

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7327 HOUSE TRANSPORTATION

25

**Haines Chamber of Commerce
Post Office Box 518
Haines, Alaska 99827**

February 26, 1991

Honorable Walter J. Hickel
Governor of Alaska
Office of the Governor
P. O. Box A
Juneau, Alaska 99811-0101

Re: Vessel Replacement Funding
Alaska Marine Highway System

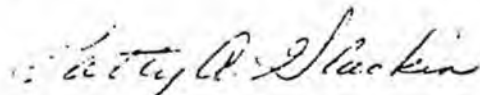
Dear Governor Hickel:

On behalf of the Haines Chamber of Commerce, I urge you to include in your FY92 Capital Budget adequate funds for vessel replacement to the Alaska Marine Highway System. This is an important capital project for all of us who depend on the ferry system.

There can be no doubt as to the importance of the ferry system to the economies of Southeast and Southwest Alaska. The maintenance needs of the aging fleet are well-documented in the Alaska Marine Highway System Plan, as are the growth needs of existing ports of call and demands for expansion of the system.

The enabling legislation is in place. Vessel replacement will be a popular and practical investment in our future.

Sincerely,



Patty A. Glackin
President

PG/as

cc: Rep. Fran Ulmer ✓



Prince of Wales Chamber of Commerce

P.O. Box 497
Craig, Alaska 99921
907-826-3870

February 26, 1990

Honorable Walter Hickel
Governor, State of Alaska
P. O. Box A
Juneau, AK 99811

Dear Governor,

The Citizens of Prince of Wales Island are heavily dependent on the Marine Transportation System. It transports our food and most other products necessary to our well-being. We also depend heavily on it for individual transportation to professional services (medical, hospital, dental, legal and etc) that are not available to us on the Island. We ship most of the seafood harvested here on the West Coast via the ferry system.

The population of Prince of Wales is now over 7000 year-around with near double of that during the "working season" March to October. We have 5 major communities besides numerous logging camps and small unorganized settlements. We have become very dependent on the ferries to connect us to the services that we need.

You indicated earlier that you wanted to put the State's resources to work by upgrading our aging fleet of ferries and establishing a vessel replacement fund. In your recently submitted budgets you included only \$4 million of the \$7 million that is needed to meet the Division's need for FY 91 and you didn't mention the vessel replacement fund.

We found this alarming considering the condition of the vessels and the 2 day a week schedule that we are struggling with this winter.

The Marine Highway is desperately needed to support the present economy and to provide part of the infrastructure needed if we are to maintain and improve the economy of all of the State, not just Southeast Alaska. We felt you understood how important this Marine link was. Southeastern is not the only one who benefits from this Highway - the entire State does. \$8.4 million of the revenue going into Southcentral is directly attributed to the ferry system.



Prince of Wales Chamber of Commerce

P.O. Box 497
Craig, Alaska 99921
907-826-3870

When you were Governor before, you had the foresight to realize the importance of this transportation link and contributed much to its development. We were expecting the same commitment based on your earlier comments.

It is a State Highway and we urge you to include the funding needed to maintain and upgrade it when you do your next capital budget for Fy 92.

Respectfully,

Barbara H. Permenter

Prince of Wales Chamber of Commerce
Barbara Permenter, President

*cc Frank Turpin, Commissioner
DOT&F
Jim Ayres, Director Marine Transportation*

City of Tenakee Springs

RECEIVED
MAR 11 1991

RESOLUTION 91-13

In the Council
February 28, 1991

Introduced by the
Council President

A RESOLUTION REQUESTING THAT FUNDING
FOR VESSEL REPLACEMENT FOR THE ALASKA MARINE HIGHWAY SYSTEM
BE INCLUDED IN THE BUDGET FOR FISCAL YEAR 1992

- WHEREAS, money for vessel replacement in the Alaska Marine Highway System has not been included in the capital or supplemental budget bills;
- WHEREAS, the City of Tenakee Springs relies on the Alaska Marine Highway for all transportation needs;
- WHEREAS, maintaining the present fleet is only a part of preserving an ongoing Alaska Marine Highway System; and
- WHEREAS, vessel replacement is a necessary part of an Alaska Marine Highway System that will be responsive to basic transportation needs of many Alaskans and of visitors to Alaska;

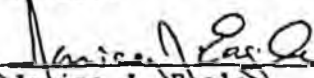
THEREFORE BE IT RESOLVED by the Common Council of the City of Tenakee Springs, Alaska to urge that funds for vessel replacement in the Alaska Marine Highway System be included in the appropriate budget bill this fiscal year.

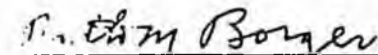
BE IT FURTHER RESOLVED to direct the city clerk to forward Resolution 91-13 to Governor Hickle, Commissioner Turpin, and Legislators Ulmer, Eliason and Grussendorf.

ADOPTED 5 AYES, 2 ABSENT THIS 28TH DAY OF FEBRUARY 1991



ATTEST:


Janice J. Eagle
City Clerk


Ruth M. Borger, Vice-Mayor
Acting Council President
ex officio MAYOR



City and Borough of Sitka

304 LAKE STREET . SITKA, ALASKA . 99835

The Honorable Walter Hickel
Office of the Governor
P O Box A
Juneau, Alaska 99811-0101

February 28, 1990

Re: Vessel Replacement Fund for the Alaska Marine Highway System.

Dear Governor Hickel:

The Alaska Marine Highway System is critical to Southeast/Coastal Alaskans for basic transportation, economic development and regional interaction. State funding for the system has decreased over the past five years resulting in steadily diminished levels of service to Southeast Alaska.

The City and Borough of Sitka and the Southeast Conference urges the regular commitment of funds to the Vessel Replacement Fund created by the last legislature, which, accumulated over a period of years, will cover capital costs to rebuild or construct new equipment and facilities for the Marine Highway system.

Your second capital budget for FY92, to be introduced in March, is the opportunity to accomplish what you said you'd do when you visited Sitka last fall: "invest in Southeast's economy by putting resources in to rebuilding our aging fleet of ferries."

We call upon your support.

Sincerely,

for Dan Keck, Mayor
City and Borough of Sitka

cc: Assembly
Southeast Conference
Frank Turpin, Commissioner DOTPF
Lloyd Jones
Senator Richard 'Dick' Eliason
Representative Ben Grussendorf



CITY OF HAINES, ALASKA

P.O. BOX 1049

HAINES, ALASKA 99827

(907) 766-2231 • TOURISM (907) 766-2234 • FAX (907) 766-3179

COPY

Governor Walter Hickel
P.O. Box A
Juneau, AK 99811-0101

February 26, 1991

Re: Alaska Marine Highway System

Dear Governor Hickel:

The Alaska Marine Highway System is the main, and in some places the only, highway in Southeast and many parts of Southwest Alaska. It is a vital year-round transportation link between isolated communities. The system's vessels are old and some are in need of refurbishment or replacement. I see that the new budgets do not include any funding for the refurbishment and replacement necessary for long-term continuous service. The ferry system draft plan dated January, 1990, supports as a priority instituting a vessel refurbishment/replacement program.

The importance of this investment is critical for the health of the whole Alaskan economy. Southeast supplies, via the ferry system, a significant portion of the tourists who go on to Anchorage and Fairbanks.

The Alaska Marine Highway System, when formed shortly after Statehood at the behest of the Southeast Conference, was put into place to be an extension of the State of Alaska road system. The ferry system is a vital road in Southeast, transporting residents, tourists, food, mail, supplies, cars and resources.

Please consider implementing the priority recommendation of the system's long-term plan, as it is practical and necessary. I encourage you to follow through with your statement of last Fall when you said you would invest in Southeast's economy by providing the resources to rebuild our aging fleet of ferries. Maintaining a consistent level of service is crucial.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Frank L. Wallace". The signature is written in dark ink and is positioned above the printed name.

Frank L. Wallace
Mayor
CITY OF HAINES



Official Business

Alaska State Legislature

P.O. Box V
State Capitol
Juneau, Alaska 99811

FOR IMMEDIATE RELEASE
March 1, 1991

Contact:
Kate Tesar
465-3824

ELIASON & GRUSSENDORF PROPOSE FUNDING FOR REPLACING MARINE HIGHWAY VESSELS

JUNEAU--Sitka's Senator Dick Eliason and Rep. Ben Grussendorf today introduced measures in the Senate and House which will appropriate \$45 million to the Alaska marine highway system vessel replacement fund which was established to purchase new ferries or refurbish existing ferries.

"The average age of the ferries in the Alaska Marine Highway System is 22 years," said Senator Eliason, President of the Senate and prime sponsor of SB 155. "The cost of replacing one of the smaller feeder ferries is between \$17 and \$25 million, while the replacement costs of the larger ferries could run as high as \$60 million. In a year where the state may have additional dollars brought in by increased oil prices, I can think of no better investment than continued upgrading of our aging fleet."

Governor Cowper's FY 92 capital budget had originally included \$45 million to begin funding for new ferries, but this item was not included in the latest version of the budget which was recently submitted to the legislature by Governor Hickel.

"The Governor has been talking about funding for large capital projects across the state which will help boost local economies and supply Alaskans with employment," said Rep. Ben Grussendorf, Speaker of the House and prime sponsor of HB 175. "State ferry operations directly or indirectly contribute \$142 million annually to Alaska's economy and generate jobs for 915 Alaskans in 40 communities across the state, ranking it the state's seventh largest employer."

-MORE-

The Alaska Marine Highway system carried over 400,000 passengers and more than 110,000 vehicles last year. The ferries transported to or from the state one of every twelve Alaska visitors last year, with these passengers accounting for one out of every eight visitor dollars spent in Alaska.

Eliason and Grussendorf see this appropriation as the beginning of what could become a series of annual appropriations to the fund. As the cost of replacing ferries increases year after year, it only makes sense to begin funding this savings account so it may accrue interest and grow until vessel surveys are completed and the full costs of replacement or refurbishment of the ferries is known, they said.

SB 155 and HB 175 will be reviewed in the Transportation Committee and Finance Committee in each House.

HB

194

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 6, 1991

FURTHER REFERRALS:

Labor & Commerce
Judiciary
Finance

Date of Committee Action: 3/19/91

The TRANSPORTATION Committee considered:

HB 194

HOUSE BILL NO. 194

REGULATION OF MARINE PILOTS

"An Act relating to the Board of Marine Pilots, marine pilots, and marine pilot organizations; 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 DCED

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Neil Phillips</i>	x	<i>Gene Kubina</i>		X	
<i>Ben Simpson</i>	x	<i>Jim M...</i>		X	
<i>Neil Hudson</i>	x	<i>Robert A. Suman</i>		✓	

Jim M...
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 194

Revision Date: _____ Department Affected: Commerce & Economic Dev.
 Title: An Act relating to the Board of BRU: Occupational Licensing
Marine Pilots, marine pilots.... Component: Administration
 Sponsor: Reps. C. Davis, et. al.
 Requestor: House Transportation **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	56.5	56.5	56.5	56.5	56.5	56.5
TRAVEL	23.5	23.5	23.5	23.5	23.5	23.5
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	10.0	3.0	3.0	3.0	3.0	3.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	96.0	89.0	89.0	89.0	89.0	89.0

CAPITAL						
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REVENUE	0	250.9	0	250.9	0	250.9
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FUNDING: (Thousands of Dollars)

GENERAL FUND	96.0					
FEDERAL FUNDS						
OTHER (GF/PR)		89.0	89.0	89.0	89.0	89.0
TOTAL	96.0	89.0	89.0	89.0	89.0	89.0

POSITIONS:

FULL-TIME	1	1	1	1	1	1
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.)
 (SEE ATTACHED)

Prepared By: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: March 18, 1991
 Approved by Commissioner: Glenn A. Olds
 Agency: Commerce and Economic Development Date: 3-18-91

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

FISCAL NOTE ANALYSIS

HB 194

The bill makes a number of amendments to the Marine Pilotage Act. The expenses identified in this fiscal note result from increasing the mandatory number of meetings to at least four as required by Section 3 of the bill, and the employment of a Marine Pilot Coordinator established by Section 5.

Since Section 22 places the Marine Pilot Coordinator position in the partially exempt service of State government, and is charged with the responsibility to administer and enforce the chapter similar to executive secretaries of other regulatory boards, the costs identified reflect similar arrangements.

Personal Services:

Marine Pilot Coordinator, XE, 12 months, Range 18A	\$56.5
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<u>Travel:</u>	23.5
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Section 3 of the bill increases the number of meetings to at least four each year. Currently the board is required to meet once a year and it is often difficult to fund an additional meeting when approved by the Governor. Funding of \$13.5 will provide for the three additional meetings.

Funding of \$10.0 will cover travel and per diem expenses for the marine pilot coordinator to travel to each marine pilotage region to audit regional marine pilot organizations, review training programs, and to enforce compliance with the marine pilotage act.

<u>Contractual Services:</u>	5.0
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This funding will provide for communications, postage, printing and advertising costs.

<u>Supplies:</u>	1.0
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Funding will provide for daily operating supplies for the Marine Pilot Coordinator position.

Equipment:

10.0

Funding will provide one-time equipment costs for the Marine Pilot Coordinator position. This funding will also provide for on-going office space costs.

TOTAL COSTS:

\$96.0

Revenues:

There are approximately 123 licensed marine pilots whose licensing fees must be increased to cover the new costs provided in the bill. In addition, current expenses of the Board of Marine Pilots exceed revenues generated through licensing fees to support its licensing program. Therefore, licensing fees will have to be increased substantially in order for the licensing program to support its costs. Biennial licensing fees of \$2,040 (\$1,020 per year) will be necessary to fully fund program costs. Marine Pilot licensees currently pay a biennial fee of \$180 (\$90 per year), and reflect a deficit of \$36.2 in covering its costs by licensing fees. If licensing fees are not increased to cover program costs, the program must then be supported by the general fund.

Since marine pilot licenses are due for renewal on December 31, 1992 (FY 93), revenues will not be collected in the first year of operation under provisions of HB 194. Funding in the first year must therefore be covered by general funds, unless a special one time assessment fee is made to licensees in FY 92.

The revenues identified in this fiscal note are based on the assumption that licensees will be willing to increase their fees to fully cover the costs of its licensing program beginning in FY 93 in conjunction with the license renewal period.

ALASKA STATE LEGISLATURE

ELECTIVE DISTRICT 1

HYDER
KETCHIKAN
KUPREANOF
MEYERS CHUCK
PETERSBURG
SAXMAN
WRANGELL



HOME

P.O. BOX 5723
KETCHIKAN, AK 99901
PHONE 225-6304

DURING SESSION

P.O. BOX V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE 465-3424

Representative Cheri L. Davis

TESTIMONY MARINE PILOTAGE ACT HOUSE BILL 194

The legislatures of all coastal States have, by statute, created boards or commissions to govern the operation of pilots of their respective states; for the appointment and licensing of such pilots; and, frequently, for the fixing of rates for pilots. Such boards and commissions are administrative agencies and, as such, are creatures of statute. The jurisdiction and authority which they assert must be found within the four corners of the statutes under which they were created.

House Bill 194 gives our Board of Marine Pilots this jurisdiction and authority.

It has been almost twenty years since any major changes were made regarding piloting in Alaska. Since introducing this bill, I have been told by some people, "things are fine...if it isn't broken, don't fix it." While I don't feel our pilotage regulations are "broken," I do feel they can use some much needed maintenance.

Pilots play an important, integral part, of transportation in Alaska. Pilots are taken on board at a particular place for the purpose of conducting a ship through inside coastal waters, or from or into a port. It is their "local knowledge" that ensures the safe passage of vessels through our waters.

This bill is a product of compromise. I have met with several representatives from the shipping industry, pilot board members, pilots and pilot organizations. I have taken into consideration all of their comments and requests and incorporated those constructive suggestions into this bill.

The Law of Tug, Tow and Pilotage gives a history of everything you could ever want to know about piloting. It gives a history of the pilotage industry and cites court cases that back-up the need for a strong Pilot Board. Giving the board the statutory power to enforce and regulate its pilots will serve in the best interest of Alaska.

Thank you.

RESPONSE TO DRAFT
MARINE PILOTING ACT
HB 194

The proposed bill represents a rather unusual combination of strengthening the Board while at the same time weakening it by dictating many details of matters the Board should deal with. On balance the negative aspects seem to outweigh the positive which leads to the conclusion that the proposal needs much more work before beginning its journey through the legislative process.

There are too many conflicts in the proposal between improvements to the pilotage industry and purely self-serving pilot interests.

Positive aspects are:

1. Clarification of the powers of the Board. For example, the language in the present Act leaves some doubt as to the Board's power to set tariffs compared to the power to merely determine criteria as to how the tariffs should be set. The proposal clarifies the ambiguity and states clearly that the Board can set rates.

2. The proposal clarifies the issue of pilot organizations and anti-trust law.

3. The proposal deals directly with the issue of limiting a pilot's monetary liability for damages resulting from accidents.

4. The proposal deals with the cross-over liability between individual pilot actions and his or her organization and other pilots in the organization.

The four items above should be part of any new, or changes to the existing, statute.

Specific sections that create problems:

Unfortunately the proposal consists mostly of matters that are self-serving for existing pilot organizations and create many barriers to entry to the profession and anti-competitive, or monopolistic, features. Some of these features stem from the nature of the profession, but most are more evidently designed as self-protection measures from a pilot perspective.

References to the specific parts of the proposal will show why the above generalizations are valid and demonstrate why the proposal needs a lot of work before being submitted for consideration by the legislature.

SECTION 1(2)

Serves no purpose other than to imply that pilots working directly for shipping companies don't provide an essential service to the state. Further, the statement implies that it is the independent relationship that provides the service instead of the qualifications of the pilot that are based upon the license.

SECTION 2(6)

The pilot members of the Board should be pilots who are actively engaged in piloting and not merely those who have been active.

The Board is presently balanced by an equal number of representatives from the public, the industry, and pilots. While it would be nice to have a pilot from a third region (really an organization) such a change would create an imbalance in pilot representation that should be countered by adding a third member from the public and industry.

What the proposed change really amounts to is an acknowledgement that the pilot members have unduely represented their organization and not profession. There may be other ways (than increasing the size of the Board) to address this issue. Alternatives should be explored.

SECTION 4

The number of Board meetings is not as important as the quality of the meetings. Alternatives as to the way the Board operates should be studied as an alternative to merely increasing the number of meetings.

SECTION 5(5)

We disagree with the idea that the tariff should include a charge to the ships in order to provide a training fund for either prospective or licensed pilots. We feel the creation of such a fund would be the source of many disputes. If the Board had power to create such a fund it would create a subsidy to a profession that would be both unique to regulated professions and unduely increase costs to the shipping industry.

Other parts of this section represent such a change to the industry that the general topic of regionalization recognition of pilot organizations must be commented upon in total and not in paragraph number.

The previous administration's study on marine piloting emphasized the desirability of improving two aspects of the industry. These were, (1) increasing the standards and training for entry into the profession, and (2) a greater emphasis on local knowledge as a licensing and practicing criteria.

The recommended solution to these two aspects included the suggestion that licensing areas, or regions, should be limited. The criteria for delineating the regions should be in part based upon the general nature of shipping (tankers, tour ships, fishing, bulk

carriers, etc...), variety of piloting tasks (channel riding, docking, anchoring, etc...), transportation costs and time, and variety and number of harbors and ports, etc...

The study also acknowledged that piloting is provided most effectively through centralized dispatching and billing organizations of pilots. Further, piloting is a skill learned through apprenticing because of the need for hands-on experience. Consequently, the organizations play a major role in training and if the training is valid it must be designed around some uniform standards.

Notwithstanding the essential role that pilot organizations have and the natural tendency for traditional organizational boundaries to define pilotage regions, it is not an improvement in the law to simply put such things in legislative concrete.

Another important part of the state's study dealt with barriers of entry into the profession and creating monopolies for the pilot organizations. Some pilot testimony during the hearings on the study focused on the "evils" of competition in the piloting industry. Little was heard about the "evils" of monopoly.

The proposal does not recognize nor deal with the need to eliminate barriers to entry into the profession. In fact, the proposal erects additional barriers under the guise of Board-approved training programs. The approved programs are done through the pilot organizations, administered by pilots with five years of piloting experience who are also approved by the Board. These requirements are coupled with the proposed license requirement that allows a trainee to have only a small number of supervised rides by one approved pilot.

What the combination of these provisions means, in fact, is that no new groups of pilots can start-up or grow. Such a result creates an environment rich for the "evils" of monopoly to develop.

Without going into lengthy discourse on the specifics of the above, I'll say that it is an area that I'd like the opportunity to discuss with you in person.

Additionally the regions created by Section 5(11)(d) need a lot of refinement with the exception of Southeastern Alaska.

SECTION 7(a)

This section limiting licenses to one region is not practical until the regions are defined adequately and the issues of the monopolistic organizations and other barriers to entry are resolved.

SECTIONS 10, 11. QUALIFICATIONS FOR LICENSE

These two sections need additional work to make them articulate together, and internally consistent.

It appears that Sec. 10 contains the requirements for what may be termed a "full" or ^{"unlimited"} ~~"limited"~~ license whereas Sec. 11 seems meant to be a "lesser" or "limited" license- ie. vessels not exceeding 20,000 gross tons. Further, it is confusing whether or not each class of license has separate pre-requisites or if each class has separate (with some overlap) pre-requisites.

For example, the Sec 10 license requires a variety of sea-going experience as well as unspecified training to be specified by the Board.

On the other hand the Sec 11 Deputy license requires very specific training but evidently no specific sea-going experience.

The full license is based upon a Coast Guard endorsement of 1,600 gross tons but evidently has no tonnage restrictions on the state license. The deputy license has no Coast Guard tonnage specifications but is limited to 20,000 gross tons for the state license.

(5)

It also appears that the deputy license requires familiarization rides and supervised dockings while the "full" license does not. Or, does Sec. 10(3) refer to the training program in Sec. 11(3)? Does the sea-going experience of Sec. 10(6) also, in some way, cover Sec 11 licenses?

In short the proposal leaves more questions unanswered than answered regarding licensing. As it is written the proposal serves no useful purpose other than to make a deputy "lesser" license almost impossible to get for someone trying to get into the profession.

SECTION 12(2)

To what part of AS 08.62.100 is the term "continued qualification" referring?

SECTION 12(4)(6)

Again, the deputy license is treated differently than the "full" license by not specifying the conditions (or possibility) of renewal.

SECTION 13(6)

See comment above reference to Section 12.(4)(6).

SECTION 16(2)

This should clarify that the limit is \$5,000 per accident and not \$5,000 per claimant.

SECTION 18

It appears that the conceptual goal of Section 18 material is worthwhile. Pilot organizations do promote operational efficiency and have a great responsibility for training. However, the content of Sec. 18 again leaves many unanswered questions. Some of these are:

- a. How many pilots are required to form an organization? It would seem the answer is two.
- b. Does a pilot have to work through an organization?

- c. Is an established organization required to let any pilot join?
- d. If more than one organization operates in a region, which one is the "cost center" upon which the regional tariff is imposed?
- e. Is an organization required to accept all applicants for training?
- f. Can an organization function in more than one region?
- g. If two organizations exist in the same region, by which criteria does the Board "recognize" one?
- h. Can a trainee get approved training in a non-recognized organization?

SUMMARY

Based upon the above brief discussion of source of intent, language, and unresolved matters in the draft proposal, it seems reasonable to conclude that much work remains to be done before a piece of workable legislation can be presented. A lot of the problems seem to be a result of the legislation trying to incorporate details better left to the Board. However, the desire to legislate Board members reflects a lack of confidence in the Board.

The legislation would probably be improved if it were restricted to:

1. Continuing the Board
2. Powers of the Board
3. Pilot liability and anti-trust issues -

It seems that the alternative to the three things above is for the legislation to be redone in detail- almost as a substitute for regulations and the Board to be given fairly limited powers.

I hope I have the opportunity to discuss in greater detail the concerns I have briefly discussed above. I would be happy to come to Juneau to meet with you.

I appreciate your interest and concern with marine piloting, and I appreciate your follow-up with me.

Joseph S. Merrill *Jm*
For Alaska Marine Pilots Dispatch Service
In Anchorage:

786-4865 day
243-2395 evening
248-2567 FAX

P.O. Box 220926
Anchorage, AK 99522

HB 194

BUSINESS DIAGNOSTICS
Joseph S. Merrill, Ph.D, CPA
P.O. Box 220926
Anchorage, AK 99522
(907) 562-2688 <i>786-4865</i>

Southeastern Alaska Pilots' Association

CABLE ADDRESS: SEAPILOTS

P. O. BOX 6100
KETCHIKAN, ALASKA 99901

HOUSE BILL NO. 194

MARINE PILOT ACT

HOUSE TRANSPORTATION COMMITTEE

SEVENTEENTH LEGISLATURE - FIRST SESSION

March 19, 1991

The State of Alaska enacted the first Pilot Act in 1970. Two pilot associations formed to meet the pilotage requirements mandated by the State and the marine industry. The Southeastern Alaska Pilots' Association and the Southwest Alaska Pilots' Association have served the State and industry well over the last twenty years. The associations and the State pilot board worked closely together for fifteen years and developed needed regulations to provide and maintain an efficient pilotage system in the State.

During the last five years the associations and the pilot board have been under constant pressure to relax standards, grant waivers for licenses, and hindered while trying to formulate necessary regulations by the Attorney General's office, industry, and dissident pilots who seek to circumvent the pilot regulations. No one segment is fully responsible for the failure of the pilotage system in Alaska.

Rather than debate past failures, the State needs to develop a new pilotage act that will remedy the problems the Board of Marine Pilots is now confronting. The pilotage bill introduced by Representative Cheri Davis will go a long way to solve the problems and concerns of the Board of Marine Pilots. The Southeastern Alaska Pilots' Association respectfully requests the Transportation Committee to view this bill as important legislation to the State of Alaska and its citizens.

Sincerely,

Captain Dale O. Collins
President
S.E.A.P.A.

COMMITTEE TESTIMONY IN SUPPORT OF H.B. 194
BY CAPT. W.E. MURPHY, SOUTHWEST ALASKA PILOTS

Mr. Chairman and members of the committee, thank you for this opportunity to testify in support of House Bill 194. My name is Edward Murphy. I reside in Homer and I've been a marine pilot in Alaska since 1974. I pilot ships throughout Southwest Alaska including very large crude carriers and other tankers, cruise ships, container ships, bulk carriers and fisheries related vessels. I served on the Alaska Board of Marine Pilots for four years, three of them as chairman.

In January of last year I wrote Governor Cowper a letter concerning grave safety problems I saw emerging in Alaska's state pilotage system. Among them:

- The lowest entry standards for licensing in the country.
- No state mandated standards or requirements for pilot training.
- Control and manipulation of state pilots by Outside steamship companies and agents.
- Pilot Board difficulties in maintaining and upgrading pilot standards.
- Inordinate delays in pilot discipline cases.
- Legal problems for pilot associations in training pilots and maintaining high standards in the absence of state requirements.

Governor Cowper responded to the concerns expressed in my letter by ordering his Office of Management and Budget to conduct an independent study of Alaska's state pilotage system and to make recommendations for improvement based on the study findings. The result of the staff study is a booklet entitled Improving Alaska's Marine Pilotage System. This document is a remarkably thorough and thoughtful look at pilotage in Alaska written by researchers who have no ax to grind except the public interest. If you have not already done so, I urge you to read the study. It will tell you far better than I can the problems with our state's pilotage system and the need for legislative change to the marine pilot statutes.

House Bill 194 represents a collaborative effort between the Southeastern and Southwest Pilot Associations along with representative Davis and her staff. The pilots who live and work in Alaska believe this Bill, or something close to it, is legislation you can all proudly support because it is, ultimately, a safety bill. Consider the following:

Committee Testimony on H.B. 194

Capt. W.E. Murphy

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1. The "FINDINGS" section makes clear for the first time the public service nature of a pilot's work by stating that, " the first and paramount duty of marine pilots is to provide for the public safety and the protection of the marine environment." It says that "marine pilots operating independently of the shipping industry have provided and will continue to provide essential service to the state." The independence of the pilot from the shipowner's interest and control is a crucial element of safety long recognized by state pilots and identified by the study staff. The federal government recognized this essential element of piloting in the Oil Pollution Act of 1990 by requiring state licensed pilots who are not a member of the ships crew to pilot tankers in certain sections of Prince William Sound.

2. The bill clearly establishes the powers and duties of the Board of Marine Pilots. The ambiguity of the existing law in this regard has long been the cause of conflicting interpretation by staff attorneys from the A.G.'s office. The result has often been Board confusion, frustration, failure to act in the public interest, and law suits.

3. The Bill raises the entry standards for pilot license applicants. The staff study, pages 15 through 17, clearly illustrates how remarkably low Alaska's standards are. The American Pilot Association says they are the lowest in the country.

4. The Bill establishes a "deputy pilot" system whereby new pilots can be trained under the supervision of veterans.

5. The Bill declares that the pilot board will establish standards for training programs. Incredibly, pilot training is not addressed at all under current statute.

6. The staff study pointed out the essential element of local knowledge in all piloting and recommended that Alaska's vast coastline be divided into pilot regions where pilots would be restricted to piloting in one region only. The Bill permits the Pilot Board to establish regions but stops short of restricting pilots to a particular region. Without this requirement regionalization does nothing to assure the public a pilot has adequate familiarity with a particular area. I urge you to strengthen the Bill by inserting such a requirement.

In addition to the features of the Bill previously listed, there are 2 more areas of concern which are equally crucial to a workable and professional piloting system. These are limiting pilot liability and permitting the Pilot Board to recognize certain pilot organizations. I'd like to talk about these areas:

The Bill limits a pilot's liability and that of pilot organizations. Every time a pilot steps on a ship he faces the possibility of financial ruin. This is in addition to possible criminal penalties he may suffer in the event the vessel he is piloting suffers an accident. Criminal penalties are called for in House Bill 315 passed by the legislature in 1990. Piloting is a high risk profession and few, if any, pilots can stand the sort of twin liabilities now emerging in this state. Some sort of liability limitation is reasonable as the legislatures of other maritime states have found. Washington is an example: its pilot act also sets a liability limit of \$5,000. Note that H.B. 194 does not limit liability if the pilot's error or negligence was wilful.

Liability is also a major problem for pilot organizations because they are caught in a "Catch-22" situation. The state doesn't require any pilot training. Yet all mariners, and probably laymen too, know that pilots have to be well trained. Yet when we train new pilots, as we must, we can be sued if that pilot has an accident. But if we failed to train a new pilot who then had an accident we would be sued for negligence. It's an impossible situation and another compelling reason why the state must both require pilot training and limit the liability of pilot organizations in their training function.

The Bill gives the Board the authority to recognize organizations of marine pilots for certain pilot regions of the state. It is important to recognize that the state cannot realistically maintain its own pilot training and dispatch service. Pilots form themselves into organizational structures called associations for this purpose. The associations provide pilots, central dispatching, employees, boats, equipment, pilot stations, radio and communications equipment, transportation, training and administration of the whole as a system. We do this with Alaska resident pilots 24 hours a day, 365 days a year in every kind of weather. House Bill 194 recognizes these facts and requires groups of pilots to do certain things in order to be recognized. It requires compliance with state standards in terms of nondiscrimination, promoting a professional pilot service, maintaining sufficient pilots to serve area shipping, and maintaining training programs. The Bill does not franchise particular groups or require individual pilots to belong.

Committee Testimony on House Bill 194

Capt. W. E. Murphy

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I urge you to strengthen this section by requiring 24 hour per day, 365 days a year service as an additional standard for recognition as a regional pilot organization.

Alaska's original state pilotage act of 1970 has changed little since it was enacted. Yet shipping in the state has increased many fold with larger and faster ships carrying more dangerous cargoes and an ever increasing number of passengers. Often these ships ply the waters of Alaska with only one United States citizen aboard; that person is the ship's pilot who is licensed by this state. The consequences of the pilot's failure to adequately meet the demands placed upon him can have profound consequences for the marine environment and the citizens of Alaska. The pilot's role is a public service one. Alaska's citizens have a right to expect that state pilots have met high entry standards, have undergone rigorous training and possess extensive local knowledge. As the study group recognized, safety demands that pilots be independent and free of the shipowner or his agent's interest and control. House Bill 194 is long overdue. I urge you to consider it favorably.

Thank you

To: Transportation Committee
Alaska State House of Representatives

From: Captain H.K. Elsensohn

Subject: House Bill No. 194

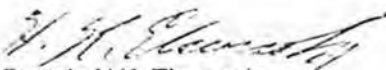
You will find attached excerpts from the book "THE LAW OF TUG, TOW, and PILOTAGE", by Alex L. Parks. This shows clearly that the Congress of The United States has given the individual states the right and responsibility to regulate pilotage on their waters.

I am nearing the end of my four year term as a member of the Alaska State Board of Marine Pilots. AS 08.62.040 states- "(a) The board shall (1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property; (2) Consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.52) establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original and renewal pilot licenses to qualified persons." The foregoing seems to be clear enough, but it has been impossible for the board to require all applicants to obtain the same training. The basis of State Pilotage is local knowledge. The pilot must know the area of his work thoroughly. The only way to become a proficient pilot is through the tutelage of an experienced pilot.

There are only two reasons for HOUSE BILL NO. 194, they are-

- 1 - To allow the Board of Marine Pilots to set the standards for pilots.
- 2 - To be sure that the State of Alaska has control of state pilots.

The "CONCLUSIONS AND RECOMENDATIONS" contained in the Division of Policy study 'IMPROVING ALASKA'S MARINE PILOTAGE SYSTEM' lead to the solutions of HOUSE BILL NO. 194.


Captain H.K. Elsensohn
119 Austin, Apt. 506
Ketchikan, Alaska 99901

TELECOPY MESSAGE

DATE: March 19, 1991

TO: House Transportation Committee
Alaska State Legislature

NUMBER: 907-465-2444

PAGES TO FOLLOW: 7

FROM: Dan Grausz
Vice President and General Counsel
Holland America Line-Westours Inc.
300 Elliott Ave. West
Seattle, Washington 98119
U.S.A.
(206) 286-3490

RESPONSE TELECOPY NUMBERS: (206) 284-8332 (Direct)

MESSAGE:

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CONTACT SUE LUNDGREN AT
(206) 286-3491.



Holland America Line
Westours Inc.

March 19, 1991

House Transportation Committee
Juneau, Alaska

Members of the Committee:

Per your request, enclosed please find a copy of the testimony that I gave earlier today regarding House Bill No. 194. Per your request, I will be providing you before the end of this week with specific line-by-line comments on this legislation.

Sincerely yours,

Daniel S. Grausz
Vice President and
General Counsel

cc: Mr. Cees Deelstra
Mr. Tony Thein

TESTIMONY OF DAN GRAUSZ BEFORE THE HOUSE TRANSPORTATION COMMITTEE
ON HOUSE BILL 194 - MARCH 19, 1991

Mr. Chairman, Members of the Transportation Committee. My name is Dan Grausz and my address is 300 Elliott Ave. West, Seattle, Washington. I am the Vice President and General Counsel of the Holland America Line/Westours/Westmark Hotels group of companies. We pride ourselves on being the largest cruise and cruise/tour operator in the State of Alaska. I appreciate being given the opportunity to testify this morning regarding House Bill No. 194.

First, let the record be very clear that Holland America/Westours supports any reasonable effort designed to enhance safety and protect the environment of the State of Alaska. We believe in compulsory pilotage. We support efforts to increase the qualifications and training of pilots. In fact, if one was to look closely at the history of cruise ship pilotage in the State of Alaska, they would find that many of the pilots now working on cruise ships in Alaska learned their skills on the bridges of our ships under the tutelage of our officers.

If this Committee believes a problem with the quality of pilotage in the State of Alaska now exists, it behooves this Committee to address that problem. This bill has far too much excess baggage attached to it. We ask this Committee to throw the excess baggage overboard and report out a bill that will truly enhance the quality of pilotage in Alaska. In this regard, we find it strange to say the least that this bill makes it more difficult for a person to be a deputy pilot than a regular pilot.

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ON HOUSE BILL 194 - MARCH 19, 1991

There is no secret that the main proponents of this legislation are the two largest pilot organizations in Alaska, both of which we have worked with in the past and expect to work with in the future. In our dealings with these organizations, we have treated each other as equals negotiating our arrangements in an arm's length manner. This legislation will turn what has been negotiations into take it or leave it bargaining such that we will be at the mercy of what will become quasi-governmental organizations blessed with what are tantamount to governmental powers but without the public accountability that should go hand in hand.

Let us be very clear on what a pilot organization is and is not. It is not a labor union or a non-profit group that exists merely to serve the interests of its members or the public. It is an association set-up to allocate the monies earned by all pilots on an arbitrary basis. It is no different from any other business entity. As such, it should be required to deal with other private entities as an equal, not as an arm of government.

Governmental organizations are required to adhere to due process requirements; pilot organizations have no such limitation on their actions. Governmental organizations are subject to political constraints; pilot organizations are not. Governmental bodies need not be concerned with antitrust issues because they are subject to procedural and political safeguards. Pilot organizations under this legislation will obtain antitrust

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immunity without the safeguards.

This bill will allow pilot organizations to monopolize the market by effectively giving them complete control over pilot training, dispatching and, in the words of the legislation, "other functions that the organization may assume."

It is not sufficient to state that the public interest is protected by the audit and review powers granted to the pilot board over these organizations particularly when 2 out of 7 board members will be working for the organizations being reviewed. What that audit and review power will not control is the exercise by these organizations of economic power over the shipping industry that this legislation gives these organizations.

The bottom line here is that we have no objection to pilot organizations. We are prepared to negotiate with them in the same manner we negotiate with any other private entity. All we ask is a level playing field. Do not give these organizations special powers and immunities. Let them survive in our free enterprise system if market forces justify their survival, not because the government has given them a license to dictate the terms and conditions of pilotage.

The second issue I would like to address concerns the question of pilot independence. Section 1 of the bill asserts that marine pilots operating independently of the shipping industry have and

TESTIMONY OF DAN GRAUSZ BEFORE THE HOUSE TRANSPORTATION COMMITTEE
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will continue to provide essential service to Alaska. In effect, this legislation attempts to preclude shippers from hiring pilots on their payrolls with the potential resulting cost savings. The claim undoubtedly here is that pilots, who are also employees, are unable to exercise independent judgment.

I submit to you that this is an insult to each and every one of us who has ever been employed. I know of no other profession in which direct employment is prohibited including doctors, engineers, nurses, teachers, psychologists, real estate professionals, veterinarians, plumbers, electricians, dentists, architects, lawyers, surveyors, accountants. Are we to assume that pilots are somehow lacking in character, morals or ethics that make them different from all these other people such as to preclude them from being able to exercise independent judgment? Should we assume that the architect or construction foreman on the developer's payroll who designs or builds a 10-story building is going to compromise his or her ethics and standards merely because he or she is an employee? So why do we make that assumption in the case of pilots.

The role of the pilot relative to certain other professionals who are allowed to be employees makes it even more absurd to prohibit employment of pilots. When all is said and done, pilots are merely advisors to the captain of the ship. It is the captain, an employee, who makes the final decisions. Are we to believe that because a person is employed, he is unwilling to even give advice?

TESTIMONY OF DAN GRAUSZ BEFORE THE HOUSE TRANSPORTATION COMMITTEE
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What is really going on here is that the pilot organizations are concerned about losing their monopoly power over their members if those members have, as an alternative, direct employment with ship owners. It is just possible, however, that individual pilots may find that direct employment is an attractive alternative given the benefits attendant to direct employment such as job security. We cannot understand why the Alaska Legislature would deem it appropriate to tell people which company they can or cannot work for particularly when all they are hired for is to give advice.

The third issue is the rates for pilotage. Initially, I would like to put into perspective what we are talking about here. Holland America has four ships operating in Alaska waters. For a typical Inside Passage Cruise stopping at Ketchikan, Juneau and Sitka, this means 41 hours of actual pilotage time. Depending on the size of the ship, we pay between \$10,000 and \$12,500 in pilotage fees for each Inside Passage cruise. This works out to approximately \$275 per hour for pilotage. In addition, we pay for lodging, meals and travel expenses. There are few, if any, other professions who can obtain similar pay particularly given the lack of overhead requirements.

We do not understand why pilots need to have government to assist them in setting rates. Government pricing is appropriate where the service provider has monopoly power. In that case, the public needs to be protected against the monopolist. That is why

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government has historically regulated pricing by public utilities.

In this legislation, it is the pilot organizations who are seeking protection from the public. The pilot organizations are afraid to live by the same laws of supply and demand that the rest of us are subject to. They want the government to do their negotiating for them. We are blessed to live in a country that believes in free enterprise. Pilots, like other professionals, must be subject to the laws of supply and demand.

The final issue is pilot liability. First, the State tells us we must employ pilots. This legislation then tells us that we will be forced to deal with specific pilot organizations on the basis of prices that are non-negotiable. We are told that pilots perform a valuable service and we want to make sure that we have only the most qualified people providing that service. But then, when it comes to mistakes or even negligence, the pilots are not accountable for their actions.

We ask you what incentive these pilots have to not make mistakes when all they risk losing is something less than the fees being paid them for the particular assignment. A person who earns \$275 per hour should be expected to be held accountable for negligence. Even we lawyers are held fully liable for our actions. I cannot see how one fosters responsibility and professionalism by creating a system that tells someone that it is acceptable to make mistakes, that it is acceptable to be negligent, that it is

TESTIMONY OF DAN GRAUSZ BEFORE THE HOUSE TRANSPORTATION COMMITTEE
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acceptable to be at fault, that it is acceptable to put lives in jeopardy, that it is acceptable to risk our environment because all you really stand to lose is your days pay. I further do not understand why these pilot organizations that seek the power this legislation will confer upon them are not held accountable for assigning unqualified pilots.

A person hired for the most menial of jobs has more liability than a pilot who is charged with safeguarding human lives. There is something inherently wrong about such a system.

As I indicated at the outset, Holland America/Westours supports a pilotage bill that will enhance safety and the environment. That is not the bill you have before you today. HB 194 will turn the clock backwards by creating a regulated industry with no accountability and no liability.

Thank you for your time and consideration of our position.

91-B/PILOT.TES

3/18/91

SECOND EDITION

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THE LAW OF
TUG, TOW,
AND PILOTAGE

BY ALEX L. PARKS

Member of the Oregon State Bar
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LONDON
CHAPMAN AND HALL

State Control

The First Congress in 1789 obviously felt that until further action was taken, it was the better part of wisdom to leave the regulation of local pilotage grounds to the various states since different situations existed with respect to the various states in relation to their respective harbors, ports and waters. This made it advisable to permit the states to promulgate different rules and regulations, and occasioned the enactment of the statute now codified as 46 U.S.C.A. 211, reading:

Until further provision is made by Congress, all pilots in the bays, inlets, rivers, harbors and ports of the United States shall continue to be regulated in conformity with the existing laws of the states respectively wherein such pilots may be, or with such laws as the states may respectively enact for the purpose.

Later, the Congress supplemented this section by enacting a provision leaving to the states the right to regulate the piloting of vessels into and going out of the waters bounding two states. 46 U.S.C.A. 212 reads:

The master of any vessel coming into or going out of any port situated upon waters which are the boundary between two states, may employ any pilot duly licensed or authorized by the laws of either of the states bounded on such waters, to pilot the vessel to or from such port.

In interpreting this latter statute, the courts have held that the waters between two states must in a real sense be the *boundary* between the two jurisdictions. Thus, in *The Glenearne*, (USDC, Ore.) 7 Fed. 604, the court held that a steamboat bound to Portland, Oregon might take either a Washington or Oregon pilot while on the Columbia River [the boundary between Oregon and Washington for much of its distance] but only the Oregon licensee was entitled to pilot the vessel on the Willamette River [which, although a major tributary of the Columbia River, is located wholly within the State of Oregon]. So, too, the United States Supreme Court held, in the case of *Leech v. Louisiana* (1909), 214 U.S. 175, that a pilot holding a license issued by the State of Mississippi was not licensed to pilot a vessel engaged in the foreign trade from the Gulf of Mexico to New Orleans, "since New Orleans is not situated upon waters which are

the boundaries between two states." The United States District Court in Massachusetts held to a like strict construction in *The Swift Arrow*, 1923 A.M.C. 1012, 292 Fed. 101.

Federal statutes, permitting the regulation of pilots to remain in the states until Congress had legislated otherwise, were held to be within the ambit of Congressional power and thus constitutionally valid by the United States Supreme Court in the landmark case of *Coolley v. The Board of Wardens of the Port of Philadelphia*, 12 How. (U.S.) 299. Subsequently this principle was reaffirmed in *Pacific Mail S.S. Co. v. Joliffe*, 69 U.S. 450; *Ex Parte McNeil*, 102 U.S. 572; *Olsen v. Smith*, 195 U.S. 332; and *Anderson v. Pacific Coast S.S. Co.*, 225 U.S. 187. The most recent affirmation of constitutionality is *Jackson v. Marine Exploration Co., Inc.* (1979), *supra*, which set forth with great clarity the dichotomy which exists between the Federal and state systems and upheld the Florida pilotage act against assaults on its constitutionality under the Due Process Clause and Equal Protections Clause.

The status of state pilotage acts—and in fact the entire system of state pilotage—was seriously threatened and in a state of hiatus from 1852 until 1871.

Between 1812 and 1849, Congress sought to provide for greater safety at sea by requiring certain inspections of equipment aboard steam vessels. In August, 1852, a new act was passed making it unlawful for any person to employ or any person to serve as engineer or pilot on steam vessels unless he was licensed by the United States inspectors. Although the act did not treat specifically of state pilotage, neither did it make an exception which could be construed as permitting state pilots to operate even though not licensed by the Federal government.

The Supreme Court rescued the state pilot system from the confusion into which it was thrown by the above-mentioned act by its decision in *Pacific Mail Steamship Company v. Joliffe*, 69 U.S. 450 in which it was held that the act was not intended to cover "port" pilots.

Again, in 1866, state pilotage was thrown into turmoil by the passage of an act requiring every American seagoing steam vessel navigating the bay, inlets, rivers and harbors of the United States to be under the control of a pilot licensed by the Federal government. While the purpose of such legislation appears to have been strengthening the safety provisions with respect to steam vessels, the net ef-

fect was that state pilotage was doomed. For seven months, this situation prevailed until February, 1867, when Congress, recognizing the total disruption of state pilotage systems, moved to correct the problem by adding a proviso to the 1866 Act reading:

. . . Provided, however, that nothing in this Act, or in the Act of which it is amendatory shall be construed to annul or affect any regulation established by the existing law of any state requiring vessels entering or leaving a port in such state to take a pilot duly licensed or authorized by the laws of such State, or of a State situated upon the waters of the same port.

In 1912, Justice Hughes in *Anderson v. Pacific Coast S.S. Co.*, 225 U.S. 187, in commenting on this proviso, stated:

. . . The existing State laws respecting port pilotage again became operative.

In 1871, Congress repealed the acts of 1852 and 1866 and substituted in lieu thereof a new act which consolidated certain portions of the two earlier acts and set forth clear provisions concerning pilotage of coastwise seagoing steam vessels. It was to this consolidated act that Justice Hughes was directing his remarks in *Anderson v. Pacific Coast S.S. Co.*, *supra*.

It should be emphasized that the Congress, in permitting the states to retain jurisdiction of pilotage, has in no way abdicated its authority to regulate and to license pilots and to place restrictions upon the states in this respect. Although the states have enacted regulatory laws governing the licensing of pilots, their activity, their organization, their compensation and their supervision, such state laws affect only United States vessels sailing under register [authorized to engage in the foreign trade] and foreign-flag vessels plying waters in the several states; the Federal government has preempted the licensing of "pilots" serving on board enrolled, or enrolled and licensed vessels; i.e., vessels authorized to engage in the "coastwise trade." *Anderson v. Pacific Coast S.S. Co.*, *supra*. Moreover, the Federal government has acted to prevent state-licensed pilots from discriminating between vessels which they may lawfully pilot. For example:

46 U.S.C.A. 213 provides:

No regulations or provision shall be adopted by any State which shall make any discrimination in the rate of pilotage or half-pilotage

between vessels sailing between the ports of one state and vessels sailing between the ports of different states, or any discrimination against vessels propelled in whole or in part by steam, or against national vessels of the United States; and all existing regulations or provisions making any such discrimination are annulled and abrogated.

46 U.S.C.A. 214 provides that the Coast Guard shall grant to an applicant for a license to pilot steam vessels⁶ such license for a term of five years if it is satisfied, after diligent inquiry, that the applicant possesses the requisite knowledge and skill and is trustworthy and faithful. It also provides for the revocation of the license for certain causes.

46 U.S.C.A. 224 provides that it is unlawful to employ any person or for any person to serve as a pilot of any steamer who is not licensed by the Coast Guard.

46 U.S.C.A. 215 is more to the point and constitutes a flat interdiction against the states invading the sphere of Federally regulated pilotage. It provides, in part:

No State or municipal government shall impose upon pilots of steam vessels any obligation to procure a State or other license in addition to that issued by the United States, or any other regulation which will impede such pilots in the performance of the duties required by Title 52 of the Revised Statutes. . . .

See *Sprague v. Thompson*, 118 U.S. 90, interpreting the above-quoted language.

(Title 52, Revised Statutes contains many statutory sections, but insofar as it concerns the licensing of pilots it applies specifically to coastwise seagoing vessels not sailing under register (i.e., enrolled vessels and enrolled and licensed vessels) and therefore does not apply to vessels engaged in the foreign trade. See *Pacific Mail S.S. Co. v. Joliffe*, 69 U.S. 450, and *Anderson v. Pacific Coast Steamship Co.*, 225 U.S. 187.)

Federal Control of Coastwise Vessels

In addition to the statutes cited above, Congress has affirmatively required that all coastwise seagoing vessels shall be under the control

⁶ As is noted, *infra*, a further statute provides that the term "steam vessel" or "steamer," or "propelled by steam" also means any vessel subject to inspection, propelled in whole or in part by any form of mechanical or electrical power, with certain exceptions not here material.

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Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Transportation

3-19-91



House Transportation Committee

DATE: 5/19/91

PLACE: 17

SUBJECT OF MEETING:

HB 194
 HB 162
 HB 175

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/WHICH BILL?
Kirkby Day	CLAA	1429 Tongass KTV	99801	225-7711	225-6157	Y N	HB 194
D MONKMAN	Alaska Coastwise Pilots	Dillon & Fiddley 800 Sealaska Plaza Jno	99801		586-4000	Y N	"
Capt. H. K. Frenschke	S.W. Alaska	114 Austin Apt. 202 Met. Bldg	99801	225-2583		Y N	"
DALE C COLLINS	Seal Pilots	4212 S. TONGASS KTV	99801	224-5511	225-7671	Y N	"
Capt. W. C. Murphy	S.W. Alaska	Box 527 Homer, AK	99603	225-6271	226-8703	Y N	HB 194
GREG O'CLARAY	MEBA	124 FRONT ST, JUNO	99801	586-6150		Y N	HB 175
Ann Boudreaux	occ. LIC DCED			586-2533	2538	Y N	HB 194
Ann Boudreaux	occ. LIC DCED				2538	Y N	HB 162
Jim Towler	SE CONFERENCE	124 W. 5th St. / Juno	99801	586-1905	463-3445	Y N	HB 175
Don Kub	Master Pilots & Pilots Club Club Pacific	12280 MID LOOP RD	99801	784-9273		Y N	HB 194 HB 175
Jim Ayers	AMHS./DOT	P.O. box R	99811	5-3959		Y N	HB 175

H B

2 3 2

HOUSE COMMITTEE REPORT

Date Referred: March 22, 1991

FURTHER REFERRALS: Community & Regional Affairs
Judiciary

Date of Committee Action: 4/4/91

Committee TRANSPORTATION considered:

HB 232

HOUSE BILL NO. 232

SUNKEN AND ABANDONED VESSELS

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

RECOMMENDATIONS:

to be replaced with _____ 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 ~~A.A.B.~~ H.T.C

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Arew A. Luman</i>	✓				
<i>Frank Phillips</i>	✓				
<i>Jim Mc...</i>	✓				
<i>W. Anderson</i>	✓				
<i>Richard (Joke)</i>	⊗				
<i>Gene Robinson</i>	✗				

Richard (Joke)
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 232

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact: 0

ANALYSIS: (Attach a separate page if necessary)

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

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

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

HB 232
Shipwrecks Act*

Section Analysis
March 26, 1991

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

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

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

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

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

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

Section 5. Defines abandonment.

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

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

Defines owner.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 13. Definitions.

Section 14. Repealer.

Section 15. Provides for an immediate effective date.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

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

MEMORANDUM

February 19, 1991

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

TO: Representative George Jacko

FROM: George Utermohle *GU*
Legislative Counsel

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

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

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

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

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

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

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

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

Sec. 30.30.031.

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

Sectional analysis

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

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

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

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

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

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

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

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

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

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

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

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

Representative George Jacko
February 19, 1991
Page 3

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

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

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

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

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

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

GU:lmb:pl
91-053.lmb

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

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

April 3, 1991

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

APR 03

8/1
A.L.

Dear Representative Foster:

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

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

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

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

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

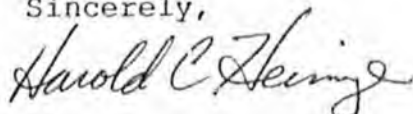
Sec. 30.30.099. APPLICABILITY. (a) Except as provided in (b) of this section, AS 30.30.031 - 30.30.099 apply to all vessels and cargo of vessels sunk or abandoned before, on or after the effective date of this act. The successor in interest of the person who owned, controlled, or had custody of a vessel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

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

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

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

Sincerely,

A handwritten signature in cursive script that reads "Harold C. Heinze".

Harold C. Heinze
Commissioner

enclosures

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

Byrce Edwons 465-4942

DATE	NAME	WHERE	POLLUTION	DISPOSITION	
2 OCT	TUG EASTERN	WHITSTONE MARROW	NONE	A	REFLOATED UNK 01
10 OCT 88	NOV 88 CITY OF SEATTLE	ATKA	UNK	A	UNK UNK 8
3 DEC	F/V OPTY	SHEMYA	UNK	A	UNK INFO 3
10 DEC	F/V RUSTAL MARM	AKWIN	NONE	A	THESE TO STAY DENATED/BURNED UNK 2
12 DEC	F/V DEYBOLAL	CLARENCE STRAT	NONE	B	UNK UNK 2
13 JAN	NOV 88 CHIL 87 JAN	UNLAKA (SUN)	YES (SHELTY)	A	THESE TO STAY DETERMINED DURING REPLY UNK 2
25 JAN	F/V TERMINAL	ST PAUL	YES	A	(POSSIBILITY OF RELATION) INFO 2
13 JAN	F/V CHRISTINE	WHITSTONE MARROW	NONE	B	REFLOATED UNK 3
23 JAN	F/V HENRY B	WHITSTONE MARROW	NONE	B	REFLOATED UNK 3
22 MAR	F/V SOLVIE	VSUAGAT ISLAND	NONE	A	UNK (BELIEVE REFLOATED) UNK 3
22 MAR	F/V DAILY BILLING	VSUAGAT ISLAND	NONE	A	UNK (BELIEVE REFLOATED) UNK 3
25 MAR	F/V SPENCER II	PORT HUGHTONS	UNK	B	UNK (BELIEVE STILL THERE) UNK 3
25 MAR	F/V MORGANE	SNOW PATZ	NONE	B	REFLOATED UNK 3
21 MAR	F/V JOHNNY FINE	SUNANON WBR	NONE		REFLOATED UNK 3
5 APR	F/V MARIANA THORND	CRUISE	NONE	A	REFLOATED UNK 3
28 FEB	F/V SWALLOW	DUTCH HARBOR	YES		STILL APPROX (PROBABLY TO STAY) UNK 3
12 MAR	F/V EXXON VDE	BUSH KILL, N.W. 1/2	YES	C	REFLOATED

1 OCT 88 TO 24 APR 89

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

FOR FURTHER INFO:

A MARINE SAFETY ANCHORAGE 271-5137
 B MARINE SAFETY KETCHIKAN 225-4491
 C MARINE SAFETY OFFICE VALDEZ 835-4791

List of vessels

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 11, 1990

OFFER OF SETTLEMENT & COMPROMISE
PROTECTED UNDER EVIDENCE RULE 408

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

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

Re: State of Alaska v. All Alaskan Seafoods

Gentlemen:

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

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

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

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

REPLY TO:

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

1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (307) 452-1568
FAX: (907) 456-1317

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

Dept of law

APR 27 1990

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

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

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

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

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

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

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

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

Sincerely,

DOUGLAS B. BAILY
Attorney General



By: Breck C. Tostevin
Assistant Attorney General

Enclosure

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

TRESPASS NOTICE AND ORDER TO QUIT

TO:

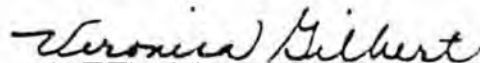
All Alaskan Seafoods Inc.
An Alaska Corporation
311 Mill Bay Road
Kodiak, AK 99615

Lloyd W. Canon, Registered Agent and/or

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

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

1. The M/V All Alaskan is aground on tidelands of the State of Alaska; namely near the northeast point of St. Paul Island, Alaska.
2. Your failure to remove the M/V All Alaskan constitutes an unauthorized remaining unlawfully upon the premises of the State of Alaska, namely the tidelands at the northeast point of St. Paul Island.
3. Your use and occupancy is unauthorized and contrary to law. Accordingly,
4. YOU ARE HEREBY ORDERED to quit your use and occupancy and to vacate the premises immediately and remove the M/V All Alaskan.
5. YOU ARE FURTHER ORDERED to remove all personal property and structures from the premises within thirty (30) days of this notice, including equipment, debris or other items of anything kind whatsoever.



Veronica Gilbert
Regional Manager
Division of Land Water
Management

CERTIFICATE OF SERVICE

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

April 11, 1990
Date

Barbara L. Isaac
Signature

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

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

MEMORANDUM

August 28, 1990

SUBJECT: Statutes relating to derelict and abandoned vessels

TO: Representative Cliff Davidson
ATTN: Jay Nelson

FROM: George Utermohle *GU*
Legislative Counsel

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

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

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

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

If I can provide further assistance, please contact me.

GU:lmb
90-0019.lmb

CC: Corky McCorkle
Harbor Master
Kodiak

HB 525

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

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 525

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

11 Sec. 30.30.051. FORFEITURE OF VESSELS. (a) A vessel that is
12 removed from public water or a port or harbor, under AS 30.30.010(b),
13 or an unattended vessel that is taken into custody under AS 30.30 020,
14 is subject to forfeiture under AS 30.30.051 -- 30.30.057.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HB 524

The first amendment expands AS 47.17.070(2)'s definition of "child abuse or neglect" to expressly include "mental injury."

The second amendment clarifies AS 47.17.070(10)'s definition of "sexual exploitation." It makes clear that "allowing," i.e., not preventing, a child's participation in acts of prostitution, or engaging in conduct that constitutes criminal exploitation of a minor, is considered sexual exploitation for the purposes of finding child abuse or neglect.

By bringing Alaska's child protection statutes into compliance with the Child Abuse and Prevention Act, 42 U.S.C. sec. 5101 et seq., the amendments make the state eligible to receive federal grants for developing, supporting, and implementing child abuse and neglect programs. Alaska is currently operating under a one-year waiver of the federal eligibility requirements, granted June 26, 1985 by the regional administrator of the U.S. Department of Health and Human Services. Because child abuse and neglect is a pressing problem in our state, and because federal support for our efforts to prevent and treat the problem is highly desirable, I urge your prompt passage of this bill.

Sincerely,

/s/

Bill Sheffield
Governor"

HB 525

HOUSE BILL NO. 525 by the Rules Committee by request of the Governor, entitled:

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

was read the first time and referred to the State Affairs, Transportation and Judiciary Committees.

A zero fiscal note with analysis was attached and appears in House Journal Supplement No. 78.

The Governor's transmittal letter dated January 29, 1986, appears below:

"Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the disposition of unauthorized vessels left unattended in boat

HB 525

harbors, and vessels that pose a hazard to navigation or a risk of pollution. The bill will clarify existing procedures in AS 30.30.010 -- 30.30.100.

The current statutory language provides overlapping and conflicting definitions for "abandoned" and "derelict" vessels, and two different procedures for disposing of them. In application, there are serious difficulties with using the statutes. It is nearly impossible to determine which standard to apply with its related disposal procedures. Furthermore, the disposal procedures have serious failings in terms of the notice given owners of seized vessels and other claimants of interest. The notice required is quite perfunctory, and results in the forfeiture of a vessel without any sort of judicial proceeding.

This bill removes the confusion in the statutory scheme, and provides revised procedures for the disposition of vessels removed from harbors. The revised procedures provide appropriate notice of the possible forfeiture of the vessel. They also ensure that there will be no forfeiture of vessels without the filing of a judicial proceeding.

The following sectional analysis of the bill highlights amendments to existing language and explains new language.

Section 1 amends AS 30.30.010(b) by allowing only peace officers to remove a vessel that is creating certain hazards. An existing reference to the Department of Transportation and Public Facilities is deleted. The language "or at a port or harbor" is added to give AS 30.30.010(b) the same coverage as AS 30.30.010(a). The list of situations in which a vessel may be removed has been slightly expanded.

A technical amendment to AS 30.30.010(a) deletes an unclear and unnecessary phrase ("of the state") from that subsection. In addition, this subsection contains two amendments to provide conformity with AS 30.30.020, as amended in sec. 2 of the bill.

Section 2 simply clarifies AS 30.30.020 by describing more precisely the places from which a vessel may be taken into custody. It also deletes the Department of Transportation and Public Facilities' authority to take vessels into custody, leaving that to peace officers.

Section 3 of the bill adds three new AS sections. New AS 30.30.051 sets out procedures for the forfeiture of vessels, and property on board the vessels, removed from public water or a boat harbor under AS 30.30.010(b), or taken into custody under AS 30.30.020. Notice to those known to have an interest in the vessel is required. Because the forfeiture is only accomplished by a judicial proceeding, notice to affected parties is given by service of the complaint. The use of this proceeding to accomplish the forfeiture is a major departure from the existing statutory procedure. The new procedure will provide greater protection of private rights because the process is under the supervision of the superior court.

HB 525

AS 30.30.054 provides the relief available in a proceeding filed under the proposed AS 30.30.051. In addition to the forfeiture of the vessel and other property aboard it, the court may order payment of harbor user fees, compensation for damage to public harbor facilities, and payment of the costs of custody and the costs of the litigation.

AS 30.30.057 prescribes the disposition of forfeited vessels. A vessel and other property aboard it, forfeited to the state, may either be destroyed or sold by the commissioner of administration, with any proceeds used to pay the costs of seizure, custody, forfeiture, and sale, and for any damage to public port or harbor facilities. If a vessel is forfeited to a municipality, the municipality has the same options.

Section 4 of the bill amends AS 30.30.160, to clarify that the Department of Transportation and Public Facilities may adopt regulations to carry out its powers and duties under AS 30.30 only; department regulations will not address the powers and duties of municipalities under that chapter.

Section 5 repeals AS 30.30.040, 30.30.050, 30.30.060, 30.30.070, 30.30.080, 30.30.090, and 30.30.100. It is appropriate to repeal AS 30.30.040 -- 30.30.080 because these sections relate to a disposal scheme that only applies to the disposal of "abandoned" vessels. There are difficulties with this existing language because it provides very little notice of the possible forfeiture of the vessel without a judicial proceeding. The repealed statutes are replaced with new provisions in sec. 3 of the bill, which provide a new forfeiture procedure.

AS 30.30.090 currently sets standards for "derelict" vessels which conflict with, and are unnecessary in light of, standards found in AS 30.30.010 for abandoned vessels. The repeal of AS 30.30.090 resolves this conflict.

AS 30.30.100 currently provides a taking and disposal procedure for derelict vessels. However, there are serious failings with this statute in terms of the notice of the possible forfeiture, and the fact that the forfeiture is accomplished without any sort of judicial proceeding. The repeal of AS 30.30.100 in sec. 5 of the bill, and the new language proposed in sec. 3, resolve these procedural difficulties.

This bill will greatly assist in the management of boat harbors in Alaska. It provides clear standards for dealing with unauthorized and hazardous "abandoned" vessels and provides appropriate safeguards for those having an interest in the vessels.

Sincerely,

/s/

Bill Sheffield
Governor"

1 IN THE HOUSE

2 HOUSE CONCURRENT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

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

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

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

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

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

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

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

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

24
25
26
27
28
29
HER

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-2800

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Transportation

4-4-91



Please complete all sections

House Transportation Committee

DATE: 4/4/91

PLACE: 17

SUBJECT OF MEETING:
 SB 9-
 HJR 15-
 HB 232-

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
JON SCRIBNER	DOT & PF			789-9110	789-6261	<input checked="" type="radio"/>	<input type="radio"/>	HB 232
Bob TRACZ	L. Indawere Newspaper	170 Fourth St R-202	99801	-	463- 5455	<input type="radio"/>	<input checked="" type="radio"/>	
BRYCE EDGMON	Rep. Juelo					<input checked="" type="radio"/>	<input type="radio"/>	HB 232
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
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						<input type="radio"/>	<input type="radio"/>	

HB

246

HOUSE COMMITTEE REPORT

(7) Date Referred: March 27, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 4/25/91

The TRANSPORTATION Committee considered: HB 246

HOUSE BILL NO. 246 APPROP: KETCHIKAN AIRPORT BRIDGE E.I.S.

"An Act making a special appropriation to the Department of Transportation and Public Facilities for an environmental impact statement for construction of a bridge connecting Ketchikan with the Ketchikan airport; 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) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	X				
<i>[Signature]</i>	x				
<i>[Signature]</i>	X				
<i>[Signature]</i>	X				

[Signature]
 CHAIRMAN'S SIGNATURE

ALASKA STATE LEGISLATURE

ELECTIVE DISTRICT 1

HYDER
KETCHIKAN
KUPREANOF
MEYERS CHUCK
PETERSBURG
SAXMAN
WRANGELL



HOME

PO. BOX 5723
KETCHIKAN, AK 99901
PHONE 225-6304

DURING SESSION

PO. BOX V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE 465-3424

Representative Cheri L. Davis

SPONSOR STATEMENT HOUSE BILL 246

Good morning and thank you for scheduling this bill so promptly.

As many of you heard from testimony given in Ketchikan, the Ketchikan International Airport is located across the channel from town on Gravina Island. Access to the airport is by small ferry and is limited in hours of operation. Since the first airport feasibility study was completed in 1967, the need for a hardlink access to Gravina has been evident and documented.

Included in your backup are memo's from airport staff relating to the hazards and problems that occur when operating a ferry as sole access to the airport. A quick trip to the airport can take several hours due to low tides or mechanical problems aboard the ferry.

Aside from the economic enhancement a hardlink would provide for the airport, access to Gravina Island would open up 4,000 acres of statehood land selection for future use. Because of our topography, Ketchikan is known for being a city three-miles long and three blocks wide. Opening up additional land on Gravina would greatly benefit the business community and enhance recreation.

Over the years, feasibility studies and comprehensive plans have been completed; Borough resolutions have been passed supporting the hardlink; and the hardlink has been put on the community legislative priority list. The money requested in this bill is the next step towards making the hardlink a reality.

Thank you for your time in considering this bill.

KETCHIKAN COMMUNITY LEGISLATIVE PRIORITIES

SEVENTEENTH STATE LEGISLATURE

First Session - 1991

CAPITAL IMPROVEMENT PROJECTS - Top Community Priorities

Health and Safety Projects

- Ketchikan Area Water Resource Project
- Upgrade Saxman Water Service System
- Mountain Point Water and Sewer Project
- Tongass Avenue/Water Street Water Pipe Replacement
- Emergency Fire Apparatus Replacement (KFD)
- Wastewater Treatment Plant Upgrade (ADEC Grant)
- Nefco Road Sewer and Water (ADEC Grant)

Transportation

- Hardlink Access between Revilla and Gravina Island - Environmental Impact Statement
- Pedestrian Bike Path (City Limits to Saxman) - Phase I
- Ketchikan International Airport Air Cargo Development - Phase I
- Boundary Road (Point Higgins School Access Road)

Economic Development

- Ketchikan Shipyard Improvements - Shop Building Number Two
- Saxman Civic/Cultural Center Improvements

THOUSANDS

450

440

430

420

410

400

390

380

370

360

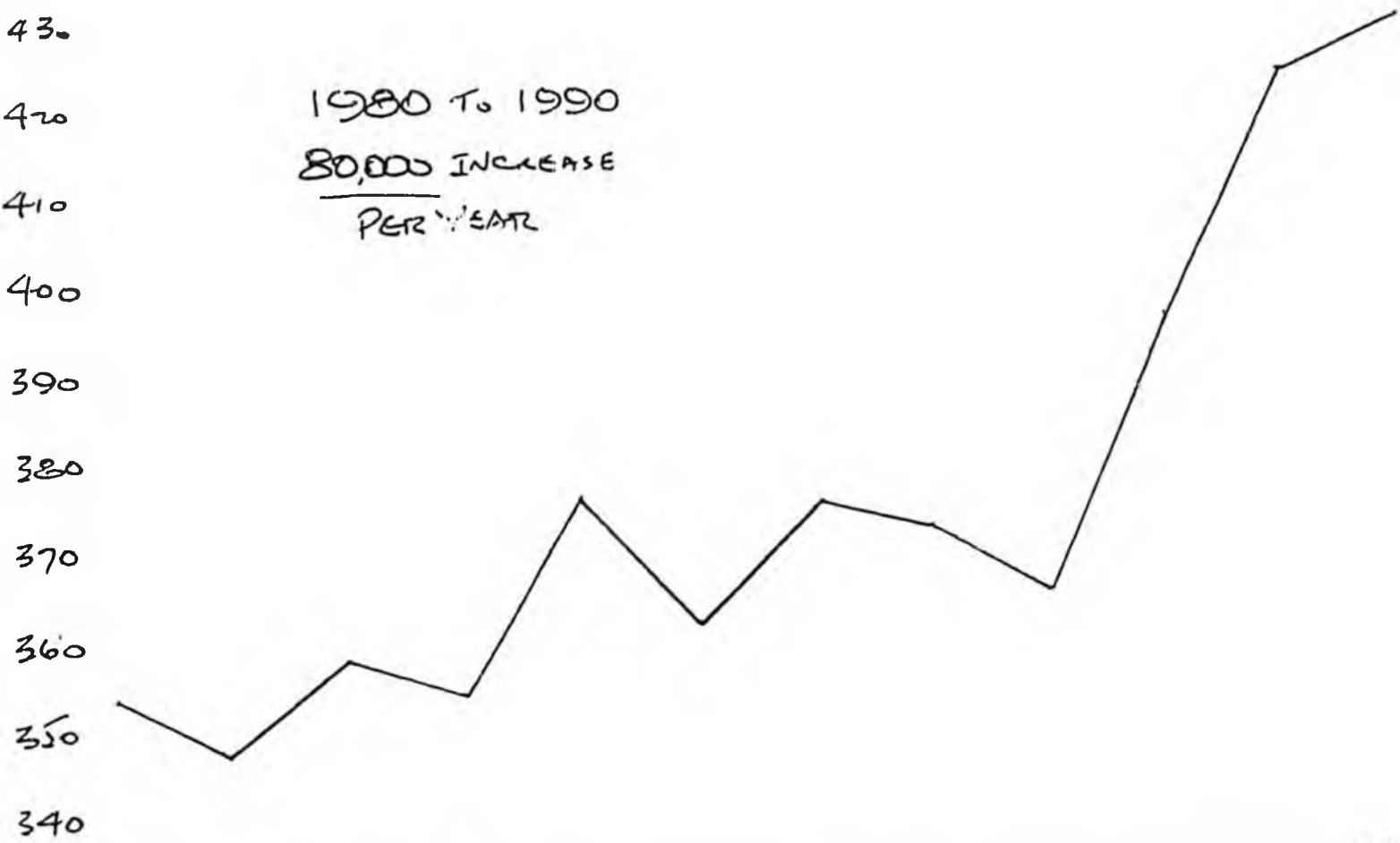
350

340

1980 TO 1990
80,000 INCREASE
PER YEAR

1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992

AIRPORT FERRY TRAFFIC - KTN



PAST EVENTS RELATED TO AIRPORT ACCESS

- 1967 Airport Feasibility, Wyller-Killewich-Van Doren & Hazard
- 1968 Effect on Annette Island, also by W-K-VD & H
- 1968 Borough Airport Hearings
- 1968 Ktn Gateway Borough Hard-Link Resolution #59 passed
- 1971 Borough Airport Documentation
- 1971 Ktn Int'l Airport Comprehensive Plan, Forrest & Hanson
- 1973 Ak Dept. of Highways Reconnaissance Report & Public Hearings
- 1973 Ktn Int'l Airport opens
- 1973 Ktn Gateway Borough Hard-link Resolution # 127 passed
- 1975 Ktn Gateway Borough Hard-link Resolution #214 passed
- 1981 Reid-Middleton Master Plan completed
- 1981 Ktn Gateway Borough Hard-link Resolution # 413 passed
- 1981 EMPS-Sverdrup Crossing Study & Hearings completed
- 1984 Narrows Crossing Cost/Benefit Study By TAMS Engineers
- 1986 Borough Assembly accepts Crossing # 7 site
- 1987 Ktn Gateway Borough Hard-link Resolution # 794 passed
- 1989 Pennock/Gravina Road Corridor monumented and adopted
- 1989 Golf Course feasibility study by William G. Kenfel & Assoc.
- 1989 Coffman Assoc. update Airport Master Plan
- 1989 Legislature names future Gravina bridge "Ketchikan Veteran's Memorial Bridge".

years in jail and a member in the district attorney's office reported.

1-10-90

Tides impede traffic

Low tides will affect vehicle traffic on the Ketchikan International Airport ferry Wednesday and Thursday evening.

There will be no vehicle traffic 90 minutes before and after low tide at 6:18 p.m. Wednesday and 7:01 p.m. Thursday. The low tides are minus 3.0 feet and minus 3.1 feet, respectively. Foot traffic will not be affected and people may board the ferry as normal.

1/23/90

Ferry delayed

About 10 people were stranded at the Ketchikan International Airport ferry terminal and missed their Alaska Airlines flight Sunday afternoon after airport ferry Ken Eichner was out of service for 1-1/2 hours.

The Eichner sustained electrical failure after reaching the airport about 3:15 p.m. The engine was shut down and after trying to locate the problem, a maintenance crew decided to switch the alternator. Normally, there would be a back-up ferry, but ironically, the Bob Ellis had been taken to Ketchikan Welding Works earlier in the afternoon for a scheduled engine replacement.

"This was just a fluke," Airport Manager Ken Linder said. "We had just taken (the Ellis) down to Ketchikan Welding."

While the Eichner was being worked on, a crew went to get the Ellis from the Ketchikan Welding's dock.

Meanwhile, the Eichner was restarted and made a few runs before the Ellis took over at 6:15 p.m., said Linder.

In the midst of the maintenance problems, a medivac flight from Seattle was in progress. Ketchikan General Hospital made arrangements to have the patient flown over to the airport via helicopter to catch the medivac. However, the ferry was back in service before that backup plan was used, said Linder.

DATE: January 16, 1990

SUBJECT: Ellis Temporarily Out Of Service

The 8 a.m. ferry departure from the airport did not occur due to a fuel problem on one of the engines. The engine quit and had to be re-started. All vehicles and passengers were off the ferry and carefully moved to the moorage dock at the airport. The ferry was on the run and things were back to normal by about 9:15 a.m.

A later look at the system showed significant water in the fuel system. Anderes and they are assisting us in the pump. The Ellis will be out of service until we can remove all the contaminated fuel from the fuel system. This may take a day or two.

productivity.

WEATHER DISRUPTS VEHICLE TRAFFIC

On January 25th vehicle traffic was temporarily halted due to high winds and rough water conditions. Walk-on passengers were accommodated without any problems. These conditions lasted for approximately 2 hours. On another note, no damage was done to either the seaplane float or floating boat dock. The Murphy's Pullout facility operated by the airport was not damaged either. However, as everyone is well aware, the float and hangar next to Murphy's Pullout was heavily damaged.

ew long narrow narrows.

"He made a good, logical, safety call," he said.

A survey was initiated on the Eichner Monday to determine the cause of the problem, said Linder.



FOR YOUR INFORMATION

12-3-90

KETCHIKAN GATEWAY BOROUGH

Ketchikan International Airport
1000 Airport Terminal Building
Ketchikan, Alaska 99901
(907) 225-6800

TO: All Airport Tenants and Employees
FROM: Penny Luse, Administrative Assistant
DATE: November 30, 1990
SUBJECT: Vehicle Restrictions Due to Minus Tides

Low tides this coming week will limit vehicle access to the ferry for periods of time. The minus tides will occur as follows:

	<u>DATE</u>	<u>TIME</u>	<u>TIDES</u>
Saturday	December 1	5:51 p.m.	- 3.3
Sunday	December 2	6:37 p.m.	- 3.9
Monday	December 3	7:26 p.m.	- 4.0
Tuesday	December 4	8:14 p.m.	- 3.4

Vehicle access to the ferry will be interrupted for about 90 minutes before and after low tides occur. These tides will impact those passengers departing and arriving on Alaska's Flights 64 and 69.

We apologize for the inconvenience and thank you for understanding. If you have any questions, please contact the airport manager's office.





KETCHIKAN GATEWAY BOROUGH

344 Front Street
Ketchikan, Alaska 99901
(907) 225-6151

March 22, 1990

~F1~
~F2~
~F3~
~F4~

Re: Aircraft and Airport Ferry Operations in the Vicinity of the Airport Seaplane Dock (or It Is Spring Again!)

Dear ~F5~:

It looks like spring is here and we are already noticing the increase in aircraft traffic arriving and departing from the seaplane dock at the airport. Along with the increased traffic we have witnessed several "close encounters of the aircraft/ferry kind."

We would like to encourage aircraft operators to alert their personnel to the hazards of operating boats and airplanes in the confined channel area near the seaplane dock. Passengers and crews on the ferries are easily alarmed when a rapidly moving aircraft passes in close proximity to the ferry boats since it is not a normal or comfortable experience for most. Aircraft operating at high speed near a vessel almost always appear much closer than they actually are which simply augments people's perceptions of an "unsafe and dangerous act".

Besides not being a safe practice, operating aircraft close to vessels is also almost entirely unnecessary and at the least does not portray professionalism or skill. It does not leave a safety margin allowing for miscalculations or safe avoidance action to a rapid development of unexpected events.

Airport ferry personnel are very sensitive to the hazards involved and would like to assist pilots operating aircraft by developing reasonable vessel procedures that will allow aircraft operators to predict ferry routes and movements. During the heavy traffic months in the summer, the skippers must monitor deck loads and count vehicle and pedestrian traffic to stay within the U.S. Coast Guard vessel licensing restrictions. They are often unprepared to notice an aircraft that is low on approach landing "close in" for the purpose of being able to fall off the step right at the dock or to avoid swells or longer taxi time.