below tides; the state on all other state owned tidelands and waters; and municipalities on municipally owned tidelands.

Subsections are (a) and (b) are unclear however, they appear to have the following meanings. The act is inapplicable to historic properties, etc. sunk or abandoned prior to the effective date of the Act and designated under AS 41.35.010-.240. Otherwise it appears to be applicable to all vessels (but not cargo) sunk or abandoned before the effective date of the act; vessels and cargo sunk or abandoned on or after the effective date of the act.

There appears to be no reason to exempt abandoned cargo from the retroactive application of this law. Likewise, there appears to be no reason to exempt future shipwrecks/cargo from the historic preservation act. We therefore suggest the following:

Sec. 30.30.099. APPLICABILITY. (a) Except as provided in (b) of this section, AS 30.30.031 - 30.30.099 apply to all vessels and cargo of vessels that are sunk or abandoned before, on or after the effective date of this Act. The

successor in interest of the person who owned, controlled, or had custody of a vessel or cargo of a vessel subject to this subsection at the time the vessel was sunk or abandoned is subject to AS 30.30.031 - 30.30.099.

(b) AS 30.30.031 - 30.30.099 do not apply to sunk or abandoned vessels or cargo designated as historic monuments, sites, properties, locations, or remains under AS 41.35.010 - 41.5.240.

Subsection (c) states that this Act shall be construed to be consistent with the Article on log brands and salvage timber (AS 45.50.210 - 45.50.325). If the articles are not consistent, AS 45 controls.

Section 12. Changes the qualifier from "shall" to "may" (adopt regulations).

Section 13. Definitions.

Section 14. Repealer.

Section 15. Provides for an immediate effective date.

House of Representatives

While in Session:
Box V
Juneau, AK 99811
(907)465-4942

P.O. Box 47001
Pedro Bay, Alaska 99647
(907)850-2208



Member:
Finance Committee

Finance
Subcommittee Chair:
Courts
Department of Public Safety

Finance
Subcommittee Member:
Department of Fish and Game

Rep. George Jacko, Jr.

M E M O R A N D U M

TO: Representative Dave Donley, Chair
House Judiciary Committee

FROM: Representative George Jacko, Jr.

SUBJECT: House Bill 232 (Abandoned Vessels)

DATE: May 10, 1991

=====

To thwart an increasing problem of abandoned vessels in the Pribilof Islands, Aleutian Chain and elsewhere in the State, I have introduced House Bill 232. HB 232 will allow municipalities and departments the ability to recover the cost of removal and restoration of abandoned or sunken vessels and cargo. Currently there is no direct statutory authority for landowners to recover costs of removing abandoned vessels.

Unless an owner has permission from a municipality or the appropriate agency, this bill will require that an abandoned vessel be removed within 30 days. It also allows the appropriate agency to effect clean up and bring a court action against the owner to recover costs and civil penalties (Twice the costs of removal and restoration if the vessel is more than 58 feet overall).

The legislation will also clarify the authority of the State agencies involved--the Department of Natural Resources, the Department of Environmental Conservation, and the Department of Transportation and Public Facilities.

RECEIVED

The Alaska Economic Report

ALASKA STATE LIBRARY

Political aftershocks will affect all industries:

April 7, 1989
No. 7/89

Spill Legacy: Litigation, Legislation

Political aftershocks of the big Exxon Valdez oil spill in Prince William Sound are beginning to be felt, as political leaders and agency heads scramble to be on what they see as 'the right side' of public opinion. In Washington, legislation to open the Arctic National Wildlife Refuge to exploration is on the shelf for now. In Juneau, where the state legislature is now meeting, oil spill liability and hazardous substance bills suddenly have new life, as well as various tax measures.

that authority, but they'd rather not test him; Cowper has plenty of other ways to make the industry 'feel the heat'. *Political effects of the spill will be felt on more industries than petroleum, however. Mining, forest operators and others who work with state and federal environmental agencies will be affected. Agencies will have much more political clout in pushing stipulations to development permits.* (Continued on Pg. 2)

Meanwhile, as cleanup operations continue in Prince William Sound (see Pg. 2), lawsuits from fishermen against Exxon, Alyeska Pipeline service Co. and the State Department of Environmental Conservation are being filed.

In Juneau, Gov. Steve Cowper is threatening to shut down the Alyeska Pipeline if Alyeska doesn't adopt better spill contingency capability. Alyeska's owner companies, the producers (Cowper did not want to meet with Alyeska) aren't sure the governor really has

In This Issue:

- *** The Spill - What happened; Massive cleanup underway in Prince William Sound Pg. 2
- *** Effect on region's rich fisheries Pg. 7
- *** Airport Marketing: Hustling new carriers with 'cooperative marketing' incentive Pg. 3
- *** Airport Indicators: Freight, passengers show healthy increases over last year Pg. 3
- *** Mining: Cyanide contamination scare at Grant Mine near Fairbanks Pg. 7
- *** Valdez Creek Gold Mine Expansion? Pg. 7

No Help: Dutch Harbor's Derelict Ship Dilemma

With attention of state agencies focused on Prince William Sound, the City of Unalaska/Dutch Harbor can't get help on a ship problem of its own, and local officials feel caught in a Kafkaesque web of admiralty laws: In late February, a 304-ft. Japanese freighter, *MV Swallow*, ran aground at Dutch Harbor; sources say the captain was drunk. In the days following, the captain and crew left town, a diesel fuel spill was cleaned up by the state and the city paid to dispose of other refuse. *Now the city is stuck with the beached ship with 89,000 gal. of bunker fuel still on board; the Japanese ship owners Hidaka Kain K.K. says it no longer owns the ship, having been paid off by insurers, but the insurance company claims it doesn't have title to the ship*

either. City officials want someone to 'do something'; they got sympathy but not much else from state officials in Juneau, including Gov. Steve Cowper (this was before the *Exxon Valdez* grounding).

This is now a common problem in the chain. Three ships, including the *Swallow*, are aground and abandoned within 25 miles of Unalaska; two more are on the Pribilofs. Unalaska has limited resources to deal with the problem, but if foreign ships go aground near smaller villages, there's no one to deal with it. There's a perception, even among insurance companies, that 'no one cares' about a derelict in the Aleutians. "If this was Malibu, we'd get action," city officials complain.

READY

REFERENCE



(left): Coast Guard Petty Officers Tim Mooney (left) and Bud Stevenson remove an oil-soaked boom from area of the grounded Swallow; Port Director Gary Daily is anxious for the Japanese owners to pick up their litter.

PAZ Christopher Hater

John van Amerongen photos

'Swallow' Sours Dutch Harbor

As for the effects of the spill itself, the beaches inside the harbor remain painted with the black bunker fuel, and dead birds, coated with oil, can still be found in the tide line. Rare emperor geese continue to feed along the shore, and bald eagles have been observed feeding on oil-

wouldn't be found ashore would be "wandering on the road," and engaged in "real heavy preening all the time."

What was frustrating was that the birds were oiled enough to die eventually, but healthy enough that they could avoid being caught and cleaned.

Swallow Sours Dutch Harbor

As Dutch Harbor families were sitting down to Easter dinner, salvage crews were continuing efforts to offload heavy oil from the *Swallow*, a 278-foot Japanese trawler that t-boned into Ulatka Head the morning of February 27, spilling an undetermined amount of #6 diesel into the surrounding water and onto the beach.

Loaded with crab, the vessel was reportedly circling near the mouth of the harbor and awaiting the arrival of a pilot when she plowed nose-on into beach at the base of the rocky bluff.

By April 11, the Coast Guard and Army Corps of Engineers had supervised the offloading of the remaining 22,000 gallons of #6 diesel and 8,000 gallons of contaminated fuel. The cargo of 250 tons of crab was disposed of at sea to avoid a possible explosion from methane gas given off by the decomposing shellfish.

While a final disposition hasn't been made as to the fate of the vessel, Port Director Gary Daily remains concerned that its Japanese owners, Hidaka Kaiun, will leave the vessel abandoned on the beach and the Coast Guard and Army will do nothing further to rid the community of a dangerous landmark. Presently, it's not considered a hazard to navigation.

"Now you have a liability hazard

toward the city," Daily told the JOURNAL. "Kids will be exploring for the next 100 years, and some will not come back. How do you justify that? Anybody who falls down has got to sue somebody."

"We've got a community with the ultimate littering problem dumped on it," said Daily. "It's got this town flat upset."

ker fuel, and dead birds, coated with oil, can still be found in the tide line. Rare emperor geese continue to feed along the shore, and bald eagles have been observed feeding on oil-soaked carcasses.

While he didn't have exact figures, ADF&G biologist Dan Urban said about 300 to 500 birds were reported killed by the oil.

"It's really scary, considering the relatively minor amount spilled here, and how little oil it took to do the birds in," Urban said.

A spot "the size of a silver dollar" would distract the birds from feeding, Urban said. Birds that normally

the time.

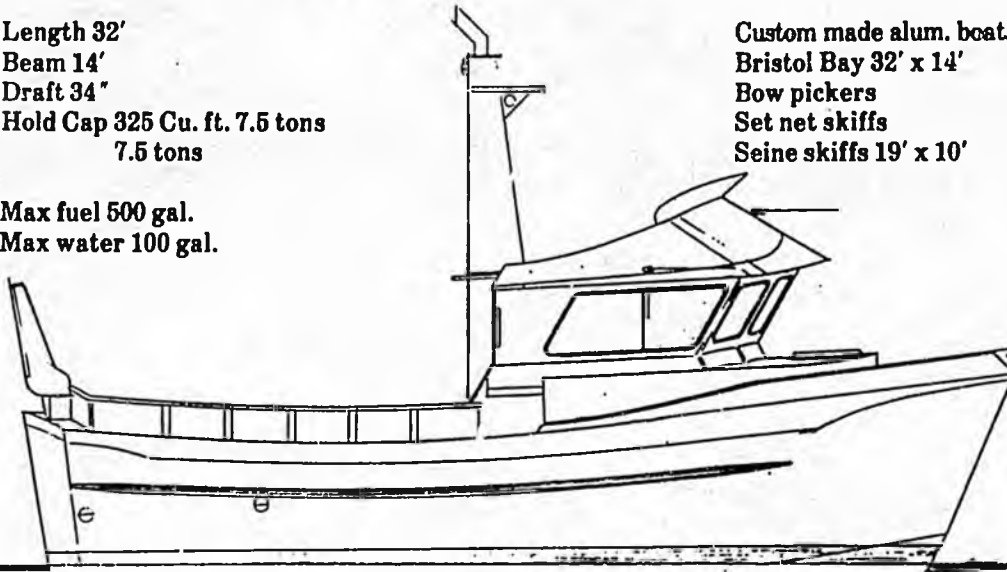
What was frustrating was that the birds were oiled enough to die eventually, but healthy enough that they could avoid being caught and cleaned.

The abandoned ship isn't exactly a monument to good U.S./Japan relations, Daily said. "If you can take millions of dollars out of here, then expect to dump this on us and leave it here, do you expect us to say thank you?"

"It's not the fault of the Japanese government . . ." Daily said, "it's not the owner's fault. But we would like this mess cleaned up." □

Length 32'
Beam 14'
Draft 34"
Hold Cap 325 Cu. ft. 7.5 tons
7.5 tons

Max fuel 500 gal.
Max water 100 gal.



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Bellevue, WA 98011
Collect (206) 488-2528

Funding for Buy-Sell Agreements



PA2 Christopher E. Haley

On the Rocks



By PAC Ed Moreth

It was 250 tons of crab perhaps destined to remain in Alaska, joked one Coast Guardsman in Dutch Harbor where a ship laden with frozen crab grounded on a rocky beach Feb. 27.

LT Matt Carr of Marine Safety Office Anchorage called it "the case of the doomed crab cargo." The Alaska snow crab started its journey on the fishing vessel Yardarm Knot, a 324-foot crab processing vessel bound for Japan. The American-flagged ship struck a reef on Feb. 20 off St. Paul Island.

In an effort to save the cargo, valued at about \$2.5 million, the Japanese refrigerated cargo ship Swallow transported the crab to its cargo holds.

Yet only seven days later, while waiting for a pilot on its approach to Dutch Harbor, the Swallow drifted bow first onto a beach at Ulatka Head with nearly two-thirds of its length aground.

Attempts to free the vessel using tugs at high tide were unsuccessful, according to

Carr. The owner, Hidaka Kaiun Company Ltd, of Japan claimed the vessel a total loss.

The 19-man crew was safely taken off the vessel; the crab, however, could not be rescued. The frozen crab was instead becoming a potential danger to the Coast Guard crew and contractors working on board the Swallow.

The crab had to be removed before it thawed, said LCDR Bill Hutmacher, the on-scene coordinator's representative from Marine Safety Office Anchorage. He said that once the crab thaws, it releases a toxic gas, which makes working conditions aboard the vessel unsafe.

A C-130 aircraft from Kodiak was sent to Dutch Harbor with 2,000 feet of inflatable containment boom. Coast

Guard crews from the Pacific Area Strike Team, Marine Safety Office Anchorage and Marine Safety Detachment Kodiak were also dispatched to the scene.

Ten of the ship's 11 fuel tanks had been punctured. Nearly 89,000 gallons of number six fuel and 30,000 gallons of diesel on board the grounded Swallow presented a potential danger to the city's four \$1-million a day fish and crab processing facilities as well as the wildlife in the area.

Two members of the U.S. Department of Interior were sent to Unalaska to set up a wildlife rehabilitation center.

The Coast Guard contracted Underwater Construction, Inc. of Anchorage, which also had been contracted to dispose of the fuel aboard the cargo ves-



Twelve Hundred feet of containment boom is and the landing craft Krystal Sea with help deployed by Pacific Area Strike Team members from a back hoe.

sel Aoyagi Maru, 40 miles east of Dutch Harbor. Underwater Construction's two work boats, Krystal Sea and Bettye K were diverted to offload Swallow's rotting crab and fuel.

Absorbent snares were placed on each side of the 280-foot Swallow. Boom was strategically set in areas to prevent the oil from spreading.

The crab was transferred to the Krystal Sea, separated from its containers, and dumped in 300 feet of water about two miles from the Swallow.

Most of the diesel on board was believed to have escaped from the vessel. It's unknown how much of the number six fuel was lost. Cleanup crews recovered more than 3,000 pounds of oily debris from the water and beaches.

The fuel transfer operations were completed on April 6. Carr said that it took 12 pumps, including two Strike Team pumps, to offload the fuel.

"The oil was as thick as molasses and so hard to pump." Heaters were placed on board the Swallow to help speed the transfer process, but had little affect.

Unalaska Mayor, Paul Fuhs, is working with the Japanese consul in Anchorage and the owner's insurance company in an effort to have the vessel removed from Dutch Harbor, according to Glenn Reed, Unalaska's assistant city manager. 🐻

SN Dan Schardt tries to wipe some of the oil from BM1 Dan Derwey's exposure suit.



DATE: SATURDAY March 18, 1989
 PAGE: C2
 SECTION: Metro
 SOURCE: The Associated Press
 DATELINE: UNALASKA

EDITION: FINAL
 LENGTH: Short

JAPANESE SHIP'S FUEL TO BURN

END OF DOCUMENT.

RANK 9 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 3695
 ANCHORAGE DAILY NEWS

DATE: FRIDAY March 17, 1989
 PAGE: A1
 SECTION: Nation

EDITION: FINAL
 LENGTH: Short

GOING NOWHERE

END OF DOCUMENT.

RANK 10 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 3635
 ANCHORAGE DAILY NEWS

DATE: SATURDAY March 11, 1989
 PAGE: D1
 SECTION: Metro
 SOURCE: by HAL BERNTON
 Daily News reporter

EDITION: FINAL
 LENGTH: Medium

GOOEY OIL COMPLICATES SPILL CLEANUP

END OF DOCUMENT.

RANK 11 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 3383
 ANCHORAGE DAILY NEWS

DATE: FRIDAY March 10, 1989
 PAGE: B1
 SECTION: Metro
 SOURCE: The Associated Press
 DATELINE: DUTCH HARBOR

EDITION: FINAL
 LENGTH: Short

OIL SPILL DAMAGE RAISED

END OF DOCUMENT.

RANK 12 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 3292
 ANCHORAGE DAILY NEWS

DATE: TUESDAY March 7, 1989
 PAGE: D1
 SECTION: Metro
 SOURCE: by HAL BERNTON
 Daily News reporter

EDITION: FINAL
 LENGTH: Medium

GUARD CONSIDERS HOW TO UNLOAD OIL, DECAYING CRAB

END OF DOCUMENT.

RANK 13 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 3258
 ANCHORAGE DAILY NEWS

DATE: WEDNESDAY March 8, 1989
 PAGE: B2
 SECTION: Metro
 SOURCE: The Associated Press

EDITION: FINAL
 LENGTH: Short

COAST GUARD HOPS UP OIL SPILL

END OF DOCUMENT.

RANK 14 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 3209
 ANCHORAGE DAILY NEWS

DATE: SUNDAY March 5, 1989
 PAGE: B1
 SECTION: Metro
 SOURCE: By STEVE RINEHART
 Daily News reporter

EDITION: FINAL
 LENGTH: Medium

COAST GUARD FIGHTS WINDS TO HOLD SPILL

END OF DOCUMENT.

RANK 15 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 3155
 ANCHORAGE DAILY NEWS

DATE: SATURDAY March 4, 1989
 PAGE: A1
 SECTION: Nation
 SOURCE: By HAL BERNTON
 Daily News reporter

EDITION: FINAL
 LENGTH: Medium

SPILL THREATENS DUTCH HARBOR JAPANESE CARGO SHIP R'NS AGROUND
 CARRYING 100,000 GALLONS OF FUEL

END OF DOCUMENT.

RANK 16 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 2995
 ANCHORAGE DAILY NEWS

DATE: THURSDAY March 2, 1989
 PAGE: E5
 SECTION: Metro
 SOURCE: The Associated Press

EDITION: FINAL
 LENGTH: Short

VESSEL RUNS AGROUND, SPILLS FUEL

END OF DOCUMENT.



Department of Transportation
and Public Facilities

POSITION PAPER

BILL NO: HB 232

APPROVED: 

TITLE: Sunken and Abandoned Vessels
and Cargoes

DATE: April 4, 1991

This bill would improve the department's ability to manage and maintain the State's harbors by clarifying Department of Transportation and Public Facilities' rights and responsibilities with regard to sunken and abandoned vessels and/or cargoes. There are no additional fiscal or personnel burdens with this bill; in fact, it would create efficiencies by eliminating current ambiguities about the department's right to directly, or through its lease agreements, seize and dispose of vessels and/or cargoes that pose or threaten to pose a danger to navigation, the environment, public health or public safety. For the protection of the public, the bill provides adequate public notice to owners or other interested parties of both seizure and disposal of vessels and cargoes. The bill also insures that the state is compensated by the responsible party(ies) for expenses incurred in seizure and disposal of vessels and cargoes.

* The department recommends HB 232, Section 11, p. 6, line 22, AS 30.30.091(a) be amended to read as follows:

...within ports and harbors administered by the Department of Transportation and Public Facilities, the department shall...

Many ports and harbors are not within the jurisdiction of the department and this amendment would ensure the department is not responsible for areas outside its jurisdiction.

For Further Information contact Katy McHugh at 465-3900.

1 IN THE HOUSE

2 HOUSE CONCURRENT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Relating to abandoned vessels on the
6 beaches of Alaska.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS about 40 abandoned vessels, including merchant vessels, fish-
9 ing vessels, and other vessels, are grounded on the coast of Alaska; and

10 WHEREAS abandoned vessels are an environmental hazard and are aesthet-
11 ically unpleasing; and

12 WHEREAS the state does not have the resources to salvage or dispose of
13 abandoned vessels; and

14 WHEREAS the state does not currently have statutory authority to
15 impose liability on the owners of abandoned vessels for the cost of salvag-
16 ing or demolishing abandoned vessels; and

17 WHEREAS communities are not compensated for the aesthetic and physical
18 trespass resulting from abandoned vessels;

19 BE IT RESOLVED by the Alaska State Legislature that the governor is
20 respectfully requested to ^{research} study the problems posed by abandoned vessels and
21 to make appropriate recommendations to the First Session of the Seventeenth
22 Alaska State Legislature for legislation necessary to remedy existing
23 problems and prevent future problems.

24
25
26
27
28
29
HER

Boyle Edwards 465-4942

DATE	NAME	WHERE	POLLUTION	DISPOSITION	UCN
2 OCT	TUG EASTERN	WHITSTONE MARROWS	NONE	REFLOATED	UCN 00
2-10 NOV 88	W/V CITY OF SEATTLE	ATKA	UNK	UNK	UCN 8
3 DEC	F/V OPTY	SHEMYA	UNK	UNK	INFO 2
10 DEC	M/V RUSSELL MANN	AKUN	NONE	THERE TO STAY DETAINED/BURIED	UCN 1
12 DEC	F/V DEYBUBALIK MIV	CLARENCE STRAT	NONE	UNK	UCN 1
11 JAN	M/V CHIL ST VAN	UNLAYKA ISLAND	YES (SHEEN)	THERE TO STAY DETAINED/BURIED, VENUS STILL RECOVERED	UCN 2
25 JAN	F/V TERMINATION	ST PAUL	YES	(POSSIBILITY OF REFLOATING)	INFO 2
11 JAN	F/V CHRISTINA	WHITSTONE MARROWS	NONE	REFLOATED	UCN 3
25 JAN	F/V HENRY IS	WHITSTONE MARROWS	NONE	REFLOATED	UCN 3
02 MAR	F/V ELLIOTT	USHAGAT ISLAND	NONE	UNK (BELIEVE REFLOATED)	UCN 3
02 MAR	F/V DAILY BELLING	USHAGAT ISLAND	NONE	UNK (BELIEVE REFLOATED)	UCN 3
03 MAR	F/V SPENCER II	PORT HUNTERS	UNK	UNK (BELIEVE STILL THERE)	UCN 3
24 MAR	F/V PROBEKING	SNOW PATZ	NONE	REFLOATED	UCN 3
24 MAR	F/V JOHNNY STRIP	SWANSON HBR	NONE	REFLOATED	UCN 3
5 APR	F/V MARIANA TRIBOND	CRAIG	NONE	REFLOATED	UCN 3
28 FEB	M/V SWALLOW	DUTCH HARBOR	YES	STILL AGROUND (PROBABLY TO STAY)	
24 MAR	T/V = XXON VDZ	BIGH KEE, P.W.19	YES	REFLOATED	

1 OCT 88 TO 24 APR 89

17 GROUNDINGS
 4-5 STRANDED
 7-9 REFLOATED
 4 POLLUTION INCIDENTS
 (OIL IN WATER)

FOR FURTHER INFO:

A MARINE SAFETY ANCHORAGE 271-513-
 B MARINE SAFETY KETCHIKAN 225-449
 C MARINE SAFETY OFFICE ^{VALDEZ} 835-4791

List of vessels

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

BILL NO. CSHB 232

Revision Date: _____ Department Affected: Natural Resources
 Title: Shipwrecks Act BRU: Land & Water Management
 Components: Land & Water Management
 Sponsor: Representative Jacko
 Requestor: House Community & Regional Affairs COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact: 0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Salli Slaughter Phone: 762-2692
 Division: Land & Water Date: 19-Apr-91
 Approved by Commissioner: Jay Justafson Date: 19-Apr-91
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,
& Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 2
Bill Version: CSHB 232 (CRA)
(H) Publish Date: 4/19/91

Revision Date: _____ Department Affected: DEC
Title: Sunken and Abandoned vessels
and cargo Environmental Quality
Sponsor: Representative Jacko Component: EQ Projects
Requestor: _____

COMPONENT SERIAL NO.

1	1	0	1	1	6
---	---	---	---	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Janice Adair
Division: Commissioner's Office

Phone: 465-2600
Date: 4/15/91

Approved by Commissioner: *Jan O. Teal*
Agency: Department of Environmental Conservation

Date: 4/16/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ics).

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 19, 1991

FURTHER REFERRALS:

Date of Committee Action: 5-10-91

The JUDICIARY Committee considered:

HB 232

HOUSE BILL NO. 232

SUNKEN AND ABANDONED VESSELS

"An Act relating to sunken and abandoned vessels and cargo; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 232 (C+RA) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) Dec - 4-19-91; DNR-4-10-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Larry Matthews</i>					
<i>Mark Stanley</i>	<i>✓</i>				
<i>[Signature]</i>	<i>✓</i>				
<i>[Signature]</i>	<i>✓</i>				
<i>W. Bruce Donley</i>	<i>✓</i>				

W. Bruce Donley
 CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 10, 1991

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 4-18-91

The COMMUNITY AND REGIONAL AFFAIRS Committee considered:

HB 232

HOUSE BILL NO. 232

SUNKEN AND ABANDONED VESSELS

"An Act relating to sunken and abandoned vessels and cargo; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 232 (CRA) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note DEC, 1991

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Jimmy Mackie</i> . MACKIE	X				
<i>Garth Phillips</i>	X				
<i>Betty Darr</i>	X				
<i>Cheri Davis</i>	✓				
<i>John C. Boyles</i>	✓				

Jimmy Mackie

 CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

Date Referred: March 22, 1991

FURTHER REFERRALS: Community & Regional Affairs
Judiciary

Date of Committee Action: 4/4/91

Re TRANSPORTATION Committee considered:

HB 232

HOUSE BILL NO. 232

SUNKEN AND ABANDONED VESSELS

An Act relating to sunken and abandoned vessels and cargo; and providing for an effective date."

RECOMMENDATIONS:

- replaced with _____ the same title
- replaced with _____ a new title
- have attached amendments(s)
- do pass
- do not pass
- no recommendations
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note ~~H.T.C.~~ H.T.C.

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✳				
<i>[Signature]</i>	✓				

[Signature]
CHAIRMAN'S SIGNATURE

H B

2 3 3

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 22, 1991

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

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill providing for junior liabilities to be extinguished after a distraint sale held by the Department of Revenue for the collection of back taxes. Such liabilities are not now extinguished, with the effect that the property is worth less to a potential purchaser because of the existence of the liabilities. This situation hinders the department's ability to collect past due taxes.

The current state statutory scheme on distraint on property in AS 43.20.270 was taken nearly verbatim from the Internal Revenue Code (26 U.S.C. 6331 -- 6342), with the exception of language that would extinguish junior liabilities. This legislation would amend the state statute to include the provision from the comparable federal statute.

The legislation also extends the current right of redemption to include those persons whose interest would be extinguished by the sale. This allows junior claimants to protect their interest without adversely impacting the department. The provision is contained in the federal statute.

If the legislature chooses to not extinguish junior liabilities, AS 43.20.270(g)(5)(B) should be amended to remove a present ambiguity. This subparagraph includes language from the federal statute that is appropriate where junior liabilities are extinguished. It specifies that the interest conveyed by the deed of real property is the interest the taxpayer had when the state's lien attached and implies that junior liabilities are no longer of effect.

I urge your favorable consideration of this bill.

Sincerely,

Walter J. Hickel
Governor

FISCAL NOTE

No. 1
 Bill Version: HB 233
 (H) Publish Date: 3/22/91

**STATE OF ALASKA
 1991 LEGISLATIVE SESSION**

Revision Date: _____
 Title: An Act extinguishing junior
liabilities in state lien distraint sales
 Sponsor: Rules Committee
 Requestor: Governor

Department Affected: Department of Revenue
 BRU: Revenue Operations
 Component: Income and Excise Audit

COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: _____

ANALYSIS: Attach a separate page for analysis.
 See Transmittal Letter Attached

Prepared By: Carl Meyer *Carl Meyer* Phone: (907) 465-2320
 Division: Income and Excise Audit Division Date: March 12, 1991

Approved by Commissioner: Lee E. Fisher *Lee E. Fisher* Date: 3/13/91
 Agency: Department of Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

H B

2 3 4

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 22, 1991

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

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill limiting assignments of permanent fund dividends to government agencies and courts. This bill would merely codify in statute a current regulation of the Department of Revenue, 15 AAC 23.220(a).

The regulation limiting assignments of permanent fund dividends was adopted by the Department of Revenue for three reasons:

1. to end the usurious purchase of dividends by commercial buyers for extraordinary discounts;
2. to reduce the incentive to file fictitious or duplicate applications; and
3. to reduce the number of assignments, which were creating an administrative burden for the department.

15 AAC 23.220(a) is currently being challenged in court for lack of statutory authority. If the state loses the litigation and the regulation is found to be invalid, absent the enactment of this proposed legislation there could be a significant disruption to the 1991 and subsequent year programs. In order to prevent such a disruption, I am recommending the prompt adoption of this legislation, and I urge your support of it.

Sincerely,

Walter J. Hickel
Governor

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

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

April 12, 1991

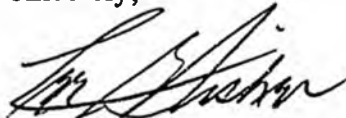
The Honorable Dave Donley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Donley:

House Bill 234, assignment of Permanent Fund Dividends, passed out of House State Affairs Committee earlier today. House Judiciary Committee is the next committee referral.

Please schedule HB 234 for House Judiciary Committee review. Due to the importance of this bill, we would like it scheduled as soon as possible.

Sincerely,



Lee E. Fisher
Commissioner

LEF:TCW:bro

cc: Thomas C. Williams, Director
Permanent Fund Dividend Division
Alaska Department of Revenue

91-61

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

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

December 18, 1991
RECEIVED
DEC 23 1991

The Honorable Dave Donley
Chair, House Judiciary Committee
Alaska State House
3111 C Street, Ste. 450
Anchorage, AK 99503

Dear Representative Donley:

This is a follow-up to the Department's April 12, 1991 request to schedule a hearing before the House Judiciary Committee on HB 234, an act relating to assignments of the right to receive a Permanent Fund Dividend (PFD).

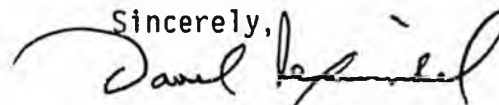
This legislation was requested by the Department of Revenue and approved for introduction last year by the Department of Law. It was heard by the House State Affairs Committee and passed out to the next committee of referral, the House Judiciary Committee.

On November 15, 1991 Superior Court Judge Dana Fabe struck down our regulation prohibiting PFD assignments to anyone other than a government agency. Therefore, passage of HB 234 early in the upcoming legislative session is very important. It would be in the State's best interest if this legislation were enacted by March 31, 1992, before the beginning of the 1992 PFD filing period. Accordingly, we would very much appreciate it if you would schedule a hearing on HB 234 at the Committee's earliest convenience.

Laurie Otto of your staff recommended that we request an opinion from the Attorney General as to whether or not this legislation would violate or be contrary to any constitutional or other legal provisions regarding the rights of individuals to contract. PFD Division Director Tom Williams has made this request.

You or your staff may contact Tom Williams at 465-2323 if you require more information regarding this legislation.

Sincerely,



Darrel Rexwinkel
Acting Commissioner

DJR:TCW:bro
91-135

cc: Thomas C. Williams, Director
Permanent Fund Dividend Division

Tracy McGill, Legislative Liaison
Department of Revenue

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 1
BILL NO. Bill Version: HB 234
(H) Publish Date: 3/22/91

Revision Date: _____
Title: An Act relating to assignments of the right to receive a PFD
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend Division
COMPONENT SERIAL NO. 9 8 1

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
OPERATING						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None.

ANALYSIS: None required.

Prepared By: Thomas C. Williams Phone: 465-2323
Division: Permanent Fund Dividend Division Date: March 14, 1991

Approved by Commissioner: [Signature] Date: 3/14/91
Agency: Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

page 1 of 1

COMMITTEE COPY

HB

237

July 24, 1989

MAYOR BRUCE BOTELHO
SENATOR JIM DUNCAN
REPRESENTATIVE FRAN ULMER
REPRESENTATIVE BILL HUDSON

Dear Friends,

I am concerned about the apparent lack of coordination between the state and the community with regard to planning and construction of new state facilities. It is my assumption that all state agencies submit annually a capital development plan which indicates current space utilization, projected growth, and proposed remodeling and new construction for a five to ten year period. However, it is not clear to me where or even if that information is being collected, nor is it clear what plans those agencies located in Juneau have to implement the development of new facilities.

A single agency within the state should be responsible for coordinating with the CBJ Planning Department and for planning for the accommodation of state facilities. Land use planning to ensure that state facilities are developed in a logical and orderly manner, integrated into the physical fabric of our community, should be among the highest priorities of both state and community planners. The state, in concert with the CBJ, should be preparing a master plan for development in the capital city, and the state should be budgeting funds annually for land acquisition in a manner consistent with that plan.

The pattern established with regard to capital leases in lieu of constructing permanent facilities works against the community both in the near term and the long term. I realize that it is the path of least resistance in terms of making available badly needed space for state agencies. There is, however, no coherence in siting the facilities with regard to a master plan for public facilities, no logic in relationships to other public facilities, no controls on the planning or design, and the end result is another Plywood Palace. These leased facilities, even though they may ultimately be owned by the state, do not make a contribution to the physical presence of state government in Juneau. These types of facilities can only be considered temporary, and the issue of where to build permanent institutional quality facilities - Juneau or Anchorage - will still eventually have to be addressed. They work against efforts to establish the air of permanence of the state government presence in Juneau.

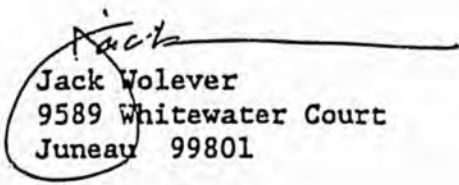
The capital lease process is also a poor investment for the agency itself. These facilities are typically not of institutional quality, are more expensive to operate and maintain, and have a relatively short life span. They offer few of the amenities that an institutional facility is expected to provide. The only arguments in favor of capital lease facilities are that they avoid getting mired in political arguments over location, which would surely occur if the facilities were in the high profile capital budget, and they are good investments for those few developers in Juneau who can cash in on the leases.

I believe that a joint CBJ/State task force should be formed of our city planners and state planners who can speak to and coordinate the planning for all state agencies in Juneau. The charge to that task force would be defining the near and long term facility and land needs of the state, and integrating permanent facilities into the community within the framework of a Master Plan for State Capital Facilities. An oversight organization, perhaps the local planning commission, would be responsible for ensuring that the plan is implemented by developing appropriate controls.

Treading lightly around these issues will not make them go away. Juneau must begin aggressively promoting, and planning to accommodate, permanent state facilities. An enormous amount of money was expended planning for a fictional capital city in Wasilla. Since the capital move vote, the only effort toward masterplanning - a state building at the Juneau Motors site - was scuttled. Should the state acquire the old Capital School site? How can we consolidate space leases spread throughout the community when they begin to run out? Who in state government is addressing these issues?

Until a comprehensive state/city planning process is implemented, this community will continue to be victimized by make-shift solutions to critical agency space shortages. If Juneau does not take steps to physically accommodate state government, and does not actively promote permanent facilities for state agencies, we will eventually become the capital in name only, if that.

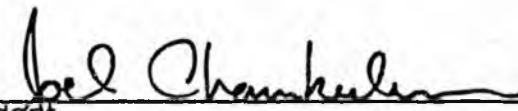
Sincerely,


Jack Wolever
9589 Whitewater Court
Juneau 99801


**RESOLUTION
STATE BUILDING LEASE PROCEDURES**

- Whereas, the Alaska Chapter of the American Institute of Architects promotes quality design and construction practices throughout the State, and
- Whereas, the Department of Administration, other State agencies and other political subdivisions for the State of Alaska have been procuring new building space through a process which solicits bids for lease space normally resulting in new construction, and
- Whereas, the contractor with the lowest lease price and cheapest cost will be the successful bidder for such State space, and
- Whereas, this process is not required to consider the quality of building design, site design, regional planning, construction quality, or operation and maintenance costs, and
- Whereas, such omission harms the long term interest of the State and the affected communities because of the low quality design, planning and construction which inevitably occurs,
- Therefore, be it resolved that the Alaska Chapter of the American Institute of Architects, strongly urges that the Governor's Office and Department of Administration revise this bid process to include qualitative criteria for design, site planning, interior amenity, and maintenance and operation costs so that the State agencies and communities affected receive building projects with acceptable design and construction quality.

Unanimously adopted this date, November 10, 1989.



President



Secretary

DRAFT

January 8, 1990

TO: All Interested Parties

FROM:

RE: Proposed Legislation Concerning the Procurement of Certain
State Leases

Background

Because of difficulties and delays encountered in the capital budget process, many state agencies have turned to the capital lease process as a means of acquiring badly needed new facilities. These facilities are designed, constructed, financed, and often operated and maintained by the successful bidder. The building is essentially purchased by the state on the "installment plan" utilizing funds from the agency's operating budget. At the conclusion of the term of the lease, which may be 20 years or more, ownership of the facility usually reverts to the state, often after payment of a final lump sum amount to the bidder.

The capital lease process is made possible because many agencies have accommodated space needs over the years through rental of increasing amounts of office space which is frequently scattered throughout a community. Consolidation of rental space and agency functions increase the buying power and the efficiency of the agency, and when a large block of space can replace many scattered leases for little or no operating cost penalty the agency proceeds with construction of a new building through a capital lease agreement.

The Problems

The capital lease process, which involves commissioning the design and construction of new state facilities, operates with virtually none of the controls normally placed on development of new public facilities. Contract documents are routinely prepared by staff lacking professional expertise. The contracts are treated as simple lease agreements, which are not suitable documents for contracts resulting in construction of new buildings that ultimately become state property.

Capital lease agreements currently in use do not protect the state from making bad investments in poor quality buildings. The leases are normally awarded only on the basis of lowest rental cost. There are no mechanisms in the process to ensure that the facilities acquired are functionally responsive to the needs of

the agency, are economical to operate and maintain, or are productive and humane environments for the individuals who work there. In short, there is no means to ensure that agency funds are invested in a responsible manner.

The Proposed Legislative Solution

Buildings which are functionally unsuccessful or unreliable will not solve an agency's space problems. Buildings which are poorly designed and constructed are expensive to operate and maintain and can have such a short useful life span that they are of little value at the conclusion of the term of lease when ownership is transferred to the state. Legislation is needed to ensure that new facilities commissioned by the state through the capital lease process result in good investments for the state and for the communities in which the facilities are constructed.

The state procurement code already has in effect provisions which regulate the use of competitive sealed proposals for procurement of the design and construction of new facilities under AS 36.30.200(c). Under this existing legislation a bidder's proposals can be evaluated on the basis of many criteria, including price. This provides the means for evaluating a capital lease proposal with regard to functionality, aesthetics, long term maintenance costs, etc.

The objectives of the attached proposed legislation are to: require that AS 36.30.200 be applied to capital lease projects; set out the minimum criteria to be considered when evaluating competitive sealed proposals for capital lease projects.

This proposed legislation can be expected to have the added benefit of minimizing the controversy which often surrounds poorly designed facilities commissioned by the state, such as the "Plywood Palace" and the recent Department of Environmental Conservation office building, both located in Juneau. The concept behind this legislation has been endorsed by the Alaska Professional Design Council, the Alaska Chapter of the American Institute of Architects, the Juneau Planning Commission, (others who sign on as supporters)..

There are related issues such as the application of the Little Miller Act which mandates payment of minimum wage rates on all public construction projects. This particular issue is anticipated to be covered in a separate piece of legislation. Other issues such as Alaska Bidders Preference and Alaska Product Preference may surface during the session. While these are all serious concerns that will likely need to be addressed, the core of this proposed legislation is related to ensuring that state funds are responsibly invested.

end



ALASKA CHAPTER
THE AMERICAN INSTITUTE OF ARCHITECTS
P.O. BOX 10-3563 • ANCHORAGE, ALASKA 99510

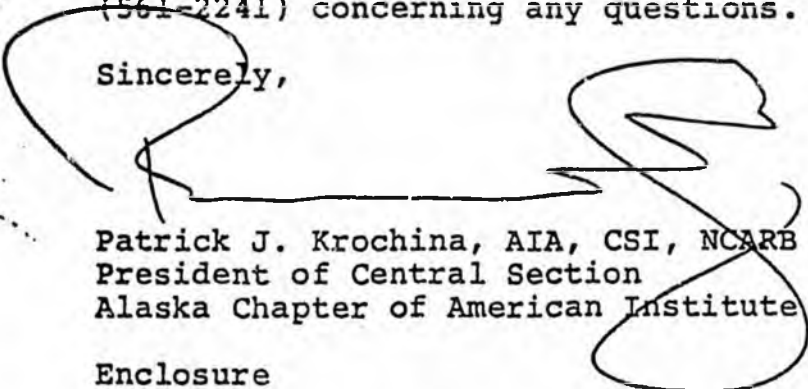
DATE: February 8, 1990
TO: State of Alaska Legislature
FROM: American Institute of Architects
Alaska Chapter

Representing Alaska Architects practicing throughout the state we have a major concern over the current procurement policies evolving with various state agencies forced to expand or replace their physical plants; namely the Capital Lease Process. We recognize that there are certain immediate financial advantages with this process, however, history has shown there are serious disadvantages that each State Dept. should be aware of.

Attached are a few documents pointing at these issues both in Juneau and Anchorage as well as a preliminary draft. Also attached is a report compiled by A/E, Contractors & Owners about the Design/Build/Bid Process which relates to the Capital Lease Process.

Please review and call any of our Board of Directors or myself (561-2241) concerning any questions.

Sincerely,



Patrick J. Krochina, AIA, CSI, NCARB
President of Central Section
Alaska Chapter of American Institute of Architects

Enclosure

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF GENERAL SERVICES AND SUPPLY

January 22, 1991

L.R. 123, SCA 90

WALTER J. HICKEL, GOVERNOR

P.O. BOX C
JUNEAU, ALASKA 99811-0210
PHONE: (907) 465-2250

The Honorable Richard I. "Dick" Eliason
Senate President
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

RE: Report SCS CSHCR 52

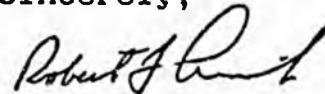
Dear Senator Eliason:

The referenced Resolution created the State Lease Task Force and asked it to provide findings and recommendations. The Task Force met twice and held extensive discussions on the topics addressed in the Resolution. The Task Force's report and recommendations are addressed in the enclosed recommendation. Nine members agreed with the recommendation, two disagreed and two had no recommendation.

Members of the State Lease Task Force

Al Adams	Senate Representative
Richard S. Armstrong	RSA Engineering
Keith Gerken	DOT&PF Representative
Rick Halford	Senate Representative
Gene Kubina	House Representative
Robert J. Link	DOA Representative
Gerald Myers	GDM, Inc.
Randy Phillips	House Representative
Barbara Sheinberg	Local Gov. Representative
William M. Smith	Tryck, Nyman & Hayes
William C. Thomas	Local Gov. Representative
Paul Voelckers	MRV Architects
Jack Wolever	University Representative

Sincerely,



Robert J. Link
Acting Chair
State Lease Task Force

tlc
osure

- Task Force Report -

TELECOPIER NUMBER 465-2189

STATE LEASE TASK FORCE
RECOMMENDED
MAJOR SPACE ACQUISITION POLICY

Whereas this Task Force recognizes the need for providing space at a reasonable life cycle cost and quality, particularly in large space acquisition projects, and whereas existing space is not always available to fit the State's need properly;

We therefore recommend that the Legislature and Governor build, own and finance any space needs in excess of 10,000 square feet or any space needed for more than 10 years, unless existing space is available at lease rates competitive with the life cycle costs of State-owned facilities.

If after analysis the State chooses not to build and own, and proceeds with a lease process that causes new construction, the Department of Administration shall address in the lease criteria life cycle costs, function, indoor environment, public convenience, planning design, appearance and location in addition to lease costs.

These criteria shall be addressed in a competitive sealed proposal process for lease space. The relative significance for each criterion shall be identified, and the process for award clearly established. The evaluation committee shall include qualified individuals reflecting appropriate experience and/or professional training.

Agree Disagree No Recommendation

Richard S. Armstrong →
Signature

1.4.96
Date

Comments:

1 IN THE HOUSE

2 SENATE CS FOR CS FOR HOUSE CONCURRENT RESOLUTION NO. 52 (STATE AFFAIRS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 RELATING TO THE LEASING OF SPACE BY THE
6 STATE AND ESTABLISHING THE STATE LEASE
7 TASK FORCE.

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

9 WHEREAS THE STATE LEASES OFFICE SPACE IN OVER 60 COMMUNITIES THROUGH-
10 OUT THE STATE, AND THE PURPOSE OF THESE OFFICES IS TO PROVIDE SERVICES TO
11 THE PUBLIC; AND

12 WHEREAS THE STATE'S PRESENCE IN THESE OFFICES AFFECTS THE BUSINESS
13 ENVIRONMENT IN THE COMMUNITIES, AND THE DESIGN OF THESE OFFICES AFFECTS
14 EMPLOYEE EFFICIENCY AND MORALE AS WELL AS THE COST OF THE LEASES; AND

15 WHEREAS THE STATE SHOULD BE A RESPONSIBLE CITIZEN IN THE COMMUNITIES
16 AND NOT CAUSE THE CONSTRUCTION OF BUILDINGS THAT ARE BELOW THE PREVAILING
17 STANDARD FOR COMMERCIAL STRUCTURES IN THE COMMUNITIES; AND

18 WHEREAS THE COMPETITIVE SEALED PROPOSAL PROCESS MAKES IT POSSIBLE TO
19 CONSIDER SEVERAL APPROPRIATE ATTRIBUTES IN ADDITION TO THE COST OF A LEASE,
20 INCLUDING THE TOTAL LIFE-CYCLE COSTS FOR MAINTENANCE AND OPERATIONS, FUNC-
21 TIONALITY, INDOOR AIR QUALITY, PUBLIC CONVENIENCE, DESIGN, APPEARANCE, AND
22 LOCATION OF THE LEASED BUILDING; AND

23 WHEREAS A COMPREHENSIVE REVIEW IS NEEDED OF THE ISSUES RAISED IN THIS
24 RESOLUTION RELATING TO THE LEASING OF SPACE BY THE STATE IN ORDER TO DETER-
25 MINE HOW THE STATE MAY ACHIEVE THE GOALS PROPOSED BY RESOLVES ONE THROUGH
26 FOUR OF THIS RESOLUTION;

27 BE IT RESOLVED THAT THE ALASKA STATE LEGISLATURE RESPECTFULLY REQUESTS
28 THE GOVERNOR TO DIRECT THE DEPARTMENT OF ADMINISTRATION TO SEEK LEASE SPACE
29 THAT NOT ONLY ACCOMMODATES THE STATE'S MISSION BUT IS ALSO COMPATIBLE WITH
1 THE COMMUNITIES' CONCERNS, INCLUDING PLANNING, ZONING, AND DESIGN REGULA-
2 TIONS WHERE THEY EXIST; AND BE IT

3 FURTHER RESOLVED THAT THE ALASKA STATE LEGISLATURE ENCOURAGES STATE

- HCR 52 - Create Lease ^{Task} Force -

4 AGENCIES TO AVOID LEASING PRACTICES THAT WOULD CAUSE THE CONSTRUCTION OF
5 SUBSTANDARD COMMERCIAL STRUCTURES, BUT NOTHING IN THIS RESOLUTION SHALL BE
6 CONSTRUED AS ENCOURAGING NEW CONSTRUCTION OR FAVORING NEW CONSTRUCTION OVER
7 THE LEASING OF EXISTING SPACE; AND BE IT

8 FURTHER RESOLVED THAT THE ALASKA STATE LEGISLATURE ENCOURAGES STATE
9 AGENCIES TO UTILIZE THE COMPETITIVE SEALED PROPOSAL PROCESS FOR THE ACQUI-
10 SITION OF LEASED SPACE WHEN THE LEASE EXCEEDS 10,000 SQUARE FEET OR A TERM
11 OF FIVE YEARS; AND BE IT

12 FURTHER RESOLVED THAT THE COMPETITIVE SEALED PROPOSAL PROCESS USED TO
13 LEASE OFFICE SPACE FOR THE STATE SHOULD CONSIDER THE TUTAL LIFE-CYCLE COST
14 TO THE STATE OF THE BUILDING TO BE LEASED AS CALCULATED OVER THE TERM OF
15 THE LEASE USING A DISCOUNTED PRESENT VALUE ANALYSIS, AND INCLUDING MAINTEN-
16 NANCE AND OPERATIONS, FUNCTIONALITY, INDOOR AIR QUALITY, PUBLIC CONVE-
17 NIENCE, DESIGN, AND APPEARANCE; AND BE IT

18 FURTHER RESOLVED THAT A STATE LEASE TASK FORCE IS ESTABLISHED TO STUDY
19 THE ISSUES RAISED BY THE GOALS SET OUT IN THE PREVIOUS RESOLVES IN ORDER TO
20 DETERMINE THE BEST METHODS FOR ACHIEVING THESE GOALS; AND BE IT

21 FURTHER RESOLVED THAT THE TASK FORCE SHALL CONSIST OF NINE PERSONS
22 APPOINTED BY THE GOVERNOR, TWO REPRESENTATIVES APPOINTED BY THE SPEAKER OF
23 THE STATE HOUSE OF REPRESENTATIVES, AND TWO SENATORS APPOINTED BY THE
24 PRESIDENT OF THE STATE SENATE; AND BE IT

25 FURTHER RESOLVED THAT THE MEMBERS OF THE TASK FORCE APPOINTED BY THE
26 GOVERNOR SHALL INCLUDE TWO ENGINEERS LICENSED UNDER AS 08.48, TWO ARCHI-
27 TECTS LICENSED UNDER AS 08.48, TWO REPRESENTATIVES OF LOCAL GOVERNMENT, ONE
28 REPRESENTATIVE FROM THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES,
29 ONE REPRESENTATIVE FROM THE DEPARTMENT OF ADMINISTRATION, AND ONE
1 REPRESENTATIVE FROM THE UNIVERSITY OF ALASKA; AND BE IT

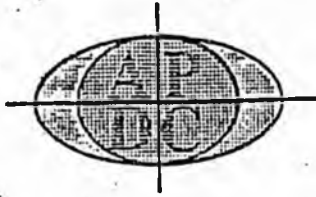
2 FURTHER RESOLVED THAT THE TERMS OF THE TASK FORCE MEMBERS SHALL BEGIN
3 JULY 1, 1990, AND THAT THE TASK FORCE SHALL TERMINATE JANUARY 22, 1991; AND
4 BE IT

5 FURTHER RESOLVED THAT THE TASK FORCE SHALL SUBMIT A REPORT OF ITS
6 FINDINGS AND RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE BY
7 JANUARY 21, 1991; AND BE IT

8 FURTHER RESOLVED THAT THE ADMINISTRATIVE AND LEGAL SERVICES OF THE
9 LEGISLATIVE AFFAIRS AGENCY SHALL BE MADE AVAILABLE TO THE TASK FORCE.

10 COPIES OF THIS RESOLUTION SHALL BE SENT TO THE HONORABLE FRANK BAXTER,
11 COMMISSIONER OF ADMINISTRATION; THE HONORABLE MARK S. HICKEY, COMMISSIONER
12 OF TRANSPORTATION AND PUBLIC FACILITIES; TO THE HONORABLE DONALD O'DOWD,
13 PRESIDENT OF THE UNIVERSITY OF ALASKA; AND TO RAY PRICE, EXECUTIVE DIRECTOR
14 OF THE ALASKA STATE HOUSING AUTHORITY.

A SOMEWHAT BRIEFER VERSION OF THE FOLLOWING ARTICLE WAS RECENTLY PUBLISHED IN THE DECEMBER ISSUE OF THE ALASKA PROFESSIONAL DESIGN COUNCIL NEWSLETTER.



Alaska Designs

Volume 12, No. 11, December 1989

The Official Newsletter of the Alaska Professional Design Council

Acquisition of State Facilities Via Capital Lease

by Jack Wolever, AIA

Given current political and economic environments, most state agencies find it almost impossible to obtain funding for needed facilities through capital appropriations. The conventional process of constructing new state buildings -- an appropriation from the legislature, selection of architects and engineers, programming and design, competitive bids, and construction -- is simply no longer accessible to most state agencies because of economic or political constraints.

Several state agencies have turned to the capital lease process as a means of acquiring new facilities. These facilities are designed, constructed, financed, and often operated and maintained by the successful bidder. The building is essentially purchased by the agency on the "installment plan" utilizing funds from the agency operating budget. At the conclusion of the term of the lease, the facility ownership usually reverts to the state, often after payment of a final lump sum amount to the bidder. The capital lease process is made possible because many agencies have accommodated space needs over the years through rental of increasing amounts of office space which is frequently scattered throughout a community. Consolidation of rental space and agency functions increase the buying power and the efficiency of the agency -- powerful arguments for capital lease facility acquisition.

It is critical, however, that those individuals responsible for facility acquisition and management ensure that buildings acquired via capital lease are good investments for the state. Buildings which are functionally unreliable or unsuccessful are frustrating to the personnel who utilize them. Buildings which are poorly designed and constructed are expensive to operate and maintain and can have such a short useful life span that they are of little value at the conclusion of the term of lease when ownership is transferred to the state. It is the responsibility of an agency's facilities management group to ensure that such problems do not compromise the acquisition of a new building.

A publication entitled Design/Build/Bid Considerations for Participants was prepared in 1986 by an ad-hoc committee of Alaskan architects, engineers, contractors, and facility planning experts to inform public sector building owners about the process of acquiring facilities through design/build/bid. The process described differs from the capital lease process currently utilized by the state in several very important areas.

Critical to the success of a design/build/bid project is preparation of a detailed facility program describing the functional needs of the agency, and performance specifications describing a minimum level of quality for building components and systems. Equally important is preparation of a format for evaluating bidder's proposals in order to obtain from each bidder a design for the best possible building that can be provided within the limits defined by the performance specifications and the project budget.

Having participated in numerous design/build/bid public works projects in Alaska and California, it has been my experience that a consultant with experience in preparing D/B/B RFPs is needed to prepare the program, performance specifications, and evaluation format. With regard to evaluation of proposals, this typically involves both objective judgements, such as awarding points for exceeding minimum energy performance standards, and subjective judgements, such as awarding points for quality of architectural design and site planning functionality. Project cost can be dealt with by either establishing a price to be paid and allowing the bidders to provide the best facility achievable within that constraint, or by allowing the cost to be another variable in the evaluation format.

State agencies that are normally in the business of leasing facilities lack the professional expertise required to prepare a D/B/B RFP, and lack that same expertise required to evaluate a D/B/B proposal with regard to both technical criteria and design criteria. The State Department of Administration is the entity that has been responsible for capital lease building acquisitions for other state agencies. The DOA track record has been dismal, producing buildings which are largely unsuccessful because of failings in the RFP utilized by DOA. The community of Juneau has seen protests sent directly from the planning commission to the Governor about conspicuous failures of capital lease building projects initiated by the DOA's Division of General Services and Supplies which is unable to differentiate between a D/B/B project and an ordinary lease for office space. Therefore, it is necessary for the Alaskan consulting community to acquire the expertise to provide state agencies with the services needed to organize and execute a successful D/B/B project.

In summary, the capital lease process is currently the only practical means available to most state agencies for obtaining new facilities. In order to ensure that agency funds are invested in a responsible manner, it is imperative that state agencies utilize a process structured to produce buildings that are functionally responsive to the needs of the occupants, are economical to operate and maintain, and are humane and productive environments for the individuals who work there. In

addition, those building projects must complement and enhance the community in which they are placed -- the buildings must be good neighbors rather than centers of controversy over planning and design issues. It is incumbent on the Alaskan design community to recognize the need for D/B/B services and to be able to provide those services to state agencies. It is incumbent on the state to recognize the failings of its' process and its' products, and to obtain the necessary expertise required to develop successful capital lease building projects.

Y TURN

The municipal Design Review Board

UL VOELCKERS

For several years, the economic and general confidence in Juneau is improving. With this momentum will come new construction including possibilities for new mining construction, and State facilities.

The potential for significant new construction suggests that as a community, we review the design and building regulations currently in effect to insure they will satisfy our own expectations for how this occurs.

The debate by the municipal Design Review Board concerning the proposed state Department of Environmental Conservation administrative building on Willoughby Avenue raised the profile of the Board, and provides a good opportunity to comment on its role and effectiveness.

The Design Review Board was established in 1984, principally in reaction to the state's Department of Land Use Planning along Egan Drive, which was dubbed the "Plywood Palace" by offended residents. In response to this ordinance, the Design Review

Board represents the community at large, revising or improving building projects which are unattractive, oppressive, or generally not in the public interest. This task, however, has proven difficult to perform, as the subsequent "Plywood Palace Two" and other less-than-satisfactory buildings added in the last few years show.

This lack of effectiveness has been due to three general conditions:

1. Aesthetics are hard to quantify and legislate. Though regulations are promulgated setting out the Board's objectives in general terms (i.e., prevent large monolithic boxes, etc.), specific and easily enforceable criteria were not possible. Instead, an overall aesthetic judgment remained necessary. Developers have argued that many people may find a particular project attractive, even though the Board does not.

2. Juneau, with the rest of the State, has been in an economic downturn. In such a period, the very difficult trade-off between aesthetics and the cost of construction is altered. Many projects which normally would not be tolerated by the community are seen as unfortunate but necessary for economic self-interest.

3. Large state projects have been developed by an indirect process called a design-build lease-back procedure which conspicuously ignores planning and design issues. Both Plywood Palaces, the DEC Lab Building underway in the Valley, and the currently proposed DEC Administrative Building along Willoughby Avenue are obvious examples. Low price is the only criteria for State selection of proposals, virtually guaranteeing banal design, cheap construction, and awkward, crowded sites. The resulting inferior buildings are then presented to the community as the State's prerogative or choice.

Until recently, the practical effect of these difficulties reduced the effectiveness of the fledgling Design Review Board. Many major buildings brought to the Board for review were large boxes based on two principles only - the raw efficiency of people-packing in a given space, and the cheapest construction methods available. The Design Review Board then chose the depressing (and fundamentally flawed) role of making minor detailing changes to obviously bad buildings.

However, the Willoughby Avenue

project suggests that an internal re-appraisal of the Design Review Board's role and authority may be happening. A fresh reading of the Board's by-laws makes clear that it was created for one purpose: to insure the public receives aesthetically desirable, humane buildings in Juneau.

Though judgments about design quality are difficult, nonetheless they can and must be made. The Board, in fact, has been selected for its ability to do so. Though developers would like the aesthetic requirement reduced to specific regulations, the visual and artistic attributes of a good building will always remain an overall subjective determination. The board must have the courage (and public support) to insist that its judgment is both meaningful and binding.

Significantly, the Board is now debating whether an entire building design, including its proposed site, can be rejected due to general failings which cannot be corrected by minor surface changes. This willingness to potentially reject an entire project is a necessary step. A Plywood Palace with a green canopy instead of red will remain a bad building. If a build-

ing is a failure in general, it should be rejected as a whole, and a more responsive design demanded.

The Design Review Board cannot operate without a general community consensus about its role. Recent support by the Empire, the CBJ Community Development Department, the CBJ Engineering Department, Planning Commission members, and the general public all indicate that a strong sentiment to require better building exists in this community.

The people of Juneau can and should demand design quality as a fundamental right. Otherwise, the fabric of Juneau will need to absorb inferior buildings for decades, long after developer's profits have been realized and forgotten. Hopefully, the new strength of the Design Review Board will indicate to the State and developer that quality design must be an initial goal, rather than a painful consequence of rejected projects.

Paul Voelckers is vice president of the Alaska Chapter of the American Institute of Architects and a local architect.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. HB 237

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act establishing certain criteria... BRU: Trial Courts
agency leases involve the construction of new buildings Components: _____
 Sponsor: Transportation
 Requestor: State Affairs COMPONENT SERIAL NO.

000	000	000	768
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	1.0					
SUPPLIES	1.0					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	2.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	2.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	2.0	0.0	0.0	0.0	0.0	0.0

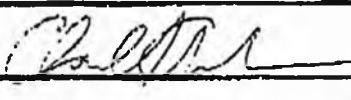
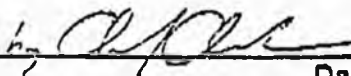
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

This legislation will require the court system to revise and reissue its purchasing guidelines. The estimated one-time cost to print and distribute the guidelines is \$2,000.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 04/14/91
 Approved by: Arthur H. Snowden, II, Administrative Director 
 Agency: Alaska Court System Date: 04/14/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO: HB 237

Revision Date: _____
Title: "An Act establishing certain criteria...
state agency leases...construction of new buildings."
Sponsor: House Transportation Committee
Requestor: House State Affairs

Department Affected: Legislature
BRU: All

Component: _____

..COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact.

Prepared By: Pamela A. Stoops, Director
Division: Administrative Services

Pamela A. Stoops

Phone: 465-3850
Date: 4/8/91

Approved By: Warren W. Endicott, Executive Director
Agency: Legislative Affairs Agency

Warren W. Endicott

Date: 4/8/91

Distribution (by preparer): Legis'

-- LAA Fiscal Note --

Impacted Agency(ies).
Page 1 of 1

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 25, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 5-1-91

The STATE AFFAIRS Committee considered:

HB 237

HOUSE BILL NO. 237

STATE LEASING OF NEW BUILDINGS

"An Act establishing certain criteria that must be considered when state agency leases involve the construction of new buildings."

RECOMMENDATIONS:

be replaced with CS HB 237 (STA)

the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact AK Court System

fiscal note(s) _____

zero fiscal note LAA

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Gene Kubina</i>	-				
<i>Toussaint</i>	✓				
<i>David Ross</i>	✓				
<i>E. Smith</i>	-				
<i>Jerry M. [unclear]</i>	✓				

Gene Kubina
CHAIRMAN'S SIGNATURE