

ALASKA LEGISLATURE COMMITTEE FILES

1993-1994

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HOUSE JUDICIARY



■ *Faddish firepower:* A Los Angeles gang member sports an Uzi. Availability of guns has been blamed for the murder plague, but what inspires the killer behind the gun?

music as one of the two most powerful influences on young people. These experts echo Aristotle, who believed that music has the power to shape character.

Motley Crue, perhaps the most popular heavy metal rock band today, says that "those who have the youth have the future." Who has them? The average teenager today listens to rock music from four to six hours a day. We should not wonder why. Young people are searching for guidance, meaning, and identity and are not finding it where they should.

The *Washington Post* recently ran a front-page story about the despair and sheer boredom among affluent northern

Virginia teenagers. Columnist Cal Thomas points out that rock stars meet three of children's basic needs: "First, [they] provide unlimited time. They never tell teens to come back when they're not busy. . . . Second . . . [they] offer complete, unqualified acceptance. . . . Third, [they] understand."

What do the rock stars tell America's youth during that unlimited time? *U.S. News* observed recently that there is an emphasis on "violence and far more explicit sexual descriptions." Even liberal columnist Ellen Goodman writes that "rock lyrics have turned from 'I can't get no satisfaction' to 'I'm going to force you at gunpoint to eat me

alive.'" *Time* magazine also noted that "rock music has become a dominant—and potentially destructive—part of teenage culture. Lyrics, album covers and music videos, particularly in the rock genre called heavy metal, romanticize bondage, sexual assaults and murder."

Among the hundreds of heavy metal bands willing to spend unlimited time with America's youth are Annihilator, Atrocity, Blood Feast, The Damned, Death, Deicide, Devastation, Entombed, Guillotine, The Horde of Torment, Infernal Majesty, Legion of Death, Massacre, Megadeth, Morbid Angel, Obituary, Pestilence, Poison, Rigor

Mortis, Slaughter, Slayer, Sodom, Suicidal Tendencies, Terrorizer, Venom, Wasted Youth, and The Zombies. We have further legitimized this part of youth culture by handing out a Grammy Award and an American Music Award each year to the "best" heavy metal band.

Rap music, popular among white as well as black youth, often pushes the same message of violence, deviance, and exploitation. The rapper Ice Cube recently released an album titled *Death Certificate*. In one song, he calls his former group N.W.A. (Niggers with Attitude) to kill their "white Jew" manager. In another song, "Black Korea," he calls on blacks to loot and burn business establishments operated by Koreans. Music critic Leonard Pitts cites Ice Cube and N.W.A. as examples of "gangsta rap," which he describes as "a sound of unredeemed violence and unrelied ugliness. . . . Think . . . of a world where the old rules are punk rules, where what's right for you is all that matters."

The group Public Enemy recently released a video titled "By the Time I Get to Arizona" protesting the decision by Arizona voters not to establish a public holiday to honor Dr. Martin Luther King, Jr. It depicts members of the group murdering the state's elected officials, including the governor. Black columnist Clarence Page called it "an odd-ball way to celebrate the legacy of Dr. King, a man who lived and died by a philosophy of non-vio-

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**American culture today accepts the notion that death is a solution to life. The flipside of that coin is that life just does not mean much.**  
■

lence." The *New York Times* recently called bigotry "the new sound in pop music," and Mira Boland of the Anti-Defamation League of B'nai B'rith says that "given the popularity of rap music today, it's hard to think of a more insidious influence on the minds of young people."

Another example of a culture that produces violent youth is the breakdown of the family. Marriage today is seen as a temporary arrangement between two individuals rather than the lifelong foundation of a family. The worst thing for children is their parents' divorce. Louis Sullivan, secretary of health and human services, points out that 70 percent of juveniles in long-term correctional facilities grew up without fathers.

My experience on the staff of a long-term youth rehabilitation facility is similar. More than 90 percent of the kids come from broken homes. One analyst, writing in *Policy Review*, concluded that the absence of fathers "is at the root of the epidemics of crime and

drugs."

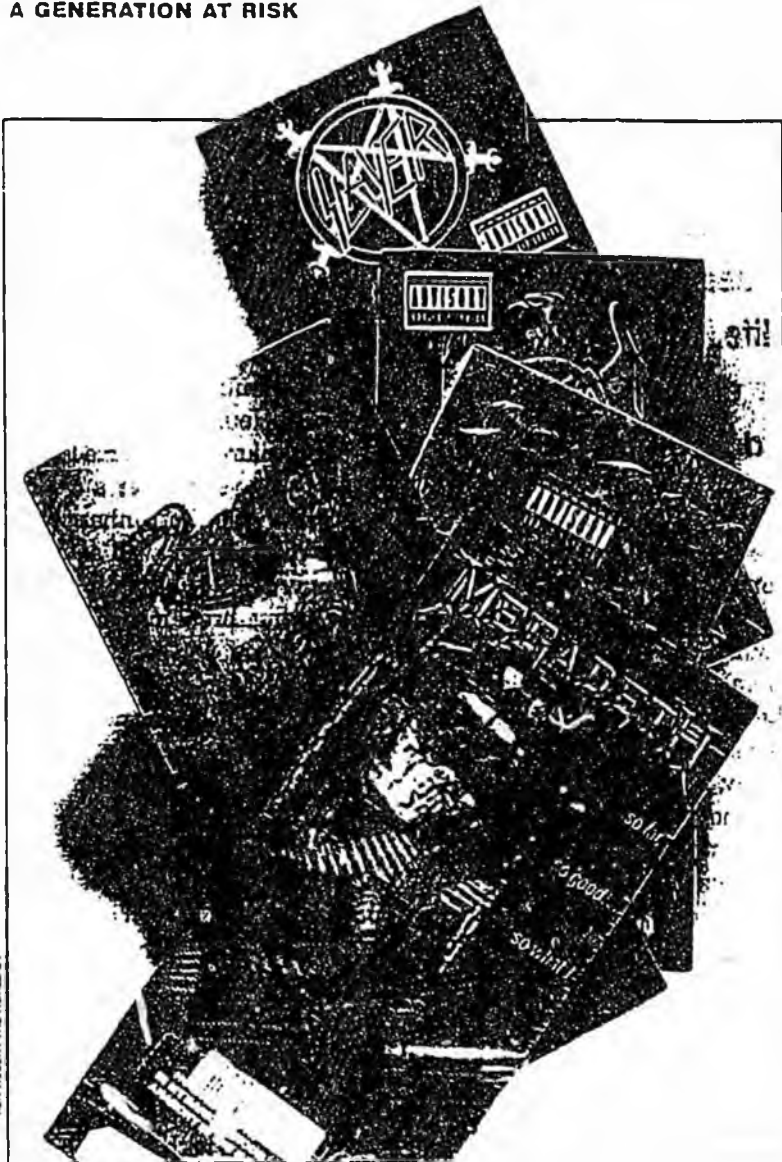
Of course, a warm body around the house does not a good role model make. But no father at all brings the chances down to zero. Peter Weyrich's study *The Human Costs of Divorce: Who Is Paying?* describes how the capacity for parenting diminishes after divorce. He notes how the California Children of Divorce Project found that years after a divorce "anger, apathy, and unhappiness were common, as well as delinquency, including drug abuse, shoplifting, breaking and entering, drinking, and sexual promiscuity. Through it all, it was clear that strong emotional needs were still unmet."

#### THE SOLUTION

Unless the cure meets the cause, the problem will persist. In general, the solution is to make children a priority. This has two components, one parental and one societal. The bottom line is that parents need to pay attention to their children. This means spending time with them. Pencil in some "quality time" just won't do. The parent who treats the local shopping mall as a babysitter is the same parent who says "I never knew" when drugs are found in the school locker. Parents should know who their children's friends are; most have no clue.

Children want and need attention, to know that they matter to someone, to trust that someone cares about what hap-

## A GENERATION AT RISK



pens to them. In his book *Honor Thy Children*, Orley Herron lists among his "21 commandments of good old-fashioned parenting" such things as taking time to be with your children, identifying with them, participating in projects with them, planning family activities, and enjoying them. All these things require attention and keeping children at the top of the priority list. Spouses do not

automatically make good parents; marriage should be as much for family and children as for each other.

Paying attention includes monitoring what is being pumped into children's brains through music and television. If someone were to come into your home and encourage your children to murder, rape, and rebel, you would show them not only the door, but

■ *Inducements to death:* Heavy metal and rap music, which often use words and imagery full of violence, sexual deviance, and suicide, help mold a culture that devalues life.

a thing or two besides. Any teacher who did the same would be fired. Well, don't forget that someone who is willing to spend unlimited time with your children may be doing just that through those Walkmans attached to their heads. Do you know who has your children's ear?

Paying attention also includes discipline. Adults often talk at and about teenagers, but they do not talk to them or with them. And they do not listen to them. Young people want direction, they want limits, they want meaning, and they want guidance. They will learn what they are taught and they will meet expectations.

When the teaching comes from delinquent peers or rock musicians, when expectations are only negative, it is little wonder why we see the results we do. At the facility where I volunteer, one boy wrote me a note that said: "You are the father I always wanted, who would take the time and show me what's right." That's what he had always looked for in a father but had never found: time and discipline.

Feder writes about exactly the same thing (we did not compare notes): "Our father knew what yuppies never learned, or

quickly forgot. There is no substitute for paternal affection and discipline." Could we be onto something here?

William Raspberry writes that the situation will not improve "until we learn once again to honor, preserve and strengthen the one arrangement that seems to offer the best chance for producing healthy, happy and competent children—the child-centered marriage."

There is also a societal component to making children a priority. First, we must encourage the formation and permanency of marriage. As long as it is deemed an arrangement only for two individuals rather than an institution for the family, children will continue to suffer. No-fault divorce assumes no-commitment marriage: no commitment to the spouse and none to children.

Second, we ease the financial burdens of raising children. Fathers today are actually earning less than their own fathers did. Most families with children now pay even more in payroll taxes than in federal income taxes. While the percentage of income paid in taxes by singles and married childless couples remained the same from the 1960s to the 1980s, it more than doubled for families with children.

This is why President Bush's proposal in his State of the Union address on January 18 to raise the exemption for dependent children by just \$500 means virtually nothing. An extra 20 cents

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**It remains true that the large majority of black youth are not out killing for Reeboks, but are going to school and church, working, and just trying to grow up.**  
■

per day for families already so far behind just won't make a difference.

Third, we must bring parents directly in touch with, so that they can evaluate, some of the most destructive cultural influences on their children. Several states have considered legislation to prohibit the sale of recordings advocating violence, drug abuse, and the like to minors. Once Johnny has to ask Mom to buy the next release by Dark Throne, Morgoth, or Ultimate Revenge for him, Mom might just get the education she needs.

Finally, we must encourage and advance private efforts to help youth that work. For example, the Endowment for Community Leadership, founded by Spencer Brand, provides funding to support people helping people in community-based projects across the country. The endowment helps fund Colorado Uplift, for example. Of 1,300 delinquent youth in that program, more than

800 now enjoy full-time employment. Focused on developing leadership skills among minorities in major cities, the endowment believes that rebuilding families and teaching responsibility to youth are critical priorities.

My message usually is that rock stars should not be used as examples for anything. If parents give their children the unlimited time, unconditional acceptance, and understanding that rock stars are willing to provide, the homicide statistics would be far different. ■

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*Thomas L. Jipping is director of the Center for Law and Democracy at the Free Congress Foundation, a nonprofit public policy research institute. He also serves as a consultant in the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention.*

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- 1 11-19-93 Decision on Cross Motions for Summary Judgment signed by Judge Reese
- 2 12-14-93 Supplemental Findings on Injunction Issue signed by Judge Reese
- 3 12-14-93 Final Order and Judgment signed by Judge Reese
- 4 02-10-94 Memo to Stastny from Kreinheder re: Projected Constitutional Budget Reserve Fund Allowable Majority Vote Appropriations
- 5 02-11-94 Final version of bill making appropriations to and from the constitutional budget reserve fund and transmittal letter

~~02-11-94~~

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

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RICK HALFORD, President of  
the Alaska State Senate,  
DRUE PEARCE, STEVE FRANK,  
BERT SHARP, MIKE MILLER,  
RANDY PHILLIPS, TIM KELLY,  
LOREN LEMAN, GEORGE JACKO,  
STEVE RIEGER, and ROBIN  
TAYLOR, comprising the  
Senate Majority of the  
Eighteenth Alaska Legislative  
Session,

Plaintiffs,

v.

WALTER J. HICKEL, GOVERNOR OF  
THE STATE OF ALASKA, and  
DARREL J. REXWINKEL,  
COMMISSIONER OF THE ALASKA  
DEPARTMENT OF REVENUE,

Defendants.

STEVE COWPER,

Plaintiff,

v.

WALTER J. HICKEL, Governor  
of the State of ALASKA,  
DARREL J. REXWINKEL,  
Commissioner of the  
Department of Revenue for  
the State of Alaska,  
and the STATE OF ALASKA,

Defendants.

Post-It brand fax transmittal memo 7671 # of pages

To: Bartels

From: A.D. Hickel

Co: Anchorage

Phone: 907-561-1111

Fax: 907-561-1111

Case No. 3AN-93-62 /CIV  
(Consolidated)  
Case No. 3AN-93-6848CIV

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DECISION ON CROSS MOTIONS FOR  
SUMMARY JUDGMENT

This court has been called upon to decide if the informal conference appeal procedure set out in A.S. 43.05.240 (a) is an "administrative proceeding" as used in Article IX, Section 17 of the Alaska Constitution, the Constitutional Budget Reserve Fund.

These informal appeals are administrative proceedings, and therefore money received from settlements, final decisions or otherwise at this appellate level are subject to segregation into the Constitutional Budget Reserve Fund.

**BACKGROUND**

On January 2, 1991, Article IX, Section 17 of the Alaska State Constitution took effect. This constitutional amendment was approved by the voters after being presented to them by the legislature in a ballot proposition during the prior fall election.

1 This new constitutional language requires that  
2 money received by the state after July 1, 1990, from the  
3 resolution of mineral tax disputes, is to be placed in  
4 a Budget Reserve Fund, separate from the general fund of  
5 the state, and quite limited in its availability for  
6 appropriation by the legislature.

7 The state had been receiving and continues to  
8 unpredictably receive large sums of money, amounting to  
9 hundreds of millions of dollars, from oil and gas tax  
10 appeals. The legislature intended to restrict the  
11 spending of these "windfalls" of what were essentially  
12 back taxes by placing these funds in the constitutionally  
13 mandated Budget Reserve Fund. (The language adopted by  
14 the voters does not mention windfalls, although the voter  
15 pamphlet pro and con statements both mention the word).

16 One of the sources of mineral tax appeal income is  
17 the informal conference procedure established by  
18 A.S.43.05.240 (a) and 15 AAC 05.010 and .020. This is the  
19 optional first stage of the taxpayer remedies which  
20 become available when the Department of Revenue serves  
21 a notice of tax deficiency following an audit of a tax  
22 return. Money received from settlements of or following  
23 final decision in these informal appeals was apparently  
24 placed in the Budget Reserve Fund in early 1991,  
25

1 (although present and former revenue officials give  
2 differing answers about the issue. See affidavits of  
3 Floerchinger, Fischer and Dick, as well as deposition  
4 excerpt of defendant Rexwinkel, page 74). At that time  
5 the Department of Revenue removed the informal conference  
6 money from the Budget Reserve Fund account and placed it  
7 in the general fund, making it available for the  
8 legislature to appropriate in the same manner as  
9 unrestricted state revenues. Subsequently received  
10 informal conference money has also been placed in the  
11 general fund.

12 By the summer of 1993 nearly \$800,000,000.00 of this  
13 money had been placed in the general fund. During the  
14 1993 legislative session appropriations from the general  
15 fund spent essentially all of this informal appeal money.

16 These consolidated lawsuits were subsequently filed  
17 challenging the legality of the state placing this money  
18 in the general fund rather than the Constitutional Budget  
19 Reserve Fund. Plaintiffs are the "Senate Majority" a  
20 group of state senators, as well as former Governor Steve  
21 Cowper, who was governor at the time of creation of the  
22 Budget Reserve Fund amendment. Defendants are the present  
23 Governor, Walter J. Hickel, his Commissioner of Revenue,  
24 Darrel J. Rexwinkel, and the State of Alaska. Governor  
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Hickel, through the Commissioner, is responsible for placing state money in the proper accounts.

All parties have moved for summary judgment on the question of whether the "informal conference" appeal process is an "administrative proceeding" as contemplated by the Constitutional Budget Reserve Fund amendment.

### ANALYSIS

The Budget Reserve Fund was established by Article IX, Section 17(a) of the Alaska Constitution, which states:

(a) There is established as a separate fund in the State treasury the budget reserve fund. Except for money deposited into the permanent fund ..., all money received by the State after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a State or federal court involving... taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund....

The meaning of the "administrative proceeding" language in the above provision is the focus of this case.

### ADMINISTRATIVE PROCEEDINGS

The meaning of this term can be a technical legal

1 meaning developed over time by the courts, the  
2 legislature or otherwise, or it could be the common,  
3 everyday meaning likely to be placed on the term by the  
4 voters ratifying the constitutional amendment.

5 Technical meanings: There are three general types  
6 of administrative proceeding: administrative rulemaking,  
7 administrative investigation, and administrative  
8 adjudication.

9 Here the administrative proceeding is one in which  
10 a final decision is possible, ("...termination, through  
11 settlement or otherwise...") and one in which a dispute  
12 is present, (disputes are "settled," and the reference  
13 to litigation also implies dispute resolution).  
14 Therefore rulemaking administrative proceedings are  
15 excluded simply by the context.

16  
17 Investigative administrative proceedings are  
18 probably also excluded, see Mallas v. United States, 993  
19 F.2d 1111, 1112 (4th Cir. 1993), although the line is not  
20 as clear, since an investigation of an issue eventually  
21 terminates in a result which could have mandatory  
22 consequences, and "settlement" of the issue under  
23 investigation is a conceivable interim resolution,  
24 although this is a bit of a stretch.

1 The audit performed by the Department of Revenue of  
2 a taxpayer's return is an investigatory administrative  
3 proceeding. None of the parties to this case have  
4 suggested that these audits and the resulting deficiency  
5 assessments are covered by the Budget Reserve Fund  
6 requirements, and the legislative history does not  
7 suggest it.<sup>1</sup>

8 The most clear administrative proceeding covered by  
9 the context of the Budget Reserve Fund language is an  
10 adjudicatory administrative proceeding: a proceeding in  
11 which a dispute between a taxpayer and the department is  
12 resolved, resulting in a final, collectable tax  
13 obligation.

14  
15 The central question then is whether the informal  
16 conference remedy provided by A.S.43.05.240 (a), and  
17 expanded upon in 15 AAC 05.010 and .020 is an  
18 adjudicatory administrative procedure. The statute says:  
19  
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21 <sup>1</sup> (This is not to say someone might not try to  
22 impose this extension someday. Alaskans are contentious  
23 and tend not to trust authorities to spend their money.  
24 That's why we have the Permanent Fund, the Budget Reserve  
25 Fund, various tax "caps", etc. The senate majority didn't  
even trust itself with the \$800 million. That's why they  
protested its placement in the general fund: for fear  
they might spend it....)

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Sec. 43.05.240. **Taxpayer remedies.** (a) A person aggrieved by the action of the department in fixing the amount of a tax or in imposing a penalty may apply to the department within 50 days from the date of mailing the notice required to be given to the person by the department, giving notice of the grievance, and requesting an informal conference. At the conference the person aggrieved may present arguments and evidence relevant to the amount of tax or penalty due the state. If the department determines that a correction is warranted, the department shall make the correction.

The nature of the informal conference itself is established in the administrative code which states:

15 AAC 05.020. **INFORMAL CONFERENCES.** (a) Upon receipt of a written request for appeal under 15 AAC 05.010 requesting an informal conference, an appeals officer will promptly schedule the informal conference. The informal conference will be conducted in person, through correspondence, or by telephone, audio, or video teleconference, or other electronic means. The appeals officer shall make available to the person who filed the request for appeal the relevant portion of that person's file, and shall explain at the informal conference the action taken by the department. A person who wants to present facts and information in support of its position must bring all pertinent books, records, schedules, and other documents to the conference. The appeals officer may copy any of the books, records, schedules, and other documents brought to the conference or otherwise made available to the appeals officer. The person who filed the request shall supply additional information that the appeals officer considers necessary.

(b) After considering the facts, information, and arguments presented at the informal conference, the appeals officer shall promptly render a written decision. The decision must identify the issues in controversy for purposes of further appeal. If the appeals officer believes that modification of the department's action is appropriate, modification must be made and reflected in the written decision.

1 (c) The decision of the appeals officer is final  
2 for purposes of appeal to a formal hearing under 15  
3 AAC 05.030 but is not a final administrative  
4 determination for purposes of appeal to the  
5 superior court.

6 So, the informal conference is a proceeding in which  
7 an aggrieved taxpayer appeals a mineral tax or penalty  
8 deficiency assessment and presents evidence. The appeals  
9 officer who hears the appeal considers all the evidence  
10 and the arguments of the taxpayer. If the officer decides  
11 it is appropriate to change the assessment in light of  
12 the evidence and argument presented, he or she does so,  
13 and this new deficiency amount is included in a written  
14 decision which is final and subject to collection by the  
15 state unless a further appeal is instituted. Is this an  
16 adjudicative administrative proceeding?

17 The state argues that this process is too lacking  
18 in formal adversary procedures to constitute an  
19 adjudication, and therefore is nothing more than an  
20 extension of the audit process, a reconsideration of the  
21 deficiency assessment.

22 The opinion of the Attorney General of April 24,  
23 1992, part D., pages 7 through 22, is the initial  
24 internal authority for removing the informal conference  
25 money from the Constitutional Budget Reserve account and  
placing it in the general fund. Several sides of the

1 issue are discussed, but the deciding aspect in the  
2 opinion is the attorney general's conclusion that a  
3 "conference" is not the same as an adjudicatory hearing.  
4 But the characterization of the conference as different  
5 from an adjudicatory hearing is not sound. At page 12,  
6 the opinion says the informal appeals officer is not a  
7 judicial or quasi-judicial officer, yet the appeals  
8 officer hears evidence, may ask for further evidence,  
9 weighs it and then makes a formal, written decision. It  
10 is difficult not to view such an official as having  
11 "judicial" or deciding power. Common sense allows no  
12 other conclusion.

13 Following this logical lapse, the opinion goes on,  
14 still at page 12, to characterize the written decision  
15 of the appeals officer as simply setting out the  
16 disagreements of the parties. Although he is required to  
17 state those disagreements, the appeals officer is writing  
18 a decision about the dispute, the dispute raised in the  
19 appeal. The officer must take into account the taxpayer's  
20 evidence and argument. And the written decision is final.  
21 It is as final as an unappealed deficiency assessment or  
22 formal hearing decision or a court decision which is not  
23 appealed further. Finality occurs when the tax is due and  
24 collectable, and should not be confused with the  
25 legalistic concept of exhaustion of remedies. Termination

of the proceeding is what the constitution refers to, which precludes the idea of appeal.

1           The opinion goes on to state

2           ...It [the informal conference] is not a process  
3           which results in the protection of a legal right,  
4           or redresses or prevents a wrong, as does a judgment  
5           or other order enforceable by judicial process....

6           This statement is wrong on all points.

7           The informal conference could as easily have been  
8           called an informal adjudication. It is informal compared  
9           to the formal appeal hearing of A.S. 42.05.240 (b), and  
10          is less adversary, but it is obviously an adjudication  
11          of a dispute. The informality makes it more convenient,  
12          but not less substantive nor final.

13  
14                   **ADVERSARY JUSTICE MODEL**

15  
16          The state points out that the informal conference  
17          lacks some of the traditional adversary justice hallmarks  
18          of common law jurisprudence: cross examination of  
19          witnesses, neutral hearing officer, record maintained for  
20          appeal.

21  
22          The state misses the point.    The procedural  
23          safeguards do not define the proceeding.  Instead, what  
24          procedural formalities are necessary depends on the  
25          context of the proceeding.  An analysis of the types of

1 procedural safeguards the state is concerned about  
2 illustrates that the context of the proceedings is the  
3 relevant inquiry.

4 As to cross examination, a proceeding to adjudicate  
5 a question involving credibility or veracity might  
6 require oral testimony and cross examination, Goldberg  
7 v. Kelly, 397 U.S. 254 (1970), (welfare termination),  
8 while a dispute involving objectively obtainable facts  
9 may only require a proceeding involving the informal  
10 exchange of information, Matthews v. Eldridge 424 U.S.  
11 319 (1976), (statistical evidence and medical reports in  
12 a disability termination).

13 Cross examination, if necessary, is certainly not  
14 precluded by the informal conference process. The  
15 taxpayer presents "evidence" to the appeals officer.  
16 Evidence includes testimony of witnesses, which certainly  
17 includes cross examination. In the context of a tax  
18 appeal, it would rarely come up, however, as credibility  
19 and veracity are usually not the issues in dispute.

20  
21 The appeals officer appointed to hear the informal  
22 appeal is as neutral as most agency internal hearing  
23 officers. The use of agency employees as hearing officers  
24 for administrative adjudicatory hearings is basic to the  
25

1 field of administrative law. Although to a judge or  
2 attorney only familiar with judicial litigation  
3 principles it might seem a violation of due process, it  
4 is actually common. The appeals officer is not the  
5 auditor who issues the deficiency assessment, and even  
6 if he were, the responsibility is to be fair in a  
7 decisionmaking model which is much less adversary than  
8 that urged by the state. Many administrative procedures  
9 used in decisionmaking include elements of the  
10 inquisitorial or civil law system of justice, in which  
11 the decisionmaker is not passive, but rather active,  
12 leading the questioning, directing the gathering of  
13 facts, controlling not only the proceeding itself but the  
14 formulation of issues as well. Administrative hearing  
15 officers have broader duties than judicial officers. The  
16 following passage describes this well. It is from  
17 Administrative Law in a Nutshell, Gellhern and Levin, 3rd  
18 Ed., West Publishing Co., 1990, page 275-6.

19 Most agencies have been given a statutory mission  
20 to accomplish, and they have the duty to develop the  
21 facts needed to carry out that mandate. Thus, the  
22 hearings need not be structured as pure adversary  
23 contests in which the presiding officer serves as  
24 a passive referee. In some programs, particularly  
25 those involving welfare or disability benefit  
claims, the hearing may be largely "inquisitorial",  
with the Administrative Law Judge taking an active  
part in questioning witnesses and eliciting relevant  
facts.

Strict separation of prosecutorial and decisionmaker  
functions is not always required by due process. Withrow

1 v. Larkin 421 U.S. 35, 32 (1975), (members of a state  
2 examining board disciplining physicians who participate  
3 in an investigation are not disqualified from  
4 adjudicating). In the case before the court, the appeals  
5 officer is not involved in the case before it reaches the  
6 appeal stage. See also F.T.C. v. Cement Inst., 333 U.S.  
7 683 (1948), (agency heads who also make final decision  
8 on alleged violations of regulatory statutes and  
9 regulations may examine evidence gathered by staff when  
10 deciding whether to initiate the proceeding by voting to  
11 issue a complaint).

12 An adversary trial is not always necessary, Goss v.  
13 Lopez, 419 U.S. 565 (1975), (in which a student was  
14 suspended properly when only receiving a statement of the  
15 charges and a chance to tell his side of the story),  
16 Board of Education v. Loudermill, 470 U.S. 532 (1985),  
17 (in which an employee was properly discharged in a  
18 proceeding involving only oral or written notice of the  
19 charge, an explanation of the evidence, and an  
20 opportunity to give his side of the story).

21 Finally, assuming it is necessary for a record to  
22 emerge from the informal conference, such a requirement  
23 is met by the appeals process set out in A.S. 43.05.240  
24 (a). The taxpayer is provided with both a written  
25

1 deficiency assessment and also a written explanation of  
2 the appeals officer's decision, including the changes,  
3 if any, made by the appeals officer following the  
4 informal conference.

5 The informal conference appeal procedure is an  
6 administrative proceeding under the technical meaning  
7 analysis.

8 Non-technical meaning: In Citizens Coalition for  
9 Tort Reform v. McAlpine, 810 P.2d 162, (Alaska 1991), the  
10 Alaska Supreme Court stated that it is

11 ...reluctant to construe abstrusely any  
12 constitutional term that has a plain ordinary  
13 meaning. (citations omitted). Rather, absent some  
14 signs that the term at issue has acquired a peculiar  
15 meaning by statutory definition or judicial  
16 construction, we defer to the meaning the people  
17 probably placed on the provision. (citations).  
18 Normally, such deference to the intent of the people  
19 requires "adherence to the common understanding of  
20 words." (citation). at 169.

21 As the state points out, there is no definitive  
22 judicial or statutory definition of "administrative  
23 proceeding." A dictionary definition of "proceeding"  
24 which is most enlightening is found in Webster's New  
25 World Dictionary, Second College Edition, Pg. 1133  
(1976), referred to in Schroeder, Siegfried, Etc. v.  
Modern Electronic, 295 N.W. 2d 514, 516 (Minn. 1980):

1 "Proceeding" is a comprehensive term meaning  
2 the action of proceeding--a particular step or  
3 series of steps, adopted for accomplishing  
4 something. This is the dictionary definition as well  
5 as the meaning of the term in common parlance.  
6 Proceeding before a governmental department or  
7 agency simply mean proceeding in the manner and form  
8 prescribed for conducting business before the  
9 department or agency, including all steps and stages  
10 in such action from its inception to its conclusion.

11  
12 The steps of going through an informal conference  
13 under A.S. 43.05.240 (a) fall squarely within this broad,  
14 non-technical definition of the term. An administrative  
15 proceeding is a process of going through the prescribed  
16 steps to an end. The end is the decision by the appeals  
17 officer.

18  
19 Much paper has been consumed in the briefing on the  
20 issue of intent, legislative or voter, in the enactment  
21 of Art. IX, Sec. 17. What the legislators intended is not  
22 relevant to what the voters intended unless they were  
23 aware of it, and even then, the term must be susceptible  
24 to multiple, logical interpretations. Here the term is  
25 easily defined as a process, a series of steps, within  
an administrative agency, to resolve a dispute, with a  
final, enforceable decision made by the appeals officer  
after reviewing the evidence and arguments presented by  
the appellant/taxpayer. An informal conference is an  
administrative proceeding in the common understanding of  
language.

**CONCLUSION**

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The informal conference procedure set out in A.S. 43.05.240 (a) is an administrative proceeding as the term is used in the Budget Reserve Fund established by Article IX, Section 17, of the Alaska Constitution. Money received after July 1, 1990, from the termination of these informal appeal proceedings, whether by settlement or through legal collection processes after decision by the appeals officer, belong in the Constitutional Budget Reserve Fund Account, not in the general fund of the state.

Dated 11/19/93  
[Signature]  
John Reese  
Judge of the Superior Court

I certify that on 11-22-93  
a copy of the above was mailed to each  
of the following at their addresses of  
record: Ad Botelho / Pope / K. Edwards  
[Signature]  
Secretary / Deputy Clerk

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**SUPPLEMENTAL FINDINGS ON  
INJUNCTION ISSUE**

Plaintiff Cowper has requested an injunction prohibiting the State from encumbering the estimated \$124,000,000 of informal conference receipts received since the filing of this litigation.

1. The legislature was aware of the source of the funds involved during its deliberations in the last legislative session, and chose to appropriate those funds. It therefore shares responsibility for replacing the funds. Furthermore, considering the legislative involvement, it is not clear that the Governor could legally remove the improperly placed funds from the general fund without an appropriation authorizing it.

2. The purpose of the constitutional Budget Reserve Fund is to cushion the impact of reduced oil revenue as oil production declines and State revenues are depleted. Currently, State revenue is not depleted. For example, there is presently some \$950,000,000 in the Permanent Fund Earnings Account, available for appropriation by the

legislature.

1           3. This means there is no actual emergency created  
2 by replacing the Constitutional Budget Reserve money, in  
3 that such replacement is not immediately needed to serve  
4 the purpose of the fund, so long as there is assurance  
5 the money will be replaced promptly. It may be needed  
6 within a few months, and almost certainly within a few  
7 years.

8  
9           4. The other financial resources of the State and  
10 the anticipated good faith of its officials in finding  
11 a proper method of replacing the funds within the ordered  
12 time limit are sufficient security to assure the ultimate  
13 correction of the fund problem.


14  
15           5. Ordering the immediate removal of these funds  
16 from the cash accounts of the State could jeopardize the  
17 orderly payment of ongoing obligations, disrupting the  
18 affairs of government. Furthermore, there are several  
19 political options available to the legislature and the  
20 Governor for dealing with this issue. Immediate transfer  
21 of funds from the general fund could burden or even  
22 preclude some of these options. Since it is not  
23 immediately necessary to have the funds restored, and the  
24 funds to ultimately do it are safe, there is no reason  
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to burden the legislature and the Governor as they  
examine all legitimate solutions to the task.

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THEREFORE, having found the balancing of the  
equities tands against entry of an injunction at this  
time, the request is denied, without prejudice.

Dated December 14, 1993



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John Reese  
Superior Court Judge

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

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RICK HALFORD, President of  
the Alaska State Senate,  
DRUE PEARCE, STEVE FRANK,  
BERT SHARP, MIKE MILLER,  
RANDY PHILLIPS, TIM KELLY,  
LOREN LEMAN, GEORGE JACKO,  
STEVE RIEGER, and ROBIN  
TAYLOR, comprising the  
Senate Majority of the  
Eighteenth Alaska Legislative  
Session,

Plaintiffs,

v.

WALTER J. HICKEL, GOVERNOR OF  
THE STATE OF ALASKA, and  
DARREL J. REXWINKEL,  
COMMISSIONER OF THE ALASKA  
DEPARTMENT OF REVENUE,

Defendants.

Case No. JAN-93-6297CIV  
(Consolidated)  
Case No. JAN-93-6848CIV

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STEVE COWPER,

Plaintiff,

v.

WALTER J. HICKEL, Governor  
of the State of ALASKA,  
DARREL J. REXWINKEL,  
Commissioner of the  
Department of Revenue for  
the State of Alaska,  
and the STATE OF ALASKA,

Defendants.

FINAL ORDER AND JUDGMENT

1  
2 This cause having come before this court, the  
3 Honorable John Reese, Superior Court Judge presiding, on  
4 cross motions for summary judgment as well as other  
5 motions, the issues having been duly heard, and a  
6 decision having been duly rendered,

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as  
8 follows:

9 1. The term "administrative proceeding", as it is  
10 used in Article IX, Section 17 of the Alaska  
11 Constitution, includes the informal conference process  
12 established pursuant to A.S. 43.05.240 and 15 AAC 05.010  
13 and .020

14 2. All monies received by the State after July  
15 1, 1990, as a result of the termination, through  
16 settlement or otherwise, of all informal conference  
17 appeals involving mineral lease bonuses, rentals,  
18 royalties, royalty sale proceeds, federal mineral revenue  
19 sharing payments or bonuses, or involving taxes imposed  
20 on mineral income, production, or property, shall be  
21 deposited into the Budget Reserve Fund established by  
22 Art. IX, Sec. 17 of the Alaska Constitution, along with  
23 an amount of money equal to the income which would have  
24 been earned on these funds if the funds had been properly  
25

placed in the Constitutional Budget Reserve Fund.<sup>1</sup>

1           3. The defendants are hereby ordered to restore  
2 and fully fund the constitutional Budget Reserve Fund,  
3 by not later than the end of the regular session of the  
4 Eighteenth Alaska Legislature, consistent with the terms  
5 of this order and with Article IX, Section 17 of the  
6 Alaska Constitution. Action by the State of Alaska  
7 consistent with the constitution and laws of the State  
8 which properly obligate these funds is not precluded by  
9 this order. (e.g., a 3/4ths vote of each house of the  
10 legislature to authorize appropriation of part or all  
11 of the funds).

12           4. The defendants shall, within 30 days, provide  
13 an accounting to the plaintiffs of the receipt and  
14 disposition of all monies subject to paragraph #2 of this  
15 final order and judgment. Said accounting shall include  
16 the date and amount of money received which resulted  
17 from the terms of any informal conference referred  
18 to in paragraph #2. Defendants' obligation to provide  
19 an accounting is a continuing one until the terms of this  
20 order are met.

21           5. The defendants shall produce to plaintiffs (a)

22           <sup>1</sup>The evidence presented by the parties up to the date of  
23 this final order suggests that the relevant monies  
24 received by the State after July 1, 1990, totals an  
25 amount of not less than \$951,518,827.86, which total  
represents at least \$924,051,580.19 in principal, plus  
at least \$27,467,247.67 in income which would have been  
earned.

1 the defendants' Interest Computations for Settlements  
2 Received Through Informal Proceedings, and (b) any  
3 documents referring to that part of the 1993 settlement  
4 of the oil and gas tax dispute with British Petroleum  
5 which was allocated to preinformal conference general  
6 fund revenues.

7 6. Pending further order of this court, any  
8 documents referred to in paragraphs #4 and #5 of this  
9 final order shall be subject to a protective order,  
10 prohibiting plaintiffs or plaintiffs' counsel from  
11 disclosing the contents of said documents to anyone other  
12 than this court under seal or an agent or employee of  
13 plaintiffs' counsel who agrees in writing to abide by the  
14 terms of the protective order.

15 7. This cause involves important issues affecting  
16 the public interest and plaintiffs are the prevailing  
17 parties.

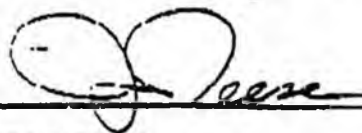
18 8. Plaintiff Steve Cowper may apply for attorneys  
19 fees pursuant to Alaska Civil Rule 82. Any award of fees  
20 does not preclude a subsequent application for fees for  
21 enforcement and verification work done after entry of  
22 this final order.

23 9. "Senate Majority" plaintiffs have waived their  
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right to costs and attorney fees.

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DATED December 14, 1993



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JOHN REESE  
SUPERIOR COURT JUDGE

Alaska Department of Revenue  
Oil and Gas Assessment Receipts Summary  
 Total Principal and Interest  
 For the Period July 1, 1990 Through December 31, 1993

	Constitutional Budget Reserve	General Fund Informal	Total All Funds
<b>Principal Payments</b>			
Fiscal Year 1991	\$230,480,513.57	\$ 61,196,813.05	\$ 291,677,326.62
Fiscal Year 1992	307,455,569.32	84,204,052.62	391,659,621.94
Fiscal Year 1993	100,772,483.00	679,711,459.60	780,483,942.60
Fiscal Year 1994	99,475,744.64	120,524,453.00	220,000,197.64
Total Principal Payments	738,184,310.53	945,636,778.27	1,683,821,088.80
<b>Interest Earnings</b>			
Through November 30, 1993	60,719,000.00 <sup>2</sup>	29,808,910.95 <sup>3</sup>	90,527,910.95
December 1993	2,879,000.00 <sup>2</sup>	2,667,000.00 <sup>4</sup>	5,546,000.00
Total Interest Earnings	63,598,000.00 <sup>2</sup>	32,475,910.95	96,073,910.95
<b>Total Principal and Interest</b>	<b>\$801,782,310.53</b>	<b>\$978,112,689.22</b>	<b>\$1,779,894,999.75</b>

Footnote 1 - Amounts determined to be included in the constitutional budget reserved fund per December 14, 1993 Alaska Superior Court decision.

Footnote 2 - Reported in the State of Alaska accounting system.

Footnote 3 - Based on earnings rates reported in Treasury Division's monthly financial statements.

Footnote 4 - Estimate based on Treasury Division's November 1993 earnings rate.

# MEMORANDUM

State of Alaska  
Office of the Governor  
Office of Management and Budget  
Office of the Director

TO: Shelby Stastny  
Director

DATE: February 10, 1994

FROM: Jack Kreinheder *JK*  
Senior Policy Analyst

PHONE: 465-3568

SUBJECT: Budget Reserve Fund Majority Vote  
Appropriation Projections

FAX: 465-3640

As you requested, I have reviewed the projections of the allowable majority vote appropriations from the constitutional budget reserve fund with Jim Baldwin and Neil Slotnick from the Department of Law. They agree that the treatment of the amounts available for appropriation in the attached projection is consistent with CSHB 58(FIN).

I have also updated the projections based on the February petroleum revenue executive update, and have excluded supplemental appropriations to be consistent with HB 58, and have also corrected an earlier error in the consistent exclusion of mental health funds from the projections (mental health funds are now excluded).

The calculation of the allowable majority vote appropriations was done as follows, using FY 94 as an example:

Under the budget reserve amendment, the allowable majority vote appropriation for FY 94 is equal to the amount appropriated for FY 93 less the amount available for appropriation for FY 94, as shown below. Amounts shown are in millions of dollars.

FY 93 appropriations (per OMB spending plan)	\$2,577.4
less FY 94 unrestricted general fund revenues	- <u>\$1,653.9</u>

equals allowable majority vote appropriation of \$ 923.5

FY 94 revenues were calculated as follows:

FY 94 UGF revenue forecast, less 6% to mental health (from DOR 2/4/94 Executive Update)	\$1,574.5
plus other UGF revenues (includes program receipts and AHFC dividend- from OMB EBB spending plan)	<u>\$79.4</u>

Totals \$ 1,653.9

In this calculation of FY 94 revenues, \$120.8 million which was appropriated from the railbelt intertie reserve and railbelt energy fund was excluded, in order to be consistent with the definition discussed above that excludes reserve funds and other designated funds or accounts. This amount was also deducted from FY 94 spending in calculating the allowable appropriation for FY 95.

## Projected Constitutional Budget Reserve Fund Allowable Majority Vote Appropriations

FY 94-FY 99/Low Case/With Futures Prices for FY 94

Note: Calculation of allowable appropriations is based on the definition of the term "available for appropriation" as stated in CSHB 58(FIN).

Revenue amounts exclude mental health funds.

Appropriation amounts exclude supplementals.

	<u>FY 93</u>	<u>FY 94</u>	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>
\$/bbl.	17.92	13.52	15.04	15.35	15.91	17.04	17.41
Production MMbbl/day	1.732	1.648	1.682	1.612	1.560	1.479	1.380
<b>REVENUES:</b>							
UGF REVENUE FORECAST*	2,211.1	1,574.5	1,710.8	1,707.1	1,741.6	1,761.1	1,658.3
OTHER UGF REVENUES	937.9	79.4	210.2	210.2	210.2	210.2	210.2
<b>TOTAL UGF REVENUES</b>	<b>3,149.0</b>	<b>1,653.9</b>	<b>1,921.0</b>	<b>1,917.3</b>	<b>1,951.8</b>	<b>1,971.3</b>	<b>1,868.5</b>
<b>APPROPRIATIONS</b>							
OPERATING	2,243.8	2,252.3	2,230.8	2,286.6	2,343.7	2,402.3	2,462.4
CAPITAL	294.0	478.7	95.0	300.0	300.0	300.0	300.0
LOANS & TRANSFERS	39.6	169.2	36.3	37.0	37.0	37.0	37.0
<b>TOTAL APPROPRIATIONS</b>	<b>2,577.4</b>	<b>2,900.2</b>	<b>2,362.1</b>	<b>2,623.6</b>	<b>2,680.7</b>	<b>2,739.3</b>	<b>2,799.4</b>
<b>ANNUAL DEFICIT</b>	<b>--</b>	<b>-1,246.3</b>	<b>-441.1</b>	<b>-706.2</b>	<b>-728.9</b>	<b>-768.0</b>	<b>-930.8</b>
<b>ALLOWABLE CBR APPROP.</b>	<b>--</b>	<b>923.5</b>	<b>979.2</b>	<b>444.8</b>	<b>671.7</b>	<b>709.4</b>	<b>870.8</b>
<b>REMAINING CBR BALANCE</b>	<b>--</b>	<b>856.4</b>	<b>415.3</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>--</b>

Initial FY 94 CBR Balance	1,779.9
(after repayment of \$978 million; also includes FY 94 settlements to date)	

\*FY 94 based on revenues collected as of 1/30/94 and futures market projections of lower 48 average prices for ANS crude, per DOR February "Executive Update".

Prepared by OMB/JK.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

P.O. BOX 110300 - STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

February 11, 1994

### MEMORANDUM

TO: Honorable Walter J. Hickel  
Governor

FROM: *for* *Robert E. Behr*  
Bruce M. Botelho  
Attorney General

RE: Attached third revised final version of bill making appropriations to and from the constitutional budget reserve fund  
Our file: 773-94-0045

Attached is a third revised final version of a bill making appropriations to and from the constitutional budget reserve fund to comply with the court's order in Hickel v. Halford. A slight change was made to the language of subsec. (o) of sec. 1 of the bill.

We have prepared the bill for introduction in the House and Senate.

No changes were made to the transmittal letter sent with the first revised version of the draft bill.

BMB:DEB:c1

cc w/enc.: Cheryl Frasca, Deputy Chief of Staff  
Office of the Governor

Hon. Bruce M. Botelho  
Attorney General

Hon. Nancy Bear Usera, Commissioner  
Dept. of Administration

Hon. Darrel Rexwinkel, Commissioner  
Dept. of Revenue

Shelby Stastny, Director, OMB  
Office of the Governor

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act making appropriations to and from the constitutional budget reserve  
2 fund under art. IX, sec. 17(c), Constitution of the State of Alaska, for operating  
3 and capital expenses of state government for fiscal year 1994; and providing for  
4 an effective date."

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

6 \* Section 1. FINDINGS AND INTENT. (a) Following ratification by the voters, art. IX,  
7 sec. 17, of the Constitution of the State of Alaska, took effect on January 2, 1991. This  
8 amendment

9 (1) created a constitutional budget reserve fund;

10 (2) required that the proceeds of certain tax and mineral revenue disputes be  
11 deposited into that fund; and

12 (3) established limitations on the legislature's ability to appropriate money  
13 from that fund.

14 (b) That amendment dedicates to the constitutional budget reserve fund money from

1 mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing  
2 payments or bonuses, and taxes imposed on mineral income, production, or property received  
3 by the state after July 1, 1990 "as a result of the termination, through settlement or otherwise,  
4 of an administrative proceeding or of litigation in a State or federal court."

5 (c) Following the ratification of the budget reserve amendment, the Department of  
6 Revenue requested that the attorney general determine whether the term "administrative  
7 proceeding" in art. IX, sec. 17, of the Constitution of the State of Alaska, applied to informal  
8 conferences and audits or only to formal hearings. On April 24, 1992, the attorney general  
9 issued a formal opinion concluding that informal conferences do not constitute "administrative  
10 proceedings" for the purposes of art. IX, sec. 17, of the Constitution of the State of Alaska.  
11 The attorney general reasoned that sec. 17 applied to administrative actions that were similar  
12 to litigation, such as the formal hearings held by the Department of Revenue. The opinion  
13 concluded that informal conferences held for purposes of discussion and negotiation "fall  
14 outside the ambit of the common understanding of litigation or legal contests."

15 (d) Since July 1, 1990, the state has engaged in several formal administrative hearings  
16 and judicial proceedings to resolve oil and gas tax and mineral royalty disputes. Revenue  
17 from the termination of these disputes has been deposited into the constitutional budget reserve  
18 fund. During this period, the state also received oil and gas or mineral tax revenue from audit  
19 assessments in the informal conference phase. In conformance with the April 24, 1992  
20 opinion of the attorney general, the Department of Revenue deposited in the general fund all  
21 revenue resulting from settlement of informal tax conferences.

22 (e) During the 1993 legislative session, the legislature passed several appropriation  
23 bills. For example, HB 45, the education budget, was passed by the House on February 22,  
24 1993, by a vote of 36-0, and was passed by the Senate on March 15, 1993, by a vote of 15-4.  
25 Senate Bill 60, regarding school construction grants, was passed by the Senate on April 24,  
26 1993, by a vote of 12-8, and by the House on May 11, 1993, by a vote of 39-1, and the  
27 Senate concurred in the final version by a vote of 17-3 on May 11, 1993. Other  
28 appropriations passed by the legislature in 1993 include HB 55, the operating budget; SB 183,  
29 the capital budget; and SB 126, intertie loans and grants and power cost equalization fund.  
30 For fiscal year 1994, the legislature approved appropriations from the general fund in excess  
31 of \$3,163,100,000.

1 (f) In passing the appropriation bills in 1993, the legislature authorized the expenditure  
2 of anticipated revenue in the general fund, including amounts deposited in that fund as a result  
3 of settlement of informal tax conferences. At the time the legislature passed those  
4 appropriations for fiscal year 1994, revenue forecasts showed a surplus in the general fund.  
5 Thus, the legislature did not anticipate that all money derived from the settlement of informal  
6 tax conferences would be spent. Due to the unanticipated decrease in state revenue, the state  
7 treasury has less money than was anticipated at the time that the legislature made its  
8 appropriations in 1993. Because of this shortfall, any anticipated surplus representing  
9 settlements of informal tax conferences, and amounts received from informal tax conference  
10 settlements occurring after July 1, 1994, must be expended to fully fund the capital and  
11 operation appropriations enacted in 1993.

12 (g) On July 12, 1993, the Senate Majority filed suit challenging the Department of  
13 Revenue action of depositing into the general fund revenue resulting from informal tax  
14 conferences. *Halford v. Hickel*, (3AN-93-6297 CI). On July 27, 1993, former Governor Steve  
15 Cowper filed a similar complaint captioned *Cowper v. Hickel* (3AN-93-6848 CI). The cases  
16 were consolidated.

17 (h) On November 19, 1993, the court issued its decision which concluded that sec. 17  
18 applied to informal tax conferences. On November 29, 1993, the state presented evidence that  
19 retroactive application of the court's ruling, requiring transfer of over \$940,000,000 from the  
20 general fund, would disrupt state finances and put at risk the justifiable reliance interest of  
21 Alaskans and municipalities throughout the state.

22 (i) The superior court dismissed the state's request that the ruling be applied  
23 prospectively only. The court found the evidence of hardship "very compelling," but noted  
24 that the hardship could be relieved if the legislature reappropriated the money for fiscal year  
25 1994. The court ordered the governor to fully restore the constitutional budget reserve fund  
26 with interest and to comply with its decision by the end of the 1994 legislative session. The  
27 superior court noted "it is not clear that the Governor could legally remove the improperly  
28 placed funds from the general fund [to the Budget Reserve Fund] without an appropriation  
29 authorizing it."

30 (j) Following appeal to the Alaska Supreme Court, that determined that all income that  
31 resulted from the settlement or other termination of informal administrative proceedings

1 involving certain taxes since July 1, 1990, should have been deposited into the budget reserve  
2 fund created by art. IX, sec. 17, of the Constitution of the State of Alaska.

3 (k) The Alaska Supreme Court ordered the governor to restore the constitutional  
4 budget reserve fund, with interest from the date of receipt by the state of money described in  
5 (j) of this section.

6 (l) The amount required to restore the constitutional budget reserve fund consistent  
7 with judicial interpretation is \$945,636,778.27, plus interest that would have been earned upon  
8 investment of this money, calculated from the date of receipt by the state.

9 (m) As of February 1994, there is not sufficient unappropriated money in the general  
10 fund to allow the governor to unilaterally transfer the money needed to fully restore the  
11 constitutional budget reserve fund.

12 (n) It is the intent of the legislature to provide a funding source for restoration of the  
13 constitutional budget reserve fund in order for the governor to satisfy the order of the Alaska  
14 Supreme Court. The legislature finds that this court order can be complied with by an  
15 appropriation from the general fund to the constitutional budget reserve fund, retroactive to  
16 July 1, 1993, of the principal and interest that should have been deposited into that budget  
17 reserve fund. It is the intent of the legislature that this appropriation will restore all money  
18 to the constitutional budget reserve fund that should have been deposited there since July 1,  
19 1990 under the provisions of art. IX, sec. 17, of the Constitution of the State of Alaska. This  
20 Act also appropriates, under art. IX, sec. 17(c), of the Constitution of the State of Alaska, that  
21 same amount of money from the constitutional budget reserve fund to the general fund.

22 (o) Alaskans have relied on appropriations made during the 1993 legislative session.  
23 Financial uncertainty is costly for municipalities, state agencies, and the people of the state.  
24 Continued uncertainty makes financial planning impossible. Further litigation concerning the  
25 capital and operating expenditures authorized by the appropriations made in 1993 for fiscal  
26 year 1994 would create greater uncertainty. The importance of finality and stability in  
27 government requires that the governor and the legislature take immediate action to restore the  
28 constitutional budget reserve fund and appropriate money from that fund under art. IX, sec.  
29 17(c), of the Constitution of the State of Alaska. Although it might be possible to make the  
30 appropriations by simple majority vote of the legislature under art. IX, sec. 17(b), of the  
31 Constitution of the State of Alaska, this Act makes the appropriations under art. IX, sec. 17(c),

1 of the Constitution of the State of Alaska, which requires a three-fourths majority vote of each  
2 house of the legislature. This action provides finality and ensures that there will be no  
3 successful challenge to the validity of the appropriations made by secs. 4, 5, and 6 of this Act.

4 (p) Making these appropriations retroactive to July 1, 1993 will provide a valid  
5 funding source for appropriations made in 1993, in effect ratifying expenditures under those  
6 appropriations.

7 (q) The appropriations made by secs. 4, 5, and 6 of this Act are for a public purpose  
8 as required by art. IX, sec. 17(c), Constitution of the State of Alaska.

9 \* Sec. 2. The sum of \$945,636,778.27 is appropriated from the general fund to the budget  
10 reserve fund established by art. IX, sec. 17, Constitution of the State of Alaska, to comply  
11 with the judgment in Hickel v. Halford (Supreme Court No. S-6124/6134) (Alaska Jan. 27,  
12 1994).

13 \* Sec. 3. An amount equal to the interest that would have been earned on money received  
14 by the state after June 1, 1990, as a result of termination through settlement or otherwise of  
15 an informal administrative proceeding involving taxes imposed on mineral income, production,  
16 or property, and subsequently deposited in the general fund, is appropriated from the general  
17 fund to the budget reserve fund established by art. IX, sec. 17, Constitution of the State of  
18 Alaska, to comply with the judgment in Hickel v. Halford (Supreme Court No. S-  
19 6124/6134)(Alaska Jan. 27, 1994).

20 \* Sec. 4. (a) The sum of \$416,600,000 is appropriated under art. IX, sec. 17(c), of the  
21 Constitution of the State of Alaska, from the budget reserve fund established by art. IX, sec.  
22 17, of the Constitution of the State of Alaska, to the general fund.

23 (b) The appropriation made by (a) of this section is to fund the portion of the fiscal  
24 year 1994 appropriations enacted in 1993 that was anticipated as being funded from amounts  
25 deposited in the general fund representing a portion of the revenue received from informal tax  
26 conference settlements.

27 (c) The sum of \$529,036,778.27 is appropriated under art. IX, sec. 17(c), of the  
28 Constitution of the State of Alaska, from the budget reserve fund established by art. IX, sec.  
29 17, of the Constitution of the State of Alaska, to the general fund.

30 (d) The appropriation made by (c) of this section is to fund the portion of the fiscal  
31 year 1994 appropriations enacted in 1993 that was anticipated as being funded from the

1 general fund but, due to shortfalls created by declining state oil revenue, requires expenditure  
2 of revenue received from informal tax conference settlements.

3 \* Sec. 5. The amount appropriated by sec. 3 of this Act is appropriated under art. IX, sec.  
4 17(c), Constitution of the State of Alaska, from the budget reserve fund established by art. IX,  
5 sec. 17, Constitution of the State of Alaska to the general fund.

6 \* Sec. 6. In addition to the amounts appropriated by secs. 4 and 5 of this Act, if the  
7 unrestricted state revenue available for appropriation in fiscal year 1994 is insufficient to cover  
8 the fiscal year 1994 general fund appropriations, the amount necessary to balance revenue and  
9 general fund appropriations is appropriated under art. IX, sec. 17(c), Constitution of the State  
10 of Alaska to the general fund.

11 \* Sec. 7. This Act is retroactive to July 1, 1993.

12 \* Sec. 8. This Act takes effect immediately under AS 01.10.070(c), only if secs. 4, 5, and  
13 6 of this Act receive the three-fourths majority vote of each house required by art. IX, sec.  
14 17(c) of the Constitution of the State of Alaska.

**SENATE BILL NO.**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**EIGHTEENTH LEGISLATURE - SECOND SESSION**  
**BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

Introduced:  
Referred:

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act making appropriations to and from the constitutional budget reserve  
2 fund under art. IX, sec. 17(c), Constitution of the State of Alaska, for operating  
3 and capital expenses of state government for fiscal year 1994; and providing for  
4 an effective date."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 \* Section 1. FINDINGS AND INTENT. (a) Following ratification by the voters, art. IX,  
7 sec. 17, of the Constitution of the State of Alaska, took effect on January 2, 1991. This  
8 amendment

9 (1) created a constitutional budget reserve fund;  
10 (2) required that the proceeds of certain tax and mineral revenue disputes be  
11 deposited into that fund; and

12 (3) established limitations on the legislature's ability to appropriate money  
13 from that fund.

14 (b) That amendment dedicates to the constitutional budget reserve fund money from

1 mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing  
2 payments or bonuses, and taxes imposed on mineral income, production, or property received  
3 by the state after July 1, 1990 "as a result of the termination, through settlement or otherwise,  
4 of an administrative proceeding or of litigation in a State or federal court."

5 (c) Following the ratification of the budget reserve amendment, the Department of  
6 Revenue requested that the attorney general determine whether the term "administrative  
7 proceeding" in art. IX, sec. 17, of the Constitution of the State of Alaska, applied to informal  
8 conferences and audits or only to formal hearings. On April 24, 1992, the attorney general  
9 issued a formal opinion concluding that informal conferences do not constitute "administrative  
10 proceedings" for the purposes of art. IX, sec. 17, of the Constitution of the State of Alaska.  
11 The attorney general reasoned that sec. 17 applied to administrative actions that were similar  
12 to litigation, such as the formal hearings held by the Department of Revenue. The opinion  
13 concluded that informal conferences held for purposes of discussion and negotiation "fall  
14 outside the ambit of the common understanding of litigation or legal contests."

15 (d) Since July 1, 1990, the state has engaged in several formal administrative hearings  
16 and judicial proceedings to resolve oil and gas tax and mineral royalty disputes. Revenue  
17 from the termination of these disputes has been deposited into the constitutional budget reserve  
18 fund. During this period, the state also received oil and gas or mineral tax revenue from audit  
19 assessments in the informal conference phase. In conformance with the April 24, 1992  
20 opinion of the attorney general, the Department of Revenue deposited in the general fund all  
21 revenue resulting from settlement of informal tax conferences.

22 (e) During the 1993 legislative session, the legislature passed several appropriation  
23 bills. For example, HB 45, the education budget, was passed by the House on February 22,  
24 1993, by a vote of 36-0, and was passed by the Senate on March 15, 1993, by a vote of 15-4.  
25 Senate Bill 60, regarding school construction grants, was passed by the Senate on April 24,  
26 1993, by a vote of 12-8, and by the House on May 11, 1993, by a vote of 39-1, and the  
27 Senate concurred in the final version by a vote of 17-3 on May 11, 1993. Other  
28 appropriations passed by the legislature in 1993 include HB 55, the operating budget; SB 183,  
29 the capital budget; and SB 126, intertie loans and grants and power cost equalization fund.  
30 For fiscal year 1994, the legislature approved appropriations from the general fund in excess  
31 of \$3,163,100,000.

1 (f) In passing the appropriation bills in 1993, the legislature authorized the expenditure  
2 of anticipated revenue in the general fund, including amounts deposited in that fund as a result  
3 of settlement of informal tax conferences. At the time the legislature passed those  
4 appropriations for fiscal year 1994, revenue forecasts showed a surplus in the general fund.  
5 Thus, the legislature did not anticipate that all money derived from the settlement of informal  
6 tax conferences would be spent. Due to the unanticipated decrease in state revenue, the state  
7 treasury has less money than was anticipated at the time that the legislature made its  
8 appropriations in 1993. Because of this shortfall, any anticipated surplus representing  
9 settlements of informal tax conferences, and amounts received from informal tax conference  
10 settlements occurring after July 1, 1994, must be expended to fully fund the capital and  
11 operation appropriations enacted in 1993.

12 (g) On July 12, 1993, the Senate Majority filed suit challenging the Department of  
13 Revenue action of depositing into the general fund revenue resulting from informal tax  
14 conferences. *Halford v. Hickel*, (3AN-93-6297 CI). On July 27, 1993, former Governor Steve  
15 Cowper filed a similar complaint captioned *Cowper v. Hickel* (3AN-93-6848 CI). The cases  
16 were consolidated.

17 (h) On November 19, 1993, the court issued its decision which concluded that sec. 17  
18 applied to informal tax conferences. On November 29, 1993, the state presented evidence that  
19 retroactive application of the court's ruling, requiring transfer of over \$940,000,000 from the  
20 general fund, would disrupt state finances and put at risk the justifiable reliance interest of  
21 Alaskans and municipalities throughout the state.

22 (i) The superior court dismissed the state's request that the ruling be applied  
23 prospectively only. The court found the evidence of hardship "very compelling," but noted  
24 that the hardship could be relieved if the legislature reappropriated the money for fiscal year  
25 1994. The court ordered the governor to fully restore the constitutional budget reserve fund  
26 with interest and to comply with its decision by the end of the 1994 legislative session. The  
27 superior court noted "it is not clear that the Governor could legally remove the improperly  
28 placed funds from the general fund [to the Budget Reserve Fund] without an appropriation  
29 authorizing it."

30 (j) Following appeal to the Alaska Supreme Court, that determined that all income that  
31 resulted from the settlement or other termination of informal administrative proceedings

1 involving certain taxes since July 1, 1990, should have been deposited into the budget reserve  
2 fund created by art. IX, sec. 17, of the Constitution of the State of Alaska.

3 (k) The Alaska Supreme Court ordered the governor to restore the constitutional  
4 budget reserve fund, with interest from the date of receipt by the state of money described in  
5 (j) of this section.

6 (l) The amount required to restore the constitutional budget reserve fund consistent  
7 with judicial interpretation is \$945,636,778.27, plus interest that would have been earned upon  
8 investment of this money, calculated from the date of receipt by the state.

9 (m) As of February 1994, there is not sufficient unappropriated money in the general  
10 fund to allow the governor to unilaterally transfer the money needed to fully restore the  
11 constitutional budget reserve fund.

12 (n) It is the intent of the legislature to provide a funding source for restoration of the  
13 constitutional budget reserve fund in order for the governor to satisfy the order of the Alaska  
14 Supreme Court. The legislature finds that this court order can be complied with by an  
15 appropriation from the general fund to the constitutional budget reserve fund, retroactive to  
16 July 1, 1993, of the principal and interest that should have been deposited into that budget  
17 reserve fund. It is the intent of the legislature that this appropriation will restore all money  
18 to the constitutional budget reserve fund that should have been deposited there since July 1,  
19 1990 under the provisions of art. IX, sec. 17, of the Constitution of the State of Alaska. This  
20 Act also appropriates, under art. IX, sec. 17(c), of the Constitution of the State of Alaska, that  
21 same amount of money from the constitutional budget reserve fund to the general fund.

22 (o) Alaskans have relied on appropriations made during the 1993 legislative session.  
23 Financial uncertainty is costly for municipalities, state agencies, and the people of the state.  
24 Continued uncertainty makes financial planning impossible. Further litigation concerning the  
25 capital and operating expenditures authorized by the appropriations made in 1993 for fiscal  
26 year 1994 would create greater uncertainty. The importance of finality and stability in  
27 government requires that the governor and the legislature take immediate action to restore the  
28 constitutional budget reserve fund and appropriate money from that fund under art. IX, sec.  
29 17(c), of the Constitution of the State of Alaska. Although it might be possible to make the  
30 appropriations by simple majority vote of the legislature under art. IX, sec. 17(b), of the  
31 Constitution of the State of Alaska, this Act makes the appropriations under art. IX, sec. 17(c),

1 of the Constitution of the State of Alaska, which requires a three-fourths majority vote of each  
2 house of the legislature. This action provides finality and ensures that there will be no  
3 successful challenge to the validity of the appropriations made by secs. 4, 5, and 6 of this Act.

4 (p) Making these appropriations retroactive to July 1, 1993 will provide a valid  
5 funding source for appropriations made in 1993, in effect ratifying expenditures under those  
6 appropriations.

7 (q) The appropriations made by secs. 4, 5, and 6 of this Act are for a public purpose  
8 as required by art. IX, sec. 17(c), Constitution of the State of Alaska.

9 \* Sec. 2. The sum of \$945,636,778.27 is appropriated from the general fund to the budget  
10 reserve fund established by art. IX, sec. 17, Constitution of the State of Alaska, to comply  
11 with the judgment in *Hickel v. Halford* (Supreme Court No. S-6124/6134) (Alaska Jan. 27,  
12 1994).

13 \* Sec. 3. An amount equal to the interest that would have been earned on money received  
14 by the state after June 1, 1990, as a result of termination through settlement or otherwise of  
15 an informal administrative proceeding involving taxes imposed on mineral income, production,  
16 or property, and subsequently deposited in the general fund, is appropriated from the general  
17 fund to the budget reserve fund established by art. IX, sec. 17, Constitution of the State of  
18 Alaska, to comply with the judgment in *Hickel v. Halford* (Supreme Court No. S-  
19 6124/6134)(Alaska Jan. 27, 1994).

20 \* Sec. 4. (a) The sum of \$416,600,000 is appropriated under art. IX, sec. 17(c), of the  
21 Constitution of the State of Alaska, from the budget reserve fund established by art. IX, sec.  
22 17, of the Constitution of the State of Alaska, to the general fund.

23 (b) The appropriation made by (a) of this section is to fund the portion of the fiscal  
24 year 1994 appropriations enacted in 1993 that was anticipated as being funded from amounts  
25 deposited in the general fund representing a portion of the revenue received from informal tax  
26 conference settlements.

27 (c) The sum of \$529,036,778.27 is appropriated under art. IX, sec. 17(c), of the  
28 Constitution of the State of Alaska, from the budget reserve fund established by art. IX, sec.  
29 17, of the Constitution of the State of Alaska, to the general fund.

30 (d) The appropriation made by (c) of this section is to fund the portion of the fiscal  
31 year 1994 appropriations enacted in 1993 that was anticipated as being funded from the

1 general fund but, due to shortfalls created by declining state oil revenue, require expenditure  
2 of revenue received from informal tax conference settlements.

3 \* Sec. 5. The amount appropriated by sec. 3 of this Act is appropriated under art. IX, sec.  
4 17(c), Constitution of the State of Alaska, from the budget reserve fund established by art. IX,  
5 sec. 17, Constitution of the State of Alaska to the general fund.

6 \* Sec. 6. In addition to the amounts appropriated by secs. 4 and 5 of this Act, if the  
7 unrestricted state revenue available for appropriation in fiscal year 1994 is insufficient to cover  
8 the fiscal year 1994 general fund appropriations, the amount necessary to balance revenue and  
9 general fund appropriations is appropriated under art. IX, sec. 17(c), Constitution of the State  
10 of Alaska to the general fund.

11 \* Sec. 7. This Act is retroactive to July 1, 1993.

12 \* Sec. 8. This Act takes effect immediately under AS 01.10.070(c), only if secs. 4, 5, and  
13 6 of this Act receive the three-fourths majority vote of each house required by art. IX, sec.  
14 17(c) of the Constitution of the State of Alaska.

DRAFT TRANSMITTAL LETTER

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill necessary for the state to comply with the January 27, 1994, order of the Alaska Supreme Court in Hickel v. Halford, the litigation concerning the constitutional budget reserve fund. This bill appropriates money from the general fund to fully restore the constitutional budget reserve fund as required by the court's order. In addition, it appropriates money from the constitutional budget reserve fund to the general fund to provide valid funding sources for fiscal year 1994 appropriations. The enactment of this bill is essential for two reasons: it ensures that the state is in compliance with the order of the Alaska Supreme Court, and it provides finality with regard to the validity of fiscal year 1994 appropriations.

The bill sets out findings concerning the constitutional budget reserve fund and the litigation on this issue. That litigation resulted in an order of the Alaska Supreme Court that the governor restore the constitutional budget reserve fund, with interest. The amount required to restore that fund consistent with the court's interpretation is \$945,636,778.27, plus income that would have been earned upon investment of this money, calculated from the date of receipt by the state. The bill makes appropriations necessary to accomplish this.

Sections 4, 5, and 6 of the bill appropriate money from the constitutional budget reserve fund to the general fund. The appropriations require a three-fourths majority vote of each house of the legislature under art. IX, sec. 17(c) of the Alaska Constitution. If secs. 4, 5, and 6 receive this required vote, the bill will take effect immediately upon enactment.

The enactment of this bill is essential to the State of Alaska. If enacted into law, the bill will bring the state into compliance with the order of the Alaska Supreme Court. By making appropriations from the constitutional budget reserve fund, the bill provides valid funding sources for fiscal year 1994 appropriations.

This bill accomplishes these goals in a manner that provides finality. For these reasons, I strongly urge your support for this bill.

Sincerely,

Walter J. Hickel  
Governor

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# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 513

Revision Date: \_\_\_\_\_  
 Title: Grants/Loans for Storage Tank Owners  
 Sponsor: House Labor and Commerce Committee  
 Requestor: House State Affairs Committee

Department Affected: Environmental Conservation  
 BRU: Spill Prevention and Response  
 Component: Underground Storage Tank

COMPONENT SERIAL NO. 1207

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY94) cost: \$ 0.0

**POSITIONS:**

FULL-TIME	0.0					
PART-TIME	0.0					
TEMPORARY	0.0					

ANALYSIS: (Attach a separate page if necessary.)

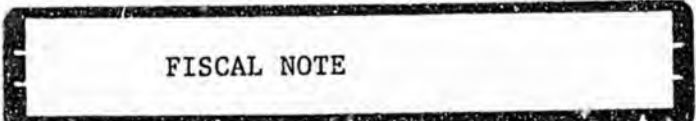
Prepared by: Bob Poe, Director  
 Division: Information & Administrative Services

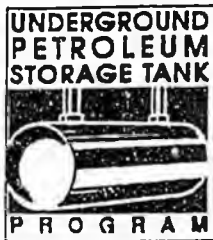
Phone: 465-5010  
 Date: 3/14/94

Approved by Commissioner: Bob Poe  
 Agency: Department of Environmental Conservation

Date: 3/14/94

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# Board of Storage Tank Assistance

410 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801  
(907) 465-5219  
FAX (907) 465-5218

Walter J. Hickel, Governor

## POSITION PAPER

IN SUPPORT OF: House Bill 513 (HB 513)

SUBJECT: "An Act relating to financial assistance for certain owners or operators underground petroleum storage tank systems; and providing for an effective date."

The Board of Storage Tank Assistance supports House Bill 513.

*Section 1:* Currently, if a Storage Tank Assistance Fund applicant is denied financial assistance completely by the Department of Environmental Conservation, the applicant has no recourse if the applicant disputes the determination. Numerous applicants have been denied financial assistance by the Department of Environmental Conservation for a variety of determinations. Under existing law, when certain costs are denied, applicants may come before the Board of Storage Tank Assistance to help mediate the dispute. Applicants that have been determined completely ineligible cannot currently come before the Board. Applicants that are determined ineligible and have been denied any assistance whatsoever feel they should also have the right to present their case before the Board of Storage Tank Assistance since all of their eligible costs have in fact been denied. This change clarifies the authority of the Board to mediate disputes when all eligible costs have been denied.

*Section 2:* The Storage Tank Assistance fund will soon be approaching the end of the application period for cleanup assistance. The last day to apply for financial assistance for cleanup is June 30, 1994. After that date if UST owners or operator discover contamination they must pay the full cost themselves. The closure and upgrade financial assistance program currently has no statutory deadlines for applications to be submitted. Closing the application period for closure and upgrade corrects an oversight in the enabling legislation and begins the first step in phasing out the Program.

*Section 3:* Currently, there are over 800 unfunded requests for financial assistance for testing, closure, upgrade or cleanup activities in the State of Alaska. Within that total there are currently over 400 unfunded requests for closure and upgrade assistance that will not receive funds or begin work until after the close of the application period for cleanup assistance. The last day to apply for cleanup assistance is June 30, 1994. Under existing law, should these closure or upgrade applicants that will not receive funds until FY 95 discover contamination while conducting upgrade or closure activities they will be unable to apply for assistance from the State of Alaska. Many of the applicants for closure and upgrade assistance originally applied in 1991 and have been waiting for funding for over three years. If these applicants discover contamination and cannot afford to undertake the high cost of cleanup and fail to receive financial assistance they will face fines, penalties and possible bankruptcy. Furthermore, if an owner cannot pay the cost of cleanup, the State actually undertakes the task using Response Funds.

Allowing applicants who have already applied for financial assistance to remain eligible for cleanup assistance from the Storage Tank Assistance Fund will further protect drinking water supplies for the State of Alaska and reduce further demands on the Spill Response Fund. Many of the facilities affected by the EPA requirements that are currently awaiting funding are in the outlying areas of the State, on the Alaska Highway, remote lodges, rural community airstrips and fishing villages. Although protecting drinking water supplies in urban areas such as Anchorage and Fairbanks is critical, maintaining essential fuel services for the State is undeniably an important consideration for stable, economic growth, tourism and access.

For and on behalf of the BOARD OF STORAGE TANK ASSISTANCE,

  
John C. Barnett, Executive Director

POSITION PAPER

June 4, 1994

H B

5 1 7

HOUSE COMMITTEE REPORT

Date Referred: March 4, 1994

FURTHER REFERRALS:

Date of Committee Action: \_\_\_\_\_

By JUDICIARY Committee considered:

HB 517

HOUSE BILL NO. 517

REAL PROPERTY TRANSFERS

An Act relating to real property transfers."

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 \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Monette James</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>			<input checked="" type="checkbox"/>
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>			<input checked="" type="checkbox"/>
<i>Brian Fortes</i>	<input checked="" type="checkbox"/>				

*Brian Fortes*  
 CHAIRMAN'S SIGNATURE



REALTOR®

ALASKA ASSOCIATION OF REALTORS, INC.®

741 Sesame Street, Suite 100 • Anchorage, Alaska 99503  
Telephone 907-863-7133

DATE: MARCH 14, 1994

TO: HOUSE JUDICIARY COMMITTEE  
BRIAN PORTER, CHAIRMAN  
JEANNETTE JAMES, VICE CHAIRMANFROM: DEA TURNER, *DT*  
EXECUTIVE VICE PRESIDENT

REF: HB 517

ATTACHED ARE COPIES OF RESOLUTIONS IN FAVOR OF SB206 THE COMPANION BILL ADDRESSING "INNOCENT MISREPRESENTATION". THESE RESOLUTIONS HAVE ENDORSED THE PASSAGE OF SB206, AND ARE FROM ALL SEVEN BOARDS OF REALTORS® IN ALASKA. ALL SEVEN BOARDS, REPRESENTING THE 1100 PLUS REALTORS IN THE STATE, HAVE REAFFIRMED THEIR SUPPORT FOR HB 517.

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*The Voice for Real Estate™* in Alaska

REALTOR® is a registered mark which identifies a professional in real estate who subscribes to a strict Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS®





Valley Board of REALTORS®  
500 E. Railroad Avenue Ste. A, Wasilla, Alaska 99654  
Telephone 907-376-5080 • Fax 907-376-5081

## Resolution 93-01

### A Resolution Supporting Senate Bill 206, Innocent Misrepresentations by Agents in Real Property Transactions

WHEREAS, Senate Bill 206 was introduced in the Eighteenth Session of the Alaska State Legislature at the request of the Alaska Association of REALTORS, and

WHEREAS, this legislation would remove liability for "Innocent Misrepresentations" by agents in a real estate transaction, and

WHEREAS, Alaska and two other states are the only jurisdictions in which real estate professionals are made liable for "Innocent Misrepresentations," and

WHEREAS, Alaska statutes are silent on "Innocent Misrepresentations" there has been cause for numerous lawsuits, causing errors and omissions underwriters to either withdraw from issuing policies in Alaska or causing insurance companies to increase their premium rates to real estate professionals, and

WHEREAS, errors and omissions insurance premiums are so expensive real estate agents may determine the insurance to be cost prohibitive to carry, and

WHEREAS, the absence of such protection is not in the public's best interest because the Alaska Surety Fund does not cover innocent misrepresentation claims, and

WHEREAS, the Alaska Association of REALTORS wholeheartedly supported the passage of legislation during the Seventeenth Legislature addressing Real Property Transfer Disclosure (AS 34.70) which further increases a real estate agent's liability exposure, and

WHEREAS, the real estate community's position is that an agent or broker for the transferor or transferee should not be liable for "Innocent Misrepresentations" in information provided to the transferee in the transfer of an interest in real property if the agent does not have personal knowledge of the error, inaccuracy, or omission that is the basis for the misrepresentations,

NOW THEREFORE, BE IT RESOLVED that the Valley Board of REALTORS strongly urges the Alaska State Legislature to pass Senate Bill 206.

Adopted this 28th day of July, 1993.



Steve Adams, President

Tammy Shanley (p)  
Tammy Shanley, Secretary



# GREATER FAIRBANKS BOARD OF REALTORS®

*The Voice for Real Estate™* in FAIRBANKS

1449 Gillam Way  
Fairbanks, Alaska 99701  
(907) 452-7743

## A RESOLUTION SUPPORTING SENATE BILL 206, INNOCENT MISREPRESENTATIONS BY AGENTS IN REAL PROPERTY TRANSACTIONS

**WHEREAS**, Senate Bill 206 was introduced in the Eighteenth Session of the Alaska State Legislature at the request of the Alaska Association of REALTORS®, and

**WHEREAS**, this legislation would remove liability for "Innocent Misrepresentations" by agents in a real estate transaction, and

**WHEREAS**, Alaska and two other states are the only jurisdictions in which real estate professionals are made liable for "innocent Misrepresentations," and

**WHEREAS**, Alaska statutes are silent on "Innocent Misrepresentations" there has been cause for numerous lawsuits, causing errors and omissions underwriters to either withdraw from issuing policies in Alaska or causing insurance companies to increase their premium rates to real estate professionals, and

**WHEREAS**, errors and omissions insurance premiums are so expensive real estate agents may determine the insurance to be cost prohibitive to carry, and

**WHEREAS**, the absence of such protection is not in the public's best interest because the Alaska Surety Fund does not cover innocent misrepresentation claims, and

**WHEREAS**, the Alaska Association of REALTORS® wholeheartedly supported the passage of legislation during the Seventeenth Legislature addressing Real Property Transfer Disclosure (AS 34.70) which further increases a real estate agent's liability exposure, and

**WHEREAS**, the real estate community's position is that an agent or broker for the transferor or transferee should not be liable for "Innocent Misrepresentations" in information provided to the transferee in the transfer of an interest in real property if the agent does not have personal knowledge of the error, inaccuracy, or omission that is the basis for the misrepresentations,

**NOW, THEREFORE, BE IT RESOLVED** that the Greater Fairbanks Board of REALTORS® strongly urges the Alaska State Legislature to pass Senate Bill 206.

Adopted this 23rd day of July, 1993.

BY: GREATER FAIRBANKS BOARD OF REALTORS®

  
J. Scott Grundy, President

  
Susan L. McDonald, Executive Officer

## Chairman Porter, Members of the Committee

My name is Greg Erkins, I am a Broker, member of the Anchorage Independent Brokers, a marketing group, and foremost a Realtor®, currently serving as the Alaska Association of Realtors®, State Legislative Chairman.

I too have had brushes with innocent misrepresentation.

While working my first year for a large Anchorage Real Estate Company, I had an offer on a property that was new construction. The builder-seller had place the well 5 feet to close to the septic system per the survey that I had ordered. The well and septic engineer, whom was also a surveyor ordered the drilling of the well and placed it 5 feet from the property line according to his report. The survey showed no problem, and the lender closed the loan.

Everything was fine until the buyer, now owner for two years wanted to refinance the property. Another survey was completed. The first well and septic engineer was correct when he said the well was 5 feet from the property line, but 5 feet on the other side of the property line in a road easement. ~~It~~ Instead of an innocent misrepresentation suit, I settled for \$500.

Another case of passing on information innocently, was a seller's statement disclosing a sump pump. The seller signed the disclosure additionally stating no water problems. The engineer with the buyers and I saw the area where the seller's and listing agent said the sump pump was located. We saw the necessity for the sump pump because it was at the end of a stairwell on the outside back of the house when water would run off a sloping hill and collect then possibly coming through the back door. The buyers accepted the house that included all appliances and the washer and dryer. At break up another sump pump well became apparent in the front corner of the building and another on the front side. We are now up to 3 sump pumps. During the day and evening hours there was a low intermitted hum that the buyers now owners heard and could not determine where the sound was coming from. The basement flooded. The moving of the washer and dryer to dry the area caused the discovery of a 4th sump pump hidden behind a wall and placed through chipped out concrete.

A third case involved a buyer who bought a house that was reduced in price 15% to compensate for an increase in interest rates on a loan because a crawl space was less than 18" and AHFC wouldn't finance the property under a first time home buyer at reduced rates. The buyer was living in the house during all

procedures, let two engineers inspect the house, signed both reports and said he would dig out the crawl space the needed 6 inches to make it more financable. Three years later a complaint was filed with the Real Estate Commission on non-disclosure and misrepresentation. The Real Estate Commission found no justification for the claim that he had no prior knowledge.

These three cases are reasons that I use on every transaction an inspection rider to the contract. However there always seems to be the problem that as I pass on information, it can be construed as a representation of the property, true or not and if not an innocence misrepresentation even if a higher authority licensed by the State made it.

Currently Alaska Statues bar innocent misrepresentation in certain land sales. The State of Alaska realizes that land subdividers could not possibly know all there is to know about a piece of land. Sec. 34.55.030 Civil Remedy. (a) **READ A**

It is not to much to ask that the State of Alaska to protect a licensed Real Estate Practitioner that as long as the purchaser knew the untruth or omission or that the agent used in a transaction did not know and in the exercise of reasonable care could not have known of the untruth or omission, that the licensed Real Estate practitioner not be liable.

This will protect the public because the Licensed Real Estate Practitioner will not be held responsible for untruths and omissions will exercising reasonable care The Licensed Real Estate Practitioner will for their own protection as well as the seller and purchaser always suggest, home inspectors, well and septic engineers, appraisers for point estimates of value, surveyors, title insurance, home owner association reports and other licensed contractors or qualified professional.

This practice would become the standard in which Real Estate Practitioners would follow so that they exercise reasonable care and therefore if an untruth was passed along to the purchaser, it would truly be innocent.

The public would be the greatest beneficiary to this practice.

I urge you pass along and support heavily HB517.

Thank you.

---





# Alaska State Legislature

Please enter into the record my testimony to the Judiciary  
 committee name  
 committee on H.B. 517, dated 3-16-94  
 bill/subject

Signed: DAVE FORKOR  
 Testifier  
Alaska Assoc. of REALTORS  
 Representing (Optional)  
100 Tundra Bay Dr. Suite 6 Kenai  
 Address  
283-5444  
 Phone No.

Mr. Chairman, members of the Committee, thank you for opportunity to comment on this legislation.

I would like to give you an example of innocent misrepresentation, and how a buyer can try to use it to their unfair advantage in a real estate transaction.

I listed an executive type home for sale in Kenai, the home was approximately 25 years old at the time. The home was in good condition with most of the cosmetic items like carpet, cabinets, etc., being original installation, and was priced accordingly to represent the condition.

A buyer was located, a professional, (a doctor) with a large family of 4 children. After the closing the buyer sent a letter to myself and the seller outline defects in the property they felt were not disclosed to them.

The defects include a leaking shower, and the buyers accusation that a reasonable competent visual inspection by a licensed real estate professional would have revealed the defect. After an inspection by a contractor it was discovered that the leak was just recently caused by the buyer. The buyer had started remodeling the bathroom and had removed part of the wall this shower was on. The buyers hammering during remodeling had broken a 25 year old seal resulting in the leak. When the home was for sale, and at closing this shower did not leak, the leak was caused by the buyers construction that had taken place after the closing.

The second defect also involved this shower. The hot and cold water controls were reversed. Allegedly, this has created a dangerous condition for the children.

The third defect was that the hot water system was inadequate. Suggesting that there was not enough hot water to wash cloths, run the dishwasher, and bathe. Again accusing me the licensed real estate agent of being incompetent for not adequately questioning the Seller to discover this defect. A third opinion, from an independent contractor was obtained, who's comments were that the heating and hot water system performed excellent for a 25 year old system, actually there was no lack of hot water in his opinion.

The buyer demanded a new heating system, although none of his complain dealt with the heating system, only hot water. The buyer also demanded that

the shower be repaired and replumbed. These total repairs amounted to \$7000 plus dollars. All of this based upon an attorney's (his sister in-law) advise that there are laws protecting consumer from the negligence of real estate agents, and laws requiring sellers to make full disclosure of known defects. All concluding with the threat of litigation seeking damages and all attorneys fees.

This resulted in myself hire an attorney, the attorney hired a contractors to inspect the property before preparing his response to the buyer, and after considerable time and expense the buyer dropped the complaint. This unfortunately is not an isolated case, real estate brokers all over the state are having to deal with buyers with similar situations.

The agents are still held liable for misrepresentation. If they intentionally deceive a buyer or hide property defects, the laws are very clear that the agent will be held accountable. Look at the word "innocent" and imagine how unfairly broad that term is. The chances to bend that to suit the buyers whims are astronomical. As in this example, should I be taking a shower in every listing to make sure the water faucets are not reversed.

The interesting fact in this transaction is that the seller, was in fact an attorney, and had spent considerable time completing the sellers disclosure statement. Their were notes written all over the disclosure statement explaining in detail, repairs and property condition, considerably more detailed than the average home seller does.

In conclusion, with this legislation we are attempting to close a loop hole for unethical buyers and sellers. We are not trying to limit the publics rights from knowing the true condition of the property. I do strongly feel that if, the seller has withheld information on the property that affects its value or condition that the seller should be held responsible for these defects. I also feel agents should be held responsible for doing a profession and competent job. They should be held responsible for misrepresentations, and the law is already in place for that. There already exists a surety fund, broker's E. & O. Insurance, and the Real Estate Commission all providing a means for the buyer and seller to be compensated for misrepresentations of the agent. If other professionals were held to these standards, attorneys would be liable for the lies of their clients.

Real Estate  
Corporation

FACSIMILE

\*\*\*\*\*

COVER SHEET

\*\*\*\*\*

RECEIVED

MAR 16 1994

DATE: 2-16-94

Rep. Brian Porter

TO: Brian Porter, Chairman

FAX # 465-3834

FROM: PAT KRUSE  
*Assoc. Broker*

WE ARE TRANSMITTING 1 PAGES  
(INCLUDING THIS COVER PAGE)

IF TRANSMISSION IS NOT COMPLETE, PLEASE CALL  
HERITAGE REAL ESTATE CORP. 562-1222

HERITAGE FAX # (907) 273-2473

COMMENTS:

*Please! Please! Support HB517  
to remove "Innocent Misrepresentation"  
Thank you!*

*Pat Kruse, Assoc. Broker  
Jay Melville - Assoc. Broker  
Scott Dallas - Realtor  
Gondra Thomas Assoc. Broker*

220 C Street, Suite 102  
Anchorage, Alaska 99503  
(907) 562-1222 FAX 273-2473

18550 Eagle River Road  
Eagle River, Alaska 99577  
(907) 694-4994 FAX 694-3641

35571 Spur Highway  
Soldotna, Alaska 99669  
(907) 262-5862 FAX 262-1004

502 Lake Street  
Kenai, Alaska 99611  
(907) 283-4408 FAX 283-4225

701 East Parks Hwy, Suite  
Wasilla, Alaska 99654  
(907) 876-2448 FAX 373-7

\*\*\*END\*\*\*



**Chelsea Realty & Development, Inc.**

"The Effort People"

104 Center Avenue, Suite 201 • Kodiak, Alaska 99615

Fax: 486-2887 • Telephone: (907)486-3424

March 14, 1994

Representative Brian Porter  
Chairman, House Judiciary Committee

Dear Representative Porter: -

I am writing in support of HR517. As owner/broker of a full-service real estate company in Kodiak, I feel that "innocent misrepresentation" legislation is long-overdue for the real estate industry.

My company prides itself on putting forth extra effort and providing the most professional service possible. I am very aware of our liability on a daily basis and insist that my agents know "all there is to know" about a listed property. However, there are times when the facts are misleading and an agent could be caught unknowingly in "innocent misrepresentation." I feel that obtaining affordable "Errors and Omissions" insurance in Alaska is adversely affected by the fact that we currently have no innocent misrepresentation law.

I would very much appreciate your support of this legislation and do not feel that such a law will compromise the responsibility held by real estate professionals in Alaska.

Sincerely,

Bonnie M. Aulabaugh  
Owner/Broker

RECEIVED

MAR 14 1994

Rep. Brian Porter



Valley Board of REALTORS®  
 851 E. Westpoint Drive, Ste. 208, Wasilla, Alaska 99654  
 Telephone 907-376-5080 • Fax 907-376-5081

## Resolution 94-01

### A Resolution Supporting House Bill 517

#### Innocent Misrepresentations by Agents in Real Property Transactions

WHEREAS, Senate Bill 206 was introduced in the Eighteenth Session of the Alaska State Legislature at the request of the Alaska Association of REALTORS, and

WHEREAS, House Bill 517 has been introduced in the Eighteenth Session of the Alaska State Legislature as a "Companion Bill", and

WHEREAS, this legislation would remove liability for "Innocent Misrepresentations" by agents in a real estate transaction, and

WHEREAS, Alaska and two other states are the only jurisdictions in which real estate professionals are made liable for "Innocent Misrepresentations," and

WHEREAS, Alaska statutes are silent on "Innocent Misrepresentations", there has been cause for numerous lawsuits, causing errors and omissions underwriters to either withdraw from issuing policies in Alaska or causing insurance companies to increase their premium rates to real estate professionals, and

WHEREAS, errors and omissions insurance premiums are so expensive real estate agents may determine the insurance to be cost prohibitive to carry, and

WHEREAS, the absence of such protection is not in the public's best interest because the Alaska Surety Fund does not cover innocent misrepresentation claims, and

WHEREAS, the Alaska Association of REALTORS wholeheartedly supported the passage of legislation during the Seventeenth Legislature addressing Real Property Transfer Disclosure (AS 34.70) which further increases a real estate agent's liability exposure, and

WHEREAS, the real estate community's position is that an agent or broker for the transferor or transferee should not be liable for "Innocent Misrepresentations" in information provided to the transferee in the transfer of an interest in real property if the





# Alaska State Legislature

Please enter into the record my testimony to the House Judiciary Committee  
 committee name  
 committee on HB 517 / Real Property, dated 3/10/94  
 bill/subject

Memo: Pro-testimony for HB 517  
 Chairman Brian Porter  
 Representative Cliff Davidson

From: Craig H. Johnson  
 Associated Island Brokers Inc.

Date: March 10, 1994

Re: Supporting this legislation

**RECEIVED**

MAR 11 1994

Rep. Brian Porter

Please accept this as written to support this new legislation. As an owner of Kodiak's largest real estate office I am aware of the liability we face daily in the real estate business. As a member of the Alaska Association of Realtor's I know the time & effort that has been spent working for SB 206. As Vice-Chairman of the AAR Legislative Committee I hope to influence this legislation in a positive way.

We are responsible to properly represent real estate. Innocent misrepresentation is only law in 3 states, however, & we take every precaution but we can't know all the facts about the properties we're selling. We will continue to have liability but it will be manageable. Alaska has been affected by "Errors & Omissions" carriers that have excluded us from their coverage areas. This has resulted in our paying much higher premiums for insurance of this type. I would appreciate your support for this legislation.

If you have further questions on this please call; office, 486-2000.

Signed: \_\_\_\_\_  
 Testifier Craig H. Johnson ALASKA ASSN. OF REALTORS LEG. COMMITTEE  
 Representing (Optional) 218 CENTER, STE 200 KODIAK, AK 99615  
 Address \_\_\_\_\_  
 Phone No. 907-486-2000

Alaska State Legislature Office



# Alaska State Legislature

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Signed:

Testifier

*Craig H. Johnson*

ALASKA ASSN. OF

Representing (Optional)

218 CENTER, STE 200 KODIAK, AK

REALTORS LEG. COMMITTEE

Address

907-486-2000

99615

Phone No.

Alaska State Legislature Office

**Chelsea Realty & Development, Inc.****"The Effort People"**

104 Center Avenue, Suite 201 • Kodiak, Alaska 99615

Fax: 486-2867 • Telephone: (907)486-3424

March 14, 1994

Representative Brian Porter  
Chairman, House Judiciary Committee

Dear Representative Porter: -

I am writing in support of HB517. As owner/broker of a full-service real estate company in Kodiak, I feel that "innocent misrepresentation" legislation is long-overdue for the real estate industry.

My company prides itself on putting forth extra effort and providing the most professional service possible. I am very aware of our liability on a daily basis and insist that my agents know "all there is to know" about a listed property. However, there are times when the facts are misleading and an agent could be caught unknowingly in "innocent misrepresentation." I feel that obtaining affordable "Errors and Omissions" insurance in Alaska is adversely affected by the fact that we currently have no innocent misrepresentation law.

I would very much appreciate your support of this legislation and do not feel that such a law will compromise the responsibility held by real estate professionals in Alaska.

Sincerely,

Bonnie M. Aulabaugh  
Owner/Broker

RECEIVED

MAR 14 1994

Rep. Brian Porter



**Chelsea Realty & Development, Inc.**

"The Effort People"

104 Center Avenue, Suite 201 • Kodiak, Alaska 99615

Fax: 486-2667 • Telephone: (907)486-3424

March 14, 1994

Representative Brian Porter  
Chairman, House Judiciary Committee

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I am writing in support of **HR517**. As owner/broker of a full-service real estate company in Kodiak, I feel that "innocent misrepresentation" legislation is long-overdue for the real estate industry.

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RECEIVED

MAR 14 1994

Rep. Brian Porter

**Real Estate**  
Corporation

FACSIMILE

\*\*\*\*\*

COVER SHEET

\*\*\*\*\*

RECEIVED

MAR 16 1994

DATE:

2-16-94

Rep. Brian Porter

TO:

Brian Porter, Chairman

FAX #

465-3831

FROM:

PAT KRUSE

*Associate Broker*

WE ARE TRANSMITTING 1 PAGES  
(INCLUDING THIS COVER PAGE)

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HERITAGE REAL ESTATE CORP. 562-1222

HERITAGE FAX # (907) 273-2473

COMMENTS:

Please! Please! Support HB517  
To remove "Innocent Misrepresentation!"  
Thank you!

Pat Kruse, Associate Broker  
Jay Melville, Associate Broker  
Donna Pales - Realtor  
Dandra Pales Associate Broker

2230 C Street, Suite 102  
Anchorage, Alaska 99503  
(907) 562-1222 FAX 273-2473

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Eagle River, Alaska 99577  
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701 East Parks Hwy, Suite  
Wasilla, Alaska 99654  
(907) 376-2448 FAX 373-7

\*\*\*END\*\*\*

# Alaska State Legislature

Ronald L. Larson

Co-Chair  
(907) 465-38

INTERIM ADDRESS  
P.O. Box 53  
Palmer, Alaska 99645  
(907) 746-1046



Eileen P. MacLean

Co-Chair  
(907) 465-3722

INTERIM ADDRESS  
P.O. Box 290  
Barrow, Alaska 99723  
(907) 852-7111

## House of Representatives

Committee on Finance

State Capitol, Juneau, Alaska 99801-1182

Sponsor Statement for HB517

An Act relating to innocent misrepresentations by agents in real property transfers

HB517 would remove real estate professionals from liability for "innocent misrepresentation" in real property transactions.

The Alaska Supreme Court ruled in 1982 in Bevins v. Ballard that brokers who make an "innocent misrepresentation" to a purchaser of real property are liable for the misrepresentation. This ruling puts an unjustified liability on real estate professionals.

Justice Connor's Dissenting opinion stated:

"When a realtor acts as a mere conduit for passing on information supplied by the seller, he should be under no duty independently to verify that information unless he has reason to believe the information to be false. ... Allowing an innocent misrepresentation action against the broker in such circumstances is quite close to imposing strict liability. There is no reason to make the broker the "insurer" of the seller's representations."

Moreover, the Supreme Court ruled in 1984 in State of Alaska, Real Estate Commission v. Myrna Johnston and Eva Loken that the Alaska Surety Fund does not cover innocent misrepresentation claims. This has made errors and omissions insurance for real estate professionals more expensive and difficult to obtain in Alaska.

The passage of HB298 last year, requiring detailed written disclosures in residential real property transfers as of July 1st, has substantially increased brokers' liability risk. Written disclosures provided by the seller to the broker, then forwarded by the broker to potential buyers, could place liability on the broker for misrepresentation the seller makes.

HB517 would overturn the Court's decision in Bevins v. Ballard, removing a real estate agent's liability for innocent misrepresentations.



**ANCHORAGE BOARD  
OF REALTORS, INC.**

REALTOR® *The Voice for Real Estate™* In Anchorage

741 Sesame Street  
Suite #100  
Anchorage, Alaska 99503  
(907) 561-2338  
(907) 563-8476 Fax

**A RESOLUTION SUPPORTING SENATE BILL 206, INNOCENT MISREPRESENTATIONS  
BY AGENTS IN REAL ESTATE PROPERTY TRANSACTIONS**

**WHEREAS**, Senate Bill 206 was introduced in the Eighteenth Session of the Alaska State Legislature at the request of the Alaska Association of REALTORS, and

**WHEREAS**, this legislation would remove liability for "Innocent Misrepresentations" by agents in a real estate transaction, and

**WHEREAS**, Alaska and two other states are the only jurisdictions in which real estate professionals are made liable for "Innocent Misrepresentations," and

**WHEREAS**, Alaska statutes are silent on "Innocent Misrepresentations" there has been cause for numerous lawsuits, causing errors and omissions underwriters to either withdraw from issuing policies in Alaska or causing insurance companies to increase their premium rates to real estate professionals, and

**WHEREAS**, errors and omissions insurance premiums are so expensive real estate agents may determine the insurance to be cost prohibitive to carry, and

**WHEREAS**, the absence of such protection is not in the public's best interest because the Alaska Surety Fund does not cover innocent misrepresentation claims, and

**WHEREAS**, the Alaska Association of REALTORS wholeheartedly supported the passage of legislation during the seventeenth Legislature addressing Real Property Transfer Disclosure (AS 34.70) which further increases a real estate agent's liability exposure, and

**WHEREAS**, the real estate community's position is that an agent or broker for the transferor or transferee should not be liable for "Innocent Misrepresentations" in information provided to the transferee in the transfer of an interest in real property if the agent does not have personal knowledge of the error, inaccuracy, or omission that is basis for the misrepresentations,

**NOW, THEREFORE, BE IT RESOLVED** that the Anchorage Board of REALTORS, which represents over 700 REALTORS, strongly urges the Alaska State Legislature to pass Senate Bill 206.

Adopted this 4th day of August, 1993. By: Anchorage Board of REALTORS

DeAnn Gleason  
DeAnn Gleason, President

Anita Bates  
Anita Bates, Legislative Chairman



# GREATER FAIRBANKS BOARD OF REALTORS®

*The Voice for Real Estate™* in FAIRBANKS

1449 Gillam Way  
Fairbanks, Alaska 99701  
(907) 452-7743

## A RESOLUTION SUPPORTING SENATE BILL 206, INNOCENT MISREPRESENTATIONS BY AGENTS IN REAL PROPERTY TRANSACTIONS

**WHEREAS**, Senate Bill 206 was introduced in the Eighteenth Session of the Alaska State Legislature at the request of the Alaska Association of REALTORS®, and

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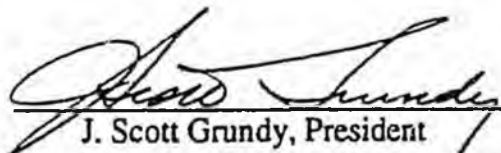
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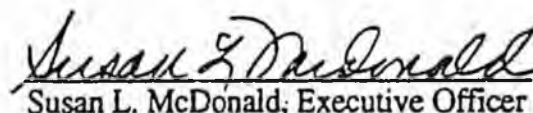
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**NOW, THEREFORE, BE IT RESOLVED** that the Greater Fairbanks Board of REALTORS® strongly urges the Alaska State Legislature to pass Senate Bill 206.

Adopted this 23rd day of July, 1993.

BY: GREATER FAIRBANKS BOARD OF REALTORS®

  
J. Scott Grundy, President

  
Susan L. McDonald, Executive Officer

**A RESOLUTION SUPPORTING SENATE BILL 206, INNOCENT MISREPRESENTATIONS BY AGENTS IN REAL PROPERTY TRANSACTIONS**

**WHEREAS**, Senate Bill 206 was introduced in the Eighteenth Session of the Alaska State Legislature at the request of the Alaska Association of REALTORS, and

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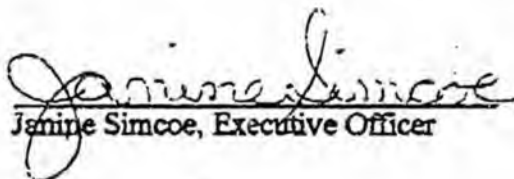
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**NOW THEREFORE, BE IT RESOLVED** that the Kachemak Board of REALTORS strongly urges the Alaska State Legislature to pass Senate Bill 206.

Adopted this 3rd day of August, 1993.

BY: KACHEMAK BOARD OF REALTORS

  
Sally Rogers, President

  
Janine Simcoe, Executive Officer



# Kenai Peninsula Board Of REALTORS®

35477 Spur Highway, Suite 201  
(907) 262-1851

P.O. Box 1288

Soldotna, AK 99689

FAX: (907) 262-1821

## A RESOLUTION SUPPORTING SENATE BILL 206, INNOCENT MISREPRESENTATIONS BY AGENTS IN REAL PROPERTY TRANSACTIONS

WHEREAS, Senate Bill 206 was introduced in the Eighteenth Session of the Alaska State Legislature at the request of the Alaska Association of REALTORS®, and

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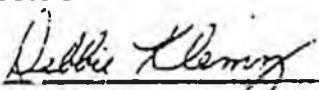
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NOW, THEREFORE, BE IT RESOLVED that the Kenai Peninsula Board of REALTORS® strongly urges the Alaska State Legislature to pass Senate Bill 206.

Adopted this 30th day of July, 1993,

BY: KENAI PENINSULA BOARD OF REALTORS®

  
\_\_\_\_\_  
David Feeka, President

  
\_\_\_\_\_  
Debbie Klemz, Executive Officer

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WHEREAS, the absence of such protection is not in the public's best interest because the Alaska Surety Fund does not cover innocent misrepresentation claims, and

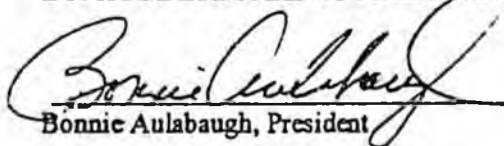
WHEREAS, the Alaska Association of REALTORS® wholeheartedly supported the passage of legislation during the Seventeenth Legislature addressing Real Property Transfer Disclosure (AS 34.70) which further increases a real estate agent's liability exposure, and

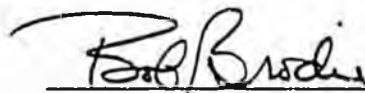
WHEREAS, the real estate community's position is that an agent or broker for the transferor or transferee should not be liable for "Innocent Misrepresentations" in information provided to the transferee in the transfer of an interest in real property if the agent does not have personal knowledge of the error, inaccuracy, or omission that is the basis for the misrepresentations,

NOW, THEREFORE, BE IT RESOLVED that the Kodiak Board of REALTORS® strongly urges the Alaska State Legislature to pass Senate Bill 206.

Adopted this 3rd day of August, 1993.

BY: KODIAK BOARD OF REALTORS®

  
Bonnie Aulabaugh, President

  
Bob Brodie, Vice President

**A RESOLUTION SUPPORTING SENATE BILL 206, INNOCENT  
MISREPRESENTATION BY AGENTS IN REAL PROPERTY TRANSACTIONS**

**WHEREAS, Senate Bill 206 was introduced in the Eighteenth Session of The Alaska State Legislature at the request of the Alaska Association of REALTORS, and**

**WHEREAS, this legislation would remove liability for "Innocent Misrepresentation" by agents in a real estate transaction, and**

**WHEREAS, Alaska and two other states are the only jurisdictions in which real estate professionals are made liable for "Innocent Misrepresentations" and**

**WHEREAS, Alaska statutes are silent on "Innocent Misrepresentation" there has been cause for numerous lawsuits, causing errors and omissions underwriters to either withdraw from issuing policies in Alaska or causing insurance companies to increase their premium rates to real estate professionals, and**

**WHEREAS, errors and omissions insurance premiums are so expensive real estate agents may determine the insurance to be cost prohibitive to carry, and**

**WHEREAS, the absence of such protection is not in the public's best interest because the Alaska Surety Fund does not cover innocent misrepresentation claims, and**

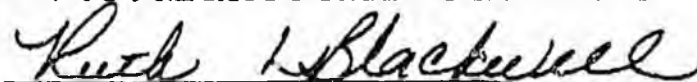
**WHEREAS, the Alaska Association of Realtors wholeheartedly supported the passage of legislation during the Seventeenth Legislature addressing Real Property Transfer Disclosure (A.S. 34.70) which further increases a real estate agent's liability exposure, and**

**WHEREAS, the real estate community's position is that an agent or broker for the transferor or transferee should not be held liable for "Innocent Misrepresentations" in the information provided to the transferee in the transfer of an interest in real property if the agent does not have personal knowledge of the error, inaccuracy or omission that is the basis for misrepresentations,**

**NOW, THEREFORE, BE IT RESOLVED that the Southeast Board of Realtors strongly urges the Alaska State Legislature to pass Senate Bill 206.**

**Adopted this 5th day of August, 1993.**

**BY: SOUTHEAST BOARD OF REALTORS**



**Ruth L. Blackwell, President**



REALTOR®

Valley Board of REALTORS®  
500 E. Railroad Avenue Ste. A, Wasilla, Alaska 99654  
Telephone 907-376-5080 • Fax 907-376-5081

## Resolution 93-01

A Resolution Supporting Senate Bill 206, Innocent

### Misrepresentations by Agents in Real Property Transactions

WHEREAS, Senate Bill 206 was introduced in the Eighteenth Session of the Alaska State Legislature at the request of the Alaska Association of REALTORS, and

WHEREAS, this legislation would remove liability for "Innocent Misrepresentations" by agents in a real estate transaction, and

WHEREAS, Alaska and two other states are the only jurisdictions in which real estate professionals are made liable for "Innocent Misrepresentations," and

WHEREAS, Alaska statutes are silent on "Innocent Misrepresentations" there has been cause for numerous lawsuits, causing errors and omissions underwriters to either withdraw from issuing policies in Alaska or causing insurance companies to increase their premium rates to real estate professionals, and

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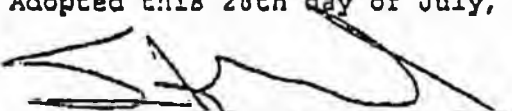
WHEREAS, the absence of such protection is not in the public's best interest because the Alaska Surety Fund does not cover innocent misrepresentation claims, and

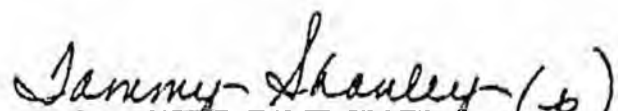
WHEREAS, the Alaska Association of REALTORS wholeheartedly supported the passage of legislation during the Seventeenth Legislature addressing Real Property Transfer Disclosure (AS 34.70) which further increases a real estate agent's liability exposure, and

WHEREAS, the real estate community's position is that an agent or broker for the transferor or transferee should not be liable for "Innocent Misrepresentations" in information provided to the transferee in the transfer of an interest in real property if the agent does not have personal knowledge of the error, inaccuracy, or omission that is the basis for the misrepresentations,

NOW THEREFORE, BE IT RESOLVED that the Valley Board of REALTORS strongly urges the Alaska State Legislature to pass Senate Bill 206.

Adopted this 28th day of July, 1993.

  
Steve Adams, President

  
Tammy Shanley, Secretary





GREEN LAW OFFICES, P.C.

F A X T R A N S M I T T A L

TO: Senate Labor & Commerce  
Hearings on SB206

FROM: Harold Green,  
Green Law Offices, P.C.

DATE: January 17, 1994

RE: Written Testimony on  
Hearing on SB206

Dear Committee Members:

I am submitting this written testimony on SB206 which, as I understand it, will remove civil liability for "innocent" misrepresentation by a licensed real estate professional in Alaska, and thereby reverse *Bevins v. Ballard*, 655 P.2d 757 (Alaska 1982).

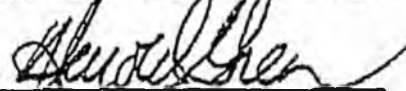
Whether or not to pass SB206 involves real public policy judgment on the part of this legislature. Let us assume that SB206 were to become law. How will the public be notified that they can no longer rely upon certain representations made by a licensed real estate professional?

Must each real estate transaction contain conspicuous language such as WARNING: YOU SHOULD NOT RELY UPON STATEMENTS MADE BY YOUR LICENSED REAL ESTATE PROFESSIONALS IN ALASKA; or should the real estate professional be required to start each conversation with a new prospective client with such a notice. How will the public be notified that they can no longer rely upon statements made by a licensed real estate professional? How will the public know which statements from a licensed real estate professional can be relied upon, and which statements from a licensed real estate professional cannot be relied upon?

Wouldn't it be cruel to pass SB206 without concurrently passing express notice requirements that clearly tell the public they should no longer rely upon statements of licensed real estate professionals in Alaska.

Perhaps SB206 will erode public confidence in our licensed real estate professionals. Does SB206 truly benefit the real estate profession? Does SB206 benefit the citizens of Alaska?

GREEN LAW OFFICES, P.C.

By:   
Harold Green, Esq.



Background and Analysis of Proposed  
"Innocent Misrepresentation" Legislative Relief

In 1982, on an appeal to the Supreme Court of Alaska, Bevins v. Ballard, 655 2nd 757, the court upheld a lower court decision that a (real estate) broker/or agent was liable for "innocent misrepresentations" made to a buyer. In other words, under Alaska law a real estate broker/agent may be liable for fraudulent, negligent and even innocent misrepresentation. The broker/agent is liable for damages resulting from representations concerning property, even though he had no knowledge that his statement was incorrect. Simply reporting a statement from an owner may result in liability. Only two other jurisdictions in the U.S. have similar liability statutes.

The Real Estate Surety Fund, a fund created to allow injured parties in a real estate transaction the ability to file a claim (up to \$10,000) and funded by all licensees, does not cover "innocent misrepresentation" claims. Errors and omissions insurance carriers have become increasingly wary of writing policies in Alaska due to this liability. The majority have refused (at any price) to issue errors and omissions insurance for real estate agents/brokers in the state. It is virtually impossible to obtain coverage. The result is the consumer does not have the needed protection in real estate transactions for the occurrence of fraudulent and intentional misrepresentation by an agent/broker who does not have the resources available to pay a judgement.

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

MAX BEVINS and JOHNSON-BEVINS  
INC., d/b/a STAR REALTY,

Appellants,

v.

DAVID L. BALLARD and LINDA K.  
BALLARD,

Appellees.

File No. 4571

O P I N I O N

[No. 2582 - November 19,

Appeal from the Superior Court of the State  
of Alaska; Third Judicial District, Anchorage, ...  
Eben H. Lewis, Judge.

Appearances: Fredrick P. Pettyjohn, Anchorage,  
for Appellants. Saul R. Friedman,  
Hedland, Fleischer & Friedman, Anchorage, for  
Appellees.

Before: Rabinowitz, Chief Justice, Connor,  
Burke, and Matthews, Justices, and Dimond,  
Senior Justice.\* (Compton, Justice, not  
participating.)

BURKE, Justice:  
CONNOR, Justice, with whom RABINOWITZ,  
Justice, joins, dissenting in part.

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\* Dimond, Senior Justice, sitting by assignment  
made pursuant to article IV, section 11 of the Constitution  
of Alaska, and Ala