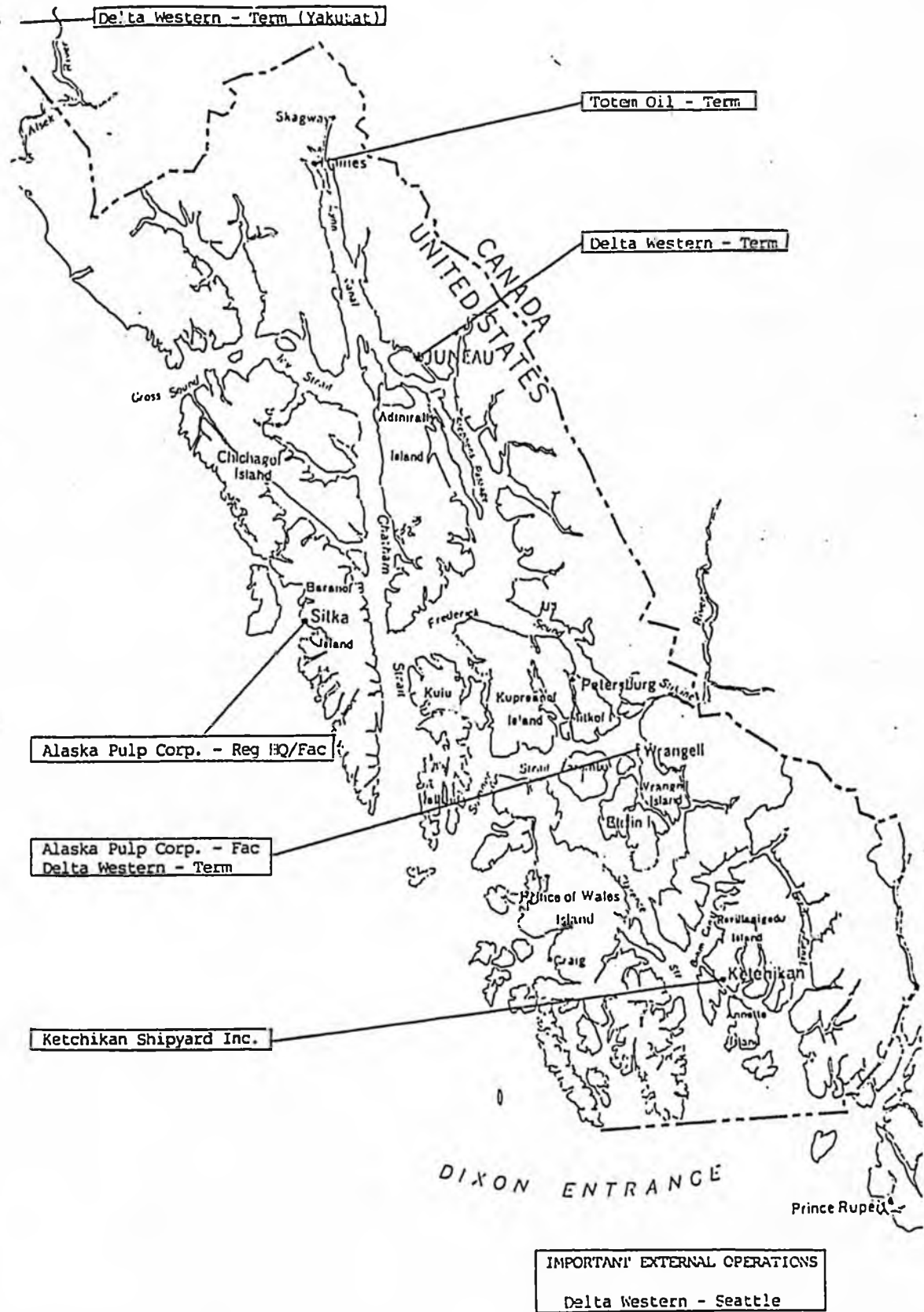


ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6987 HOUSE JUDICIARY



Significant Facilities Which Have Declined Membership
February 1992

Municipality of Anchorage



OFFICE OF THE MAYOR

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4431

TOM FINK,
MAYOR

March 27, 1992

Representative Cliff Davidson, Chairman
House Resources Committee
P.O. Box V
Juneau, Alaska 99811

Re: HB 540, Civil Liability for Oil Spills

Dear Representative Davidson:

The Municipality of Anchorage supports HB 540, Civil Liability for Oil Spills, and encourages the House Resources Committee to act expediently on this legislation.

If this legislation does not pass, the financial impact on the Municipality could be significant. HB 540 relieves certain civil liabilities to consultants who are hired to clean up an oil spill. If the bill is not moved forward, a scenario could develop in which consultants would not be willing to work on oil spills, and the only recourse would be to hire people as municipal employees to clean up spills.

HB 540 solves a problem that could be significant if lawsuits put clean-up consultants out of business. If this happens, the impacts will be major and will impede our ability to react to spill events.

I urge your support for this legislation.

Very truly yours,

Tom Fink

cc: Representative Bill Hudson



1791 - 1991

CITY OF KENAI
"Oil Capital of Alaska"

210 FIDALGO KENAI, ALASKA 99611
TELEPHONE 283 - 7535
FAX 907-283-3014

MEMORANDUM

TO: Governor Walter J. Hickel
Senator Sam Cotten
Senator Lloyd Jones
Representative Mike Navarre
Representative Bill Hudson
Representative Cliff Davidson
Representative Jim Zawacki

FROM: Carol L. Freas, City Clerk
City of Kenai

DATE: April 2, 1992

RE: HOUSE BILL 540

Attached please find a copy of the City of Kenai's Resolution No. 92-18 concerning oil spill responder's limited immunity and House Bill 540.

If you have any questions, please contact Mayor John J. Williams, City of Kenai.

Thank you.

clf

SUGGESTED BY: Mayor Williams

City of Kenai

RESOLUTION NO. 92-18

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA,
CONCERNING OIL SPILL RESPONDER'S LIMITED IMMUNITY AND HOUSE BILL
540.

WHEREAS, it is in the interest of the citizens of the State of
Alaska and the Kenai Peninsula Borough to ensure that qualified,
highly trained oil spill response organizations are in place and
ready to respond to all spills; and,

WHEREAS, the success of a spill response organization depends
upon spill response contractors, as well as countless fishermen,
subcontractors, and other part-time professionals and specialists
who must be prepared on an emergency basis to act swiftly and
without hesitance in the face of adverse circumstances and often
with far less than complete information; and,

WHEREAS, these responders will be deterred from performing clean-
up activities on behalf of the person or persons actually
responsible for the spill if they are unduly exposed to unlimited
liability in the course of their response activities; and,

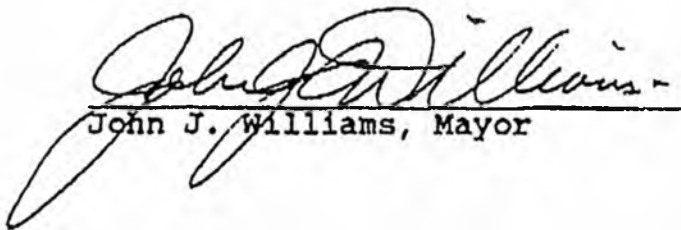
WHEREAS, twenty-one members of the House co-sponsored HB 540
which provides for limited immunity to oil spill response action
contractors.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF
KENAI, ALASKA, that it supports and encourages Alaska State
legislation, such as HB 540, which grants any person who responds
to an oil spill, caused by another, immunity from liability from
all costs and damages except in cases where the responder acts
with gross negligence or willful misconduct, or causes personal
injury or wrongful death; and,

FURTHER BE IT RESOLVED, where limitations on immunity are granted
to responders, it is important that victims be fully protected
and compensated for damages, and the party responsible for the
spill in the first instance shall be liable for any damages
caused by responder's simple negligence.

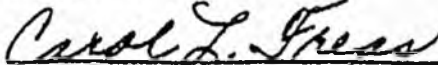
COPIES of this resolution shall be transmitted to the Honorable Walter J. Hickel, Governor of the State of Alaska; and members of the Alaska House and Senate Resource Committees and Special Committees on Oil and Gas.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this first day of April, 1992.



John J. Williams, Mayor

ATTEST:



Carol L. Freas, City Clerk

(3/26/92)
clf

Kenai Chamber of Commerce
402 Overland
Kenai, Alaska 99611
(907) 283-7989



April 8, 1992

Representative Bill Hudson
Alaska State Legislature
State Capitol
Juneau, Alaska 99811-1182

Reference: House Bill 540

Dear Mr. Hudson,

Enclosed, please find a resolution from the Kenai Chamber of Commerce in support of House Bill 540.

The Kenai Chamber of Commerce is in strong support of House Bill 540. Without a limit of liability for oil spill responders, Tesoro Alaska Petroleum would have to post a bond of \$1 billion to counter the effect of litigation due to any oil spillage occurring during transportation between Valdez to the Kenai refinery. This huge burden on Tesoro's cash flow could put their ability to operate in Alaska in jeopardy.

Tesoro Alaska Petroleum is a major employer in the Kenai area, and a major contributor to Alaska's economy. Their lack of presence in the Kenai area would have a major negative impact state wide, as well as locally.

The Kenai Chamber of Commerce is asking that your support of this bill be strongly considered.

Thanking you in this matter.

Sincerely,


Jeff Belluomini
President

Kenai Chamber of Commerce
402 Overland
Kenai, Alaska 99611
(907) 283-7989



RESOLUTION 92-3

RESOLUTION SUPPORTING TESORO ALASKA

WHEREAS, the continued operation of the Tesoro Refinery is being threatened by the unreasonable demand by Alyeska Pipe Line Service Co. management; and

WHEREAS, Alyeska Pipe Line Service Co. is demanding Tesoro to secure a billion dollars insurance bond; and

WHEREAS, Tesoro Alaska can provide a billion dollars of P and I insurance and Alyeska Pipeline Service Co. rejected this offer; and

WHEREAS, Tesoro contributes substantially to the tax base of the Kenai Peninsula Borough; and

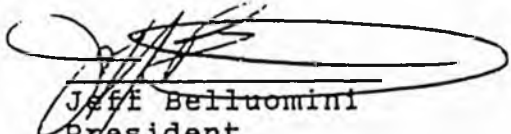
WHEREAS, The Alaska State Legislature is currently considering CSHB 540 which provides limited immunity for responders and a permanent solution to the issue:

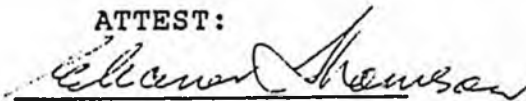
NOW THEREFORE, BE IT RESOLVED BY THE GREATER KENAI CHAMBER OF COMMERCE:

Section 1: That the Greater Kenai Chamber of Commerce urges the Alaska State Legislature to intervene on Tesoro's behalf and resolve this situation.

Section 2: That copies of this resolution be distributed to Governor Walter Hickel, The Alaska State Legislature, Members of the House Resources Committee, Tesoro Alaska and Alyeska Pipe Line Service Co.

ADOPTED BY THE BOARD OF DIRECTORS OF THE GREATER KENAI CHAMBER OF COMMERCE ON THIS 3RD DAY OF APRIL, 1992


Jeff Belluomini
President
Kenai Chamber of Commerce

ATTEST:

Eleanor Thomson

CITY OF KODIAK
RESOLUTION NUMBER 08-92

PASSI

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK SUPPORTING THE PASSAGE OF HOUSE BILL 540, LIMITING THE LIABILITY OF AN OIL SPILL RESPONSE ACTION CONTRACTOR

WHEREAS, the House Special Committee on Oil and Gas filed House Bill 540 which limits the liability of an oil spill Response Action Contractor (RAC) for release or threatened release of hazardous substances, and for an act or omission that is not contrary to a state or national oil spill contingency plan; and

ATTEST:

WHEREAS, House Bill 540 also relates to the liability of an RAC for an act or omission that is not contrary to the state or national plan or an order of an on-scene coordinator; and

WHEREAS, House Bill 540 repeals the requirements that liability is not limited in an action for damages to personal property not caused by oil and is only limited if the act or omission occurs within 15 days after the release of oil; and

WHEREAS, House Bill 540 is supported by Pacific Fisheries Legislative Task Force, California Sierra Club, International Bird Rescue Center, Citizens' Oversight Council on Oil and Other Hazardous Substances, Ventura County Fishermen Association, and Alaska Coastal Community Cooperative; and

WHEREAS, RAC's do not create the risk of a spill; and

WHEREAS, it is imperative to have uniform liability standards to attract RACs to establish in Alaska; and

WHEREAS, certification standards must be consistent with other states in the event of a spill, and RACs would be wanted to respond in Alaska from other states; and

WHEREAS, Alaska must attract response action contractors as no business will willingly assume the strict liability for another's actions that result in oil spill damages,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Kodiak, Alaska, supports the passage of House Bill 540, and urges the Legislature to pass the bill.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the members of the House Resources and Judiciary Committees, the Kodiak delegation, and the City's Juneau lobbyist.

PASSED AND APPROVED this 9th day of April, 1992.

CITY OF KODIAK

Walter E. Johnson
MAYOR

ATTEST:

Marjorie Dalbe
CITY CLERK



Homer Electric Association, Inc.

CENTRAL OFFICE: 3977 LAKE STREET • HOMER, ALASKA 99603 • (907) 235-8167

March 31, 1992

The Honorable Bill Hudson, Member
House Resources Committee
Room 124, Capitol Building
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Hudson:

REF: HOUSE BILL #540 (RESPONDER IMMUNITY)

Homer Electric Association supports HB #540, Responder Immunity.

Tesoro Alaska Petroleum Company operates a large refinery in Kenai, Alaska. Tesoro's operations support 575 jobs in Alaska. In addition to investing in a \$20 million payroll in Alaska, Tesoro contributes approximately 55% of the cost of the Cook Inlet Spill Prevention and Response, Inc. (CISPRI).

Tesoro is the third largest borough taxpayer and supports the Kenai Peninsula community through charitable organizations, donating large sums of money and staff time. Tesoro is Homer Electric Association's largest consumer, purchasing in excess of 75 million kilowatt hours of electric energy each year. HEA is very committed to the support of Tesoro and the continuation of its enterprise on the Kenai Peninsula.

We urge you to support House Bill #540 and pass it out of the House Resources Committee.

Sincerely,

HOMER ELECTRIC ASSOCIATION, INC.

N. L. Story
General Manager

NLS:em

- | | | |
|------------------------|---------------------|------------------|
| cc: RF - NLS | Rep. B. Hudson | Rep. T. Martin |
| Rep. Mike Navarre | Rep. R. Taylor | Rep. Mary Miller |
| Rep. Gail Phillips | Rep. B. Grussendorf | Rep. Mike Miller |
| Sen. Paul Fischer | Rep. C. Davis | Rep. R. Phillips |
| Sen. Jay Kerttula | Rep. P. Parnell | Rep. B. Sharp |
| Sen. Sam Cotten | Rep. R. Foster | Rep. M. Hanley |
| HEA Board of Directors | Rep. L. Baker | |
| Mark Necessary, Tesoro | Rep. D. Choquette | |
| Dave Hutchens, ARECA | Rep. J. Gonzales | |



Resource Development Council

for Alaska, Inc.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-2035
Phone 907/276-0700 Fax 276-3887

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Becky L. Gay

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Bery Thomson
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Joe Usibell, Jr.
William H. Whiteside
Jeff Wilson
George P. Wuerch

EX-OFFICIO MEMBERS
Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young

Resource Development Council Position Paper - HB 540 2/21/92

The Resource Development Council for Alaska, Inc., strongly supports HB 540 and urges the Alaska Legislature to carefully review and approve this legislation. RDC is a non-profit, pro-economic and resource development organization with a statewide board and membership.

RDC's primary concern with HB 540 is that it corrects prior legislation which wrongly placed the emphasis on preserving an avenue for future litigation that could result from an oil spill, as opposed to placing the emphasis on a good faith response. RDC believes the response action contractor (RAC) provisions contained in the Oil Pollution Act of 1990, which provide for simple negligence, are the appropriate approach in Alaska.

To increase the negligence standard to levels higher than those required by the federal government is not only unnecessary, but has threatened to shut down at least one major employer on the Kenai Peninsula, involving hundreds of jobs in that region. HB 540 addresses several concerns expressed by response action contractors, as well as those involved in the business of shipping oil.

RDC notes that 19 other coastal states have enacted legislation as protective as OPA-90 over the last 18 months, pointing to the integrity of the federal policy.

RDC firmly believes that response action contractors involved in controlling the release or threatened release of a substance should be held to the federal standard of simple negligence as outlined under OPA 90 and urges passage of HB 540.

Ventura County Commercial Fishermen's Association
SERVING COMMERCIAL FISHERMEN SINCE 1987

V.C.C.F.A. • 1567 SPINNAKER DRIVE • STE. 203-199 • VENTURA, CALIF. 93001
(805) 985-9705

Honorable George Deukmejian
Governor of California
State Capital First Floor
Sacramento, CA. 95814

May 4, 1990

Dear Governor Deukmejian,

Ventura County Commercial Fishermen's Association (VCCFA) has developed the Fishermen's Oil Response Team (FORT). As you are aware this resource of certified commercial fishermen is designed to be called upon by clean up coordinators during an emergency. FORT would provide additional manpower, vessels, and aircraft as needed to respond within the first hour of an oil spill emergency not days later.

I have received information that California Trial Lawyers Association wishes to change the wording of SB-2040. Instead of providing qualified immunity for spill respondents, they prefer to negotiate indemnification of said respondents.

Please let me know your viewpoint on this important issue. Should qualified immunity not be granted to responders as outline in the bill, FORT has no chance of succeeding. I cannot ask the men and women who have voluntarily trained and been certified in oil spill recovery to participate if the possibility of a lawsuit hangs over their heads when they are cleaning up someone else's spill.

Because of the sensitive Channel Islands and nearby coastal region our association supports FORT's defensive capabilities towards oil spill recovery. I shudder at the thought of a "VALDEZ" type spill encircling the islands while bureaucrats negotiate indemnity clauses.

Your support is welcome. Enclosed is our newsletter and I would appreciate your subscription.

Sincerely,

Brian Jenison

ENDORSEMENTS OF CLEANUP CONTRACTOR LIMITED LIABILITY

Be it further resolved, that the Pacific Fisheries Legislative Task Force supports and encourages state and federal legislation which grants any person who responds to an oil spill, caused by another, immunity from liability from all costs and damages except in cases where the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death.

...Pacific Fisheries Legislative Task Force, June 16, 1990 (Sitka)
Alaska Delegates: Sen. Eliason
Sen. Zharoff
Rep. Davidson
Rep. Navarra

In particular, I support the need for limited immunity for all oil spill responders other than liable parties, to the extent that it may be necessary to encourage such persons to take action promptly. Prompt action after a spill is essential to protect the marine environment of California from oil pollution.

As you know, the Oil Pollution Act of 1990 (P.L. 101-380) was signed by the President on August 18th. That Act provides limited federal immunity for all oil spill responders.

A law that does not address responder's concern about liability exposure, causing them to hesitate in responding to spills, would be counterproductive.

Oil spill response is not an exact science. Decisions often must be made with incomplete and sometimes conflicting information. Moreover, the operational environment is unpredictable. Liability standards must take those factors into account if effective programs are to be put in place.

...United States Coast Guard, August 28, 1990

Because unnecessary impediments to expeditious oil spill response should be minimized, we support the concept of immunizing spill responders by passing through their liability to the spiller, under the following conditions: none of the spiller's original liability is in anyway reduced, and there are adequate assurances that all damages will be paid, and that the injured parties can be made whole.

...The California Sierra Club, April 21, 1990

007 225 229915 5

MORE ENDORSEMENTS OF CLEANUP CONTRACTORS LIMITED LIABILITY

Cleanup firms are willing to accept legal responsibility for willful misconduct, personal injury or wrongful death. They need protection from simple negligence because they must make quick decisions under difficult circumstances. Sometimes they may guess wrong. In most cases, they are not acting on their own, but under Coast Guard authority. The federal government, however, is protected in such circumstances from those seeking targets from which to recoup losses. Cleanup groups are not.

...The San Francisco Examiner, June 10, 1990

Right now, oil spill teams can be sued just for showing up to fight the damage. for events that occur in the chaos of a recovery effort. For the land that is damaged as a result. And the price tag can run into the billions...

We urgently need your help to pass Good Samaritan liability protection for our efforts. We believe our work deserves the same immunity from lawsuits as a doctor who stops to help a heart attack victim on the street. Indeed, we stop everything to help an injured Earth when she needs it.

...International Bird Rescue Research Center, et al., August 1990

Should qualified immunity not be granted to responder as outlined in the bill, FORT has no chance of succeeding. I cannot ask the men and women who have voluntarily trained and been certified in oil spill recovery to participate if the possibility of a lawsuit hangs over their heads when they are cleaning up someone else's spill.

...Ventura County Commercial Fishermen's Association, May 4, 1990

TO: BILL HUDSON
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

DATE: 3-28-92

FROM: Micheal & Claudia Ussery
1508 Cara Loop
Anchorage, Alaska 99515

SUBJECT: House Bill 540 - Responder Immunity

I support HB 540, which was introduced in February, as a means to solve the issue of responder immunity. I believe the legislation is appropriate and that the responders in the state (such as CISPRI) should be granted immunity similar to that already provided other emergency responders in Alaska. I urge you to work for a scheduled hearing of this bill, if it has not already been scheduled, and for passage of HB 540.

I am employed by Tesoro Petroleum. Tesoro contributes approximately 55% of the costs of the Cook Inlet Spill Prevention & Response, Inc. ("CISPRI"); has a total payroll of approximately \$20 million; is the third largest taxpayer in the Kenai Peninsula Borough; and has contributed a large amount of money and employee time over the years to charitable organizations and public concerns. It was the first refiner to process a barrel of Alaska North Slope Crude on August 8, 1977. A shut down in crude supply last year was avoided by the passage of HB 196, which was passed for one year. HB 196 expires June 30, 1992.

Thank you for your attention and support of HB 540.

FAX MEMO

TO: House of Representatives Resource Committee
Cliff Davidson, Georgianna Lincoln, Pat Carney,
David Finkelstein, Bill Hudson, Ivan Ivan and Tom
Moyer
FAX (907)465-3444

FROM: Tiny Schasteen
Unalaska, Alaska

DATE: March 27, 1992

SUBJECT: House Bill 540

The purpose of this memo is to request your help in protecting the environment of Unalaska and the entire State.

As I understand HB 540 it's goal is to prevent a spill responder who responds to an oil spill from being held liable for the entire spill.

Currently if You or I attempt to cleanup a spill we will be held responsible for that spill even if we had nothing to do causing the spill. This makes it impossible for anyone, including a "Good Samaritan", from cleaning up any oil spill not caused by them.

Three months ago there was a 12,000 gallon spill in Unalaska to which I dispatched men and equipment. The company I manage has born all the costs for this cleanup even we had nothing to do with causing the spill. In fact the spill was all the way across town, in a different bay. The owners of my company didn't have a problem with the costs incurred, however due to the fact that when we responded to this spill we accepted FULL RESPONSIBILITY for this spill, I have been instructed not to respond to any spill not caused by our company.

This is totally unacceptable! If HB 540 does not pass, it will prevent people with good intent, like myself, from trying to clean up spills they are not responsible for.

IF HB 540 DOES NOT PASS IT WILL BE AN ENVIRONMENTAL DISASTER TO RIVAL THE EXXON VALDEZ!

TO: Bill Anderson
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

DATE: 3 April 92

FROM: Christine L. Learning
4607 Box 7545
PALMER ALASKA 99645

SUBJECT: House Bill 540 - Responder Immunity

I support HB 540, which was introduced in February, as a means to solve the issue of responder immunity. I believe the legislation is appropriate and that the responders in the state (such as CISPRI) should be granted immunity similar to that already provided other emergency responders in Alaska. I urge you to work for a scheduled hearing of this bill, if it has not already been scheduled, and for passage of HB 540.

~~\$~~ we don't need a State Tax

W. J. Jank

TO: Representative Bill Hudson

DATE: 4-01-92

Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

FROM: John W. Hewitt
6471 Ashland Dr
Anchorage AK 99507

SUBJECT: House Bill 540 - Responder Immunity

I support HB 540, which was introduced in February, as a means to solve the issue of responder immunity. I believe the legislation is appropriate and that the responders in the state (such as CISPRI) should be granted immunity similar to that already provided other emergency responders in Alaska. I urge you to work for a scheduled hearing of this bill, if it has not already been scheduled, and for passage of HB 540.

TO: Bill HUDSON

Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

DATE: 4-8-92

FROM: CURT RUDD

Box 111483

ANC 99511

SUBJECT: House Bill 540 - Responder Immunity

I support HB 540, which was introduced in February, as a means to solve the issue of responder immunity. I believe the legislation is appropriate and that the responders in the state (such as CISPRI) should be granted immunity similar to that already provided other emergency responders in Alaska. I urge you to work for a scheduled hearing of this bill, if it has not already been scheduled, and for passage of HB 540.

Curt Rudd

TO: Bill Hudson

DATE: 4-6-92

Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

FROM: DALE GRETH

24105 ENTRY # 1105

ANC 99507

SUBJECT: House Bill 540 - Responder Immunity

I support HB 540, which was introduced in February, as a means to solve the issue of responder immunity. I believe the legislation is appropriate and that the responders in the state (such as CISPRI) should be granted immunity similar to that already provided other emergency responders in Alaska. I urge you to work for a scheduled hearing of this bill, if it has not already been scheduled, and for passage of HB 540.

Dale Greth

To: Bill HUDSON

Date: 4-5-72

Alaska State Legislature
State capitol
Juneau, Alaska 99801

From: BILL FALLACARO
1402 NUNAKA DR
ALIC 99804

Subject: House Bill 540-Responder Immunity

I support HB 540, which was introduced in February as a means to solve the issue of responder immunity. I believe the legislation is appropriate and that the responders in the state (such as CISPRI) should be granted immunity similar to that already provided other emergency responders in Alaska. I urge you to work for a scheduled hearing of this bill, if it has not already been scheduled, and for passage of HB 540. In these very troubled times we're experiencing, what we do not need at this time is to run a prospering company such as Tesoro, out of business. Tesoro employs approximately 575 people in Alaska. I am fortunate to be one of the 575. Tesoro contributes approximately 55% of the costs of the Cook Inlet Spill Prevention and Response Inc., is the third largest taxpayer in the Kenai Peninsula Borough, and has contributed a large amount of money and employee time over the years to charitable organizations and public concerns. I appreciate your immediate attention concerning HB 540. Thankyou.

William Fallacaro

PUBLIC OPINION MESSAGE

Landa

DEAR: REPRESENTATIVE HUDSON

NAME: VICTORIA ASKIN

TITLE:

ADDRESS: PO BOX 178

CITY: KENAI

ZIP: 99611

PHONE: 283-5129

BILL NO: HB 540

SUBJECT: CIVIL LIABILITY FOR OIL SPILLS

MESSAGE: I STRONGLY SUPPORT THE PASSAGE OF HB540 FOR THE ECONOMY OF THE KENAI PENINSULA. THE FAILURE OF THIS BILL COULD RESULT IN LOSING A LARGE PORTION OF THE TAX BASE WITH AN ADDITIONAL DRAIN PUT ON THE UNEMPLOYMENT AND WELFARE SYSTEM. AGAIN, I STRONGLY URGE YOU TO VOTE YES ON HB540.

POMID: 13154526

DATE: 92/03/26

TIME: 15:45:26

LIONAME: SOLDOTNA LIO

COPIES: PEPRESENTATIVES REPRESENTATIVES SENATOR

DONLEY	ELLIS	FISCHER
GRUENBERG	HANLEY	
MARTIN	M.W.MILLER	
PARNELL	CARNEY	
DAVIDSON	FINKELSTEIN	
IVAN	LEMAN	
LINCOLN	MOYER	
ZAWACKI	BAKER	
C.DAVIS	FOSTER	
NAVARRE	G.PHILLIPS	
TAYLOR		

PUBLIC OPINION MESSAGE

Landa

DEAR: REPRESENTATIVE HUDSON

NAME: CHERYLE KENT

TITLE:

ADDRESS: BOX 636

CITY: KENAI

ZIP: 99611

PHONE: 283-5129

BILL NO: HB 540

SUBJECT: CIVIL LIABILITY FOR OIL SPILLS

MESSAGE: PLEASE VOTE YES FOR THIS IMPORTANT ISSUE. I SUPPORT IT WHOLEHEARTEDLY

POMID: 13155526

DATE: 92/03/26

TIME: 15:55:26

LIONAME: SOLDOTNA LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATOR

DONLEY	ELLIS	FISCHER
GRUENBERG	HANLEY	
MARTIN	M.W.MILLER	
PARNELL	CARNEY	
DAVIDSON	FINKELSTEIN	
IVAN	LEMAN	
LINCOLN	MOYER	
ZAWACKI	BAKER	
C.DAVIS	FOSTER	
NAVARRE	G.PHILLIPS	
TAYLOR	KUBINA	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

Lande

NAME: LINDA WHITE
 TITLE:
 ADDRESS: PO BOX 7453
 CITY: NIKISKI ZIP: 99635
 PHONE: 283-5129
 BILL NO: HB 540

SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
 MESSAGE: I AM IN SUPPORT OF HB540. BY NOT EXTENDING THIS BILL, UNDUE AND UNNECESSARY HARDSHIPS TO MANY ENTITIES WILL OCCUR. HARDSHIPS TO NOT ONLY INDUSTRY BUT TO GOOD SAMARITAN VOLUNTEER ORGANIZATIONS WILL OCCUR. TRAINED, KNOWLEDGEABLE VOLUNTEERS ARE A NECESSITY TO A VIABLE RESPONSE, AS ARE RESPONSE ACTION CONTRACTS THEMSELVES.

POMID: 13160232
 DATE: 92/03/26
 TIME: 16:02:32
 LIOHANE: SOLDOTNA LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATOR

DONLEY	ELLIS	FISCHER
GRUENBERG	HANLEY	
MARTIN	M.W.MILLER	
PARNELL	CARNEY	
DAVIDSON	FINKELSTEIN	
IVAN	LEMAN	
LINCOLN	MOYER	
ZAWACKI	BAKER	
C.DAVIS	HAVARRE	
G.PHILLIPS	TAYLOR	
FOSTER		

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

Lande

NAME: GEORGIA POYNER
 TITLE:
 ADDRESS: BOX 7397
 CITY: NIKISKI ZIP: 99635
 PHONE: 283-4304
 BILL NO: HB 540

SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
 MESSAGE: I SUPPORT THE PASSAGE OF HB540. COMPANIES LIKE TESORO ARE THE BACKBONE OF THE KENAI PENINSULA. LET'S NOT FINANCIALLY BURDEN THEM ANY FURTHER.

POMID: 13162122
 DATE: 92/03/26
 TIME: 16:21:22
 LIOHANE: SOLDOTNA LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATOR

NAVARRE	G.PHILLIPS	FISCHER
FOSTER	TAYLOR	
BAKER	C.DAVIS	
DONLEY	ELLIS	
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MARTIN	M.W.MILLER	
PARNELL	CARNEY	
DAVIDSON	FINKELSTEIN	
IVAN	LEMAN	
LINCOLN	MOYER	
ZAWACKI		

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: JACKIE ANSOTEGUI
 TITLE:
 ADDRESS: BOX 3315
 CITY: KENAI, ALASKA
 PHONE: 283-8405
 BILL NO: HB 540
 SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
 MESSAGE: I URGE YOU TO SUPPORT THIS BILL. THANK YOU.

ZIP: 99611

POMID: 13092708
 DATE: 92/03/27
 TIME: 09:27:08
 LIONAME: SOLDOTNA LIO

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G. PHILLIPS	FISCHER
NAVARRE	
CARNEY	
DAVIDSON	
FINKELSTEIN	
IVAN	
LEMAN	
LINCOLN	
MOYER	
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: SHEILA WEST
 TITLE:
 ADDRESS: PO BOX 82882
 CITY: FAIRBANKS
 PHONE: 474-8073
 BILL NO:
 SUBJECT: CHILD CARE GRANTS
 MESSAGE: FULL FUNDING OF THE CHILD CARE GRANTS IS URGENTLY NEEDED. NO CUTS TO CHILDRENS PROGRAMS ARE ACCEPTABLE, WHILE OTHER AREAS SUCH AS TOURISM ARE GETTING MILLION DOLLAR INCREASES. PLEASE SHOW US WITH YOUR BUDGET - WHO'S FOR KIDS AND WHO'S JUST KIDDING. EOM

ZIP: 99708

POMID: 07092158
 DATE: 92/03/27
 TIME: 09:21:58
 LIONAME: FAIRBANKS LIO

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BRUCKMAN	CARNEY	COTTEN
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B. DAVIS	C. DAVIS	DUNCAN
DONLEY	ELLIS	ELIASON
FINKELSTEIN	FOSTER	FISCHER
GONZALES	GRUENBERG	FRANK
GRUSSENDORF	HANLEY	HALFORD
IVAN	JACKO	HOFFMAN
KOPHEN	KUBINA	JONES
LARSON	LEMAN	KERTTULA
LINCOLN	MACKIE	MENARD
MACLEAN	MARTIN	PEARCE
M. A. MILLER	M. W. MILLER	POURCHOT
MOYER	NAVARRE	RODEY
PARNELL	G. PHILLIPS	SHULTZ
R. PHILLIPS	SHARP	STURGULEWSKI
TAYLOR	ULMER	UEHLING
ZAWACKI		ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: SUSAN CASWELL
TITLE:
ADDRESS: BOX 3238
CITY: SOLDOTNA ZIP: 99669
PHONE: 262-9554
BILL NO: HB 540
SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
MESSAGE: I URGE YOU TO SUPPORT THIS BILL.

POMID: 13092423
DATE: 92/03/27
TIME: 09:24:23
LIONAME: SOLDOTNA LIO

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NAVARRE FISCHER
G. PHILLIPS
CARNEY
DAVIDSON
FINKELSTEIN
IVAN
LEMAN
LINCOLN
MOYER
ZAWACKI

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: CAROLYN PRINCE
TITLE:
ADDRESS: BOX 1087
CITY: SOLDOTNA ZIP: 99669
PHONE: 262-4214
BILL NO: HB 540
SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
MESSAGE: I URGE YOU TO SUPPORT THIS BILL

POMID: 13092607
DATE: 92/03/27
TIME: 09:26:07
LIONAME: SOLDOTNA LIO

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NAVARRE FISCHER
G. PHILLIPS
CARNEY
DAVIDSON
FINKELSTEIN
IVAN
LEMAN
LINCOLN
MOYER
ZAWACKI

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: JANNA PRESTON
 TITLE:
 ADDRESS: 2700 WEST 34TH AVENUE
 CITY: ANCHORAGE ZIP: 99517
 PHONE: 248-5399
 BILL NO: SB 157
 SUBJECT: OPTOMETRISTS: AUTHORIZED PRACTICES
 MESSAGE: HB 336: PLEASE SUPPORT THE OPTOMETRY BILL. /JSM

POMID: 03085620
 DATE: 92/03/27
 TIME: 08:56:20
 LIONAME: ANCHORAGE LIO

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BAKER	BARNES	ADAMS
BOYER	BROWN	COLLINS
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D.DAVIS	C.DAVIS	DUNCAN
DOHLEY	ELLIS	ELIASON
FINKELSTEIN	FOSTER	FISCHER
GOZDALES	GRUENBERG	FRANK
GRUSSENDORF	HANLEY	HALFORD
IVAN	JACKO	HOFFMAN
KOPONEN	KUDINA	JONES
LARSON	LEMAN	KERTTULA
LINCOLN	MACKIE	MENARD
MACLEAN	MARTIN	PEARCE
M.A.MILLER	M.W.MILLER	POURCHOT
HOYER	NAVARRE	RODEY
PARNELL	G.PHILLIPS	SHULTZ
R.PHILLIPS	SHARP	STURGULEWSKI
TAYLOR	ULMER	UEHLING
ZAWACKI		ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: SHARON LOOSLI
 TITLE:
 ADDRESS: BOX 935
 CITY: KENAI, ALASKA ZIP: 99611
 PHONE: 283-4052
 BILL NO: HB 540
 SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
 MESSAGE: I URGE YOU TO SUPPORT THIS BILL.

POMID: 13091426
 DATE: 92/03/27
 TIME: 09:14:26
 LIONAME: SOLDOTNA LIO

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NAVARRE	
CARNEY	
DAVIDSON	
FINKELSTEIN	
IVAN	
LEMAN	
LINCOLN	
HOYER	
ZAWACKI	

PUBLIC OPINION MESSAGE

UCAP: REPRESENTATIVE HUDSON

NAME: SUSAN LACEY
 TITLE:
 ADDRESS: BOX 1005
 CITY: KENAI, ALASKA
 PHONE: 283-9256
 BILL NO: HB 540
 SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
 MESSAGE: I SUPPORT HB540 AND I WOULD LIKE YOU TO DISTRIBUTE THE LIABILITY
 EVENLY.

ZIP: 99611

POMID: 13082144
 DATE: 92/03/27
 TIME: 08:21:44
 LIONAME: SOLDOTNA LIO

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CHOQUETTE	DAVIDSON
S.DAVIS	C.DAVIS
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FINKELSTEIN	FOSTER
GONZALES	GRUENBERG
GRUSSENDORF	HANLEY
IVAN	JACKO
KOPONEN	KUBINA
LARSON	LEMAN
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MACLEAN	MARTIN
M.A.MILLER	M.W.MILLER
MOYER	NAVAPRE
PARHELL	G.PHILLIPS
R.PHILLIPS	SHARP
TAYLOR	ULMER
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: VAL ISCHI
 TITLE:
 ADDRESS: 604 LAUREL DRIVE
 CITY: KENAI, ALASKA
 PHONE: 283-3835
 BILL NO: HB 540
 SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
 MESSAGE: I AM IN SUPPORT OF HB540.

ZIP: 99611

POMID: 13085213
 DATE: 92/03/27
 TIME: 08:52:13
 LIONAME: SOLDOTNA LIO

COPIES: REPRESENTATIVES SENATOR

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G.PHILLIPS	
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DAVIDSON	
FINKELSTEIN	
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LEMAN	
LINCOLN	
MOYER	
ZAWACKI	

FORUM / LETTERS

Alyeska has got to know: A deal is a deal

By WALTER B. PARKER,
ESTHER WUNNICKE and ERNIE PIPER

If a supertanker hits Bligh Reef tonight, we're going to need more than a volunteer response organization that's willing to work for a few days.

Yet that's exactly what Alyeska Pipeline Service Company and its oil company parents are proposing. Despite more than two decades of legal precedent and company promises, Alyeska now says that it is only a "volunteer" spill responder, and that it will serve as a Good Samaritan for no more than 72 hours.

This claim is contrary to what Congress agreed to when it approved pipeline construction, contrary to what Alyeska promised, and an insult to Alaskans who lived through and worked on the Exxon Valdez oil spill.

The state and federal governments have a chance to clear up this confusing and potentially disastrous claim with separate measures now before the Alaska Legislature and the U.S. House of Representatives. The state measures, HB540 and SB270, contain lan-



guage that would spell out in law Alyeska's responsibilities to respond. Good as that effort is, even the state bill falls into Alyeska's claim that it is responsible for no more than the "Initial" response.

A quick look at the record should prompt our legislators to pass HB540 and SB270 — without letting Alyeska off the hook by limiting its responsibility to 72 hours. There are three good reasons why we shouldn't buy into Alyeska's claim.

First, that's not what the U.S. Congress said when it approved the construction of the pipeline. Throughout the entire debate about construction of the pipeline — and then again in the Oil Pollution Act of 1990 — the Congress made its intent clear: The people who hold the permits to operate the pipeline are responsible for controlling and

cleaning up oil spills, from start to finish. There was no time limit, no 72-hour clock.

Second, Alyeska's new claim ignores its own promises. In 1973, under congressional questioning that was directed at just the kind of "who's in charge" confusion Alyeska is now proposing, an Alyeska lawyer said his company was the agent of the owners and that Alyeska would accept "full responsibility" on behalf of the owners.

"Our actions are their actions," said Alyeska general counsel John Knodell. So, said an inquisitive congressman, Alyeska won't be used by an owner company as some kind of corporate shield from liability? "That is correct," said the Alyeska lawyer.

Of course, that's exactly the opposite of what Alyeska is claiming two decades later. Instead of a one-stop response headquarters — Alyeska — now there could be many, increasing the potential for confusion and finger-pointing when oil is on the water.

Here's the third reason why Alaskans should hold Alyeska to the terms of the deal: We're paying for it. Through a variety of complex formulas, the owner companies deduct part of their spill prevention and

response costs from what they pay us in royalties on the money they make from the North Slope oilfields we own.

It's not an insignificant sum. The state is foregoing as much as \$150 million in potential royalty payments through the end of the decade in exchange for better Alyeska preparedness in Prince William Sound.

We're not paying Alyeska millions of dollars a year to volunteer on terms they dictate to us. We're paying them to protect us — and not just for 72 hours. That's been the deal since the pipeline was built, and the deal should stick.

We should spell this deal out in law, right now, before people in Cordova and Chenega are watching oil wash up on their beaches, and wondering where the heck the responders are.

□ Walter Parker was chairman of the Alaska oil spill commission; Esther Wunnicke was vice chair of the oil spill commission; Ernie Piper was state oil spill co-ordinator during much of the cleanup.

IF SHE'S NOT A GOOD SAMARITAN, JUST WHO IS?

The men and women who respond to an oil spill crisis are willing to accept many dangers. Good Samaritans in every sense of the word, they risk uncertain seas, fire and exposure.

But there's one risk that's truly unacceptable. A crippling lawsuit against the recovery team itself. Yet, because of an odd quirk in the law, that's a real possibility.

Right now, oil spill teams can be sued just for showing up to fight the damage. For events that occur in the chaos of a recovery effort. For the land that is damaged as a result. And the price tag can run into the billions.

Is this reasonable? The Congress of the United States doesn't think so. The California State Senate doesn't think so. In fact, only one group wants to be able to make the people fighting the oil spill pay for the spill itself. The California Trial Lawyers Association.

This powerful special interest group has managed to block the final steps in enacting Good Samaritan protection for oil recovery teams. Why? For the oldest reason of all—they want the loot.

Senator Barry Koene and Assemblyman Ted Lempert are working overtime to protect California's coastline. And we have a major interest in their efforts. We are the people who fight oil spills. Some of us do so to protect our fishing grounds. Some to save innocent wildlife. Others, as part of a responsible petroleum industry. We believe that whoever spills the oil should be liable for the costs—not the people who clean it up.



We urgently need your help to pass Good Samaritan liability protection for our efforts. We believe our work deserves the same immunity from lawsuits as a doctor who stops to help a heart attack victim on the street. In-
fact, we stop everything to help an injured Earth when she needs it.

Please send in the coupons below and tell the California State Assembly to pass SB 2040 authored by Senator Barry Koene. It's the only way to keep some very Good Samaritans on the job.

Join Us In Saying NO To The Trial Lawyers, Yes on SB 2040.

CALL US

We will send a FREE coupon in your name to your State Assembly member.

CALL TOLL FREE

1-800-325-6000

Ask for Operator 9752

This is not the
Western Union Service

WRITE US

Fill out this coupon and send it to us:
YES! I support Senate Bill 2040 (Koene) and
 oppose the California oil spill recovery
 bill. I support the California State
 Senate and the California State Assembly
 in their efforts to pass SB 2040.

NAME _____
ADDRESS _____
CITY _____

Return to: International Bird Rescue
Research Center, 1221 8th Street, Suite 200
Lawrenceville, GA 30043

OR, TELL 'EM YOURSELF

Please Mail Sponsor:
Don't let this free coupon go to waste! It's yours to
use all the time. Please join the I.B.R.C. Cause
and the California State Senate by ordering
Senate Bill 2040 (Koene).

NAME _____
ADDRESS _____
CITY _____

Send to: Max White, L. Brown, Jr., Area
Captain, 1221 8th Street, Suite 200

SPONSORED BY
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H B

5 4 9

FISCAL NOTE

No. 1

Bill Version: HB 549

(H) Publish Date: 2/19/92

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

Revision Date:
Title: Exempt U of A from Admin. Procedures Act

Department Affected: University of Alaska

BRU:

Component:

Sponsor: Governor
Requestor: University of Alaska

Component Serial No.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES						
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)	FY93	FY94	FY95	FY96	FY97	FY98
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:	FY93	FY94	FY95	FY96	FY97	FY98
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

There is no cost associated with passage of this legislation. However, if this legislation fails to pass, the cost to the University to administer faculty/staff and student grievances, could add tens of thousands of dollars in litigation costs each year.

Prepared by: Wendy Redman
Division: Statewide Administration

Phone: 474-7582
Date: 12/23/91

Approved by: Brian Rogers, Vice President for Finance
Agency: University of Alaska

Date: 12/23/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency

COMMITTEE COPY

University of Alaska
Statewide Administration

TO: House Judiciary Committee
Rep. Dave Donley, Chair
Rep. Max Gruenberg, Vice Chair
Rep. Johnny Ellis
Rep. Mark Hanley
Rep. Terry Martin
Rep. Mike Miller

FROM: Wendy Redman, Vice President
University of Alaska Statewide System

DATE: May 12, 1992

RE: **SB 411 - University of Alaska Grievance Procedures**

I recognize that time is running out, and that the Judiciary Committee may only have one more meeting. With that in mind, however, I urge you to bring SB 411 up for its final hearing in your committee. This bill is the priority legislation for the University this session, and failure to pass it will result in substantial cost to the system.

SB 411 and its companion bill, HB 549, were held up in the legislature by the lobbying efforts of the ACCFT and the AFL-CIO, pending settlement with the union. The provisions of the legislation have no impact on employees who are in a collective bargaining unit, and as part of our settlement with the ACCFT, they agreed to withdraw opposition to this bill.

SB 411 received a hearing in the Senate HESS and Judiciary Committees, and was passed by the Senate to the House last week. The companion bill, HB 549 was heard in House HESS, waived in House SA, and is now in House Judiciary.

The University has had grievance procedures and policies in place for non-organized employees for decades that are based on a collegial model of peer review and consideration. These policies are based on constitutionally required due process protections, and have appeal rights at several levels all the way to the President. Members of our collective bargaining units, including the ACCFT, have grievance provisions in their contracts as mandated by PERA, that include binding arbitration and the right to strike. The non-organized employees at the University have rejected this more formal process of grievance hearings in favor of the peer review model.

The adjudication procedures included in the APA are not intended for employee grievances and, in fact, do not apply to any other employee group in the state. These procedures are meant for third party actions dealing primarily with complaints against state licensing boards and commissions. The requirement for utilization of outside hearing officers will add considerable cost to our grievance procedures, and frankly, seem inappropriate for the vast majority of our grievances. The majority of our grievances are resolved at an early stage of review, and do not involve any cost to the grievant or the University.

I urge you to give consideration to putting this bill on your committee agenda for a hearing so it can be brought to the floor for a vote.

Date of Committee Action: 4/10/92

The HEALTH EDUCATION AND SOCIAL SERVICES Committee considered: HB 549

HOUSE BILL NO. 549 EXEMPT U OF AK FROM APA PROCEDURES

"An Act exempting the University of Alaska from the administrative adjudication provisions of the Administrative Procedure Act; and providing for an effective date."

- RECOMMENDATIONS: the same title
 be 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 U. of A. 2/19/92 zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
<i>Chris Harris</i>	<input checked="" type="checkbox"/>				
<i>Mary Miller</i>	<input checked="" type="checkbox"/>				

[Signature]

CHAIRMAN'S SIGNATURE

WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 19, 1992

*The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Speaker Grussendorf:

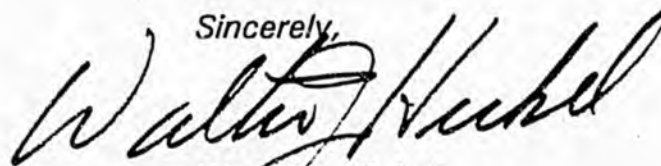
Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would exempt University of Alaska student and employee grievances from the Administrative Procedure Act (APA).

The Alaska Supreme Court recently ruled that, under AS 44.62.330(a)(45), the administrative adjudication procedures of the APA (AS 44.62.330 - 44.62.630) apply to the university. Internal disputes such as employee and student grievances traditionally have been resolved through the university's grievance procedure. That procedure is built around a process of peer review, with a multi-step appeal process. Compared to the university's grievance procedure, in which grievances are often resolved with little or no expense in the earlier stages, the APA procedure is cumbersome and expensive, and not as readily accessible to the individual grievant. Therefore, the bill simply deletes the university from the list of state agencies that must use those procedures.

This legislation would permit the university to continue to use its longstanding dispute resolution and grievance process, which is consistent with practices found in the public sector and with the collegial atmosphere that characterizes a university setting.

I urge your prompt and favorable attention to this bill.

Sincerely,



Walter J. Hickel
Governor

H73549

1992 LEGISLATIVE PROPOSAL FORM**DEPARTMENT:** The University of Alaska**SUBJECT OF PROPOSED BILL:** Exempt University of Alaska Grievance Policy from the Quasi-judicial proceedings of Administrative Procedures Act**SUMMARY OF INTENT:** *Include what the problem is, how this proposal solves it, and how many incidents have occurred which necessitate this change.*

In May 1988, Ralph McGrath and Don Mohr filed a class-action type grievance on their own behalf and that of a number of other former community college faculty members who are now on the UAA faculty. The grievants specifically requested that the matter be heard pursuant to the Alaska Administrative Procedures Act (AAPA). The UAA Grievance Council denied that request, and in September 1988 Mr. McGrath, et al, filed a complaint against the University for declaratory judgment and injunctive relief ordering the University to conduct the grievance hearing in accordance with the AAPA. Following thorough briefings by both parties, Judge Brian Shortell issued an order in March 1989 holding that the University is not required to conform its grievance hearings with the procedural requirements of the AAPA. Plaintiffs appealed this decision to the Alaska supreme court, and in June 1990, the Supreme Court overturned the earlier decision opining that since the University was not specifically excluded from the requirements of the AAPA, it was, therefore, required to implement grievance procedures pursuant to the AAPA.

The University is seeking a clear exemption from the requirements in AS 44.62.330 (a)(45). The AAPA grievance procedures do not apply to any employee group in the state, and there is a substantial body of evidence from legislative hearings that there was no intent that the AAPA be applied to University grievance procedures. The quasi-judicial proceedings included in the AAPA are not intended for employee or student grievances, but rather for citizen grievances against state boards and commissions. Employee and student grievance procedures are traditionally built around a process of peer review and consideration with appeal rights at several levels all the way to the President. The majority of University grievances are resolved at an early stage of review, and are done so at little or no cost to the grievant or to the University. The imposition of the AAPA procedures, however, will now impose a quasi-judicial proceeding on all university grievances, including the utilization of a formal hearing officer. The additional cost, complexity and formality of the AAPA requirements are contradictory to the resolution of student and employee grievances, and are contradictory to the collegial approach that characterizes a university setting.

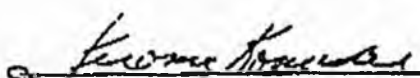
ESTIMATED FISCAL IMPACT:

Operating: Without Legislation -- \$200,000/year Capital: None

WHAT OTHER DEPARTMENTS WILL BE AFFECTED BY THIS PROPOSAL: None**WHO WILL SUPPORT THIS BILL:** University faculty, staff and students**WHO WILL OPPOSE THIS BILL:** Possible: Alaska Community College Federation of Teachers (ACCFT). (The ACCFT is a collective bargaining unit that represented faculty assigned to the states' community colleges. They currently represent the 9 faculty at Prince William Sound Community College)**BRIEFLY OUTLINE ANY PRECEDENTS FOR THIS PROPOSAL IN ALASKA OR OTHER STATES.** As stated above, there is no employee group in the state that uses the AAPA model for grievance procedures. The quasi-judicial proceedings are expensive, cumbersome, and ill-suited to employee dispute resolution.**IF A SUBSTANTIALLY SIMILAR BILL HAS BEEN DRAFTED AND NOT INTRODUCED, OR INTRODUCED AND NOT PASSED, PLEASE GIVE LAWLOG OR BILL NUMBER:**

Date

Sept 20, 1991


 Jerome Komisar, President
 University of Alaska Statewide System

Governor's Office Notes:

University of Alaska

Statewide System

HB 549/SB 441 Exempt UA Grievances from APA

In June, 1990, the Alaska Supreme Court overturned a Superior Court decision and found that because the University of Alaska was not specifically excluded from the adjudication procedures of the Alaska Administrative Procedures Act (APA), it must implement grievance procedures pursuant to APA, or "...seek a remedy from the legislature".

The APA adjudication procedures apply to boards and commissions listed in Sec 44.62.330, in third party actions dealing with the granting or denying "...a right, authority, license, or privilege...". For instance, when an individual is denied a real estate license, that person is entitled to a hearing before the Real Estate Commission through the process outlined in this statute. The quasi-judicial proceedings included in the APA are not intended for employee or student grievances, but rather for what are essentially licensing decisions and disputes involving state boards and commissions.

The statute as currently written applies to the University of Alaska, "...except to the extent that its inclusion is inconsistent with the provisions of AS. 14.40", the statute specifically outlining the responsibility and authority of the Board of Regents and the President of the University of Alaska. AS 14.40 gives the Board of Regents the right to "...adopt reasonable rules, orders, and plans...for the good government of the University." Taken together with the strong constitutional powers in Title 14, Article VII, Section 3 of the Alaska Constitution, the Board has plenary authority to govern and manage the University. Transcripts of the legislative history of the APA statute reveal that the legislators had no intention that this section be interpreted in a way that would negate internal grievance procedures. The Supreme Court, however, did not consider legislative intent, and because the APA does

contact:

Wendy Redman
UA Statewide System
463-3086/474-7582

Position Paper

UNIVERSITY OF ALASKA AND THE ACCFT

BACKGROUND

In response to dramatic declines in state revenue that reduced the University budget by nearly 15%, the Board of Regents implemented an organizational restructuring plan on July 1, 1987. Following many months of discussion and debate as to possible alternatives, the Board implemented a plan that called for the restructuring of the system's three universities and 10 community colleges into three newly organized regional universities. Because it retained required local funding, Prince William Sound Community College in Valdez maintained its separate status as an independent community college. This restructuring resulted in an annual cost savings of nearly \$6 million and included the layoff of dozens of individuals in administrative and staff positions. The overriding principle of the Board of Regents in implementing this plan was to protect the instructional delivery capacity of the University and to maintain the missions inherent in both the university and the community college programs. As a result, no faculty positions were eliminated, the level of course offerings was maintained, and substantial administrative savings were realized.

New mission statements for the three universities were created that recognized the expanded instructional responsibilities of these newly created institutions. New policies and procedures were developed at each university that recognized the integration of the faculties of the former universities and community colleges. Common curriculums were established within each regional university resulting in the elimination of many of the transfer difficulties previously experienced by students moving between the community colleges and the universities.

BORNSTEIN I

Prior to the restructuring of the University of Alaska system the community college and rural education faculty were represented by the ACCFT, while faculty at the university campuses in Anchorage, Fairbanks and Juneau were not represented by any union. The University took the position that the collective bargaining agreement ceased to apply to the transferred faculty at the same time that the community colleges themselves ceased to exist. The ACCFT rejected offers by the University to negotiate concerning the effects of the restructuring and, in fact, directed their members to refuse participation in all discussions and decisions regarding the restructuring process. The ACCFT subsequently contended through a series of grievances that: 1) the University had no right to implement a restructuring plan that eliminated the separate identity of the community colleges, 2) that the University restructuring was the result of "anti-union animus", and 3) the union's representative status and collective bargaining contract should continue into the restructured universities. These issues were placed before Mr. Tim Bornstein for arbitration. A decision on the first two issues, known now as "Bornstein I", occurred in February, 1988,

CORRECTION

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

University of Alaska

Statewide System

HB 549/SB 441 Exempt UA Grievances from APA

In June, 1990, the Alaska Supreme Court overturned a Superior Court decision and found that because the University of Alaska was not specifically excluded from the adjudication procedures of the Alaska Administrative Procedures Act (APA), it must implement grievance procedures pursuant to APA, or "...seek a remedy from the legislature".

The APA adjudication procedures apply to boards and commissions listed in Sec 44.62.330, in third party actions dealing with the granting or denying "...a right, authority, license, or privilege...". For instance, when an individual is denied a real estate license, that person is entitled to a hearing before the Real Estate Commission through the process outlined in this statute. The quasi-judicial proceedings included in the APA are not intended for employee or student grievances, but rather for what are essentially licensing decisions and disputes involving state boards and commissions.

The statute as currently written applies to the University of Alaska, "...except to the extent that its inclusion is inconsistent with the provisions of AS. 14.40", the statute specifically outlining the responsibility and authority of the Board of Regents and the President of the University of Alaska. AS 14.40 gives the Board of Regents the right to "...adopt reasonable rules, orders, and plans...for the good government of the University." Taken together with the strong constitutional powers in Title 14, Article VII, Section 3 of the Alaska Constitution, the Board has plenary authority to govern and manage the University. Transcripts of the legislative history of the APA statute reveal that the legislators had no intention that this section be interpreted in a way that would negate internal grievance procedures. The Supreme Court, however, did not consider legislative intent, and because the APA does

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Position Paper

not specifically exempt the University, and because the referenced statutory language in AS 14.40 does not specifically grant the Board the authority to establish grievance procedures, they essentially directed the University to seek the appropriate legislative action for clarification.

The University is seeking a clear exemption from the requirements in AS 44.62.330 (a)(45). The APA grievance procedures do not apply to any employee group in the state. Provisions in the state statutes covering collective bargaining require that grievance procedures be part of all collective bargaining contracts, and non-covered state employees are included in grievance procedures established within their specific agencies and departments.

Employee and student grievance procedures, which incorporate constitutionally required due process protections, are traditionally built around a process of peer review and consideration with appeal rights at several levels all the way to the President. The majority of University grievances are resolved at an early state of review, and are done so at little or no cost to the grievant or to the University. The imposition of the APA procedures, however, will now impose a quasi-judicial proceeding on all university grievances, including the utilization of a formal hearing officer. The additional cost, complexity and formality of the APA requirements are contradictory to the resolution of student and employee grievances, and are contradictory to the collegial approach that characterizes a University setting.

If this legislation is not passed, it is anticipated that the University will have to pay approximately \$200,000 per year for hearing officers, and associated costs involved with this complex process.

A "grandfather" clause is included with the legislation that provides the APA procedures be utilized for all grievances filed prior to the final passage of this legislation.

UNIVERSITY OF ALASKA AND THE ACCFT

BACKGROUND

In response to dramatic declines in state revenue that reduced the University budget by nearly 15%, the Board of Regents implemented an organizational restructuring plan on July 1, 1987. Following many months of discussion and debate as to possible alternatives, the Board implemented a plan that called for the restructuring of the system's three universities and 10 community colleges into three newly organized regional universities. Because it retained required local funding, Prince William Sound Community College in Valdez maintained its separate status as an independent community college. This restructuring resulted in an annual cost savings of nearly \$6 million and included the layoff of dozens of individuals in administrative and staff positions. The overriding principle of the Board of Regents in implementing this plan was to protect the instructional delivery capacity of the University and to maintain the missions inherent in both the university and the community college programs. As a result, no faculty positions were eliminated, the level of course offerings was maintained, and substantial administrative savings were realized.

New mission statements for the three universities were created that recognized the expanded instructional responsibilities of these newly created institutions. New policies and procedures were developed at each university that recognized the integration of the faculties of the former universities and community colleges. Common curriculums were established within each regional university resulting in the elimination of many of the transfer difficulties previously experienced by students moving between the community colleges and the universities.

BORNSTEIN I

Prior to the restructuring of the University of Alaska system the community college and rural education faculty were represented by the ACCFT, while faculty at the university campuses in Anchorage, Fairbanks and Juneau were not represented by any union. The University took the position that the collective bargaining agreement ceased to apply to the transferred faculty at the same time that the community colleges themselves ceased to exist. The ACCFT rejected offers by the University to negotiate concerning the effects of the restructuring and, in fact, directed their members to refuse participation in all discussions and decisions regarding the restructuring process. The ACCFT subsequently contended through a series of grievances that: 1) the University had no right to implement a restructuring plan that eliminated the separate identity of the community colleges, 2) that the University restructuring was the result of "anti-union animus", and 3) the union's representative status and collective bargaining contract should continue into the restructured universities. These issues were placed before Mr. Tim Bornstein for arbitration. A decision on the first two issues, known now as "Bornstein I", occurred in February, 1988,

stating that the Board of Regents had the authority to restructure the University without an obligation to bargain first with the union, and that there was no evidence of "anti-union" animus on the part of the University.

BORNSTEIN II

In August, 1988, Mr. Bornstein held a hearing on the question of whether the ACCFT representation of the former community college faculty should have continued beyond the implementation date of the restructuring. The University argued that after the restructuring the unit definition that had been established within the former collective bargaining agreement no longer existed. The ACCFT argued that the administrative restructuring and elimination of the community colleges did not alter the community of interest and that their representational rights extended into the new organization.

The hearing before Mr. Bornstein was held less than one year following the implementation of the restructuring. The University argued at the time that the restructuring, particularly the integration of faculty who were coming together from different academic cultures, was a process that would take several years to accomplish. At the time of his hearing, the full integration was just beginning. Under the collective bargaining agreement, faculty teaching at the community colleges were restricted primarily to lower division, developmental, vocational and community interest courses; did not hold academic rank; receive tenure; engage in research as a part of their workload; participate in peer review or evaluation; or involve themselves with faculty governance processes. Under the new policies and procedures that were being developed at the time of this initial Bornstein II hearing all of this was changing: revised tenure, promotion and evaluation policies were being written by the combined faculty; new mission statements were being developed by advisory committees; academic programs and departments were being consolidated with faculty from the former community colleges and universities sharing in the development and delivery of courses at all instructional levels; major remodelling and space allocations were being developed in Anchorage that reflected the needs of the integrated faculties; and the curriculum itself was being substantially revised to provide consistent course content and standards at each campus within the regional universities.

In January, 1990, Mr. Bornstein issued a ruling, now referred to as "Bornstein II", that concluded that at the time of his hearing, 18 months earlier, "...the working conditions and interests of the professional employees transferred from the community colleges to the three regional universities have not meaningfully changed", and further, that the university erred when it declined to continue recognition of the ACCFT as the representative of a bargaining unit following the initial restructuring. He directed that the parties meet together to seek a "...suitable remedy for the contractual and statutory violations...". The inordinate length of time taken by Mr. Bornstein to reach a decision in this arbitration created an unusual situation for both the University and the ACCFT. During the 18 months following the initial hearing, the

University proceeded with the evolution of the new institutions and the implementation of policies and procedures for the newly integrated faculty outlined above. While Bornstein could easily identify that a community of interest continued to exist within the university 9 months after the restructuring was initiated, it was far more difficult to determine what it should be in January of 1990 -- nearly 2 1/2 years later.

During the course of the next 9 months, the University and the ACCFT met several times to discuss the "remedy" directed in the Bornstein II decision. In order to determine a remedy for the Universities failure to recognize the ACCFT, it was necessary to identify who should be in the unit. The ACCFT contended that the unit should be composed of all former community college faculty, regardless of where they were in the new institutions (faculty, administrators, etc), and that it should also include all new faculty hired into positions that were formerly budgeted in a community college, regardless of what their new assignment might be. While vocational-technical faculty, the developmental and extended campus faculty continued in many instances to engage in work similar to that performed prior to restructuring, their conditions of employment had changed substantially. Another particular complexity involved the faculty in arts and sciences on the Anchorage campus. Following restructuring, these faculties came together in a way that made the distinction between "community college" and "university" difficult to determine. History 101 is now the same for all students whether they are seeking an associate degree, a baccalaureate, or taking the course for personal enrichment. Furthermore, under the faculty policies implemented at UAA, faculty are provided an option, depending on the teaching and research needs of the department, of selecting a tenure track option that may or may not include a research commitment. As a result, it is impossible to tell, based on workload, who is a "community college type" faculty member and who is not - particularly for faculty hired after the implementation of the restructuring. The union's contention that all **positions and individuals** formerly assigned to the community colleges, regardless of their current assignment, should be in the unit was simply not acceptable to the University. A unit that has no common community of interest makes little sense. The result of this unit would have been to create a bifurcated faculty, where for example, virtually every academic department at the Anchorage campus would have some of the faculty in a union and some not, and further, that this bifurcation would be based not on a common community of interest, but rather on the premise that positions and individuals who were once in a bargaining unit should forever continue in the bargaining unit regardless of their work assignment. From a management standpoint, this construct was and continues to be unworkable.

BORNSTEIN III

Mr. Bornstein retained jurisdiction over the matter in the event that the parties could not reach an agreement, and at the request of the University and the ACCFT, hearings were initiated in November 1990. The issue before Mr. Bornstein was to define a unit for purposes of establishing a remedy in

response to the University's failure to recognize the ACCFT as the bargaining agent for the former community college faculty following restructuring. During these hearings, the ACCFT argued that the contract that existed at the time of restructuring should be unilaterally extended, and that close to \$30,000,000 in awards and damages be made for the University's failure to honor the contract following the implementation of restructuring. The University argued that a full integration of the faculty, while it had not taken place at the time of the initial hearing in July of 1988, was essentially in place prior to the termination of the contract and that the period of time covered by the award should end, at the latest, with the beginning of the fall semester of 1988. The University further argued that if the contract was found to be in effect at any point following restructuring, that it should be applied *in toto*, and that all wages and benefits assigned to faculty outside of the contract provisions should be rescinded. On the issue of unit determination, the ACCFT argued that all new faculty hired to replace former community college faculty should be part of the unit, while the University argued that none of them should be considered because they did not fall into the community of interest defined by the contract itself.

Mr. Bornstein's final decision, known now as the "Bornstein III", received in May, 1991, defines a unit for purposes of the remedy that includes all former community college members and "new faculty hired to teach courses traditionally taught by former community college faculty on the basis of a bipartite workload"¹ Mr. Bornstein rejected most of the ACCFT's claims for damages, and fashioned a financial remedy that addresses itself to specific contract terms and conditions that were not continued following restructuring. The decision rejected the ACCFT position that the contract should be unilaterally extended and rejected the University's argument that the contract, if found to be in effect, should be applied, *in toto*. Instead, Mr. Bornstein's decision directed a compromise by limiting the time frame for awarding damages to the period July 1, 1987 (the implementation of the restructured University) to the expiration of the contract, March 31, 1989. He also concluded that wages and benefits extended by the University outside of the provisions of the collective bargaining agreement could not be rescinded.

In reaching his compromise on the term for awarding damages, Mr. Bornstein rejected the University's claim that a full integration of former community college faculty into the new University was completed prior to the expiration of the contract on March 31, 1989. While he acknowledged that there was movement in that direction, he was not persuaded that there were significant alterations in the working conditions prior to the expiration of the contract. He points out that many of the most significant changes in the working conditions, including the development of new faculty promotion and evaluation criteria, were implemented close to or after the March 31, 1989 contract

¹ Faculty workloads consist of 5 equal parts. A tripartite load is composed of three parts teaching, one part research, and one part public service. A bipartite workload is composed of four parts teaching and one part public service.

expiration date. In his words, "...the ice continued to melt during the 1988-89 academic year, but when the contract expired on March 31, 1989, there was still a large and identifiable block of ice in place."

The legislature appropriated a total of \$1.2 million in FY92 for payment of the award established in the Bornstein III arbitration. This amount was the best estimate that the University and the ACCFT could make as to the potential costs associated with each award element. Copies of Mr. Bornstein's award (Attachment #1) and the status of the pay-out to date (Attachment #2) are included here for your information. As of today, the only element remaining to be determined is the amount due to individuals for various overload payments that were allowed under the collective bargaining agreement. For instance, under the terms of the contract faculty members were eligible to receive additional pay beyond their annual salary for courses taught beyond their normal course load; for days worked beyond the academic year defined in the contract; for class preparation days; for time spent as a substitute for an absent faculty member; for committee assignments, etc. The payment of these individual overloads required that faculty submit documentation prior to payment. This process is nearing completion. Initial estimates are that these payments will be in excess of \$700,000. If additional funds are necessary to pay all aspects of the award, the University will submit a request for a supplemental appropriation as is the case with all state arbitration awards.

PRINCE WILLIAM SOUND COMMUNITY COLLEGE

From the original implementation date of restructuring, the University has recognized the ACCFT as the appropriate representative for the faculty at PWSCC. The University has attempted to enter into negotiations with the ACCFT on behalf of the faculty to no avail. The ACCFT has consistently refused to bargain with the University relative to these faculty, contending at each encounter that are representing, and bargaining, for a larger unit of approximately 285 unspecified members. Since the University refuses to negotiate a contract for a group that cannot be defined, and the ACCFT refuses to negotiate for the PWSCC faculty, we have failed to successfully enter into negotiations.

Our inability to enter into negotiations with the faculty at PWSCC has been especially frustrating. However, the University is obligated to recognize the ACCFT as their rightful agent, and as long as their agent refuses to negotiate on their behalf, it is difficult to see what option exists for us. In an effort to encourage the reopening of negotiation on behalf of the PWSCC faculty, we sent a copy of a new contract proposal to the ACCFT in December, 1991 with copies to each of the PWSCC faculty members. The ACCFT has subsequently filed an Unfair Labor Practice Charge against the University for this action. In a further effort to achieve some level of fairness for the PWSCC faculty, who have not received any salary increases in recent years, the University authorized, with the acceptance of the ACCFT, the payment of salary increases to the

PWSCC faculty at the same level as that received by other University employees during the past three years.

The University remains prepared to enter into full negotiations with the PWSCC faculty at any time.

CURRENT STATUS

The Bornstein arbitrations did not address the issue of whether a collective bargaining relationship continued to exist between the University and the ACCFT following the expiration of the contract in March of 1989. Mr. Bornstein was very careful to limit his findings to the period that ended on March 31, 1989 and he scrupulously avoided taking any position on whether a community of interest exists today. The ACCFT contends the remedy unit defined in the Bornstein II arbitration should automatically be accepted as the "successor unit", (i.e., no vote) for future negotiations. The University contends that the remedy unit has no meaning as a prospective bargaining unit because there is no common community of interest. The unit definition that existed prior to restructuring was established by the State Labor Relations Agency and was based on a community of interest for faculty who were employed at a community college. In correspondence responding to a request from the ACCFT for clarification on the issue of a prospective unit definition, Mr. Bornstein indicated that the answer to that question should probably come from the State Labor Relations Agency. In May of 1991, President Komisar wrote to the State Labor Relations Agency requesting their assistance in clarifying the representative status of the ACCFT and the composition of a bargaining unit that they might determine had a common community of interest. (Attachment #3) In September of 1991, the ACCFT made a motion to the Agency to reinstitute an Unfair Labor Practice charge originally filed in 1987 and held in abeyance pending the outcome of the Bornstein arbitration. The motion for reinstatement requests that the Agency essentially adopt the remedy unit defined in the Bornstein II arbitration as the successor unit, and direct that the contract terminated in March of 1989 be extended to the present time. The ACCFT further requests that the Agency assign additional monetary awards similar to those assigned by Bornstein for the period of time from the contract termination to the present. The Agency has agreed to hear these cases and will begin hearings in the very near future.

At the same time, the University has continued to engage in informal discussions with the ACCFT in an effort to determine whether we can agree on an appropriate bargaining unit without the third party intervention of the State Labor Relations Agency. The University continues to believe that a bargaining unit must represent a group that shares a common community of interest. The ACCFT continues to believe that they have a "right" to all of the individuals and positions that were formerly assigned to the community colleges, regardless of what their current assignments or conditions of employment may be.

A central issue of concern to the University continues to be that following restructuring, faculty at all the campuses have been integrated with the total University faculty, and that the community of interest that once existed is difficult to see today. The faculty at each extended campus are integrated into academic departments with their colleagues in Anchorage, Fairbanks or Juneau, the professional environment and obligations have changed, and in many cases, the workload has changed significantly from what it was when the individuals were community college faculty. These issues are particularly dramatic on the Anchorage campus, where faculty from traditional academic disciplines such as history, english, biology, etc., who were formerly teaching in separate institutions, to separately enrolled students, are now members of an integrated faculty co-located with their colleagues, and teaching to an integrated student body. The ACCFT version of a bargaining unit would result in the bifurcation of virtually every academic department. From a management standpoint, it is difficult to imagine how a educational institution could be effectively run with this type of collective bargaining situation. An additional issue of concern is that the ACCFT proposal for a successor unit does not allow for a vote by the membership, which would include many new faculty who were hired after the implementation of restructuring in 1987, and who never had any relationship whatsoever with a community college or with the ACCFT.

While it is still our preference that the University and the ACCFT find a joint solution to the central issue of unit definition without the intervention of the State Labor Relations Agency, both parties must feel that they have more to gain than to lose if such discussions are to be successful. At this point it appears that the ACCFT is ambivalent on this question. The University is attempting to resolve the issue through negotiations and failing that, we will seek the assistance of the the State Labor Relations Agency. In collective bargaining, these are the appropriate avenues of resolution.

March 17, 1992

Jerome B. Komisa
President

Testimony Submitted on Behalf of the
University of Alaska
Before the
House and Senate Finance Committees
March 18, 1992

Thank you for this opportunity to come before you to discuss the proposed University budget for fiscal year 1993. It is not a happy occasion, but I do appreciate your consideration and your willingness to listen.

I don't envy you your task. The policy choices you must make are awesome and they will have a far reaching and irreversible impact on Alaska.

For the University and the State of Alaska, the threat of additional reductions comes at a particularly difficult time:

- * the University's enrollment is expanding, more and more Alaskan young people are choosing to stay in the State for their college education;
- * virtually all entry level jobs in our economy require some form of post-secondary education, and job promotions are usually tied to additional education;
- * public service needs of the State are expanding as people seek assistance in developing small business opportunities, assistance with technological changes, and application of new knowledge and research in their daily lives;
- * research opportunities abound and the University is in a position to lead the growing national and international interest in Arctic research and global warming;
- * and the quality of the University is becoming well known throughout the State and nation.

Six years ago, as State revenues plummeted, the University took nearly a 20% reduction in State funding. The Board of Regents directed the University to take that reduction in a way that would minimize the impact on student access and delivery. The result of this was a massive reorganization of the State's higher education system that reduced the administrative structure dramatically, merging the community college and university systems, saving nearly \$6 million per year in administrative costs to the State, and providing a vastly different type of higher education system. The University did not lay off any faculty, and we maintained the course delivery levels. It would be less than honest, however, to imply that this restructuring

was accomplished without a cost to the institution. Initially, enrollment in the University fell as did its capacity for public service and its ability to maintain its physical plant. Many of the traumas of the restructuring are still being absorbed and it is only in the last two or three years that the University has begun again to move forward in extension and research and student enrollment.

I bring this issue up for two reasons. First, I believe that memories are short, and it is my impression that most of the public have forgotten what the University went through in restructuring itself only 6 years ago. And second, the notion that the University can find substantial savings from administrative restructuring today is simply not true. While we can make further consolidations of administrative functions on some campuses, and we can reduce and realign administrative functions between the statewide and campus administrations, the fact is that these savings will be relatively small in terms of dollars. The pressures of expanding enrollments and flat budgets have already forced so much reduction in administrative costs that very little is left for further reduction. Financial savings today will have to come from a major reduction in services.

The current proposal of less than \$157 million is not simply a cut, it would represent a drastic curtailment in the services the University can provide the State and, in turn, irretrievably alter some of the fundamental conditions of life in Alaska.

For the current year, FY92, the budget for the University is \$4 million more than it received in FY91. University fixed costs, however, rose by \$11 million, and enrollment increased by 5%. As a result, the campuses have had to make significant reductions in services and staff this year.

- * At all campuses, class offerings are being restricted, class size is increasing, proper sequencing for graduation is being significantly impacted; and closed sections for lower division core requirements, which all students need for graduation, are the rule rather than the exception.

- * Nearly 50 courses were cancelled in the Spring schedule at UAA and UAF; 26 at UAS; from 12 to 20 cancelled at each extended campus resulting in a loss of an estimated 4,200 credit hours.

- * Summer Sessions at UAF, UAS, and UAA are moving to a self-support basis resulting in higher cost to students, and a substantial reduction in course offerings.

In addition to the loss of course sections and credit hours, there were other cutbacks throughout the University because of increases in fixed costs. At UAA severe travel restrictions were put in place as well as general reductions in departmental expenditures of 3 - 5%. The closing of two research centers, the

Center for Information Technology and the Center for High Latitude Research, will result in the loss of important instructional, research and data collection capabilities for the State.

At UAF every department was assigned a reduction amounting to 3 - 20% of funding, resulting in the loss of dozens of administrative, clerical, and faculty positions. Crucial maintenance of facilities continues to be deferred, instructional equipment purchases must be delayed, and new initiatives designed to secure more federal funds have been curtailed.

At UAS, general reductions were made in administrative and clerical support, travel, commodities, library acquisitions, maintenance, and student access to computing services.

If this magnitude of reductions was necessary during a year of increased General Fund support, it is not too difficult to imagine what will be necessary to handle a decline of over \$12 million from the FY92 funding level.

Upon receiving the \$157 million target, I asked each of the Chancellors to project what actions they would have to take to accomplish so large a reduction. They were to examine two approaches: first, a 7% across-the-board cut of this year's budget of \$168 million; second, a 10% cut from the \$174 million target - the additional \$5 million having been distributed in accordance with the Board of Regents' initial budget submission.

Under each approach the results are horrendous. To absorb this reduction in general fund expenditures, the University will have to:

- * reduce employment: permanent faculty - 125; adjunct faculty and graduate assistants - 472; permanent staff - 208; temporary staff - 52.

- * cut 1,237 credit bearing courses, resulting in the loss of 74,225 credit hours;

- * diminish its public service, extension and advisory programs;

- * contract its organized research activities by \$1,446,200; resulting in approximately \$4,000,000 loss in federal funds;

- * reduce programs in athletics, performing and fine arts activities;

- * reduce acquisition of library resources, laboratory equipment, and computing and instructional technology;

- * defer important facility maintenance and plant enhancements designed to provide long term cost savings;

The results will be evident:

* more students will be driven from the State to continue their studies and the probability of their remaining Alaskans will be reduced;

* less choice, and diminished quality for those students who do continue to study at the University of Alaska;

* more Alaskans will be denied an opportunity to continue their studies because of the reduction in program choice, higher tuition and fewer locations being served;

* the University will be less able to compete for sponsored research funds and academic research, one of Alaska's significant growth industries, will be retarded;

* the University will not be able to maintain, let alone enhance, its capacity to aid in economic activity and economic development;

* the quality of the cultural life of the community will be unavoidably damaged;

* the University will be forced to raise tuition much faster than planned in order to maintain minimum standards.

Most of these effects are not easily quantifiable, in fact the most important ones are not. But numbers can be put against some of the effects and by just examining those it is clear that a \$17,000,000 cut in the University's General Fund budget will cost individual Alaskans much more than the money saved in the State budget.

If, because of these reductions, 500 full-time students, and 500 is a low estimate, decide to go out-of-state for a four year undergraduate degree, the out-of-pocket expense to Alaskans will be approximately \$20,000,000 given the current cost of about \$40,000 for four years of out-of-state tuition, room and board and travel for those 500 students. And unless the University's budget is ultimately restored, there will another 500 students the next year, and the next.

This means \$20,000,000 more spent in Oregon or Washington or California, and \$20,000,000 less in Alaska. And since economic activity feeds upon itself, the \$20,000,000 will multiply into \$40,000,000 less commercial activity in this State.

But dollars are not the full measure of the injury done by compelling students who wish to remain in Alaska to study outside. The dollars lost might well be the smaller sum by far. By forcing students outside, Alaska would be drawing for itself a most disparaging self-image and would be declaring in no uncertain tones that the students' futures lie outside Alaska's

borders. I don't think any of us believe that vision; we do not want that type of tomorrow.

For those students who continue with the University, there will be fewer course offerings, larger classes, less library books, fewer adequate laboratories, less computer time and far less opportunity for advising and counseling.

Those who will be hurt the most, of course, are those place bound Alaskans who will not be able to use the services of the University because it will no longer be able to offer courses at convenient times and locations. These Alaskans will find themselves without the skills and knowledge essential for a place in an advanced economy, and without the wherewithal to improve their individual economic situation.

The Board of Regents' concerns and aspirations for the University have included a strong sense of reality regarding the State's revenues. At their urging, we have been planning for a funding future that was relatively flat. We have been engaged in program review processes to assess our program offerings and distribution; we have developed an allocation model that is intended to assist us in distributing our resources in the most effective manner; and we are engaged in a substantive management review process to assure that we are maximizing our administrative services and financial resources.

It should also be pointed out that the University is engaged in significant activities designed to increase our non-general fund revenue. Our budget request for FY93 included a 10% tuition increase, but, as mentioned before we will be forced to seek a larger increase.

We are continuing to build upon our research capacities and are increasing the level of sponsored research in the University. This funding supports not only research activities but also provides our graduate students opportunities for advanced study.

We have embarked on an aggressive land management program to maximize revenues. The land grant revenue goes into an endowment intended for the long term benefit of the University. The yearly revenue is less than \$2 million per year and, although it is unlikely that level can be greatly increased in the near future, revenue from our land ownership may prove a major factor toward the end of the '90s.

We are stepping up our development programs to secure private contributions. This is an area that I believe has great potential for the University, but again, these funds become part of an endowment for the long term benefit of the system and cannot be counted on as a revenue source that will provide any significant short-term off-set to the reductions we are discussing.

The work performed by the University of Alaska is essential to the future of our State. In simple economic terms, higher education has long been seen as having a direct correlation with

the health and vitality of the communities it serves. The educational, public service, job training, research, cultural and social contributions of higher education are essential to the overall State economy. How can Alaska find the balance between resource protection and development that our future depends on without the necessary research done at the University? How can our citizens enter, or stay current, with a job market that requires ever more sophisticated skills and technological abilities? How can the State attract new business and industry without offering the benefits of a high quality higher education system?

The University of Alaska is as significant an instrument of public policy as it is a major channel of private success. In making your budget decisions, in allocating the reductions to State agencies and the University, you are making public policy decisions on the priorities of the State.

Things do cost more in Alaska. Alaska's government now spends four times the amount spent per capita on all services than do other states, except for higher education, health and social services. In those areas it spends only twice the national average. The current proposal allocates higher percentage cuts from the current year to the University and health and social services than it does to other services, further pushing these areas of spending down on the State's list of priorities.

The proposal before you cuts 7% from the current year's funding to the University, compared to an average of 4% for other agencies in the State. We need at a minimum undiminished State support. We cannot maintain our bearing and our complexity of missions without it. And the State needs a strong public university. The brightness of Alaska's future would be deeply tarnished without it.

You have given the University great support in the past. It is an investment that has paid large returns. We need your help to continue.

Thank you for listening so patiently. I would be more than pleased to answer any questions.

University of Alaska
FY93 PROPOSED BUDGET IMPACT

	SPS	UAA	UAF	UAS	TO
FY92 Authorization	\$12,703.5	\$57,296.4	\$84,920.4	\$13,181.3	\$16
FY92 Gov. Request	\$12,905.0	\$61,488.7	\$86,008.1	\$13,464.5	\$17
FY93 Reduced Budget	\$11,643.2	\$55,476.6	\$77,598.5	\$12,148.0	\$15
FY93 Reduction	(\$1,261.8)	(\$6,012.1)	(\$8,409.6)	(\$1,316.5)	(\$1

Permanent Staff	(26)	(70)	(95)	(17)	
Temporary Staff	(3)	(18)	(27)	(4)	
Permanent Faculty	(1)	(49)	(67)	(8)	
Adjunct Faculty	(0)	(180)	(243)	(49)	
Credit Hours	0	(39,922)	(33,418)	(7,885)	(7
Course Sections	0	(549)	(557)	(131)	(

FY85-92

UNIVERSITY OF ALASKA GENERAL FUND OPERATING BUDGET
AS A PERCENTAGE OF ALL STATE GENERAL FUND OPERATING BUDGET APPROPRIATION

	FY85	FY86	FY87	FY88	FY89	FY90	FY91	
University	168.9	167.3	144.0	146.5	154.2	161.0	170.4	
State Budget	2110.5	2116.5	1844.1	1911.3	2086.7	2118.6	2286.3	2
% of State Budget	8.05%	7.90%	7.81%	7.66%	7.39%	7.60%	7.45%	
Fall Student Credit Hours	201928	214323	210013	202801	205807	212875	224482	2

UNIVERSITY OF ALASKA GENERAL FUND GROWTH
COMPARED WITH HIGHER EDUCATION PRICE INDEX
GROWTH FY85-FY92

	FY85	FY86	FY87	FY88	FY89	FY90	FY91
UNIVERSITY	168.9	167.3	144.0	146.5	154.2	161.0	170.4
HEPI		176.0	183.2	191.3	202.6	214.8	225.5

-----> A

sections, and general fund support to Adult Basic Education in Anchorage. Elimination of course sections will cause students severe scheduling and sequencing problems and create delays in completing degree course requirements. Eliminating specialized programs, including some vocational-technical programs, two year programs and graduate degrees, will severely harm site-bound Alaskans. Closing or severely curtailing programs that are within a reasonable commuting distance to Anchorage or an extended campus site will also harm site-bound students. The range in anticipated course section impact is a result of the lack of flexibility in academic and institutional support due to reductions made during restructuring and the FY92 vetoes which may require more significant reductions in instruction.

- B. STUDENT SERVICES -- Reduced staffing will result in reduction or elimination of many social, recreational, and cultural activities; counseling services; student health medical services; financial aid management and student employment; and student recruitment and retention efforts.
- C. LIBRARY SERVICES -- Review specialized libraries for reduction or elimination. The library will reduce staff, the purchase of books and periodicals, and reduce the hours of operation, severely limiting its use by students and researchers. Inflation since FY90 has reduced library purchasing power by over 35% which has resulted in an inability to maintain current periodicals, subscriptions and reference books and materials, and even minimum basic reference materials for new programs.
- D. OTHER SERVICES -- Reduce general fund support to intercollegiate athletics. Athletic program cuts at UAF will have an undetermined impact on the UAA athletic program. Reduce and/or eliminate research, public service centers and research institutes thereby reducing services to the public and government agencies and eliminating local jobs. UAA's capacity to train and keep Alaskans in state, and our ability to better manage our resources and develop new technologies that create jobs will be jeopardized. If the state's investment is lost or reduced, funding agencies will become cautious of awarding grants to UAA, the "new" money brought into the Alaska economy each year because of UAA's research efforts will decline. The reduced physical plant budget does not provide for fixed cost increases; building maintenance and renewal replacement dollars will have to be used for utilities and other non-discretionary costs. Reductions to academic and institutional support were so severe during the 1987 restructuring, that there is little flexibility to reduce staff in these areas without jeopardizing whole mandatory functions.

University of Alaska FY93
University of Alaska Fairbanks

Category	\$th FY92 Auth.	\$th FY93 Gov Req.	\$th FY93 Reduced Budget	\$th FY93 Loss	# Perm. Program	# Temp. Staff	# Perm. Staff
TOTAL	84920.4	86008.1	77598.5	(8409.6)	(95)	(27)	(67)
Instruction	27331.9	27946.3	25213.8	(2732.5)	(11)	(1)	(42)
Intercol. Athletics	818.5	818.5	738.5	(80.5)	0	(1)	0
Academic Support	5349.9	5349.9	4826.8	(523.1)	(6)	(5)	(4)
Institutional Support	8716.9	8716.9	7864.6	(852.3)	(15)	(8)	(1)
Physical Plant	12771.2	12771.2	11522.5	(1248.7)	(28)	(3)	0
Debt Service	1232.1	1231.1	1111.6	(120.5)	0	0	0
Student Services	3993.3	4024.5	3631.0	(393.5)	(9)	0	0
Library Services	4748.2	4966.5	4480.9	(485.6)	(5)	(2)	(5)
Public Service	5107.6	5107.6	4608.2	(499.4)	(4)	(4)	(4)
Scholar- ships	283.2	283.2	255.5	(27.2)	0	0	0
Research	14567.6	14791.4	13345.2	(1446.2)	(18)	(3)	(11)

Credit hours/course sections lost --> (33,418hr) (557 sec)

Impact:

- A. INSTRUCTION -- Students will be faced with closed classes; a total of 557 course sections will be eliminated. Some undergraduate majors will be terminated, including some in science, liberal arts and engineering. Eliminating specialized programs, including some vocational-technical, two-year programs and graduate degrees, will severely harm site-bound Alaskans. Elimination of special services such as the Writing Center will impair UAF efforts to improve student communication skills and make UAF graduates less competitive in the workplace. Certain extension sites will be closed and thereby eliminating information that assists in economic development.

- B. STUDENT SERVICES -- Publications and other forms of communication will be reduced, including fewer class schedules, giving students less timely information. One athletic program will be cut at UAF, jeopardizing NCAA standing, affecting community-campus interaction, and having an undetermined impact on UAA. Responses to prospective students and notification of financial aid will be slower, meaning students may choose another school in the meantime. The reduction to the Adjunct Faculty labor pool will impact at least 150 graduate students who would have been hired as graduate assistants; this loss of income may seriously impair their ability to complete their education. Also the reductions to the staff labor pools will seriously impact student employee hiring.
- C. LIBRARY SERVICES -- The library will reduce the purchase of books and periodicals, and will reduce its hours of operation, severely limiting its use by students and researchers. The reduction would equate to an effective ten percent reduction of staffing availability to students or a reduction to acquisition purchasing power of sixty percent. Inflation since FY90 has reduced library purchasing power by over thirty-five percent which has resulted in an inability to maintain current periodicals, subscriptions and reference books and materials, and provide even minimum basic reference materials for new programs.
- D. OTHER SERVICES
- Academic Support -- The major academic computer, which provides instructional and research support and electronic mail, will be shut down. Computer classes using the VAX will be disrupted, and all external communications depending on the VAX will be interrupted. Cancelling software support contracts will affect speed and accuracy of purchasing, budget, physical plant and grants and contracts. The more than 4,000 students and faculty users of the Fairbanks computing facility will be left without consultant and training services with little or no support for some areas such as microcomputers and statistical software. Staff cuts will force elimination of the PC purchase program, which has saved thousands of dollars for university employees and students.
- Research - Statewide and Local Economic Impact -- Parts of research programs and facilities in Fairbanks and throughout the state will close eliminating local jobs. UAF's capacity to train and keep Alaskans in state, and our ability to better manage our resources and develop new technologies that create jobs will be jeopardized. If the state's investment is lost or reduced, funding agencies will become cautious of awarding grants to UAF, the \$50 million of "new" money brought into the Alaska economy each year because of UAF's research efforts will decline.
- Institutional Support -- Administrative costs will be cut first and deepest. Eliminating evening and weekend

information/switchboard services will disadvantage tourists and students. Elimination of the summer shuttle bus service will impact summer programs. Increased ticket prices for cultural events and for conferences will limit access to a portion of the public unable to pay. Building safety checks will be curtailed by the public safety office; increasing the possibility of costly vandalism and theft. Many other hardships will result as well as undesirable spinoffs on special projects, for example reduced support will jeopardize the fund raising campaign momentum which led to UAF's recent success in securing a \$1 million endowment. In short, as we disappoint students and faculty who expect quality services from UAF, we will at the same time be removing the base of support that allows us to generate alternative sources of revenue, including grants and contracts and private funds.

Physical Plant -- The budget does not provide for fixed cost increases in utilities and other non-discretionary items; building maintenance and renewal/replacement dollars will have to be used for these purposes. This only increases future maintenance costs.

University of Alaska FY93
University of Alaska Southeast

Category	\$th FY92 Auth.	\$th FY93 Gov Req.	\$th FY93 Reduced Budget	\$th FY93 Loss	# Perm. Program	# Temp. Staff	# Perm. Staff
TOTAL	13181.2	13464.5	12148.5	(1316.5)	(17)	(4)	(8)
Instruction	5077.7	5148.1	4644.7	(503.4)	(2)	(1)	(6)
Intercol. Athletics	0	0	0	0	0	0	0
Academic Support	1087.8	1155.8	1042.8	(113.0)	(1)	0	(1)
Institutional Support	2330.0	2330.0	2102.2	(227.8)	(5)	0	0
Physical Plant	2430.7	2430.7	2193.0	(237.7)	(5)	(1)	0
Debt Service	0	0	0	0	0	0	0
Student Services	1154.9	1266.7	1142.8	(123.9)	(3)	(1)	0
Library							

Services	1077.0	1110.0	1001.5	(108.5)	(1)	0	(1)
Public Service	5.0	5.0	4.5	(0.5)	0	0	0
Scholarships	18.2	18.2	16.4	(1.8)	0	0	0
Research	0	0	0	0	0	0	0

Credit hours/course sections lost---> (7,885hrs) (131sec)

Impact:

- A. INSTRUCTION -- Forced program elimination or reduction in FY93 will result in the loss of approximately 11 FTE faculty positions, 78 courses, and 3,510 credit hours. In FY94, required additional reductions will result in the additional approximately loss of 12 FTE faculty, 76 courses, and approximately 4,020 credit hours. The anticipated loss of tuition funding as part of these program eliminations will range from \$197.5 to \$315.9.

UAS programs require a majority of faculty to teach across programs, across disciplines and across degree levels within a program. Therefore, specific program eliminations and reductions will result in course and enrollment losses in other programs, or extension of the time it takes students to complete a degree program. Substitution of adjunct faculty may not resolve all concerns as sufficiently qualified adjunct faculty may not exist in the community, or those which do may not be relied on for consistent service, or meet continued compliance with academic quality standards. As a consequence, anticipated additional losses from this include 12 courses, and 540 credit hours with an effective additional loss of tuition and fee revenues of \$30.0.

On the Juneau Campus, any and all instructional program reductions or eliminations will be predicated on minimizing loss of degree-seeking students. Due to the differences of their missions, program reductions within the Sitka and Ketchikan campuses are more difficult to ascertain. Reductions are anticipated to include all instructional levels, including developmental and bridging programs as well as degree programs.

- B. LIBRARY SERVICES -- Reduction to Library Services is anticipated to not exceed 7.0-8.5% of the proposed reduction. This would equate to an effective 10.0% reduction of staff availability to students or a reduction to acquisition purchasing power of 60.0%. Inflation since FY90 has reduced library purchasing power by over 35.0% which has resulted in an inability to maintain current periodicals, subscriptions and reference books and materials, and an inability to provide even minimum basic reference materials for the new programs.

C. STUDENT SERVICES -- No reductions are possible to academic-related student service support functions within the Juneau Campus. These support functions are already inadequately staffed to provide required student processing, assistance and records management functions. Any single reduction to staff dedicated to counseling, recruitment and retention of students will effect a 40.0% loss in the region's ability to recruit and retain freshmen students from the region and improve retention of existing students through their course of study to graduation. Adequate resources for recruitment and retention are critical concerns in meeting mission goals, accreditation standards requirements and federally sponsored program requirements, particularly those related to financial aid programs. Due to the lack of regulatory governances and compliance, the student life, health and activities components of the Juneau Campus are the only remaining areas in student services where reductions can be accomplished. However, the anticipated reduction could impact accreditation compliance standards required for a "resident" campus. The Ketchikan and Sitka campuses have no flexibility to reduce staffing in this area, as any reduction would totally eliminate student services at these sites.

D. OTHER SERVICES --

Academic Support -- No further reductions to those made during the restructuring of 1987 can be made in academic support. Since that restructuring, the Juneau Campus has reduced its academic administrative positions by 30%, while expanding its responsibilities to include two external campuses. Any further consolidation or combining of schools under fewer Deans would jeopardize their ability to continuously review, enhance, modify or develop necessary curriculum or programs, direct resources to ensure optimum course and program offerings, ensure that financial resources are allocated to each program efficiently, and to provide optimum leadership for all faculty and staff. The Ketchikan and Sitka campuses have no flexibility to reduce staffing in this area, as any reduction would eliminate required functional activities.

Institutional Support -- No further reductions to those made subsequent to the restructuring of the 1987 can be made in institutional support without the elimination of a functional area. Since the restructuring, the Juneau Campus has reduced its institutional administrative positions by 71%, while expanding its responsibilities to include two external campuses. The majority of institutional support funding resides within the business and personnel service departments. Permanent staffing is no more than one deep in any accounting, business or personnel function, and in a majority of the staffing, two functions are covered within each position. The Ketchikan and Sitka campuses have no flexibility to reduce staffing in this area, as any reduction would eliminate required functional responsibilities.

Physical Plant -- Because the size of the non-personal services budget in Physical Plant greatly exceeds that of all other NCHEM components and provides greater funding flexibility, the physical plant is the only available source for the balance of the reduction as well as any required transitional funding needed to supplement program reductions. These reductions could double our current deferred maintenance levels, result in closure of ancillary facilities, and impact health, safety and code compliance.

University of Alaska FY93
Statewide Programs & Services

Category	\$th FY92 Auth.	\$th FY93 Gov Req.	\$th FY93 Reduced Budget	\$th FY93 Loss	# Perm. Program	# Temp. Staff	Staff
TOTAL	12703.5	12905.0	11643.2	(1261.8)	(26)	(3)	
Instruction	0	0	0	0	0	0	
Intercol. Athletics	0	0	0	0	0	0	
Academic Support	2340.0	2541.5	2293.0	(248.5)	(6)	(1)	
Institutional Support	9696.1	9696.1	8748.1	(948.0)	(20)	(2)	
Physical Plant	245.0	245.0	221.0	(24.0)	0	(0)	
Debt Service	442.4	442.4	381.1	(41.3)	0	0	
Student Services	0	0	0	0	0	0	
Library Services	0	0	0	0	0	0	
Public Service	0	0	0	0	0	0	
Scholar- ships	0	0	0	0	0	0	
Research	0	0	0	0	0	0	
Impact:							

ACADEMIC AND INSTITUTIONAL SUPPORT -- Statewide functions such as accounting, payroll and benefits, university computing network, legal services, capital project management, and so on, are operational in nature and if discontinued at Statewide, considerable economies of scale would be lost by their dispersion to the academic units. Statewide is funding the first phase of a systemwide management study which is presently analyzing the relationship and distribution of functions between the campuses and Statewide to determine if any further realignment has cost savings potential.

The "discretionary" services in Statewide which might yield savings to the university system are more limited than first appears. Budget reductions of the magnitude suggested will require nearly complete termination of all administrative systems computing development, resulting in an inability to achieve the savings associated with enhanced electronic data management and communications. Baseline support for lower-cost distance education development and telecommunications services, which are less expensive and time-consuming than direct travel, would be curtailed or eliminated. The Advance College Tuition program, which provides a direct service (and cost savings) to future generations of Alaskans through the Permanent Fund Dividend program may be discontinued because it will be several years, if ever, before the program is self-supporting. Critical academic, voc/tech, human resource, affirmative action, legal, and finance support functions will be curtailed or eliminated.

Statewide is pursuing an aggressive land management strategy that, over time, should result in additional revenue streams. However, those revenues do not exist today to offset reductions. We are also trying to enhance our private fund raising program. Unfortunately, this area has never been adequately funded, and like land management, currently needs more "seed" money, not less, to eventually achieve any significant increase in private donations. Statewide also has been directly affected by the national recession and low interest rates. In the past, interest earnings on our cash balances were a major revenue source and were used to subsidize the academic units by reducing risk management charge-backs. For FY92, interest earnings projections indicate the possibility of insufficient earnings to meet Statewide's own revenue needs greatly increasing the probability that no reductions to chargebacks can be made in FY92 or FY93.

UNIVERSITY OF ALASKA FAIRBANKS



Governance Office
Fairbanks, Alaska 99775-0880
(907) 474-7964 • FAX: (907) 474-5213

MEMORANDUM

TO: Pat Carney
Georgianna Lincoln
Bettye Davis
Cheri Davis
John Gonzales
Mark Hanley
Mike Miller
Health, Education and Social Services

FROM: Lois Hildenbrand, President
UAF Staff Council

DATE: April 8, 1992

SUBJECT: Administrative Procedures Act

Attached is a resolution regarding the Administrative Procedures Act passed by the UAF Staff Council today. Staff Council is in favor of House Bill 549. If you would like to discuss this matter further, do not hesitate to contact me at 747-7043.

LH/kam

Attachment

cc Tom Moyer

The UAF Staff Council approved the following at its meeting #43 on April 8, 1992:

RESOLUTION PASSED (2 nays and 1 abstention)
=====

WHEREAS, The Alaska Administrative Procedures Act (APA) adjudication procedures apply to boards and commissions listed in Sec. 44.62.330, in third party actions dealing with the granting or denying "...a right, authority, license, or privilege...", and

WHEREAS, AS 14.40 gives the Board of Regents the right to "...adopt reasonable rules, orders, and plans for the good government of the University," and

WHEREAS, Title 14, Article VII, Section 3 of the Alaska Constitution, indicates that the Board has plenary authority to govern and manage the University, and

WHEREAS, Transcripts of the legislative history of the APA statute reveal that the legislators had no intention that the quasi-judicial proceedings included in the APA be used for employee or student grievances, but rather for what are essentially licensing decisions and disputes involving state boards and commissions, and

WHEREAS, The APA grievance procedures do not apply to any other employee group in the state, and

WHEREAS, The majority of University grievances, traditionally built around a process of peer review and consideration with appeal rights at several levels all the way to the President, are resolved at an early stage of review and are done so at little or no cost to the grievant or to the University, and

WHEREAS, APA requirements will increase cost, complexity, and formality of grievance procedures and are therefore contradictory to the resolution of student and employee grievances, and

WHEREAS, If HB 549/SB441 is not passed, it is anticipated that the University will have to pay approximately \$200,000 per year for hearing officers, and associated costs involved with this complex process, now

THEREFORE BE IT RESOLVED, That the UAF Staff Council supports the passage of HB 549/SB441 to exempt UA grievance from APA.

 4/8/92
President, UAF Staff Council Date

Juneau Central Labor Council

AFL-CIO

124 Front St. • Juneau, AK 99801 • (907) 586-9711

April 8, 1992

Representative Bettye Davis
House Health & Social Services Committee
Room 409
State Capitol
Juneau, AK 99801-1182

Re: Opposition to HB 549

Dear Representative Davis:

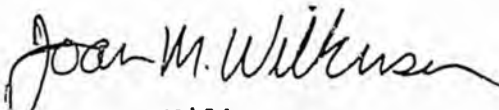
The Juneau Central Labor Council strongly opposes HB 549.

The Administrative Procedures Act was created by the legislature for the purpose of ensuring due process to persons adversely affected by administrative action, such as adverse employment or personnel actions. With HB 549, the Governor is suggesting that the University of Alaska be permitted to disregard these due process concerns. This bill thus represents a direct attack upon employee rights.

When the state community college system merged into the state university system, the Alaska Supreme Court addressed the issue of the applicability of the APA to a grievance brought by community college instructors in McGrath v. University of Alaska, 813 P.2d 1370 (Alaska 1991). The Supreme Court held that the use of the APA was appropriate and, in fact, "... the University's academic freedom is strengthened, rather than undermined, by the existence of a grievance procedure for adverse employment decisions which comports with the basic requirements of the APA and due process."

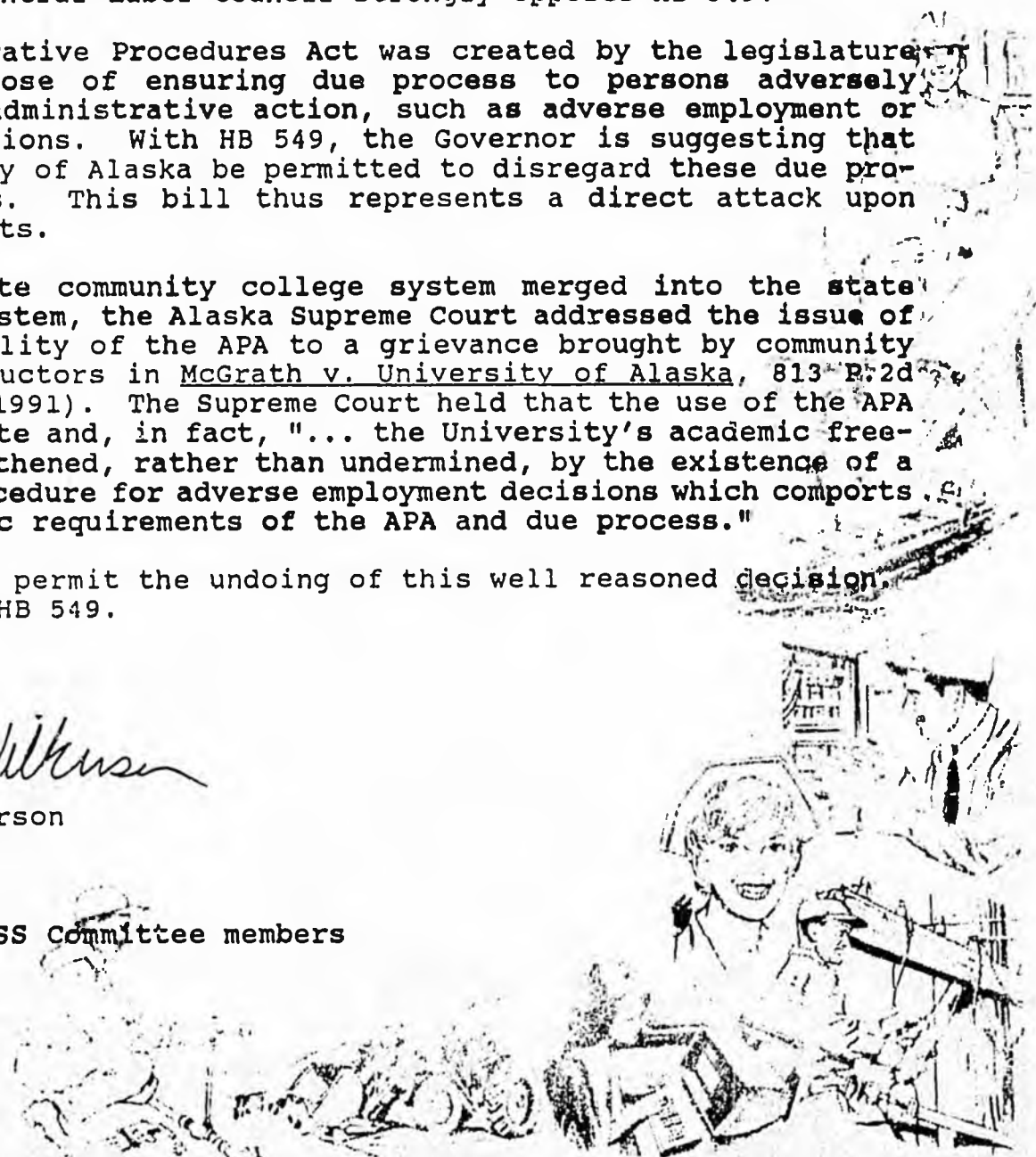
Please do not permit the undoing of this well reasoned decision.
Vote against HB 549.

Sincerely,



Joan M. Wilkerson
President

cc: House H&SS Committee members



Anchorage Alaska
April 6, 1992

House Health, Education and Social Services

Co-Chairman Pat Carney

Co-Chairman Georgianna Lincoln

Vice-Chairman Bettye Davis

Members Cheri Davis, John Gonzales, Mark Hanely, M.A. Miller

We the undersigned are all former faculty members of Anchorage Community College and current faculty members of the University of Alaska Anchorage. We wish to indicate our strong support for House Concurrent Resolution No. 55 and our strong opposition to House Bill No. 549 exempting the University of Alaska from the Administrative Procedures Act.

Ray Noble *Ray Noble*

Paul Alexander *Paul D. Alexander*

Brian Williams *Brian Williams*

John Mears *John Mears*

Vince Claydon *Vince Claydon*

Emil Remus *Emil Remus*

Frank Gross *Frank Gross*

Mike Buesseler *Mike Buesseler*

ALASKA STATE AFL-CIO

2971 Commercial Dr.
Anchorage, Alaska 99501
(907) 258-6284



819 1st Ave.
Fairbanks, Alaska 99701
(907) 456-2030

MANO FREY
Executive President

GARY BROOKS
Secretary / Treasurer

To: Paul Fuhs: Office of the Governor
From: Laura Kelley, AFL-CIO Vice President (907-786 1645)
733 West 4th #883
Achorage, Alaska 99501

Re: Proposed Legislation exempting the University of Alaska from the Alaska Administrative Procedures Act.

We understand that the University of Alaska has requested the Administration introduce a bill exempting the University of Alaska from the Alaska Administrative Procedures Act. This is not good legislation and it has a long and expensive history.

The University of Alaska was sued by a Professor named Aden, the gist of the suit revolved around the fact that Ms. Aden was denied tenure—she grieved the issue; however the grievance procedure in place did not afford Ms. Aden basic protections which are required under the Alaska Administrative Procedures Act and available to all other State Employees. The court ruled the Administrative Procedure Act should have applied to the Aden grievance. Soon thereafter, and following the 1987 absorption of the community college teachers into the university, the university:

1. unilaterally repudiated the existing collective bargaining agreement between the University of Alaska and the Alaska Community Colleges Federation of Teachers 2404 (the union for the community college teachers). This union contract contained a grievance procedure which paralleled the Administrative Procedures Act.

2. Merged the 300 community college teachers into the university personnel procedures and grievance policy while simultaneously denying 130 of them tenure and/or proper placement into the university job title grids.

The ACCFT 2404 filed a grievance on behalf of its 130 injured members. Naturally, the University refused to recognize the

grievance procedure in the union contract--so the grievance was filed under the university grievance policy.

Since the final determinator of the university's grievance procedure is the President of the University--the same person who remanded the 300 community college teachers to the university personnel procedures and the inappropriate job title grids--a university grievance committee recommended to the then President of the University Donald O'Dowd--that the existing grievance procedure was inadequate and the Administrative Procedures Act should apply. Donald O'Dowd rejected the recommendation of the committee and denied the grievance.

The ACCFT' 2404 filed litigation--which ultimately went to the Alaska Supreme Court. On 6/26/91 in a 5-0 decision the Court ruled that the Administrative Procedures act must apply to the University of Alaska grievance procedure. (see attached)

The proposed legislation is not about student's and their complaints about grades, cafeteria food and the like. The proposed legislation is an attempt on the part of the University to deny all of its 3500 employees the protections that all other State employees have.

The university lost in Court and is ^{Now} ~~not~~ attempting to subvert the law through this legislation. Outside legal counsel, Tom Owens so far has been paid \$88641.70 to represent the University in this matter and lost.

IN THE LEGISLATURE OF THE STATE OF ALASKA

S. B. 441

HB. 549

We the undersigned oppose "An Act exempting the University of Alaska from the administrative adjudication provisions of the Administrative Procedure act. and providing for an effective date.

Walt Peterson Instructor 4-4-92

Lynn Anne Kaye Assoc. Prof- 4-4-92

Paul H. Esob.

4/3/92



4/3/92

Paul Gemman

4-3-92

John DeLoe

4-3-92

IN THE LEGISLATURE OF THE STATE OF ALASKA

S. B. 441

H. B. 549

We the undersigned oppose "An Act exempting the University of Alaska from the administrative provisions of the Administrative Procedure act, and providing for an effective date."

Nuke Anderson

J. C. Wighfield

Don K. Swamer

John F. Allen

William Lewis

Joe J. Thomas

Walt Behr

Richard Leonard

*File
opponent*

H B 579

IN THE LEGISLATURE OF THE STATE OF ALASKA

S. B. 441
H. B. 549

We the undersigned oppose "An Act exempting the University of Alaska from the administrative provisions of the Administrative Procedure act. and providing for an effective date."

Brigid Cammack 3040 Riverwood Dr Jkt. AK 99707
Michael R. Bryson 2249 King Rd. FBS AK 99709
Eugene [Signature] Box 22067 FFAA. 99707
Candi [Signature] P.O. Box 81453 Fairbanks 99708
Ann D. Dyer 1578 Drake Street, Fairbanks, AK 99709

April 5, 1992

The Honorable Pat Carney
Pouch V
Juneau, AK 99801

RE: House Bill 549

Dear Representative Davis:

- * The purpose of the Administrative Procedures Act is to insure responsible government

The University is obligated to act equally responsibly toward employees and the general public. The procedures for ensuring compliance are clear under the adjudicative procedures of the Administrative Procedures Act.

As the recent court case, McGrath v. University of Alaska (813 P2d 1370) demonstrates, the UNIVERSITY OF ALASKA HAS REPEATEDLY FAILED TO INSTITUTE EQUITABLE ADJUDICATION PROCEDURES FOR EMPLOYEES under policies and regulations of the Board of Regents.

The CITIZENS of the State of Alaska RELY UPON the adjudicative procedures of THE ADMINISTRATIVE PROCEDURES ACT AS APPLIED TO EMPLOYEES OF THE UNIVERSITY OF ALASKA. The adjudicative procedures of the APA make it possible for an employee to seek resolution when internal practices of the University are against public policy. They provide the protection employees need to "blow the whistle" when necessary. EMPLOYEES SHOULD HAVE THE OPPORTUNITY TO APPEAL BEYOND THE UNIVERSITY PRESIDENT TO AN EXTERNAL AUTHORITY.

- * Is the University seeking exemption from the discipline provided by the adjudicative procedures of the APA?

If University practices are fair and reasonable, expense to the University in providing protection under the procedures of the APA will be the same for employees as to the general public.

Contrary to assumptions made and distributed at University expense by the governance body of the University of Alaska (see enclosures), THE IMPOSITION OF THE ADJUDICATIVE PROCEDURES OF THE APA WILL NOT IMPOSE A QUASI-JUDICIAL PROCEEDING ON ALL UNIVERSITY GRIEVANCES, NOR WILL THEY REQUIRE UTILIZATION OF A FORMAL HEARING OFFICER for all grievances. As noted, most grievances are resolved at early stages, with little or no cost to either party. IF University practices are fair and reasonable, little change should occur.

Please recommend and vote against passage of this bill.

Lois Foster

Lois Foster, 513 East Street, Juneau, AK 99801

From: JAN M HENDERSON

TO: GOVERNANCE LEADERS

FROM: JAN HENDERSON
UAA GOVERNANCE OFFICE

SUBJECT: UNIVERSITY GRIEVANCE PROCEDURES
ALASKA ADMINISTRATIVE PROCEDURES ACT

Please share this information with other faculty, staff and students. If you have any questions, call me at 786-1945.

POMs (Public Opinion Messages) need to be sent WEDNESDAY, JANUARY 29, 1992, to the Governor's office regarding introduction of a bill exempting the UA from the APA. Please take five minutes out right now and encourage the Governor's office to introduce this important legislation. Your voice message or fax message is urgently needed today.

Send to: Governor Walter J. Hickel
Anchorage phone: 561-4228
Anchorage fax: 561-4356.

Remember, do not use university letterhead. This bill has not been assigned a number, but is entitled:

"AN ACT EXEMPTING THE UNIVERSITY OF ALASKA FROM THE ADMINISTRATIVE ADJUDICATION PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT".

Rationale: The Alaska Administrative Procedures Act (APA) grievance procedures do not apply to any employee group in the state, and there is a substantial body of evidence from legislative hearings that there was not intent that the AAPA be applied to University grievance procedures. The proceedings included in the AAPA are not intended for employee or student grievances, but rather for citizen grievances against state boards and commissions. Employee and student grievance procedures are traditionally built around a process of peer review and consideration with appeal rights at several levels all the way to the President. The majority of University grievances are resolved at an early stage of review, and are done so at little or not cost to the grievant or to the University. The imposition of the AAPA procedures, however, will now impose a quasi-judicial proceeding on all university grievances, including the utilization of a formal hearing officer. The additional cost, complexity and formality of the AAPA requirements are contradictory to the resolution of student and employee grievances and are contradictory to the collegial approach that characterizes a university setting.

Attachment 5

Classified Employees' Association
University of Alaska Southeast
11120 Glacier Highway
Juneau, Alaska 99801

Walter J. Hickel, Governor
State of Alaska
Pouch A
Juneau, Alaska

Dear Governor Hickel:

The Classified employees of the University of Alaska Southeast support the legislation which would exempt the University of Alaska from the Alaska Administrative Procedures Act. Our reasons are:

- 1) The Alaska Administrative Procedures Act grievance procedures do not apply to any employee group in the state and there is a substantial body of evidence that there was not intent to apply the AAPA to the University grievance procedures.
- 2) The proceedings included in the AAPA are not intended for employee or student grievances, but rather for citizen grievances against state boards and commissions.
- 3) Employee and student grievance procedures are traditionally built around a process of peer review and consideration with appeal levels all the way to the President.
- 4) The majority of University grievances are resolved at an early stage of review, and are done so at little or no cost to the grievant or the University.
- 5) The imposition of the AAPA procedures will impose a quasi-judicial proceeding on all university grievances, including utilization of a formal hearing officer.
- 6) The additional cost, complexity and formality of the AAPA requirements are contradictory to the resolution of student and employee grievances and are contradictory to the collegial approach that characterizes a university setting.

We urge you to proceed with the introduction of this important bill which has our complete support.

Sincerely,

Donna Chantry, President
UAS Classified Employees Association

cc: Paul Fuchs

Ralph McGRATH and Don
Mohr, Appellants,

v.

UNIVERSITY OF ALASKA, Appellee.

No. S-3418.

Supreme Court of Alaska.

June 21, 1991.

Following merger of state community college system into state university system, professors filed grievance regarding tenure status. The Superior Court, Third Judicial District, Anchorage, Brian C. Shortell, J., affirmed university's determination that Administrative Procedure Act was not applicable to grievance, and appeal was taken. The Supreme Court Rabinowitz, C.J., held that Alaska Administrative Procedure Act was applicable to University of Alaska employee grievance proceedings.

Reversed and remanded.

1. Administrative Law and Procedure

↔5

Colleges and Universities ↔8(1)

Alaska Administrative Procedure Act was applicable to University of Alaska employee grievance proceedings; Act procedures were not inconsistent with authority of Regents to manage University. AS 44.62.330-44.62.650.

2. Administrative Law and Procedure

↔441

Claims involving legislative as opposed to adjudicative facts, are not controlled by adjudicative provisions of Administrative Procedure Act. AS 44.62.330-44.62.650.

Robert A. Royce, Jermain, Dunnagan & Owens, Anchorage for appellants.

Thomas P. Owens, Jr. and C. Ann Courtney, Owens & Turner, P.C., Anchorage, William R. Kauffman, Fairbanks, for appellee.

Before RABINOWITZ, C.J., and
BURKE, MATTHEWS, COMPTON and
MOORE, JJ.

OPINION

RABINOWITZ, Chief Justice.

I. FACTS AND PROCEEDINGS

The University of Alaska ("University") is a statewide institution which operates both four-year universities and community colleges. In 1987, the University undertook a system-wide restructuring and eliminated the separate administration of the community colleges. Previously, the faculty at the community colleges had been represented by the Alaska Community Colleges' Federation of Teachers, Local 2404, and covered by a collective bargaining agreement. This agreement had no rank or tenure provisions. After the restructuring, the community colleges' faculty was offered an opportunity to transfer to the combined faculty of the University of Alaska. In the combined faculty, the community college faculty would not have union representation and the employees would be subject to the same rank and tenure system as their colleagues at the University of Alaska.

All members of the community colleges' faculty were offered an opportunity to transfer to the combined faculty, and all but one accepted. The University's Board of Regents adopted a policy "to provide the guidelines for faculty appointment, tenure, academic ranks, and salary for faculty in the transition." The policy provided that former full-time community college faculty with seven full years of service were eligible to receive tenure; those with four to six years were eligible to receive two-year contracts; and those with fewer years of service were eligible to receive one-year contracts. No former community college faculty member was offered a full-professorship; the highest rank offered was associate professor.

Many community college faculty members were dissatisfied with their rank and tenure assignments. Associate Professor Don Mohr, as a representative of the com-