

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7015 HOUSE JUDICIARY

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FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 223

Revision Date: February 20, 1992
Title: An Act relating to assignments of the right to receive a PFD
Sponsor: Senate Rules Committee
Requestor: Senate Finance

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: See attached analysis.

ANALYSIS: See Attached.

Prepared By: Thomas C. Williams
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: February 20, 1992

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 2/20/92

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

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
SB 223 ANALYSIS
As of February 20, 1992

This legislation was introduced last year at the request of the Department of Revenue. It would place into statute a regulation which was effective from April 1, 1989 through November 14, 1991.

On April 1, 1989 the Department adopted 15 AAC 23.220(a) which prohibited PFD assignments to anyone other than a government agency. Prior to the enactment of the regulation, an ever increasing number of individuals were assigning their right to a dividend to other individuals or companies, often in exchange for a cash payment. As a result, the Department was receiving a substantially increasing number of assignments to process. More importantly, there was an increasing temptation for individuals to file fictitious and duplicate applications in order to sell them. Accordingly, the Department was also receiving more invalid applications, requiring additional screening and review efforts to ensure ineligible applicants were not paid.

Despite the adoption of the regulation, Frontier Financial Services still purchased several thousand 1989 dividends. When the Department did not honor those assignments, Frontier Financial Services challenged the regulation in Court. On November 15, 1991 Superior Court Judge Dana Fabe struck down this regulation stating the Department had no authority to enact it.

Passage of SB 223 early in the current legislative session is very important. It would be in the State's best interest if this legislation were enacted early enough so the Governor could sign it by March 31, 1992, before the beginning of the 1992 PFD filing period.

Without such legislation we face a significant disruption to the 1992 and subsequent year programs. The division would be faced with the task of trying to process an extremely large number of assignments. It would be increasingly difficult to determine if applicants who assigned their dividend were eligible. Not only would the Department have to respond to more public inquiries and process more paperwork, the Department would have to refocus and increase its review effort to ensure ineligible applicants are not paid. This would adversely impact the Department's ability to conduct timely reviews and resolve appeals.

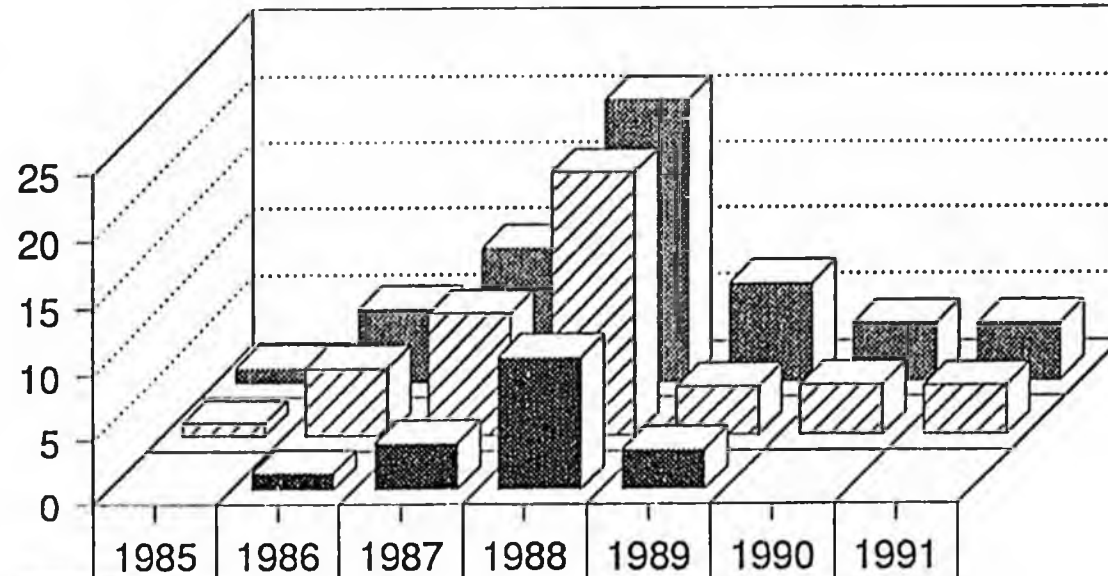
On December 18, 1991 the Department requested an opinion from the Attorney General as to whether or not this legislation would violate or be contrary to any constitutional or other legal provisions regarding the rights of individuals to contract. A copy of the Department of Law's December 31, 1991 opinion concluding there is no legal or constitutional impediment to a statute restricting the assignments of permanent fund dividends is attached. That opinion references HB 234, a bill identical to SB 223 introduced last year in the House.

In addition, we have attached a bar graph depicting assignment activity from 1985 through 1991.

PERMANENT FUND DIVIDEND ASSIGNMENTS

For 1985 - 1991 Dividend Years

Thousands



	1985	1986	1987	1988	1989	1990	1991
Total Assignments	1.047	5.401	9.907	21.132	7.248	4.261	4.256
Matched to File	0.985	5.153	9.243	19.783	3.732	3.847	3.779
Assignments to Buyer		1.282	3.567	10.123	3.041		

Assignments to Buyer
 Matched to File
 Total Assignments

As of January 16, 1992

RECEIVED

MEMORANDUM

JAN 3 1992

State of Alaska

Department of Law

STATE OF ALASKA
DEPT. OF REVENUE
PFD DIVISION

TO:

Thomas C. Williams, Director
Permanent Fund Division
Department of Revenue

December 31, 1991

FILE NO.:

663-92-0286

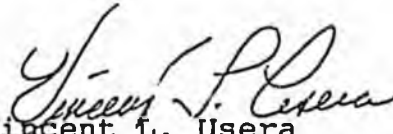
TEL. NO.:

465-3600

SUBJECT:

Assignment of PFDs;
constitutionality of HB 234

FROM:


Vincent L. Usera
Assistant Attorney General
Commercial Section - Juneau

You have asked whether enactment of HB 234, a statute forbidding the assignment of a permanent fund dividend (PFD) to entities other than government agencies or courts, would constitute interference with an individual's constitutional right to contract. We conclude that it would not.

Alaska's Permanent Fund Dividend program is unique. It gives rise to the right for all state residents who are eligible, to receive a dividend. *Anthony v. State*, 810 P.2d 155 (Alaska 1991). There is presently no statutory impediment to the assignment of dividends and individuals are not restricted in making assignments. We understand the Division is seeking legislation which would change this by prohibiting any assignment of a PFD to other than a governmental agency or a court.

Restrictions on the right to make various types of assignments may be found in other existing laws. Federal statutes prohibit the assignment of claims against the United States, and the federal government and several states bar the assignment of public contracts. Statutes in practically every state, including Alaska, restrict wage assignments, 1/ some barring them entirely, some restricting to whom or in what amount assignments can legally be made. See *Restatement (Second) of Contracts* ch. 15 (Introductory and Statutory Notes) (1981). Alaska also prohibits any attempted assignment of unemployment benefits, 2/ worker's compensation benefits, 3/ benefits payable from the state pension fund, 4/ or rights to maintenance for handicapped

1/ AS 06.20.290

2/ AS 23.20.405

3/ AS 23.30.160

4/ AS 39.35.500

persons. 5/ 6/ The Restatement also states, "[a] contractual right can be assigned unless . . . the assignment is forbidden by statute or is otherwise inoperative on grounds of public policy . . ." Restatement (Second) of Contracts § 316(2) (1981) (emphasis added). Thus, it becomes clear that, as a general rule, placing statutory restrictions or impediments on or otherwise regulating assignments is not improper and does not violate individual rights to contract.

You raised concerns about article I, section 15 of the Alaska Constitution. 7/ This section, virtually identical in pertinent part to the contracts clause of the U. S. Constitution, 8/ prohibits the impairment of the obligation of contracts, which the U.S. Supreme Court explained "was to be understood as the legal duties imposed upon the contracting parties by the operation of law on the contract." *Eckles v. State*, 760 P.2d 846, 859 (Oregon 1988) (citing *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213 (1827)).

In a recent leading case in which the subject statute was found to violate the contracts clause, the United States Supreme Court stated:

First of all, it is to be accepted as commonplace that the Contract Clause [of the United States Constitution] does not operate to obliterate the police power of the States. "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general welfare

5/ AS 23.15.170

6/ Several other statutes regulate the subject matter of assignments and the manner in which they may be made.

7/ Article I, section 15, states in pertinent part: "No law impairing the obligation of contracts . . . shall be passed."

8/ U. S. Const. art. I, § 10.

of the people and is paramount to any rights under contracts between individuals."

Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 241 (1978) reh'g denied 439 U.S. 886 (quoting *Manigault v. Springs*, 199 U.S. 473, 480 (1905)) (emphasis added).

Even though a statute impairs contract rights, it will still be judged on the severity of the impairment, and "[m]inimal alteration of contractual obligations may end the inquiry at its first stage." *Allied Structural Steel* at 245. "[It] is customary in reviewing economic and social regulation, however, [for] courts [to] properly defer to legislative judgment as to the necessity and reasonableness of a particular matter." *United States Trust Co. v. New Jersey*, 431 U.S. 1, 22 (1977), reh'g denied, 431 U.S. 975. See also *Allied Structural Steel; Diamond Glue Co. v. United States*, 187 U.S. 611 (1903). If the legislature enacts HB 234, it is presumed that, since the bill contains a statement of public policy, it will have been found to be necessary and reasonable and would survive any challenge on those grounds.

One additional hurdle a statute must clear to avoid violation of the contracts clause is the requirement that its purpose be reasonably connected to a public rather than private interest. *Veix v. Sixth Ward Building & Loan Assoc. of Newark*, 310 U.S. 32 (1940); *Treigle v. Acme Homestead Assoc.*, 297 U.S. 189 (1936). The bill would apply to all individuals who apply for a PFD and is, therefore, directed to the public at large, not to any individual interest. Thus, the bill does not run afoul of the contracts clause on this ground.

All that being said, however, the most salient point is that the contracts clause can only be violated when it impacts contracts already in effect on the date of a legislative enactment; there can be no violation of the clause where it only affects contracts that might be made in the future. A long line of cases expressly supports this well-settled principle, from *Ogden v. Saunders*, 25 U.S. 213 (1827), through *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983), on remand 440 So. 2d 1031 (Ala. 1983); and it is found by implication in all cases cited herein. See Annot., 57 L.Ed.2d 1279, § 5[b] (1979). As a practical matter, the contracts of concern - assignments of future PFDs - will not likely be formed if the bill is enacted prior to March 31, 1992. It is highly doubtful anyone would pay for an assignment unless the dividend had been applied for, and applications cannot be made prior to March 31 of a given year. 2/ It is possible that some contracts may

Thomas C. Williams, Director
Permanent Fund Dividend Division
663-92-0286

December 31, 1991
Page 4

have already been formed; however, we feel the bill would still be found constitutional even were it to affect those contracts.

As to other constitutional challenges, we do not believe the bill would run afoul of the equal protection provisions of either the U.S. or Alaska Constitutions, as the bill applies universally to PFD recipients; no class of any sort is excluded. An argument could be advanced that the provision permitting assignment of PFDs to governmental or judicial entities may require equal protection scrutiny, but we believe the provision would pass constitutional muster. The Alaska Supreme Court already has decided that individual rights to a permanent fund dividend are entitled only to minimum protection. It is the law in Alaska that "[a permanent fund] dividend is merely an economic interest and therefore is entitled only to minimum protection under our equal protection analysis." *State v. Anthony*, 810 P.2d 155, 158 (Alaska 1991). The court has adopted a flexible, sliding scale approach to the analysis of equal protection issues. *State v. Erickson*, 574 P.2d 1 (Alaska 1978). Under this approach, the first step is to determine where on the scale to locate the issue. As the right to receive a permanent fund dividend is at the lowest end of the scale, *Anthony*, the Division need only show that the distinction complained of has a fair and legitimate purpose. *Id.* at 12. As articulated by the division, the purpose is to ensure that the courts have a means of affirmatively pursuing restitution and payment of fines and other court-ordered obligations, such as child support. An additional purpose is that the public have a means of meeting legitimate obligations to government by use of the dividend. The state has a legitimate interest in having those obligations met and the public benefits as well. ^{10/} The purpose is reasonable, and the assignability of PFDs to governments and the courts bears a rational relationship to the state's objectives. Thus, the proposed statute does not offend the equal protection clauses contained in either constitution and should be upheld if challenged on those grounds.

We conclude, therefore, that there is no legal or constitutional impediment to a statute restricting assignments of Permanent Fund Dividends.

VLU/ps

^{10/} Many Alaska citizens make voluntary use of the PFD to repay student loans and other obligations to the state. Since it became possible to do so, repayments have increased the amounts available for further lending from these revolving fund programs.

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JUDICIARY COMMITTEE REPORT

Date Referred: May 14, 1991

FURTHER REFERRALS:

Date of Committee Action: 5-18-91

The JUDICIARY Committee considered:

SB 250

SENATE BILL NO. 250

INSTITUTIONAL REAL ESTATE APPRAISERS

"An Act relating to the certification of real estate appraisers; and providing for an effective date."

RECOMMENDATIONS:

be replaced with HCS SB 250 (Jud) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

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

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) Admin

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Larry Masters</i>	<input checked="" type="checkbox"/>	<i>David Donley</i>		<input checked="" type="checkbox"/>	
<i>John G. ...</i>	<input checked="" type="checkbox"/>				
<i>David ...</i>	<input checked="" type="checkbox"/>				
<i>John Ellis</i>	<input checked="" type="checkbox"/>				

David Donley
CHAIRMAN'S SIGNATURE

Revision Date: _____ Department Affects: _____
 Title: Relating to the certification of real estate appraisers. BRU: Occupational Licensing
 Sponsor: Rep. Navarre Component: Administration
 Requestor: Rep. Navarre COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

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

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

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.) SB 250 creates a separate licensing category for institutional real estate appraisers. New funds are not required to implement this bill. **Revenue will be generated from application and license fees however, at this time, we are unable to provide an estimate until we have some idea of the numbers of individuals who would be affected by the bill.

Prepared By: Jennifer Strickler, Admin. Officer Phone: 465-2144
 Division: Occupational Licensing Date: 4-17-91
 Approved by Commissioner: Glenn A. Olds
 Agency: Commerce and Economic Development Date: 4-18-91

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

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HOUSE COMMITTEE REPORT

(7)

Date Referred: May 8, 1991

FURTHER REFERRALS:

Date of Committee Action: 5-10-91

The JUDICIARY Committee considered:

SB 251

SENATE BILL NO. 251

REGULATION OF SECURITIES HELD BY INSURERS

"An Act relating to regulation of securities held by insurers; and providing for an effective date."

RECOMMENDATIONS:

be replaced with HCS SB 251 (L+C) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

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

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) CZD 4-19-91

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Terry Masterson</i>	✓				
<i>Mark J. Kealey</i>	X				
<i>Bill Kuehn</i>	/				
<i>J. Ellis</i>	/				
<i>W. Derek Doney</i>	✓				

W. Derek Doney
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1

Bill Version: SB 251

(S) Publish Date: 4/19/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: 4/12/91
Title: Regulation of securities held
by insurers

Department Affected: Commerce & Economic Dev.
BRU: Insurance
Component: Operations

Sponsor: Senate Labor & Commerce
Requestor: Senate Labor & Commerce

COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

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

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

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

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)
No financial impact on the division.

Prepared By: Joan Brown, Administrative Officer Phone: 465-2597
Division: Insurance Date: 4-16-91

Approved by Commissioner: Glenn A. Olds *Glenn A. Olds* Asst Comm.
Agency: Department of Commerce & Economic Development Date: 4-16-91

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 251

Revision Date: 4/12/91 Department Affected: Commerce & Economic Dev.
 Title: Regulation of securities held BRU: Insurance
by insurers Component: Operations
 Sponsor: Senate Labor & Commerce
 Requestor: Senate Labor & Commerce COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

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

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

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

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)
 No financial impact on the division.

Prepared By: Juan Brown, Administrative Officer Phone: 465-2597
 Division: Insurance Date: 4-16-91
 Approved by Commissioner: Glenn A. Olds Asst Comm.
 Agency: Department of Commerce & Economic Development Date: 4-16-91

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



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

DEPARTMENT Commerce & Econ. Dev.	DIVISION Insurance	BILL NUMBER SB 251	SPONSOR Senate Labor & Commerce Comm.
SHORT TITLE OF BILL Regulation of securities held by insurers			
DEPARTMENT POSITION Recommend Passage			
PREPARED BY <i>Eugene W. Furman</i> Eugene W. Furman	DATE 4/15/91	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 4-16-91

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUP(S) AFFECTED BY BILL Alaska domestic insurers (perhaps five of which invest in mortgage backed securities)
ORGANIZATIONAL SUPPORT FOR BILL None	ORGANIZATIONAL OPPOSITION TO BILL None

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND LEGISLATIVE INTENT

This legislation will prevent the federal government's preemption of the limits imposed on investments by Alaska domestic insurers contained in AS 21.21. The Alaska Legislature passed the limits on investment in mortgage backed securities for the safety and soundness of our domestic insurance industry. Unless Alaska opts out of the federal legislation, the Alaska investment safeguards will be eliminated with respect to mortgage backed securities.

ANALYSIS OF BILL PROGRAM EFFECTS

There will be no change to the status quo. Alaska domestic insurer will remain able to invest in mortgage backed securities up to the caps contained in AS 21.21. There will be no new freedom to place all of an insurer's investments in mortgage backed securities, a risk filled possibility under federal preemption. The reader should note that the federal legislation to which SB 251 is responding was passed prior to the general collapse of the real estate markets in the Lower 48 states.

AMENDMENTS PROPOSED

None

HOUSE CS FOR SENATE BILL NO. 251 (L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 5/8/91
Referred: Judiciary

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulation of securities held by insurers; and providing for an
2 effective date."

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

4 * Section 1. AS 21.21 is amended by adding a new section to read:

5 Sec. 21.21.255. REGULATION OF SECURITIES HELD BY INSURERS. As provided
6 under 15 U.S.C. 77r-1(b) and (c) (Secondary Mortgage Market Enhancement Act of 1984),
7 securities that are purchased, held, or invested in by an insurer shall be regulated under
8 ~~AS 21.18.150, AS 21.21.050, 21.21.260, 21.21.270, AS 21.66.030, and other applicable~~
9 ^{MS} ~~provisions~~ ^{under} of this title.

10 * Sec. 2. This Act takes effect July 1, 1991.

MEMORANDUM

State of Alaska

TO: Representative David Donley
Chairman, Judiciary Committee
Alaska State House of Representatives

DATE: May 1, 1991

FILE NO.:

THRU: Glenn Olds
Commissioner *Glenn*
Department of Commerce
and Economic Development

TELEPHONE NO.: (907) 465-2515

SUBJECT: SB 251
Federal preemption
of State Authority

FROM: David J. Walsh *DW*
Director
Division of Insurance
Department of Commerce
and Economic Development

Attached is a copy of SB 251 and all necessary back up material. The bill passed the Senate on Monday, April 29, 1991. It was read over the next day and referred to the House Labor and Commerce and Judiciary Committees. Labor and Commerce has scheduled the bill for Tuesday, May 7, 1991. This memorandum is to formally ask you to schedule SB 251 for Thursday, May 9, 1991, pending referral.

It is imperative that the bill pass this session. As you can see from the attached information, in 1984 Congress passed a bill preempting state authority to regulate the amount an insurance company can invest in the non-government-guaranteed secondary mortgage market. This bill was part of the package of legislation that gave the country junk bonds and the merger and acquisition fever that swept the nation to the detriment of many investors and insureds.

If this provision of federal law becomes effective it will gut the excellent solvency bills the legislature passed last year which restrict the amount and percentage an insurance company can invest in any one, non-government-guaranteed source. Fortunately, Congress gave the states seven years to opt out of the federal law. That seven year period expires on October 3, 1991. Therefore it is imperative that the bill pass this session.

I do not know why this was not discovered and brought to the legislature before now. All I can say is that we found it early last month, had a bill drafted, and introduced it in the Senate on April 12, 1991. Senate Labor and Commerce heard the bill and reported it out with all "do passes." Senate Judiciary waived it and it passed this past Monday on a 17-0 vote.

I know that your schedule is hectic, but this bill should not take more than ten minutes at the outside. Because of the critical nature of this legislation, I would appreciate it if you can schedule it for hearing before House Judiciary on Thursday, May 9, 1991. If you need any additional information or if you have any questions, please contact me.

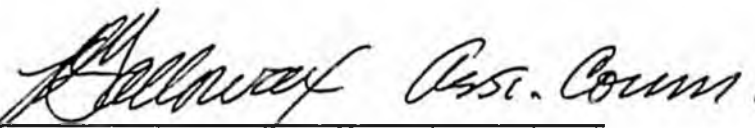
SB 251: "An Act relating to regulation of securities held by insurers; and providing for an effective date."

The Alaska Legislature passed the limits on investments contained in AS 21.21 for the purpose of promoting the safety and soundness of the Alaskan domestic insurance industry. Various pieces of AS 21.21 prevent an Alaskan insurer from concentrating its investments in one particular type of investment. Concentration in particular investment vehicles is unsafe. If that vehicle suffers problems, an insurer may become insolvent. As an example, the reader is referred to Executive Life Insurance Company's, domiciled in California, concentration of investment in junk bonds.

A number of years ago, the federal government, in an effort to provide a larger market for its agencies' mortgage backed securities, passed legislation calling for a preemption at the state level of all legislation which was designed to limit the level for mortgage backed securities to which all state regulated financial entities were allowed to invest. This federal legislation provided a certain number of years for the states individually to opt out of the loosening of mortgage backed security investment restrictions. SB 251 is Alaska's legislation designed to opt out of this federal preemption.

The reader should note that this federal legislation was passed several years prior to the current general collapse of real estate values that has occurred in the lower contiguous forty-eight states.

The Division of Insurance supports the passage of SB 251. Alaska does not wish to have its standards lowered by the action of others.



Glenn A. Olds, Commissioner

Date: 4-16-91

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Hallford
Senator Jay Kerttula



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(907) 465-3844

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99504
(907) 561-2018

SENATE LABOR AND COMMERCE COMMITTEE

TO: ALL SENATORS

FROM: Senator Drue Pearce, Chair
Labor & Commerce Committee *Drue Pearce*

DATE: April 27, 1991

RE: SB 251 - "An Act relating to regulation of securities held by insurers; and providing for an effective date."

AS 21.21 was amended last session to set limits on investments by the Alaskan domestic insurance industry. The intent of that legislation was to prevent an Alaskan insurer from concentrating its investments in a single type of investment. A diverse investment policy helps insure total solvency should a single investment type fail.

In order to increase the market for federal agency mortgage backed securities, congress passed legislation a few years ago that would allow an insurer to concentrate their investments in federal agency backed mortgages. The states were provided a window period to adopt statute that allowed the state's investment policies to override this federal policy.

Given the recent collapse of real estate values in the Lower 48, Alaska's diverse investment policy is preferential to a policy that would allow an insurer to concentrate in a single type of investment.

SB 251 allows the state's diverse investment policy to prevail.

I urge your support.

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HOUSE COMMITTEE REPORT

(7)
Date Referred: May 7, 1992

FURTHER REFERRALS:

Date of Committee Action: 5-9-92

The JUDICIARY Committee considered:

CSSB 254(JUD)

CS FOR SENATE BILL NO. 254 (JUD)

CLAIMS ON PERMANENT FUND DIVIDENDS

"An Act relating to the exemption for permanent fund dividends from the collection of debts, to the seizure of dividends for the collection of debts, to claims on a dividend, and providing that claims on defaulted scholarship loans have third priority among claims against a dividend; 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 _____

zero fiscal note(s) Courts 4-14-92

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>		<i>Daniel Donley</i>		✓	
<i>[Signature]</i>		<i>[Signature]</i>		α	
<i>[Signature]</i>	✓	<i>Kevin Pat Parnell</i>		✓	
<i>[Signature]</i>	x				

[Signature]
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1

Bill Version: SB 254

Bill (S) Publish Date: 4-24-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to the exemption for BRU: Trial Courts
permanent fund dividends from collection of debts Components: _____
 Sponsor: Judiciary Committee by request
 Requestor: _____ COMPONENT SERIAL NO.

000 000	000 768
-----------	-----------

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

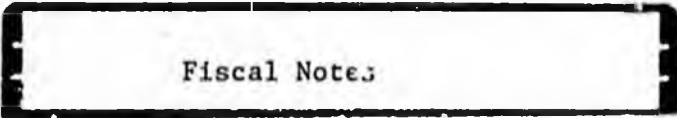
ANALYSIS: (Attach a separate page if necessary)
 No fiscal impact.

Changes in SSB 254 (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.
4/24 date 67LB Comte Aide (initial)

Prepared by: C. S. Christensen III, Staff Counsel *(Signature)* Phone: 264-8228
 Division: Alaska Court System Date: 02/11/92

Approved by: Arthur H. Snowden, II, Administrative Director *(Signature)* Date: 02/11/92
 Agency: Alaska Court System

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



No. 2

Bill Version: SB 254

(S) Publish Date: 4-25-92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 254

Revision Date: _____
Title: An Act relating to claims on
permanent fund dividends
Sponsor: Senate Judiciary Committee
Requestor: Senate Judiciary Committee

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Changes in CSB (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

4/24 6718
date Comte Aide (Initial)

Estimate of current year impact: None.

ANALYSIS: None required.

Prepared By: Thomas C. Williams
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: February 12, 1992

Approved by Commissioner: David Reynolds
Agency: Revenue

Date: 2/12/92

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

SECTIONAL ANALYSIS

CSSB 254 (JUD) "An Act relating to the exemption for permanent fund dividends from the collection of debts, to the seizure of dividends for the collection of debts, to claims on a dividend, and providing that claims on a defaulted scholarship loans have third priority among claims against a dividend; and providing for an effective date."

Section 1. Amends AS 09.38.015(a) to clarify that an individual is entitled to an exemption of a portion of a permanent fund dividend under AS 43.23.064(a).

Section 2. Amends AS 09.38.030(b) to clarify that the liquid assets exemption does not apply to an individual's permanent fund dividend.

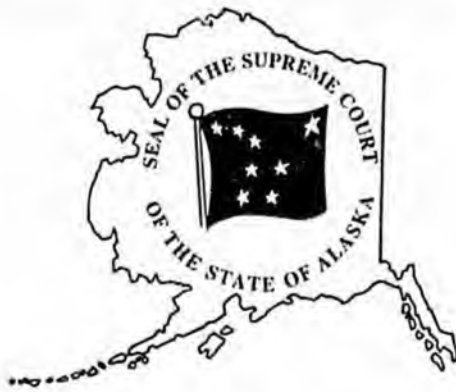
Section 3. Amends AS 43.23.065 in five ways: First, it conforms with section 2 of this bill, to clarify that the liquid assets exemption does not apply to an individual's permanent fund dividend. Second, it adds court-ordered fines to the list of debts for which a permanent fund dividend exemption is not available to an individual. Third, it provides that claims on defaulted student loans have priority over other debts owed to state agencies when a dividend is seized. Fourth, it provides that claims listed in AS 43.23.065(b) have priority over other debts whether payment is sought through legal action or through assignment. Fifth, it allows a writ of execution on a dividend to be served on the Department of Revenue by certified mail rather than by process server.

Section 4. Provides that AS 09.38.080(c) and 09.38.085, relating to notice, do not apply to a levy on a permanent fund dividend. Instead, the Department of Revenue must provide notice of the levy to a debtor. Also provides that the department may not accept an assignment of or an execution on a dividend prior to April 1 of a dividend year.

Section 5. Amends AS 43.23.067(b), relating to seizure of a dividend to pay a student loan, to clarify that a debtor's request for a hearing must be made to the Postsecondary Education Commission, rather than the Department of Revenue.

Section 6. Amends AS 43.23.067(c) to conform with the amendment made by section 5.

Section 7. Immediate effective date.



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

May 7, 1992

The Honorable Dave Donley
Chairman, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

I am writing to urgently request that the Judiciary Committee schedule SB 254, relating to claims on a permanent fund dividend, at its earliest convenience. This bill was introduced at the request of the Alaska Supreme Court, and was drafted with the assistance of the Department of Law and the Department of Revenue. Its primary purpose is to improve the procedures surrounding execution by a creditor on the permanent fund dividend of a debtor.

As you know, existing law provides that a creditor may execute on the dividend of a debtor, just as a creditor may execute on a debtor's bank account or other property. The amount which the creditor may seize is limited to 55% of a dividend, unless the creditor is executing on the dividend in order to satisfy a child support obligation, court-ordered restitution, or a debt owed to the state. In such cases, the entire dividend may be seized.

The current procedures surrounding execution on a dividend are contradictory, cumbersome, expensive, and frequently fail to give adequate notice to the debtor. Specific problems, and the corrections proposed in SB 254, are as follows:

1. Existing law requires the creditor to serve notice of the execution on the debtor. This causes several problems. First, aside from being unwieldy and expensive, existing

notice procedures are unnecessary, since the Department of Revenue automatically notifies a debtor that the dividend has been seized. Second, the creditor frequently does not know where the debtor can be reached in order to be notified of the claim. Great expense can be incurred in attempting to locate and serve the debtor, and if he cannot be found, the execution may take place without notice. Third, since the state is frequently the creditor seeking execution, the unnecessary expense of the notice requirement prevents it from attempting to recover many small debts.

SB 254 corrects these problems by eliminating the existing notice requirement, and instead requiring the Department of Revenue to provide legally adequate notice to the debtor. Because the department already sends notice to debtors, no additional expense will be incurred by expanding the information provided in that notice. Because the debtor has provided a current address to the department in order to receive a dividend, the debtor is more likely to receive notice of the seizure than under the existing procedure. Finally, because notice procedures will be less expensive, the state will be able to economically pursue far more debts than it does now (section 4).

2. As noted above, AS 43.23.065 provides that 45% of a dividend is exempt from execution for most debts. However, AS 09.38.030(b) provides a liquid assets exemption for debtors which can be read to exempt all of a dividend from execution. Most courts have rejected this reading, because it subverts the legislature's purpose in enacting the 45% exemption. SB 254 resolves this issue by making it clear that the liquid assets exemption does not apply to dividends (sections 2 and 3).
3. As noted above, creditors may seize an entire dividend, not just 55% of it, to pay for child support obligations, restitution, or other debts owed to a state agency, in that order of priority. A court-ordered fine for a violation of state law is a "debt owed . . . to a state agency" and thus is not subject to the exemption. However, criminal fines imposed by a municipality are subject to the exemption. SB 254 corrects this inequity by adding court-ordered fines for either state or municipal violations to the list of exemptionless debts (section 3).
4. While current law prioritizes claims against a dividend, it is not clear whether the listed priorities apply only in the case of execution, or if the listed priorities also apply to

The Honorable Dave Donley
May 7, 1992
Page 3

voluntary assignments of a dividend. SB 254 provides that the priorities apply in both cases (section 3).

The Judiciary Committee substitute for SB 254 makes three additional changes to existing law:

First, the CS provides in section 3 that a writ of execution upon a dividend may be served on the Department of Revenue by certified mail, rather than by process server as is currently required.

Second, the CS provides in section 3 that claims on defaulted student loans shall be given priority over other debts owed to state agencies when a dividend is seized by the state.

Third, the CS provides in section 5 that the Department of Revenue may not accept an assignment of or an execution on a dividend before April 1 of a dividend year.

Passage of SB 254 will improve the procedures surrounding execution on a permanent fund dividend by giving better notice to debtors that their dividend is being seized, and making it less expensive for the state to execute on persons who fail to pay child support or other debts. We urge your favorable consideration.

Very truly yours,



C. S. Christensen III
Staff Counsel



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, Alaska 99501

February 17, 1992

The Honorable Rick Halford, Chair
Senate Judiciary Committee

The Honorable Dave Donley, Chair
House Judiciary Committee

The Honorable Jay Kerttula, Co-Chair
The Honorable Pat Pourchot, Co-Chair
Senate Finance Committee

The Honorable Mike Navarre, Co-Chair
The Honorable Eileen MacLean, Co-Chair
House Finance Committee

Dear Legislators:

We are writing to express the joint support of the Alaska Court System and the Departments of Revenue, Law, Public Safety and Administration for House Bill 291 and Senate Bill 254, companion legislation relating to the collection of debts by execution on permanent fund dividends.

HB 291 and SB 254 were introduced at the request of the Alaska Supreme Court, and drafted with the assistance of the Departments of Law and Revenue. Their primary purpose is to improve the existing procedures surrounding execution by a creditor on the permanent fund dividend of a debtor.

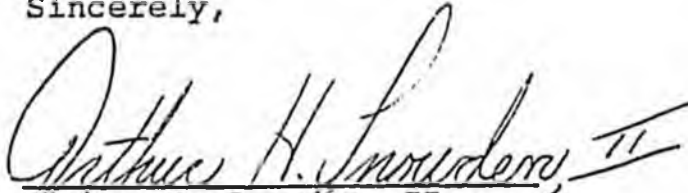
Current procedures are cumbersome, expensive, and unnecessary. They result in increased case processing costs for the court system, increased debt collection costs for the Department of Law, and increased process serving costs for the Department of Public Safety. To resolve these problems, HB 291 and SB 254 transfer certain procedural responsibility for the notification of debtors to the Department of Revenue. There is no fiscal

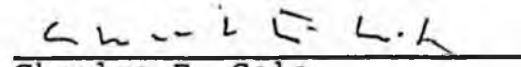
The Honorable Rick Halford, et al
February 18, 1992
Page 2

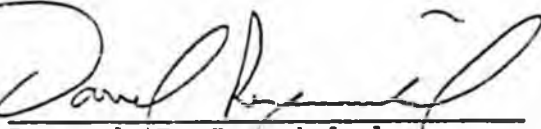
impact associated with Revenue's increased responsibility. Law will find it easier to recover debts owed to the state, and even debtors will benefit, in that it is more likely that they will receive notice of an impending execution.


HB 291 and SB 254 are rare examples of legislation that benefits several state governmental entities by merely shifting responsibility in a mutually agreeable way. We urge you to bring these bills before your committees at your earliest convenience, and to give them your favorable consideration.

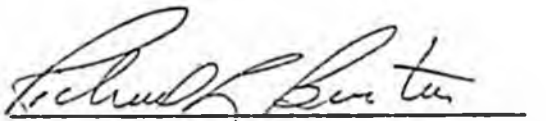
Sincerely,


Arthur H. Snowden, II
Alaska Court System


Charles E. Cole
Department of Law


Darrel J. Rexwinkel
Department of Revenue


Nancy Bear-Oserra
Department of Administration


Richard L. Burton
Department of Public Safety

S B

2 5 8

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 16, 1991

FURTHER REFERRALS:

Date of Committee Action: 5-16-91

The JUDICIARY Committee considered:

SB 258

SENATE BILL NO. 258

AUTOMOBILE LIABILITY INSURANCE

"An Act relating to automobile liability insurance."

RECOMMENDATIONS:

be replaced with HCS SB 258 (L+C) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

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

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) CEC 4-29-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>David Donley</i>	✓	<i>Larry Martin</i>		✓	
<i>Mark Hensley</i>					
<i>Mark Hensley</i>	✓				
<i>J. Elder</i>	✓				

David Donley
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1
 Version: SB 258
 (S) Publish Date: 4/29/91

STATE OF ALASKA
 1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Commerce & Economic Dev.
 Title: An Act relating to automobile BRU: Insurance
liability insurance Component: Operations
 Sponsor: Senate Labor & Commerce
 Requestor: _____ COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Don Koch, Chief of Market Surveillance Phone: 465-2577
 Division: Insurance Date: 4/26/91
 Approved by Commissioner: Glenn A. Olds *[Signature]* Ant Gunn
 Agency: Department of Commerce & Economic Development Date: 4-26-91

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

FISCAL NOTE

No. 1

B.. Version: SB 258

(S) Publish Date: 4/29/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Commerce & Economic Dev.

Title: An Act relating to automobile liability insurance BRU: Insurance

Sponsor: Senate Labor & Commerce Component: Operations

Requestor: _____ COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

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

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

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Don Koch, Chief of Market Surveillance ^{DK} Phone: 465-2577

Division: Insurance Date: 4/26/91

Approved by Commissioner: Glenn A. Olds *Glenn A. Olds*

Agency: Department of Commerce & Economic Development Date: 4-26-91

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

B

5/16/91

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 9, 1991

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 5-15-91

The LABOR AND COMMERCE Committee considered:

SB 258

SENATE BILL NO. 258

AUTOMOBILE LIABILITY INSURANCE

"An Act relating to automobile liability insurance."

RECOMMENDATIONS:

be replaced with HCS SB 258 (L+C) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

^{Senate} zero fiscal note(s) Commerce 4/29/91

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> Bruckman			<input checked="" type="checkbox"/>
<i>[Signature]</i> ^{Parsons}	<input checked="" type="checkbox"/>				
<i>[Signature]</i> Finkelstein	<input checked="" type="checkbox"/>				

[Signature] Finkelstein
CHAIRMAN'S SIGNATURE

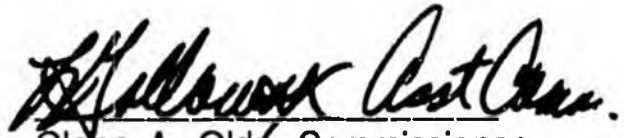
CSSB 258: " An Act relating to automobile liability insurance."

The Department of Commerce and Economic Development is in favor of this particular piece of legislation.

In 1990, language was added to AS 21.89.020(c) to require the offer of limits for uninsured/underinsured motorists coverage limits in excess of those voluntarily purchased for liability coverage.

This legislation provides that such an offer need not be made to a person who must file a proof of financial responsibility under AS 28.20.

The legislation would also repeal the sunset portions of the mandatory automobile insurance law.



Glenn A. Olds, Commissioner

Date: 5-18-91

SB

261

Date of Committee Action: 3/20/92

The JUDICIARY Committee considered: CSSB 261(JUD)(title am)

CS FOR SEN. BILL NO. 261 (JUD)(title am) OPERATION OF VEHICLES, PLANES, & BOATS
 "An Act relating to the authority of the Department of Public Safety to adopt regulations concerning commercial motor vehicle safety and licensing, and regulations necessary to qualify for federal highway funds; to operating commercial motor vehicles; to the definitions of 'previously convicted' and 'controlled substance' as they relate to motor vehicle licenses and to offenses regarding the operation of motor vehicles, aircraft, and watercraft; and providing for an effective date."

- RECOMMENDATIONS:
 be replaced with HCSCSSB 261 (JUD) the same title
 a new title
 have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

- ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
 fiscal impact _____ fiscal note(s) _____
 zero fiscal note Dept. of Law, Prosecution 3/10/92 zero fiscal note(s) Alaska Court System 2-24-92
 (Trial Courts)

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Mike Miller	✓				
Terry Martin	✓				
Mark Stanley	X				
Louis Rod Palmell	✓				
J. Ellis	✓				
W. Krenberg	✓				

Mark Stanley
 VICE CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSSB 261 (Jud)

Revision Date: _____
Title: "...relating...to regulations concerning commercial motor vehicle safety..."
Sponsor: Senate Rules/Request of the Governor
Requestor: House Judiciary Committee

Department Affected: Department of Law
BRU: Prosecution
Component: All
COMPONENT SERIAL

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Expenditures/Revenues: (Thousands of Dollars)

85 through 91

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

This bill amends the Alaska Uniform Traffic Laws Act (AS 28) to authorize the adoption of regulations necessary to implement a commercial motor vehicle safety inspection program, a commercial motor vehicle licensing program, and other requirements imposed by federal law or regulation. The changes made in the bill are needed to avoid loss or withholding of federal highway money. Although some additional offenses may occur involving commercial drivers, it is not anticipated that the bill will have a fiscal impact on the Department of Law.

Prepared by: Richard I. Pegues, Director
Division: Administrative Services
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: March 10, 1992
Date: March 10, 1992

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

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322

March 3, 1992

The Honorable Dave Donley
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Representative Donley:

Re: SB 261, An Act Relating to
Commercial Motor Vehicles

SB 261, an Act relating to penalties for operation of a commercial motor vehicle, has passed the Senate and is now in the House Judiciary Committee. I am writing to ask you to schedule this bill for a hearing as soon as reasonably possible.

If SB 261 is not enacted into law, there will be two major consequences. The first will occur on the federal deadline of April 1, 1992, when Alaska's authority to issue commercial motor vehicle driver's licenses (CDLs) will be revoked. This means that Alaska residents operating commercial vehicles in Alaska will be in violation of federal law, since the licenses previously issued to them will no longer be valid. It also means that Alaska commercial vehicle drivers will no longer be allowed to operate in any other state. The only "legal" commercial vehicle operators in Alaska would be out-of-state drivers with a valid CDL from their home state. Alaskans could not go to another state to get a license, because a state may only issue CDLs to its own residents.

The second consequence of a failure to adopt this proposed legislation is the loss of a percentage of federal highway money, beginning on October 1, 1993. The first year's loss would be five percent of the total allotment, approximately \$12,000,000. The second and subsequent

The Honorable Dave Donley
March 3, 1992
Page 2

years' loss would be 10 percent. This penalty would continue until the state complies with the federal requirement.

In order to avoid making all present commercial vehicle operators in the state ineligible to continue their livelihood, this bill must be passed and effective by April 1, 1992. I am respectfully requesting that this bill be set for a hearing as soon as possible. I, or Ms. Juanita Hensley, Chief of Driver Services, would be glad to answer any questions you may have about this.

Sincerely,


Gayle A. Horetski
Deputy Commissioner

SB 261--Operating Commercial Motor Vehicles While Intoxicated

<u>Sec.</u>	<u>Purpose</u>	<u>Required by</u>
1	Gives department authority to adopt regs	
2-6	Applies current license revocation procedures to commercial drivers with 0.04% blood alcohol or refusal of breath test	49 CFR 383.51(d)
7	Requires notification to the state where an out-of-state commercial driver is licensed	49 USC App. 2708
8-10	Requires court to revoke commercial license for refusing to take a chemical test of breath	
11-12	Makes a person a second or subsequent offender whether convicted of DWI as a regular driver or as a commercial driver	
13	Defines "disqualify" to mean that the privilege to drive a commercial motor vehicle is withdrawn	
14	Same as secs. 11-12	
15	Creates the offense of operating a commercial motor vehicle while intoxicated, using the threshold level of 0.04% blood alcohol	
	Establishes "implied consent" to take a chemical test of breath	49 CFR 383.72
	Creates the necessary legal presumptions arising from having 0.04% blood alcohol	
16	Amends current law to require a commercial license when "driving" a commercial vehicle	
17	Requires disqualification for 60 days for submitting false information in application for a commercial license or employment	49 CFR 383.73(g)
18	Prohibits employers from hiring commercial drivers who do not have a commercial license	
19	Requires that commercial drivers be placed "out of service" for 24 hours if drinking or using drugs or in possession of alcohol or drugs within four hours of going on duty	49 CFR 392.5
	Requires court disqualification for serious traffic violations	49 CFR 383.51(b) and (c)
	Creates an offense for driving a commercial vehicle without a license or if the license is revoked or the person is "out of service"	49 CFR 383.51(d)(1)

<u>Sec.</u>	<u>Purpose</u>	<u>Required by</u>
20	Necessary definitions	
21	Conforming amendments to current "open container" law	
22-23	Conforming amendments to current DWI law	
24-27	Conforming amendments to current law relating to refusal to take a breath test	
28	Conforming amendments to current law relating to administering chemical tests without consent	
29	Conforming repealer of portion of current "open container" law	
30	Provides, consistent with case law, that convictions committed before the effective date of the Act can be considered prior convictions	
31	Effective date	Deadline for implementation: April 1, 1992 49 CFR 383.23

ALASKA TRUCKING ASSOCIATION, INC.

3443 Minnesota Drive • Anchorage, Alaska 99503 • PHONE (907) 276-1149 • FAX (907) 274-1946

TESTIMONY OF FRANK J. DILLON
BEFORE
HOUSE JUDICIARY COMMITTEE
MARCH 13, 1992

Mr. Chairman, members of the Committee, My name is Frank Dillon and I am Executive Director of Alaska Trucking Association, Inc. I'm submitting this testimony on behalf of the members of ATA who urge you to pass Committee Substitute for Senate Bill No. 261.

CSSB 261 is enabling legislation that will validate with the federal government the more than 8,500 already issued Commercial Driver Licenses in the State of Alaska.

By and large, Alaska's heavy truck drivers are professionals. The demands of the job require a great degree of skill and knowledge in order to operate safely and efficiently over Alaska's highways.

Companies that use trucks and the drivers of those trucks believe that qualified drivers are an essential ingredient in making Alaska's highways safe.

The Commercial Driver's License is designed to help ensure the drivers of heavy commercial trucks are qualified.

On behalf of Alaska's truck users, drivers, and the motoring public, please pass CSSB 261.



• P.O. Box 73398
• 600 Driveway St.
• Fairbanks,
• Alaska 99707

• Telephone
(907) 452-1181
• FAX #
(907) 451-6188

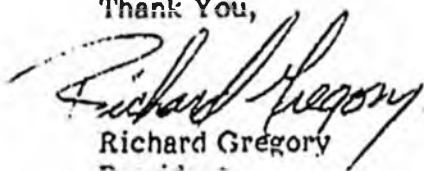
March 9, 1992

To Whom It May Concern:

This letter is in regards to C.S.S.B.261, the Commercial Drivers License bill which has been scheduled in the House Judiciary Committee.

All drivers and employees of Sourdough Express, Inc. support the C.S.S.B. 261 , the Commercial Drivers License bill.

Thank You,



Richard Gregory
President

cc: Rep. Dave Donley
Max Gruenberg
Pat Parnell
Mark Hanley
Terry Martin
Mike Miller
Johnny Ellis

To Members of Judiciary Com. March 10

As you well know safety is a high concern of responsible truck drivers on our highways. That is why I and owner/operators like myself greatly support C.S.S.B. 261, the Commercial Drivers License Bill. Any responsible professional trucker is glad to see restrictions that will get the outlaws out of the driver's seats. These are the same guys that will work for nothing that keeps the rates at a barely able to survive rate and they do it by hauling heavy, driving fast, and not keeping their rigs in safe mechanical shape.

You should look at re-regulating the trucking industry - especially in the construction hauling segment. It will make the highways safer!

Alvin B. Jenson
1407 W. 40th Anchorage

RULES OF APPELLATE PROCEDURE Rule 602

ground to relieve the attorney's client of the filing requirement. *Beavers v. Alaska Const., Inc.*, Op. No. 3560, 787 P2d 643 (Alaska 1990).

A challenge to an administrative decision, even if based on constitutional grounds, is subject to the 30-day limitation of this rule. *Diedrich v. City of Ketchikan*, Op. No. 3661, 805 P2d 362 (Alaska 1991).

Any claim which is functionally an administrative appeal must be brought within the 30-day limit of this rule; however denominated, a claim is functionally an administrative appeal if it requires the court to consider the propriety of agency determination. *Diedrich v. City of Ketchikan*, Op. No. 3661, 805 P2d 362 (Alaska 1991).

City employee's complaint in superior court that the city breached the covenant of good faith and fair dealing implied in his employment contract when it discharged him, allegedly in retaliation for appealing his termination to the city personnel board, was the functional equivalent of an administrative appeal, and therefore had to be brought within the 30-day appeal period of this rule. *Diedrich v. City of Ketchikan*, Op. No. 3661, 805 P2d 362 (Alaska 1991).

Rule 603. Stays.

(a) Civil Appeals.

(1) *Automatic Stay.* An automatic two day stay of execution or enforcement of district court judgments is provided for in District Court Civil Rule 24(a). A motion for stay and bond are not required for this stay.

(2) *Stay Upon Appeal—Supersedeas Bond.*

[a] *Stay.* When an appeal is taken, the appellant may obtain a stay of proceedings to enforce the judgment by filing a supersedeas bond. The stay is effective when the supersedeas bond is approved. The filing of a supersedeas bond does not prohibit the court from considering the public interest in deciding whether to impose or continue a stay on that portion of an administrative or district court judgment which is not limited to monetary relief.

[b] *Request for Approval.* A supersedeas bond, with a Request for Approval of Supersedeas Bond, must be served and filed with the district court, or with the superior court in administrative appeals. The bond may be filed at or after the time for filing the notice of appeal.

[c] *Amount and Form.* The amount of the supersedeas bond is 125% of the district court or administrative agency judgment (including any prejudgment interest, costs and attorney's fees), except that the court may specify a different amount based on the standard provided by Rule 204(d) upon motion by any party to the appeal. The form and conditions of the bond are governed by Civil Rule 80 and Appellate Rule 204(d).

[d] *Objections — Reconsideration.* An appellee may by motion raise objections to the form or amount of the bond or to the sufficiency of the surety. However, approval of the bond will not be delayed to allow objections to be filed. Objections filed after the supersedeas bond has been approved will be treated as a motion to rescind or modify the approval to be decided by the judge.

[e] *Approval.* The clerk may approve a supersedeas bond upon filing if: (i) the bond is in the form prescribed above; (ii) the amount of the bond is 125% of the judgment or, if the judge has ordered a different amount, in the amount ordered by the judge; and (iii) the bond is in cash pursuant to Rule 602(f) or is executed by approved surety companies. Otherwise, the judge must decide whether to approve the bond.

[f] *Exemption.* The state or an officer or agency thereof or a municipality or an officer or agency thereof desiring a stay on appeal is exempt from the requirement of filing a supersedeas bond.

(3) *Stay in Workers' Compensation Appeals.* An employer appealing to the superior court from a judgment of the Alaska Workers' Compensation Board may obtain a stay of the judgment pending the appeal by complying with subparagraph (a)(2) and by establishing that irreparable damage will result if the stay is not granted.

(4) *Proceedings on Stay.* When an appeal is taken, the district court judge or magistrate shall enter a written order indicating whether or not the proceedings to enforce a judgment have been stayed. If the proceedings are stayed, and process has been issued to enforce the judgment, the judge or magistrate must recall the process by written notice to the officer holding the process. Thereupon the process must be returned to the court, and all property seized or levied upon by virtue of such process must be released if it has not been sold, and in cases of civil arrest, the person arrested must be released from custody. This subdivision of this rule will not be construed as making any stay retroactive or as invalidating any proceedings or levies prior to the time the stay becomes effective.

(b) *Criminal Appeals.* If a sentence of imprisonment is imposed, admission to bail will be allowed and the sentence stayed, pending appeal. A sentence to pay a fine or a fine and costs may be stayed, if an appeal is taken, by the district judge or magistrate or by the superior court upon such terms as the court deems proper. During appeal the court may require the defendant to deposit the whole or any part of the fine and costs in the registry of the superior court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his or her assets. An order placing the defendant on probation will be stayed if an appeal is taken.

(SCO 439 effective November 15, 1980; amended by SCO 554 effective April 4, 1983; by SCO 957 effective March 30, 1989; and by SCO 1015 effective January 15, 1990)

Annotations

Cases

An employer must make a showing of irreparable damage as well as filing a supersedeas bond in order to obtain a stay of a disability

award in worker's compensation cases. *Wise Mechanical Contractors v. Bignell*, Op. No. 2329, 626 P2d 1085 (Alaska 1981).

A monetary enforcement judgment on an administrative order may be stayed as a matter of right upon the posting of an appropriate supersedeas bond under this rule. *Pipeliners Union v. Alaska State Commission*, Op. No. 2820, 681 P2d 330 (Alaska 1984).

In a consolidated review and enforcement proceeding pertaining to an order of the Alaska State Commission for Human Rights, the court could enter an enforcement judgment before entering a judgment on the appeal. *Pipeliners Union v. Alaska State Commission*, Op. No. 2820, 661 P2d 330 (Alaska 1984).

Superior court improperly stayed the payment of taxes during its review of administrative agency's order where the supersedeas bond filed with the court for the principal amount of taxes due did not include costs and interest. *City of Nome v. Catholic Bishop of Northern Alaska*, Op. No. 2986, 707 P2d 870 (Alaska 1985).

Even if AS 29.53.390(a), which authorizes judicial review of a disputed tax assessment, were interpreted to require payment of taxes before appeal, this rule supersedes it. *City of Nome v. Catholic Bishop of Northern Alaska*, Op. No. 2986, 707 P2d 870 (Alaska 1985).

Rule 604. Record.

(a) Appeals from District Court.

(1) Preparation of Record.

[a] The record on appeal consists of the entire district court file, including the original papers and exhibits filed in the district court, and the record of proceedings before the district court, unless otherwise ordered by the court or unless the parties designate an abbreviated record. A party is not required to submit a designation of the record unless the court so requires.

[b] The record of proceedings before the district court will include cassette tapes rather than transcripts unless the superior court orders the submission of transcripts. Otherwise, the record on appeal must be prepared and certified in conformity with Rule 210. The papers in the record need not be numbered, and the superior court clerk's certificate attached to the record need not include a table of contents.

[c] The clerk of the superior court shall prepare the record on appeal. In the absence of an agreement between the parties or an order of the court to the contrary, all reasonable costs incurred in connection with preparing the record on appeal or a cross-appeal will be borne by the appellant.

(2) *Time*. The record must be prepared and certified within 40 days from the date of filing of the notice of appeal.

(3) *Power of Court to Correct or Modify Record of District Court*. If any differences arise as to whether the record on appeal truly discloses what occurred in the district court, the difference must be submitted to and settled by the superior court and the record made to conform to it. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, or the superior court on motion or of its own initiative, may direct that the omission or misstatement be corrected,

and if necessary that a supplemental record be prepared and certified in accordance with this rule.

(4) *Return of Record and Appellate File after Final Disposition*. Unless the court otherwise orders, the clerk shall return the record and appellate file after final disposition to the district court as provided by Rule 512(a)(2).

(b) Appeals from Administrative Agencies.

(1) Preparation of Record.

[a] The original papers and exhibits filed with the administrative agency, and a typed transcript of the record of proceedings before the agency, constitute the record on appeal unless otherwise ordered by the court or unless the parties designate an abbreviated record. In an appeal from the revocation of a driver's license by the Division of Motor Vehicles, the record of proceedings will include cassettes rather than transcripts unless otherwise ordered by the court. A party is not required to submit a designation of the record unless the court so requires.

[b] The record on appeal must be prepared and certified in conformity with Appellate Rule 210, except as otherwise provided in this rule.

[c] The administrative agency shall prepare the record on appeal. In the absence of an agreement between the parties or an order of the court to the contrary, all reasonable costs incurred in connection with preparing the record on appeal shall be borne by the appellant. The preparing agency may require advance payment of the costs as reasonably estimated by the agency.

(2) *Time*. The record must be prepared and certified by the agency within 40 days from service of notice by the court that the agency is to prepare the record.

(3) *Notice of Certification of the Record*. Immediately upon completion, the agency shall forward the record to the superior court. The court shall notify the parties that the record has been prepared and certified by the agency and is available at the court.

(4) *Return of Record and Appellate File after Final Disposition*. If a timely appeal from the superior court decision is filed and unless the court otherwise orders, the clerk shall return the record after final disposition to the administrative agency as provided by Rule 512(a)(3). If a timely appeal is not filed, the clerk shall return the record to the agency on the day after the time for filing an appeal expires. The appellate file will be retained by, or returned to, the superior court.

(SCO 439 effective November 15, 1980 as amended by SCO 767 effective March 15, 1987; by SCO 826 effective August 1, 1987; by SCO 873 effective July 15, 1988; by SCO 928 effective January 15, 1989; and by SCO 1015 effective January 15, 1990)

S B

262

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 1
Bill Version: SB 262
(S) Publish Date: 5/10/91

Revision Date: _____
Title: "An Act relating to coverage of certain executive... under... minimum wage..."
Sponsor: Senate Labor & Commerce
Requestor: Senate Labor & Commerce

Department Affected: Labor
BRU: Labor Standards & Safety
Component: _____
Wage & Hour
COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Changes in CS SB 262 (LC) have no fiscal impact. This fiscal note is appropriate.

5-8-91 RKM
date Comte Aide (initial)

Prepared by: Bob Libbey, Director

Phone: 264-2452

Division: Labor Standards & Safety

Date: 5/2/91

Approved by Commissioner: Nancy Bear Usura

Agency: Department of Labor

Date: 5/2/91

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

7-LS1142J
Cramer
5/7/92

HOUSE CS FOR CS FOR SENATE BILL NO. 262 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to coverage of certain executive or administrative employees of retail or
2 service establishments from the overtime requirements of the state minimum wage laws;
3 and providing for an effective date."

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

5 * Section 1. AS 23.10.060(d) is amended to read:

6 (d) This section does not apply with respect to

7 (1) an employee employed by an employer employing less than four employees
8 in the regular course of business, as "regular course of business" is defined by regulations of the
9 commissioner;

10 (2) an employee employed in handling, packing, storing, pasteurizing, drying,
11 preparing in their raw or natural state, or canning agricultural or horticultural commodities for
12 market, or in making cheese or butter or other dairy products;

13 (3) an employee of an employer engaged in small mining operations where not
14 more than 12 employees are employed, if the employee is employed not in excess of 12 hours

CORRECTION

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 1
BILI Bill Version: SB 262
(S) Publish Date: 5/10/91

Revision Date: _____
Title: "An Act relating to coverage of certain executive... under... minimum wage..."
Sponsor: Senate Labor & Commerce
Requestor: Senate Labor & Commerce

Department Affected: Labor
BRU: Labor Standards & Safety
Component: _____
Wage & Hour
COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Changes in CSB 262 (4C) have no fiscal impact. This fiscal note is appropriate.

5-8-91 RAM
date Comte Aide (initial)

Prepared by: Bob Libbey, Director

Phone: 264-2452

Division: Labor Standards & Safety

Date: 5/2/91

Approved by Commissioner: Nancy Bear Usura

Agency: Department of Labor

Date: 5/2/91

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

Bill No: Senate Bill No. 262 (L&C)

Date: May 13, 1991

Title: "An Act relating to coverage of certain executive or administrative employees of retail or service establishments from the overtime requirements of the state minimum wage laws"

Contact: Eileen Plate
465-2700

Committee Substitute for Senate Bill 262 (L&C) seeks to align Alaska's overtime exemption criteria for executive/administrative employees in retail and service establishments more closely with the criteria applied under the Fair Labor Standards Act (FLSA).

The FLSA distinguishes executive/administrative employees in retail and service establishments from those similarly employed in other establishments. Specifically, for the purposes of exemption, the FLSA provides that employees in retail or service establishments are exempt if the employees spend at least 60% of their time performing executive/administrative duties. For employees in other establishments, the requirement is 80%.

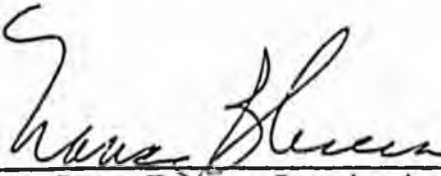
Current Alaska law exempts bona fide executive and administrative employees from Alaska's Wage and Hour Act, which includes overtime laws; however, no differentiation is made between types of establishments. Departmental regulations require use of the 80% criteria "across-the-board" for determining whether or not an employee is a bona fide executive or administrative employee for overtime exemption purposes.

As permitted under the FLSA, under the provisions of this bill, the 60% work responsibility criteria would be used. Specifically, employees of retail or service establishments who spend at least 60% of their time each week performing executive/administrative duties would be exempt from Alaska's overtime law. The bill further stipulates that the exemption would be operative only if the executive/administrative employee earns at least twice the minimum wage, based upon a 40 hour work week. Presently, this would be \$380 per week (\$4.75/hr (minimum wage) x 2 x 40 hours).

Inasmuch as many retail and service establishments in Alaska (hotels and restaurants, for example) employ large numbers of lower paid workers, the wage floor provisions in the committee substitute mitigate the Department's concern regarding a relaxation of the overtime law.

The provisions of this bill will not have a fiscal impact on the Department.

APPROVED:


Nancy Bear Userra, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

7-LS1142N
Cramer
5/7/92

HOUSE CS FOR CS FOR SENATE BILL NO. 262 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

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8 in the regular course of business, as "regular course of business" is defined by regulations of the
9 commissioner;

10 (2) an employee employed in handling, packing, storing, pasteurizing, drying,
11 preparing in their raw or natural state, or canning agricultural or horticultural commodities for
12 market, or in making cheese or butter or other dairy products;

13 (3) an employee of an employer engaged in small mining operations where not
14 more than 12 employees are employed, if the employee is employed not in excess of 12 hours

1 a day or 56 hours a week during a period or periods of not more than 14 workweeks in the
2 aggregate in a calendar year during the mining season, as the season is defined by the
3 commissioner;

4 (4) an employee engaged in agriculture;

5 (5) an employee employed in connection with the publication of a weekly,
6 semiweekly, or daily newspaper with a circulation of less than 1,000;

7 (6) a switchboard operator employed in a public telephone exchange that has
8 fewer than 750 stations;

9 (7) an employee of an employer engaged in the business of operating taxicabs;

10 (8) an employee in an otherwise exempted employment or proprietor in a retail
11 or service establishment engaged in handling telegraphic, telephone, or radio messages for the
12 public under an agency or contract arrangement with a telegraph or communications company
13 where the telegraph message or communications revenue of the agency does not exceed \$500 a
14 month;

15 (9) an employee employed as a seaman;

16 (10) an employee employed in planting or tending trees, cruising, or surveying,
17 or bucking, or felling timber, or in preparing or transporting logs or other forestry products to
18 the mill, processing plant, railroad, or other transportation terminal, if the number of employees
19 employed by the employer in the forestry or lumbering operations does not exceed 12;

20 (11) an individual employed as an outside buyer of poultry, eggs, cream, or milk
21 in their raw or natural state;

22 (12) casual employees as may be liberally defined by regulations of the
23 commissioner;

24 (13) an employee of a hospital whose employment includes the provision of
25 medical services;

26 (14) work performed by an employee under a flexible work hour plan if the plan
27 is included as part of a collective bargaining agreement;

28 (15) work performed by an employee under a voluntary flexible work hour plan
29 if

30 (A) the employee and the employer have signed a written agreement and
31 the written agreement has been filed with the department; and

1 (B) the department has issued a certificate approving the plan which states
2 the work is for 40 hours a week and not more than 10 hours a day; for work over 40
3 hours a week or 10 hours a day under a flexible work hour plan not included as part of
4 a collective bargaining agreement, compensation at the rate of one and one-half times the
5 regular rate of pay shall be paid for the overtime;

6 (16) an individual employed as a line haul truck driver for a trip that exceeds 100
7 road miles one way if the compensation system under which the truck driver is paid includes
8 overtime pay for work in excess of 40 hours a week or for more than eight hours a day and the
9 compensation system requires a rate of pay comparable to the rate of pay required by this
10 section; and

11 (17) an individual employed as an executive or administrative employee of
12 a retail or service establishment who is not exempt from AS 23.10.050 - 23.10.150 under
13 AS 23.10.055, and who devotes a portion of the employee's workweek to activities not
14 directly or closely related to the performance of executive or administrative activities, so
15 long as more than 60 percent of the employee's hours worked in the workweek are devoted
16 to bona fide executive or administrative activities and so long as the employee earns at least
17 twice the minimum wage per hour for the first 40 hours of employment each week.

18 * Sec. 2. This Act takes effect July 1, 1992.

Alaska State Legislature

3111 C Street, Suite 150
Anchorage, Alaska 99503
(907) 561-2038

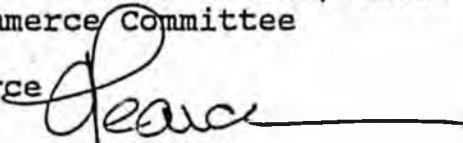


During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-4993

Senator Drue Pearce
District G

MEMORANDUM

TO: Representative Davide Finkelstein, Chair
House Labor & Commerce Committee

FROM: Senator Drue Pearce 

DATE: May 16, 1991

RE: CSSB 262 (L&C), Relating to altering administrative
employees overtime wages

CSSB 262 would make our Alaska Statutes consistent with federal regulations regarding overtime wages for management employees. The bill was introduced at the request of hotel and restaurant owners and operators. It comes as a result of a compromise worked out between employees and management, therefore organized labor has adopted a neutral policy toward the legislation.

Alaska is the only state which requires management employees to spend at least 80% of their time in administrative functions before being exempted from overtime pay requirements. Currently most states match federal regulations which only require 60% of time spent on management duties.

In the Labor & Commerce Committee an extra safeguard was made for low income management to ensure that their income was not further diluted by an inability to collect overtime. In order to qualify under the new percentages of this legislation, a management employee must make two times minimum wage.

These requirements have a great impact on the hotel/restaurant industry, where most management employees also "work the line". It is very difficult, if not impossible to meet this hourly requirement. Consequently, many employers and management employees are working in violation of the current law.

Passing this legislation will alleviate these discrepancies. I urge your individual support.

Thank you.

Alaska State Legislature

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



Senate

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

May 17, 1991

MEMORANDUM

TO: Chairman David Finkelstein
House Labor and Commerce Committee Members

FROM: Sen. Bettye Fahrenkamp

re: SB 262, Altering Administrative Employees Overtime
Wage Laws.

At the request of the hotel/restaurant operators, I helped draft Senate Bill 262, which would bring Alaska statutes in line with federal regulations regarding overtime wages for administrative employees. SB 262 was introduced by the Senate Labor and Commerce Committee and passed the Senate recently by an 18-0 vote.

This bill is a compromise worked out between organized labor, hotel/restaurant management and the Department of Labor. *Some have characterized SB 262 as an anti-labor bill. I have been given assurances by Mano Frey (President, AFL-CIO) and Harriet Lawler (Business Manager for the hotel workers union) that they do not view it as such.* Rather, SB 262 corrects an inconsistency between state and federal law.

Currently Alaska is the only state which requires management employees to spend at least 80% of their time (most match federal regs. which require only 60%) in administrative functions to be exempted from overtime pay requirements. For many hotel/restaurant managers who help work "on the line" during peak work loads, this is a difficult, if not impossible requirement to meet.

Consequently, many employers and management employees in Alaska are knowingly or unknowingly working in violation of the current law.

For administrative employees benefit, SB 262 mandates that they be paid at least twice the minimum wage if they are to be exempted from overtime laws.

Also, because of the section of statute being amended, employers will now be required to keep track of the hours the administrative employee spends in management versus line functions. Because this function is currently the responsibility of the employee (most of whom are unaware of these requirements,) few are claiming or getting paid for overtime.

For a good number of years I have been a strong advocate for organized labor in this legislature. During that time we have increased the demands upon businesses and their owners one hundred fold--from increased wages to improved work conditions to better workers' compensation coverage. *This proposal is a moderate request by management which gives them some breathing room and does not adversely affect organized labor.*

Given the compromise process which has already occurred, I respectfully request the passage of SB 262 from House Labor and Commerce Committee. Thank you for your consideration and assistance.



ALASKA VISITORS ASSOCIATION

501 West Northern Lights, Suite 201 • Anchorage, Alaska 99503

Tel: (907) 276-6663 • Fax: (907) 258-4036

1991-92 Executive Officers

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Bob Berto

*Southeast Stevedoring
Ketchikan, Alaska*

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Tim Cerny

*Fountainhead
Development*

Bob Dindinger

Alaska Travel Adventures

Bill Elander

Anchorage CVB

Bob Engelbrecht

TEMSCO Helicopters

Lois Hansen-Payton

Kodiak Island CVB

Len Laurance

Mariner, Inc.

Lynn Leary

Frontier Flying Service

John Litten

Sitka Tours

Linda McLaughlin

Delta Air Lines

Ralph Nestor

*Travel Industry
Management, UAF*

David Palmer

Alaska Airlines

Ray Pedersen

Princess Tours

Brad Phillips

Phillips Cruises & Tours

Terry Underwood

HAL-Westours Inc.

Richard West

*Alaska Sightseeing/
CruiseWest*

Tim Worthen

Regency Cruises

Karen Cowart

Executive Director

May 6, 1992

Senator Shirley Craft
Alaska State Legislature
P.O. Box V (MS 100)
Juneau, Alaska 99801

Dear Senator Craft:

The Alaska Visitors Association Government Relations Committee supports SB 262 which would reduce the percentage of time a management employee would be required to devote to actual management or administrative functions and allow for utilization of the employee for general operation purposes.

The visitor industry must be flexible in both managerial and operational hours due to the travel patterns established nation wide. This bill would allow us that necessary flexibility, would bring Alaska more in line with other states that are our competitors and finally allow Alaska to be consistent with federal guidelines.

We strongly encourage the passage of this bill.

Respectfully,

Bob Berto
President

Johne Binkley
Vice President

cc: Members, House Judiciary Committee
Members, AVA Govt Relations Committee



*Alaska Cabaret, Hotel,
Restaurant & Retailers Association*

U.S. Box 102830 • Anchorage, Alaska 99510
401 K Street • (907) 278-8144 • Fax (907) 271-8040

May 06, 1991

Alaska Senate Labor & Commerce Committee
 Senator Drue Pearce, Chairman
 Senator Virginia Collins, Vice-Chairman
 Senator Dick Eliason
 Senator Rick Halford
 Senator Jay Kerttula

Dear Committee Members:

The Alaska Cabaret, Hotel, Restaurant and Retailers Association supports the intent of Senate Bill 262 and urges that this proposed legislation be enacted.

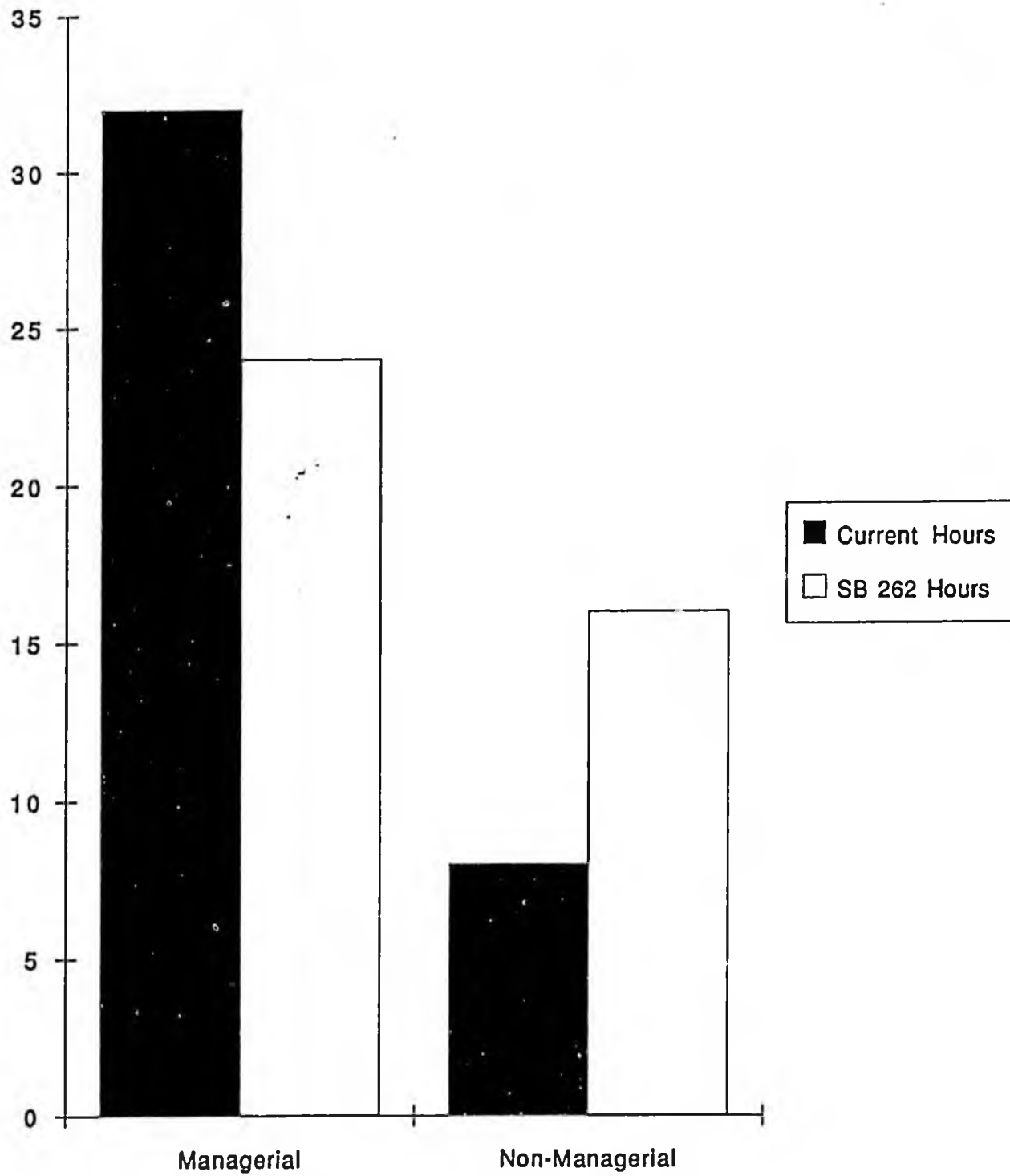
Thank you for your consideration of our position.

Yours truly,

A handwritten signature in cursive script that reads "Carol Wilson".

Carol Wilson
 Executive Director

SB 262 MANAGERIAL HOUR COMPARISON



S B

267

FISCAL NOTE

BILL NO. SSSB 267

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: 3/25/92

Department Affected: Fish and Game

Title: Notice of Fish and Game Regulations

BRU: Boards/Boards Services

Component: Boards/Boards Services

Sponsor: Senator Zharoff

Requestor: Senate Resources
Expenditures/Revenues: (Thousands of Dollars)

COMPONENT SERIAL NO.

	4	8	2
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OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Geron Bruce G.B. Phone: 465-4100
 Division: Commissioner's Office Date: 4/4/92
 Approved by Commissioner: [Signature]
 Agency: Department of Fish and Game Date: 4/6/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. OSC., & Impacted Agency(ies).

- ADFG FISCAL NOTE, POSITION + CFEC -



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99015 (907) 486-5250

DURING SESSION:

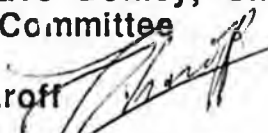
STATE CAPITOL BLDG., JUNEAU, ALASKA 99801-1182 • (907) 485-3473 • FAX: (907) 483-3043

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Representative Dave Donley, Chairman
House Judiciary Committee

FROM: Senator Fred Zharoff 

RE: Scheduling of CSSSSB 267, relating to notice of the Board of Fisheries' intention to consider approval of a petition to CFEC to establish a moratorium on entrants into a commercial fishery

DATE: April 30, 1992

I am writing to request that you schedule CSSSSB 267 for a committee hearing at your earliest convenience.

CSSSSB 267 amends AS 16.05.251(g) to provide that notice of, and a copy of, a petition from the Commissioner of Fish and Game to the Commercial Fisheries Entry Commission to establish a moratorium on entry in a commercial fishery shall be available to the public at Fish and Game Department offices, and distributed to the Fish and Game advisory committees in the areas affected by the proposed moratorium, 30 days before the Board takes action on the petition. The bill also requires that the Commissioner document the criteria used to determine that the fishery requires a moratorium in the petition.

This legislation will increase the public comment period from 15 to 30 days, and help to assure that the public has access to material critical to their considerations regarding the management of fish and game resources in their area in a timely manner.

Backup information is included.



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 • (907) 486-5259

DURING SESSION:

STATE CAPITOL BLDG., JUNEAU, ALASKA 99801-1182 • (907) 485-3473 • FAX: (907) 483-3043

DISTRICT N

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SSSB 267 SPONSOR STATEMENT

March 31, 1992

SSSB 267 amends AS 16.05.251(g) to require 30 days public notice of the intent of the Board of Fisheries to consider the approval of a petition by the Commissioner of Fish and Game to the Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery. SSSB 267 also provides that a copy of the public notice and the petition be distributed to each Fish and Game advisory committee and ADFG office in the administrative area where the moratorium would be established.

Current law requires only 15 days public notice of the board's intent to consider the approval of a petition to establish a moratorium on entry into a fishery, and there are no specific provisions to assure the prompt availability of the petition to the public for consideration.

Consideration and comment regarding fish and game issues by an informed public is the basis for the development of rational and effective fishery regulations under Alaska's Fish and Game Board system. Current statutory language does not provide adequate time for the public to be notified of, obtain material related to, and comment on the petition to be considered by the board. It is vital to this process that the public be given sufficient time and information to comment on issues and proposals that will affect their area.

This legislation will help to assure that the public and the Board of Fisheries are provided sufficient time and information in their considerations regarding the approval of a petition to establish a moratorium on entry into a commercial fishery.

SSSB 267
- SPONSOR STATEMENT -

DEPARTMENT OF FISH AND GAME

POSITION PAPER

Bill Number: SSSB 267

Sponsor: Senator Zharoff

Bill Title: Notice of Fish and Game Regulations

Department Position: Support

Legislative Intent: It is the intent of this legislation to increase the existing 15 day public notice requirement on a petition from the Alaska Board of Fisheries to the Commercial Fisheries Entry Commission requesting a moratorium on new entrants into a commercial fishery. This legislation would also require the board to distribute, in a timely manner, a copy of the public notice and a copy of the petition to each fish and game advisory committee and the office of the department in the administrative area where the proposed moratorium would be established.

Effects of Legislation on Department Programs: Requiring a minimum 30 day public notice will provide greater public notice. This will not be burdensome, or cost any more than the existing 15 day public notice requirement. The department supports the intent to provide the public with greater notice.

It is not clear what "in a timely manner" means or is trying to accomplish. Currently, when the Division of Boards publishes the public notice to fulfill the Administrative Procedures Act (APA) for the board, the notice is also distributed pursuant to APA requirements. The public notice is an informative summary of the issue the board has accepted.

For fish issues, there is a standing distribution of 1,670. This includes all the advisory committee members on file, the 60 legislators, and any organization and individual that has requested to receive fish issue mailings. The notices are currently distributed to each of the Department of Fish and Game's divisions.

We do have concern on distributing the "petition" itself to the full mailing. Some petitions can be very lengthy. Just the other day we received a petition that was over two inches thick (though this was not a moratorium petition). The commissioner's petition to the board regarding the scallop petition was approximately 20 pages in length.

It is also not clear the parameters of what department offices are "in the administrative area where the proposed moratorium would be established." If not clearly defined, people can argue that this requirement was not fulfilled.

Department of Fish and Game
Position Paper 888B 267
Page 2

I would note that as the statutory requirements get more complex the chances of missing a procedural step increase. The courts historically turn over regulations and laws for procedural errors.

Commissioner's Signature

Don Linnick for

Date

4/6/92

TO: The Honorable Fred Zharoff
Chairman
Senate Rules Committee

DATE: March 31, 1992

FAX NO: 789-6170

ATTN: David Shrader

TELEPHONE NO: 789-6160

FROM: COMMERCIAL FISHERIES
ENTRY COMMISSION
Bruce Twomley, Chairman
Frank Homan, Commissioner
Rich Listowski, Commissioner

SUBJECT: SSSB 267

You asked for our comments on SSSB 267 extending the time for public notice for moratorium requests under Board of Fisheries consideration from 15 days to 30 days. In the event of a petition for a moratorium from the Commissioner of Fish and Game, with the approval of the Board of Fisheries, comes to the CFEC, we would undertake our own separate public notice procedures as required by the Alaska Administrative Procedures Act. SSSB 267 together with CFEC public notice procedures extends the time period to the public for comments. While we cannot comment for the Board of Fisheries or the Department of Fish and Game, our statutes are not affected and we have no problem with this legislation.

If we can provide any additional information, please do not hesitate to contact us.

cc: Geron Bruce, Special Assistant to the Commissioner, ADF&G
Laird Jones, Director, Board of Fisheries, ADF&G