

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

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1779



# Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Received

APR 19 1993

Phone: 907-463-3366  
Fax: 907-463-3312

April 16, 1993

Representative Brian Porter  
State Capitol  
Juneau, AK

Dear Representative Porter,

Thank you for meeting with us today. You were the first legislator with whom we have met in regards to SB 178, the bill limiting nuisance suits. I appreciated your points and arguments. They have helped us rethink our own understanding of the bill.

In light of that rethinking, I would like to clarify some of my own points and respond to some that you raised.

I think that the fundamental, and ultimately constitutional, issue in question here is whether the state may, through a permit, enhance one person's property at the expense, or to the diminishment of another's. If the state permits a private (i.e. non-public) activity which causes an "unreasonable interference with the use or enjoyment of real property" owned by another, it would constitute a "taking" and would probably be unconstitutional. The state may take private property, if it compensates the property owner, when it decides that it would be in the public's interest to do so. Condemning a property for the purposes of building a road would be such an example. I would be surprised if the state has the constitutional authority to take property, for private purposes, by simply issuing a permit.

A few comments on the permitting process:

1. The vast majority of permits are issued without any public process. For instance, if you want to burn leaves in your back yard, you go down to city hall and pick up the required permit. There would be no public notice or public hearing, and if there were, it would be extremely unlikely and an unreasonable burden for any of your neighbors to appear.
2. The criteria by which an applicant is judged eligible to receive a permit rarely include the impacts on specific property holders. Usually permit criteria consider more general issues such as, in the leaf burning example, fire safety and *ambient* air quality, i.e. it would not consider the quality of the air in your neighbor's yard, but just your impact on overall air quality.
3. A permit authorizes an activity, it rarely dictates how that activity is to be executed or performed. For instance, you could burn leaves on a workday morning and not disturb anyone, or you could burn leaves on a Sunday afternoon and smoke out your neighbor's barbecue. Though your leaf burning is permitted, it in no way confers on you the right to ruin your neighbor's dinner.

If, as SB 178 suggests, your neighbor's only recourse were to sue the state for damages, then in compensating your neighbor, the state is subsidizing your leaf burning and absolving you of any responsibility of being a good neighbor.



FISCAL NOTE

No. 1

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Bill Version: SB 178

(S) Publish Date: 4-13-93

Revision Date: April 1, 1993  
Title: "An Act relating to civil nuisance actions; and providing for an effective date."  
Sponsor: Senate Judiciary Committee  
Requestor: Senate Judiciary Committee

Department Affected: Department of Law  
BRU: Legal Services  
Component: Operations  
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Changes in CSSB 178 (JVD) have no fiscal impact. This fiscal note is appropriate.

4/12/93 KRI  
date Comte Aide (initial)

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

Phone: 465-3672  
Date: April 1, 1993  
Date: April 1, 1993

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# **CORRECTION**

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



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If, as SB 178 suggests, your neighbor's only recourse were to sue the state for damages, then in compensating your neighbor, the state is subsidizing your leaf burning and absolving you of any responsibility of being a good neighbor.



I have also talked to several lawyers who have told me that, as currently drafted, the bill would protect permittees' from nuisance suits even though they were violating the terms of their permits.

The practical implications to SB 178 are immense. The state issues thousands and thousands of permits each year. If it were the state and not the permittee, that were responsible for ensuring that the permitted activity were performed in such a way so as to not create a nuisance, then:

- There would be no incentive for the permittee to avoid creating a nuisance.
- The state's potential liabilities would be enormous.
- The state would be forced to write such restrictive permits that any activity requiring a permit would become a bureaucratic and business nightmare.

Clearly this is a complicated issue. However, on reflection, it seems to me that one, SB 178 represents a substantial erosion of private property rights. Two, that it will cause a great increase in the state's intrusion into the private sector if it must now delineate how all permitted activities are to be performed. And three, that it will relieve any permit holder of a great deal of his or her civil responsibilities.

I appreciate your consideration in this matter and thanks again for meeting with us.

Sincerely,

  
Russell Heath  
Executive Director

FISCAL NOTE

No. 1

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Bill Version: SB 178

(S) Publish Date: 4-13-93

Revision Date: April 1, 1993

Department Affected: Department of Law

Title: "An Act relating to civil nuisance actions; and providing for an effective date."

BRU: Legal Services

Sponsor: Senate Judiciary Committee

Component: Operations

Requestor: Senate Judiciary Committee

COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

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PERSONAL SERVICES						
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TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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Changes in CSSB 178 (JVD) have no fiscal impact. This fiscal note is appropriate.  
4/12/93 KRL  
date Comte Aide (initial)

ANALYSIS: (Attach a separate page if necessary.)  
Please see the attached analysis.

Prepared by: Richard I. Peques, Director  
Division: Administrative Services Division

Phone: 465-3672  
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Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. SB 178

ANALYSIS (Continued):

This bill repeals and reenacts AS 09.45.230, which permits civil actions to enjoin or abate a nuisance. The existing statute currently provides that an action may be brought by a person whose property is injuriously affected or whose personal enjoyment is lessened by a private nuisance to enjoin or abate the nuisance. This current authority to bring an action would be narrowed by the bill, which provides that a person may not bring an action based on a nuisance if the occupation, structure, or act, including an emission or discharge, that is the subject of the action is authorized under the following circumstances:

- (1) a statute or regulation;
- (2) a license, permit, or other document issued by the state or federal government, or
- (3) a court order or decision.

The state rarely uses this statute to enjoin or abate nuisances, because other state regulatory authority is usually available for those activities where the state might be involved in abating a nuisance. Consequently, any impact that may occur will be felt by private parties and there will not be a fiscal impact for the Department of Law.

# Alaska State Legislature

Senate Majority Leader  
Chair, Judiciary Committee  
Vice Chair, Community &  
Regional Affairs

Member, State Affairs Committee  
Committee on Committees  
Western States Legislative Forestry Task Force  
Legislative Council



**Senator Robin L. Taylor**

State Capitol  
Juneau, Alaska 99801-1182  
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Fax: (907) 225-0713

## MEMORANDUM

TO: Representative Brian Porter  
Chair, House Judiciary Committee

FROM: Senator Robin Taylor  
Chair, Senate Judiciary Committee 

DATE: 20 April 1993

RE: SB 178 Civil Nuisance Actions:  
Request for hearing

This morning Senate Bill 178 received a referral to the House Judiciary Committee. With this memorandum I request that a hearing be scheduled for this legislation at your earliest convenience.

In addition, background information for the legislation is attached under this cover including a sponsor statement, sectional analysis, supporting letters to the editor of the Sitka Sentinel, and the written testimony submitted to the Senate Judiciary Committee. Please note that the sectional analysis and sponsor statement refer specifically to CSSB 178 (JUD).

Thank you for your timely response to this matter. If I can be of any further assistance, please do not hesitate to contact my office.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

# Alaska State Legislature

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Chair, Judiciary Committee  
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Regional Affairs

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*Senator Robin L. Taylor*

## SPONSOR STATEMENT

### SB 178

Senate Bill No. 178 has been introduced to clarify existing law and to protect permit holders from being sued for doing conducting those activities which are authorized by their permit. Senate Bill No. 103 and House Bill No. 167 are bringing Alaska's air quality control program into compliance with Federal standards. Simultaneously, mining and manufacturing businesses are developing and are likely to be permitted dischargers of waste water. Similarly expanding municipalities are requiring larger power plants, waste water treatment plants and incinerators. Unfortunately, the likelihood of private nuisance lawsuits seeking damages against these permitted activities

Alaska needs to maintain its orderly society. Both the state and local governments must be able to permit activities or hold permits for their own activities without the prospect of being sued by every person who simply opposes the permitted activity.

Senate Bill No. 178 amends Alaska's general nuisance statute to clarify the standard to be used by courts in determining whether or not an act or structure is, in fact, a nuisance. The goal is to prevent lawsuits against permit holders when they are acting within the limits of their permits. Senate Bill 178 would NOT protect any permit holder from a nuisance action if the permit holder exceeds or violates the limits of the permit.

## JUDICIARY COMMITTEE SUBSTITUTE FOR SB178

After the initial introduction of SB 178, there was concern that the language of the bill as drafted could be interpreted as interfering with the ability of the state and local governments to protect their citizens from statutorily identified public nuisances. The committee substitute before you has been drafted to address those concerns. CSSB 178 (JUD) narrows the scope of the bill and clarifies its intent to relate to private nuisance actions only.

### Sectional Analysis: CSSB178(JUD)

#### Section 1 OVERVIEW

AS 09.45.230 would be amended by adding two new sections. It preserves the right of people to sue to abate nuisances and recover damages. It specifies those activities that would be protected from such actions, but it preserves the right of people to sue to abate certain public nuisances, namely dilapidated fences (AS 03.30.030), houses of prostitution (AS 09.50.170 - AS 09.50.240), outdoor advertising (AS 19.25.080 - AS 19.25.180) and junkyards (AS 19.27). Suits regarding other public nuisances would remain the responsibility of government, whether state or local. Nothing in this section would prevent private persons from suing the responsible government to compel that government to abate a public nuisance.

Sec. 09.45.230(a) authorizes private persons to bring actions to enjoin or abate a nuisance. It also authorizes the award of damages. This represents no change from current law.

Sec. 09.45.230(b) specifies those actions which would be protected from nuisance lawsuits, such as those authorized by statute, regulation, permit, license or order of an administrative agency, or the order or decision of a court.

Sec. 09.45.230(c) lists the section numbers of the statutes under which private parties could still bring actions to abate or enjoin public nuisances (described in the overview of Section 1).

## Section 2 OVERVIEW

Section 2 changes the definition of nuisance, bringing that definition in line with modern legal concepts. The definition of what constitutes a nuisance would become more objective and, therefore, more consistently applied by courts.

Present law provides that a nuisance is that which injuriously affects a person's property or lessens a person's personal enjoyment of his property.

Section 2 of the bill would also add a new section to Article 4 of Title 9 that defines a nuisance as "a substantial and unreasonable interference with the use or enjoyment of real property, including water." The inclusion of "water" as real property is very important. It will allow persons to protect private water supplies as well as protect private recreational developments that include water sources.

## Section 3 OVERVIEW

Section 3 would make the amended Sec. 09.45 230 applicable to any pending actions. While Alaska's courts are more likely than not to agree that the amended Sec. 09.45.230 expresses what the modern trend in nuisance actions is throughout the country, the provision for an immediate effective date (as the bill does in Sec. 4) should notify the courts of the Legislature's intention that all sections of the bill will be deemed Alaska's law as of that enactment date. The effective date will clarify when permitted activities are protected.

## Section 4

As noted above, Section 4 provides for an immediate effective date.



# Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

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## SB 178/HB 282 CIVIL NUISANCE ACTIONS

SB 178/HB 282 "An Act Relating to Civil Nuisance Actions" would protect any permitted activity from legal liability for harm caused by unreasonable interference with a neighbor's property. An individual would not be allowed legal recourse if an activity, including noise, emission or discharge, is authorized by permit, license, statute, regulation, etc.

The Alaska Environmental Lobby opposes SB 178/HB 282.

\* SB 178/HB 282 takes away an individual's fundamental right to protect his or her property. It is not fair to prevent citizens of Alaska from having access to legal actions regarding permitted activities. Fishermen, native corporations, landowners and others would not be allowed to make civil nuisance actions against permitted activities if this legislation is enacted.

\* A private landowner could not file a civil nuisance action against a polluter of his or her property if the government has permitted the activity causing the pollution. Examples could include pollution from a sewer system or drilling mud pit, or noise from a zoned activity, such as an animal kennel.

\* SB 178/HB 282 would prevent a nuisance suit against a permitted activity even if the permit is being violated.

\* State permits are often negotiated. Variances are often allowed when a business is not in compliance with its permit. According to a 1993 finding of the Citizens Oversight Council on oil and hazardous substances, the public is not sufficiently included in the permitting process and the permitting process often lacks integrity.

\* This legislation appears aimed to prevent the one and only active private nuisance suit in Alaska. This suit complains about property damages from pollution of the Sitka pulp mill, which has operated under variances from its permit for many years. At least one attorney connected with the pulp mill is a prominent advocate of SB 178/HB 282.

\* SB 178/HB 282 has statewide implications. Besides affecting citizens' fundamental property rights, the bill may limit, nullify or affect statutes regarding construction without approval, contaminated food, smoking, abandoned vehicles, obstructions to navigable water, public health nuisances, water, air and land nuisances and more (Legislative Legal Affairs, 4/3/93).

\* The legislature has previously shown great reluctance to interfere with pending litigation. SB 178/HB 282 sets a precedent that may allow litigants to attack cases of their opponents in the legislature.

\* SB 178/HB 282 may be unconstitutional because it denies due process to property owners. It may constitute a "taking" of private property rights by the state of Alaska, and therefore may make the state liable to private property owners for costs of injury to their property caused by a permitted activity.

\* It appears that no other state in the U.S. has a similar limitation on civil nuisance actions.



# Alaska State Legislature

## House of Representatives

Official Business



State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-3718

House Majority Leader

To: Representative Brian Porter *Brian*  
From: Representative Gail Phillips *Gail*  
Date: April 16, 1993  
Re: House Bill 282 (SB 178)

Please find attached comments on House Bill 282 that I have received from Stephen F. Sorensen. I would like to have them included in the bill file. Thank you.

APR 16 1993

LAW OFFICES

BIRCH, HORTON, BITTNER AND CHEROT

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April 16, 1993

HAND-DELIVERED

The Honorable Gail Phillips  
House of Representatives, State of Alaska  
Capitol Building, Room 216

Re: Comments on House Bill 282 (SB 178)

Dear Representative Phillips:

Thank you for the opportunity of comment on House Bill 282, an act which would limit the ability of private landowners to bring lawsuits based upon nuisance. As I explained at the Alaska Miners Association breakfast meeting this morning, I represent mining companies as well as private landowners, including one private landowner in Sitka who is suing a quarrying operation on the basis of nuisance.

This bill, as well as the Senate's version, SB 178, seeks to redefine "nuisance" to mean a "substantial and unreasonable interference with the use or enjoyment of real property, including water." The bill will prohibit lawsuits based upon nuisance when an activity is conducted pursuant to government (federal, state or local) license or permit. This would undermine the rights of private property owners and would eliminate their right to peaceably enjoy their property. As matter of principle, if one property owner's activities substantially and unreasonably interferes with another property owner's enjoyment of her or his property, the owner causing the interference should be liable. This is view is mandated by simple fairness and concept that the legislature ought not be passing laws favoring the interest of one property owner over another. This bill requires the people of Alaska to pay for costs that ought to be borne by the person causing the nuisance, and presumably benefitting from it.

However, the right to use one's property as one sees fit is not absolute. When a person's use of their property substantially and unreasonably reduces the value or enjoyment of another's property, claim for nuisance is the appropriate

The Honorable Gail Phillips

April 16, 1993

Page -2-

Comments on HB 282

remedy and the person causing the harm should be held accountable. Lawsuits based upon nuisances have been a part of America's legal system and that of the Western World for hundreds of years. The primary purpose of lawsuits based upon nuisance is to protect people from diminished economic value, and loss of quality of life that results from other landowner's activities.

The bill would reverse this by placing the burden of a nuisance caused by private activity, though conducted under a governmental permit or license, on private property owners who neither caused nor benefitted from the activity. Persons who suffered economic damage because of such activity, if rendered unactionable by the HB 282, may have not other recourse. The law of inverse condemnation is inapplicable, as it applies only where the government has taken some action, but not where the government's involvement is only the issuance of a permit, and the action causing the economic damage is done by a private entity.

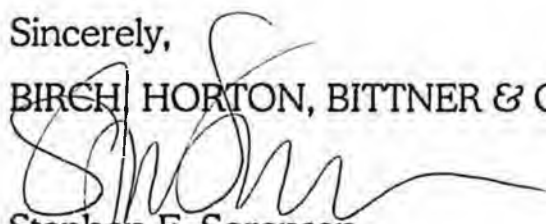
The only aspect of HB 282 that is supportable, is changing the definition of nuisance to "substantial and unreasonable" interference with property rights. This would raise the threshold of harm required to prevail in a nuisance action and discourage frivolous actions. I note, however, that there is no evidence that a nuisance cause of action has been abused to any great degree. But, the potential for such abuse exists and the new definition adequately addresses this potential problem.

I have taken this opportunity to provide you with a markup of HB 282 so that only the definition remains. I offer this for your consideration. The remainder of the bill is fatally flawed. It would deprive legitimate plaintiffs of an ancient, and perhaps their only, remedy for certain kinds of economic harm.

Thank you again for this opportunity of provide you with my views of HB 282. If I can be of any other assistance on this matter, or if there are any questions, please feel free to contact me.

Sincerely,

BIRCH, HORTON, BITTNER & CHEROT



Stephen F. Sorensen

Enc.:

Markup of HB 282



## Alliance for Juneau's Future, Inc.

### POSITION OF THE ALLIANCE FOR JUNEAU'S FUTURE ON SB 178

The Alliance for Juneau's Future supports Senate Bill 178 for the following reasons:

If business and industry is to invest time and capital in Alaska, they need predictable and stable laws. As the situation stands now, Alaska has two potentially conflicting systems governing land use and pollution: the regulatory system administered by the executive branch of state government and the "nuisance" system which is controlled by the judicial system.

While it is far from perfect, the legislature has made a clear choice that the regulatory system should have primacy. The legislature should defend the authority of the system it has established. SB 178 would do just that.

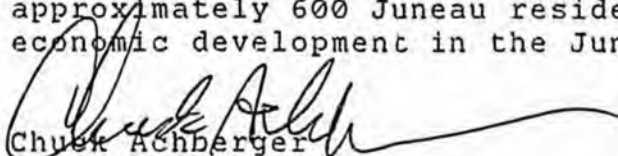
Without the protection of SB 178, Alaska risks having the regulatory system usurped or superseded by a judicially created "nuisance" system. The resulting uncertainty in the law will surely drive business and industry away from our state.

SB 178 makes another much needed correction to our nuisance statutes. The traditional standard for nuisance suits developed through hundreds of years of the common law was that an interference had to be "substantial and unreasonable." Our statute, AS 09.45.230, has departed from the established standard and endorsed one that is much more subjective and personal. Again, the uncertainty of this standard is harmful to a stable legal environment.

SB 178 will reestablish the traditional common law nuisance standard of a requirement of "substantial and unreasonable" interference with property.

Uncertainty in the law is harmful to those who would develop Alaska resources and provide a stable economic future for our state. But beyond that, it is most harmful to the public's respect for government. SB 178 takes one small step to the legal stability we need.

The Alliance for Juneau's Future is an organization of approximately 600 Juneau residents who support reasonable economic development in the Juneau area and throughout Alaska.

  
Chuck Achberger  
Executive Director

217 Second Street, Suite 201  
Juneau, Alaska 99801  
(907) 586-2323  
FAX (907) 463-5515



POSITION PAPER

Senate Bill 178

The Alaska State Chamber of Commerce has endorsed Senate Bill 178 as necessary to provide a good business climate in Alaska as well as to enable private citizens, the State of Alaska, and local government to protect their property from unreasonable intrusions.

Alaska's present nuisance law allows a person to sue his neighbor if he believes that his "personal enjoyment" of his property is lessened by his neighbor's activities. This is a very individual and subjective standard by which to judge the neighbor's actions. What may lessen one person's "personal enjoyment" of his or her property may not bother anyone else. The neighbor should be found liable only if what he is doing would be a nuisance to nearly everyone else in the community. In other words, "personal enjoyment" should be a standard that reflects the entire community.

What Senate Bill No. 178 does is change the standard by which a nuisance would be judged from "injuriously affected" or "lessened personal enjoyment" to "substantial and unreasonable interference." This makes the determination of what constitutes a nuisance a reflection of how an entire community functions.

Senate Bill No. 178 would also significantly reduce nuisance law suits brought against businesses and operations complying with conditions of their respective permits, i.e., air emissions, water discharges, noise, etc.

The Alaska State Chamber of Commerce believes that Senate Bill 178 strikes that proper balance between private interests, private and public interests, and creates the level playing field that makes possible economic development in Alaska and the protection of the environment.

WRITTEN TESTIMONY SUBMITTED  
SB 178 CIVIL NUISANCE ACTIONS

Municipality of Anchorage

Sealaska Corporation

Alaska Forest Association, Inc.

Alaska Miners Association, Inc.

Petro Star Inc.

Pete Ehrhardt, Attorney at Law

Sitka Sound Seafoods

Haines Financial Services

Dr. Ronn E. Dick, Sitka

Mary E. Forbes, Kodiak

Dave Katz, Ketchikan

Robert Ellis, Sitka

Don Muller, Sitka

**Municipality  
of  
Anchorage**



P.O. BOX 196650  
ANCHORAGE, ALASKA 99519-6650  
(907) 343-4545

**TOM FINK,  
MAYOR**

OFFICE OF THE MUNICIPAL ATTORNEY

April 1, 1993

APN - 5 RECD

Senator Robin Taylor  
Chair  
Senate Judiciary Committee  
State Capitol  
Juneau, Alaska 99801

**SUBJECT: SB 172 Regarding Awarding of Attorneys Fees and Costs and  
Civil Actions to Effectuate or Vindicate a Public Policy  
of the State**

Dear Senator Taylor:

The Municipality of Anchorage is very interested in a bill addressing the subject raised in Senate Bill 172, attorneys fees in public interest litigation. In recent years the Municipality of Anchorage has incurred expenses relating to "public interest litigation" in situations where the public interest in avoiding unnecessary municipal legal expenses appears to outweigh the public interest allegedly served by the litigation.

In some situations the Municipality of Anchorage has taken a position asserting a good faith interpretation of the applicable statutes and been forced to defend that interpretation in court. After a successful defense of that interpretation the public interest litigant doctrine has been applied to preclude the Municipality from recovering attorneys fees in cases relating to issues of "public interest" unless the suit is declared frivolous by the court.

In some other situations the Municipality may defend a good faith interpretation of the applicable statutes only to find that that interpretation, however reasonable, is different than the interpretation utilized by the courts. Where the opposing party is a "public interest litigant" the Municipality may be required to pay full attorney's fees regardless of the economic resources of the "public interest" party.

As the costs of litigation increase, this potential liability for defending against any public interest litigation creates a strong motivation for government attorneys to use very restrictive interpretations of statutes when giving advice to legislative or

Senator Robin Taylor  
April 1, 1993  
Page 2

executive bodies. Where the public interest litigant doctrine creates a financial liability in the event of any challenge to an executive or legislative decision either in the form of attorneys expenses or liability for attorneys fees to the opposing party, and there is no possibility for compensation in the event of a successful defense of the government's position, the frankness and variety of options presented in legal advice offered to legislative and executive decision makers may be adversely affected.

The Anchorage Municipal Attorney strongly endorses the concept set out in Senate Bill 172. The bill could go even farther and, using the Federal Equal Access to Justice Act, 28 USC § 2412, as a pattern, could protect governmental entities from responsibility for full attorneys fees where the position of the government or governmental agency was substantially justified.

Sincerely,



Richard L. McVeigh  
Municipal Attorney

ms\lrc\mcveigh\house/dp



APR 13 RECD

April 13, 1993

The Honorable Robin Taylor  
The State Senate, State of Alaska  
Capitol Building, Room 30  
Juneau, Alaska 99801

Re: Senate Bill 178/House Bill 282

Dear Senator Taylor:

Yesterday, the Senate Judiciary Committee heard testimony on Senate Bill 178, an act which would limit the ability of private landowners to bring lawsuits based upon nuisance. Due to a family emergency, I was unable to testify at the hearing. A companion Bill, HB 282, has also just been introduced.

Sealaska Corporation strongly supports some elements of the bill, but strongly opposes others. While I was not able to appear before the committee to pass along Sealaska's position on this bill personally, I want to take this opportunity to do so. A copy of Sealaska's comments on Senate Bill 178 is enclosed, and applies equally to HB 282.

These bills would narrow the definition of "nuisance" to mean "a substantial and unreasonable interference with the use of an enjoyment of real property, including water." By narrowing the definition of "nuisance", the bill would help eliminate lawsuits which are frivolous or brought merely to harass. Sealaska believes that lawsuits based on nuisance are only warranted if the interference with property rights is "substantial and unreasonable," and therefore supports Section 2 of the bill.

The bill also bars lawsuits based on nuisance when an activity is conducted pursuant to a government license or permit. Sealaska believes that this would undermine the rights of private property owners, and would limit their right to peaceably enjoy their property. As a matter of principle, Sealaska believes that if


Page Two  
April 13, 1993

peaceably enjoy their property. As a matter of principle, Sealaska believes that if one property owner's activities substantially and unreasonably interfere with another property owner's enjoyment of his or her property, the property owner causing the interference should be liable. This belief is based on simple fairness, and the belief that the legislature should not favor the interests of one property owner over those of another. Sealaska, therefore, strongly opposes the remainder of SB 178 and HB 282. I have taken the liberty of enclosing a proposed revision that would change the definition as suggested by both bills, but which deletes the negative aspects. I offer this for your consideration.

Thank you for taking the time to review Sealaska's comments. If you have any questions, please do not hesitate to call.

Sincerely yours,

SEALASKA CORPORATION



Robert W. Loescher  
Executive Vice President  
Resource Management

RWL/bjw

SEALASKA CORPORATION

COMMENTS ON SENATE BILL 178  
An Act Relating to Civil Nuisance Actions

This proposed legislation seeks to limit both public and private rights of action against activities that are conducted pursuant to various state or federal statutes, regulations, licenses, permits, or other documents, or by court order.

SB 178 would narrow the definition of "nuisance" to mean "a substantial and unreasonable interference with the use and enjoyment of real property, including water." The definition in current State law (A.S. 09.45.230) is that an action may be brought by a person whose property is "injuriously affected or whose personal enjoyment is lessened."

As the largest owner of private lands in Southeast Alaska, Sealaska agrees that the existing definition is too broad and might encourage frivolous claims based on a person's subjective perception that his or her "enjoyment" of a property interest has been "lessened." The proposed language would add the requirements that the interference be both substantial and unreasonable. As a matter of policy, Sealaska believes that lawsuits should not be brought unless the problem is substantial, and the interference is unreasonable. This narrower definition should go a long way towards reducing frivolous lawsuits. It strikes a good balance between the right to use one's property as one sees fit, and the right to peaceably enjoy one's property without undue interference from others.

However, the right to use one's property as one sees fit is not absolute. When one person's use of property substantially reduces the value of another's property, it is appropriate that the person who causes the harm should be liable to the other property owner.

Lawsuits based upon nuisance have been recognized in our legal system for hundreds of years where one person's activity diminishes the use and enjoyment of another's property. The purpose of lawsuits based upon nuisance is to protect people from diminished economic value, and loss of quality of life that results from that use.

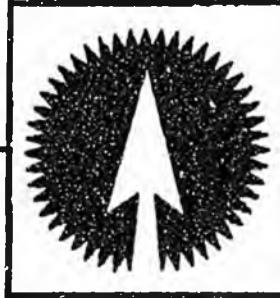
When brought for legitimate reasons, lawsuits based on nuisance encourage the economically efficient use of property by forcing a person to consider the impact of his actions on others. For this reason, the balance of SB 178 may be overbroad in its efforts to limit such litigation. If a nuisance is defined as a substantial and unreasonable interference, then Sealaska believes that a private party should have recourse to the courts to abate it. The current common law principle is based on the simple notion of fairness -- that a person who benefits from the use of property should be required to pay for any substantial harm that use causes to others.

Just because the government agency, individual, or company creating the nuisance does so under some type of government permit does not assure that individual property interests will be protected. This Bill does not say that the creator of the nuisance must be in compliance with the permit or even that there is a net economic benefit to the activity. Far more importantly, government permit decisions do not purport to settle other people's rights. It may well be that a person whose property is "substantially and unreasonably" interfered with would not have even participated in the agency permit proceeding, and even if he did participate, he would not have received the formal rights that are necessary before an individual's property rights can be impaired. The effect would be to force one group of property owners to subsidize another for what should be borne as a cost of doing business.

Sealaska endorses the concept of eliminating frivolous and unnecessary litigation as impediments to legitimate activities. Changing the definition as suggested in SB 178 will accomplish that goal in most cases. It is overkill to go beyond that by eliminating the centuries-old private property interest of abatement of nuisances through the courts. It sacrifices one important individual property right in order to promote another.

Accordingly, Sealaska Corporation supports Sec. 2 of SB 178 to the extent that it would clarify the definition of "nuisance" in A.S. 09.45.255. Sealaska opposes the balance of the Bill that would unduly restrict private property owners from access to the courts to protect their interests.

# Alaska Forest Association, Inc.



111 STEDMAN SUITE 200  
KETCHIKAN, ALASKA 99901-6599  
Phone 907-225-6114  
FAX 907-225-5920

## Statement of Support

### Senate Bill 178 - Civil Nuisance Suits

The Alaska Forest Association is in full support of Senate Bill 178. Under current law, a business or individual can be sued under a "nuisance" action even if they are operating in compliance with applicable laws and permits. This bill would allow a nuisance suit to be brought only if the subject of the action is out of compliance with a law, regulation, permit or court order.

Resource development operations and other business entities are required to comply with an entire realm of laws, regulations and permits that are subject to public scrutiny. If the business is operating within these boundaries then they should not be subject to litigation under a nuisance suit.

The Alaska Forest Association urges passage of SB 178.

D R A F T: April 5, 1993

TESTIMONY OF DAVE MATTHEWS  
FOR THE  
ALASKA FOREST ASSOCIATION

My name is Dave Matthews. I am acting manager of the Alaska Forest Association (AFA). The AFA submits this testimony for the record. The AFA is a private, non-profit organization comprised of companies involved in Alaska's forest products industry on federal, state and private lands. The Association has 119 member companies which are directly involved in the industry. The AFA provides more than 4,000 direct, year-round jobs. The Association has 200 associate member companies which provide goods and services to Alaska timber industries.

Senate Bill 178 only makes common sense. If an agency has determined that an activity is in the public interest and issued a permit allowing it, why should anyone be able to sue the permit holder based on doing what is authorized by that permit? A permit should be a shield from nuisance lawsuits. Accordingly, the AFA strongly supports passage of Senate Bill 178.

*Dave Matthews*  
*Alaska Forest Association*



# ALASKA MINERS ASSOCIATION, INC.

501 West Northern Lights Boulevard, Suite 203, Anchorage, Alaska 99503 fax: (907) 278-7997 telephone: (907) 276-0347

April 5, 1993

Honorable Robin Taylor  
Chairman  
Senate Judiciary Committee  
Alaska State Legislature  
Juneau, AK 99801-1182

Re: SB-178, Civil Nuisance Actions

On behalf of the Alaska Miners Association I wish to go on record in support of SB-178 which deals with civil nuisance suits that are filed opposing projects which are legal and covered by existing laws or permits. This bill is important for several reasons.

If an individual or company is conducting its business within the law, there should be nothing in statute that would encourage third parties to file nuisance suits against the activity.

This bill will remove one of the incentives for groups or individuals to file nuisance lawsuits. By removing the financial incentive, this bill should decrease the number of suits that are filed to merely harass and stall projects.

If fewer nuisance suits result, individual miners and companies will have one less artificial uncertainty when trying to develop a project.

Lastly, passage of this bill will provide additional tangible evidence to the international mining industry that Alaska truly wants mineral development and that the Alaska State Legislature is interested in removing the impediments to responsible mineral development.

Sincerely,

Steven C. Borell, P.E.  
Executive Director

**PETRO STAR INC.**  
**CORPORATE OFFICE**

Telephone: (907) 474-8210  
Fax: (907) 474-9503

P.O. Box 61030  
Fairbanks, Alaska 99706-1030

201 Arctic Slope Avenue #200  
Anchorage, Alaska 99518  
(907) 344-2661

April 7, 1993

**TESTIMONY OF STEPHEN T. LEWIS  
IN SUPPORT OF S.B. 178**

I, Stephen T. Lewis, testify as follows in support of Senate Bill 178:

1. The existing array of environmental regulations already imposes substantial and comprehensive requirements on industry. Compliance with environmental regulations needs detailed and long-range planning and substantial economic investment. Industry needs the assurance that if it obtains appropriate environmental permits and complies with them, it cannot be sued simply because an individual alleges that his or her "personal enjoyment" is impaired by the permitted activity. The agencies already address the questions of whether property will be injuriously affected or the personal enjoyment of Alaskans will be affected when they make permitting determinations.

2. Environmental permitting issues are committed to the regulatory authorities because the agencies are better able than the courts to decide detailed technical questions and to perform the balancing of interests that permitting decisions can involve.

3. Individuals that oppose development projects or complain that projects will affect their enjoyment of their property already are afforded ample opportunities to be heard in the regulatory permitting process, and they potentially can appeal agency

determinations. Private lawsuits raise issues that are substantially the same as those addressed in the permitting process. They waste the courts' time and unfairly allow private plaintiffs a "second bite at the apple" to shut down business activities.

4. There is no reason to believe that the courts make fairer or more accurate decisions than the permitting agencies. The adversary system employed by the courts is particularly ill-suited to address the complex technical and policy issues presented in the field of environmental regulation. "Nuisance" suits can pose a real danger that a court will erroneously shut down a project that the agencies have accurately determined to be a lawful and prudent use of resources.

5. Allowing "nuisance suits" to challenge permitting decisions undermines the regulatory process. The regulated community will have less respect for and less willingness to work with the agencies if agency determinations cannot provide the certainty necessary to prudent business planning. In effect, allowing individuals who are disappointed by the permit process to ignore agency determinations and file private nuisance lawsuits means that an agency determination that stops a project is binding, but one that allows a business to operate is provisional. This creates an impossible situation for orderly environmental regulation and for Alaska.

Respectfully submitted,

  
Stephen T. Lewis  
Chairman, Petro Star Inc.

**Robinson, Beiswenger & Ehrhardt  
Lawyers  
35401 Kenai Spur Highway  
Soldotna, Alaska 99669**

**Gordon G. Goodman • Associate**

**Telephone: (907) 262-9164  
Telecopier: (907) 262-7034  
Toll Free: 1 (800)770-9164**

**April 5, 1993**

**Sent via FAX**

**Senate Judiciary Committee  
State Capitol  
Juneau, AK 99801-1182**

**Re: Senate Bill 178**

**To Whom It May Concern:**

Attached to this letter you will find a position paper setting forth the critical reasons why Alaska property owners should not have their property rights extinguished by passage of Senate Bill 178. Senate Bill 178 is a bill intended to protect polluters, including the Alaska Pulp Corporation, from legal liability for harm caused by pollution of their neighbor's property.

Thank you for your attention to this matter.

Sincerely,



**PETE EHRHARDT  
Attorney at Law  
(Counsel in a nuisance suit against  
Alaska Pulp Corporation).**

**PE/rm  
Enclosure**

**Arthur S. Robinson • Allan Beiswenger • Peter Ehrhardt**

**POSITION PAPER ON S.B. 178****"An Act Relating to Civil Nuisance Actions"****April 2, 1993**

1. Senate Bill 178 should not pass. It has been introduced at the eleventh hour in an attempt to protect the Sitka pulp mill against private nuisance suits by landowners. The bill would allow this mill to go on polluting and prevent victims of this pollution from doing anything about it.

2. The right of an Alaskan to maintain a private nuisance action to protect his property is fundamental. If this act goes forward companies who engage in permitted activity approved by the state will claim that private actions by fishermen, native corporations, landowners, and other persons cannot be maintained because the activity was permitted by the state. Furthermore, as written, the bill would prevent a suit for nuisance against a permitted polluter even if the permit was violated.

3. A private landowner could not maintain an action against a polluter of his property if the government, for example the Department of Environmental Conservation, had permitted the activity such as a sewer system or drilling mud reserve pit.

4. So far as is known, no other state has a similar limitation on nuisance actions.

5. The bill is probably unconstitutional because of two problems.

a. It denies due process to property owners.

b. It constitutes a "taking" of private property rights by the State of Alaska and may make the State of Alaska liable to private property owners for the cost of an injury to their property caused by a permitted activity.

6. S.B. 178 ignores the findings made by the Citizens Oversight Council on oil and other hazardous substances. In February 1993, the council found that the public is not sufficiently included in the permitting process and that the permitting process itself often lacked integrity. S.B. 178 uses permits to immunize polluters from liability. This should not be allowed in light of the findings of the Oversight Committee.

329-333 Katlian Street

Sitka, Alaska 99835



**Fax Message:**

To: Senator Robin Taylor  
From: Harold Thompson  
Date: 4/13/93

Re: Senate Bill 178

Sitka Sound Seafoods is in favor or SB 178 and think it makes sense.

I hope you can support the bill. Thanks for your consideration.

Regards,

Harold Thompson  
President

(907) 747-8662

TELEFAX (907) 747-8268

Telex 090-48-391 SSSZAFOOD SIK

FRESH AND FROZEN SALMON, COD, BLACK COD, HALIBUT, ROCK FISH, CRAB, HERRING





# HAINES FINANCIAL SERVICES

APR 15 RECD

April 12, 1993

Investments  
Financial Planning  
Real Estate Brokerage  
Appraisals  
Accounting  
Bookkeeping  
Consulting

Robin Taylor, Chairman  
Senate Judiciary Committee  
State Capitol, Rm. 30  
Juneau, AK 99801-1182

RE: Senate Bill No. 178 - Limiting Private Property Rights

Dear Senator Taylor:

Each year government places further restrictions on the rights of private property owners. I'm opposed to this legislation (SB 178) since it will make it even more difficult for property owners to obtain relief from actions by others having a negative impact on privately held property. I believe this legislation to be unconstitutional as it severely limits the rights of private property owners to the quiet enjoyment of their property.

If the government has erred and the only option left is the courts, then ***this right should not be restricted by government.*** Serious impacts could render private property worthless or destroy one's constitutionally guaranteed right of quiet enjoyment. This bill would give government even more power over my property. Shame on you!

## THE BILL OF RIGHTS ARTICLE V

"...nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation."

Sincerely,

Peter M. Enticknap

cc: Senator Rick Halford  
Senator George Jacko  
Senator Dave Donley  
Senator Suzanne Little  
Senator Fred Zharoff  
Rick Hunter, President, AK Association of Realtors

April 5, 1993

To: Senate Judiciary Committee  
Eighteenth Legislature  
State of Alaska  
Juneau, AK

From: Dr. Ronn E. Dick, Associate Professor  
Natural Resources  
801 Lincoln St.  
Sitka, AK 99835

Dear Sirs:

I am writing as a concerned citizen and as a natural resource management professional to comment on Senate Bill No. 178, "An Act relating to civil nuisance actions."

My concerns are both procedural and substantive.

Procedurally, I am distressed by the fast track upon which this piece of legislation has been placed. The Bill was introduced on Wednesday, March 31 and only two working days later the hearings are being held. I have to wonder why this Bill has such priority and who has decided to assign it that priority. The time frame simply does not give anyone in the public or legislature to prepare for detailed consideration of the Bill's merit. In addition, no other legislative committee is scheduled to hold hearings on this Bill.

Substantively, I have even more serious concerns. On the face of it, this is an obvious, cynical and corrupt exercise of power by an elected representative of the people of Alaska who has decided to do the bidding of powerful, wealthy corporations. This legislation is in direct response to a lawsuit against Alaska Pulp Corporation because of its pollution of Sitka Sound and the effects of this pollution on the waterfront property owners in Sitka Sound. It is ironical that that the special interests of the two pulp mills in SE Alaska, especially Alaska Pulp Corporation (APC), benefit from this Bill. It is ironical because it is these pulp mills that complain the most about the influence of "special interests", on legislation.

Rather than get into the legal details and nuances of such a Legislative Act with respect to individual property rights and due process, I will focus my comments on the underlying principles of justice that this Act violates. Since this Act exempts any polluter from liability if they have the permission of the government to pollute (by virtue of statute or regulation, license or permit, or court order of decision), it is absolutely essential that the integrity of the "permission" process be untainted. The fact is that this permitting process is often lacking of integrity and often involves collusion between the permitting agencies and the polluters.

It is a fact that APC and the State of Alaska Department of Environmental Conservation (DEC) have had numerous private meetings to agree upon acceptable pollution standards. Generally, APC

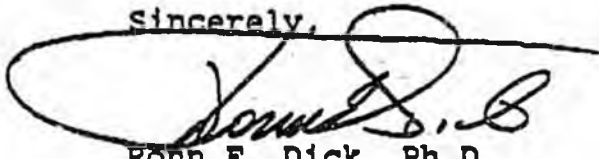
informs DEC about the current level of discharge of specific pollutants and DEC writes the standards so that those levels of discharge can be maintained.

It is a fact that DEC often fails to enforce violation of the standards or to enforce their own regulations. An excellent example of DEC's refusal to enforce their own regulations is DEC's 20+ year refusal to enforce Air Quality Regulation 18 AAC 50.110 Air Pollution Prohibited (Effective 5/26/1972). The Sitka Conservation Society filed an administrative appeal regarding the DEC's failure with respect to this regulation four years ago and the appeal was decided in favor of the Sitka Conservation Society in May of 1992. In short, this regulation placed the burden of proof on the polluter to prove that the pollution they create is NOT injurious to human health or welfare, animal or plant life, or PROPERTY, or which would unreasonably interfere with the enjoyment of life or property. DEC still has NEVER enforced this regulation in the past and has not enforced this regulation in spite of the appeal decision almost one year ago.

Now, the Alaska State Legislature is considering a Bill that would disenfranchise the public, the citizens of Alaska, from seeking legal redress when the State Government and corporations collude to circumvent the laws and regulations of the state.

Frankly, this legislation threatens the credibility of our State government and I believe is politically and socially destabilizing. It destroys checks and balances and leaves the citizens of Alaska without any acceptable means of protecting themselves from corporate excesses. This Act should not have been written in the first place. It most certainly should not receive the approval of the Senate Judiciary Committee.

Sincerely,



Ronn E. Dick, Ph.D.  
Forest Resources



# Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary  
 committee name  
Civil Nuisance  
 committee on SB 178 Actions, dated April, 1993.  
 bill/subject

I am opposed to SB 178. Though I do not condone frivolous lawsuits, I do not think the right of property owners to file nuisance suits should be taken away. This could be a costly mistake for the State of Alaska. By denying due process to property owners, the bill could be interpreted as constituting a "taking" of personal property rights by the State of Alaska. The state would then be liable to private property owners should they incur damage to their property as a result of state permitted activities. The Federal Government has not taken this risk. Why should the State of Alaska take it for the benefit of a few

citizen? Also, the possible costs the state could incur from the above scenario is contradictory to this legislature's goal to cut General Fund spending. SB 178 is also bad public policy. The Citizens Oversight Council on Oil and Other Hazardous Substances (a committee created by this legislature) has concluded that the integrity of the state's permitting process is already in question. Passage of SB 178 would further degrade this process. Lastly, SB 178 is difficult to understand, very ambiguous and would affect many other existing Alaska statutes. This bill should not pass.  
 Thank you for the opportunity to testify.

Signed: Mary E Forbes  
 Testifier  
Kodiak Audubon ~~Soc~~ Society  
 Representing (Optional)  
418 Mill Bay Rd Kodiak AK 99615  
 Address  
486-2685  
 Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the

Senate Judiciary  
committee name

committee on

SB 178 / SCR 4  
bill/subject

dated

4/15/93

Addition to verbal testimony

The effect of both of these measures would be to remove an essential check and balance of our miraculous democracy - it would tilt the playing field in favor of big business, big government and the rich, and deprive common citizens of access to the courts.

Signed:

Dave Katz  
Testifier

Tongass Conservation Society  
Representing (Optional)

Address

PO Box 3377

Address

Ketchikan, AK

Phone No.

225-5827



# Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary Committee  
committee name  
committee on SB178, dated 5 April 93  
bill/subject

I am against passage of SB178.  
This bill appears to be directed to relieving Alaska Pulp Corporation  
from its many years of imposition of its pollution on private  
property owners in Sitka. I speak to this bill in terms of  
its impact in Sitka but realize the effects would be state wide.

1. This bill would allow the mill to continue polluting and  
prevent victims of the pollution from relief in court even  
if the ~~pollution~~ permits continue to be violated.

2- This bill would be a "taking of private property  
rights and would likely make the State liable for  
damage to private property resulting from permitted  
operations.

3- SB178 ignores the fact that the public has not been  
sufficiently included in the permitting process.

4- SB178 uses permits to immunize polluters from  
liability.

Signed:

Robert Jellio  
Testifier

Sitka Property Owner

Representing (Optional)

Box 2966 Sitka

Address

747-8950

Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary Committee  
 committee name  
 committee on S.B. 178, dated 4/5/93  
 bill/subject

Hello: My name is DON MULLER. I have been a businessman in Sitka for the last 17 years. For two years before that I was a chemist at the APC mill.

Just yesterday I returned from Cambodia where I spent the last two months working on an education project for a relief agency. If I may, I would like to draw an analogy between what I saw there and SB 178.

As you all know, Cambodia has been involved with civil war and unrest for the last 25 years. As you also know, much of this has been the result of the genocidal Khmer Rouge

Signed: Don Muller (DON MULLER)

Testifier

Self

Representing (Optional)

Box 1042 Sitka

Address

747-8808, 747-6734

Phone No.

3 Pages

and their ultra-extreme policies. In April of 1991, after tremendous international effort, a peace accord was signed by the parties involved. This resulted in tremendous optimism internationally and, of course, among the Khmer people. Democracy, it appeared, would soon come to Cambodia. The people would finally have their country back.

It soon became apparent, however, that the Khmer Rouge thought differently. And they expressed this very simply, as they always have: anything in the peace accords that they didn't agree with, they simply went around it; if a particular agreement didn't please them at a particular time, they simply ignored it and operated by their own rules. Their own ~~rules~~ concerns were more important than the concerns of the country.

SB 178 is obviously being considered because the pulp mill doesn't like the existing rules. The pulp mill, represented by Robin Taylor and Jim Clark, wants to write its own rules, especially since the mill might be in violation

of the existing rules. According to the pulp mill, the rights of the mill are more important than the rights of the community it operates in.

I ask that you vote against SB 178 in the interests of democracy and the rights of the citizens of Alaska.

## LETTERS TO THE EDITOR

### Alaska Pulp

Dear Editor: I am writing this letter concerning the class action suit filed against Alaska Pulp Corporation of Sitka, Alaska.

In the Sitka Sentinel, March 2, 1992, it states that "some Sitka residents have filed a class-action suit against Alaska Pulp Corp., claiming the mill recklessly polluted the community, damaging the quality of life of waterfront property owners." It further states that "it seeks an undetermined amount of damages on behalf of environmental activist Larry Edwards and about 150 owners of waterfront property they claim is affected by mill pollution."

I have lived in Sitka for 46 years, having moved here when I was 22-years-old. I also live on waterfront property.

This past year I have enjoyed a weekly bridge session with several of my longtime friends, among them two close friends, who live on the beach close to the mill. We have observed pods of whales for months at a time in the area, as well as seals and sea lions. Seals have come in large groups and can be counted in the hundreds. In fact many of us have remarked that we have not seen as much wildlife in years as we have seen this year.

I have lived in Sitka before and after the pulp mill was built. I, and many others, can say the town is better now. Concerning the air, it is a well-known fact here that the smoke coming from wood stoves, particularly in the hospital, school and Swan Lake District, can be seen and smelled for miles. The pulp mill should not be blamed for all the air pollution. In this same newspaper article it is stated that "mill officials have spent nearly \$100 million on pollution control since 1968 and report operating expenses of the equipment total \$12 million a year." Nothing as far as I know has been spent on cleaning up the wood smoke problem.

One of my late husband's favorite places to fish, before and after the pulp mill, was Long Island. After his death our family set up a James Reeder Long Island Memorial Scholarship Fund at Sheldon Jackson College to be used for a student majoring in fisheries.

I think we should support the pulp mill and its endeavors to run a clean, efficient plant. I also believe the "150 owners of waterfront property" should put their name where the public can know who they are. To date I can find only one.

Eileen G. Reeder, Sitka

## LETTERS TO THE EDITOR

### Supports APC.

Dear Editor: I am concerned about the class-action suit filed against Alaska Pulp Corp. of Sitka.

What a beautiful country we live in! Wooded islands and streams emptying into Silver Bay. There is a small stream about 500 feet from my home and on these waters beautiful wild ducks come to gather in flocks for their journey both north and south; sometimes for a prolonged stay.

Yes, I have lived on the beach at Thimbleberry Bay, a beautiful natural harbor, since 1965. I prefer this location above any other that I know of. This property was purchased previous to the start-up of the mill and has not changed. We have seals, whales and porpoises in our waters and what a pleasure it is for me to watch them frolic and invite the boat people to a race!

There is also a fish hatchery just a mile or so farther up the bay from the Alaska Pulp mill. On the hills above the mill there are beautiful trees, and lakes where fishermen enjoy catching fish. A very interesting hike for these fishermen.

I am one of the "Older People," 90 years of age, who has in the past years enjoyed both the hiking to the above lakes and fishing on our boat, Tierrah, in the area across the bay from our home and all along the Eastern Channel.

Now I enjoy a walk every day, weather permitting, up my road to the mail box. It is a good quarter mile hike uphill, among beautiful trees, and in clear, invigorating air. It is unbelievable the height and beauty of the trees that I have enjoyed since I have lived here these 27 years.

Since the mill has come to Sitka the town has grown from 3,500 to 8,700 people; new streets and many beautiful homes have been built. There are new stores that offer everything from food to clothing, furniture, fuel oil and most necessities of life. Also appearing is tourism, an airport for the large planes, and a bridge connecting Mt. Edgecumbe to Sitka.

Many boats are owned here from big seiners, trollers, pleasure crafts down to canoes, rowboats, kayaks, and dingies and many of the owners I have heard say they enjoy the Sitka area as one of their favorite places. This is a beautiful, scenic, clean air, wild and natural town to live in and I want it to stay as it is, with the Alaska Pulp mill here, as they make it possible for all to have a better quality of life.

Harriet Stein, Sitka

## LETTERS TO THE EDITOR

### Supports APC

Dear Editor: Since I have lived and enjoyed my beach property on Thimbleberry Bay since 1948, I would like to evidence my disbelief that anyone could consider their property polluted by Alaska Pulp Corp. as Larry Edwards' class action suit indicates.

My three sons, all their friends, and now their children, as well as numerous visitors from out of town, over the years have enjoyed this property for swimming, fishing, boating and just enjoying the beauty and clear air. My sons and grandchildren are healthy.

In the early years of Alaska Lumber and Pulp Corp. there was enough pollution to cause less marine plant-life on the beach. Since the mill has put in their treatment plants, an area taking up nearly as much land as the mill itself, all marine life is now prevalent. I

believe the liquor they are now releasing is benefiting the marine life. This is evidenced by Silver Bay teeming with whales, porpoises, seals, otter, etc.

For my hobby business in seaweed and shells, I know most of the beaches around Sitka. At Herring Cove shoreline, a bay adjacent to the mill, I get some of my finest and best seaweed.

I would like to ask Larry Edwards, and other people so critical of our Sitka mill, why they settled and bought homes in this area? They purchased their property after the mill was established and there has been nothing but improvements since then.

I agree with Eileen Reeder's letter that the 150 owners of waterfront property "should put their name where the public can know who they are." I have called many waterfront property owners and fail to find any of the 150 who wish to sue the mill. Who are they?

We wish people would not harass us in our beautiful area and allow us to have the quality of life we now have.

Mary Richards Sarvela, Sitka

## LETTERS TO THE EDITOR

### Supports APC

Dear Editor: This letter concerns the class action suit filed against Alaska Pulp Corp. of Sitka.

The Sitka Sentinel March 2 article states "Some Sitka residents have filed a class-action suit against Alaska Pulp Corp., claiming the mill recklessly polluted the community, damaging the quality of life of waterfront property owners" and that it seeks "an undetermined amount of damages on behalf of environmental activist Larry Edwards and about 150 owners of waterfront property they claim is affected by mill pollution."

I have lived on waterfront property close to the mill for 34 years and have enjoyed every minute of it! Being right on the water has given my family and me many hours of pleasure watching the whales, seals, otter, birds and deer and once in awhile a Canadian goose drops by for lunch on our lawn. We feel fortunate to live so close to so much wildlife.

Prior to this time we lived in Washington for 16 years near Mt. Rainier where we enjoyed an abundance of wildlife and clean air. However, driving in the Tacoma area you can expe-

rience what polluted air is really like. I have not experienced any air and water pollution of any great magnitude in Sitka, like some people like to have you believe.

My family and I and friends have spent many enjoyable hours here on the bay, swimming, water skiing, boating and picnicking. When friends and relatives come up to visit from the Lower 48 usually their first words are how clean the air is and what wonderful water we have. APC has bent over backwards to keep it that way. They are always willing to help our community in many activities that helps the youth and Sitka citizens. It has never been their intention to pollute.

I resent the implications that are being given about this being a place with "dirty water and dirty air." I believe the quality of life much improved for the people of Sitka since APC came to town and that we should do all what we can to support them in their efforts to maintain and run a clean, efficient plant.

Who are these 150 waterfront people? I also do not know who they are. This will always be "home," and where I intend to spend the rest of my life.

Verle Kramer, Sitka

## LETTERS TO THE EDITOR

### More APC Support

Dear Editor: It was with sadness and mixed emotions when I read in the Ketchikan Daily News about another effort by the preservationists to force the Alaska Pulp Corp. to close their doors.

These people will stop at no end to not only close the life blood of Sitka, but eventually the fisheries and any other development.

Where is the silent majority? It is past time to stand up for your future. We in Ketchikan, a short time ago, were forced to have an advisory election (in regard to the U.S. Navy acoustic submarine testing facility). We, the silent majority, mobilized and more than proved the "antis" wrong.

In looking at these same people, it is readily evident that their only interest is to stop any development, whether it be the Tongass National Forest, Glacier Bay, sport fishing, etc.

I can remember when, in 1956, Sitka was just a small fishing village, in conjunction with some assistance from the government at Japonski Island. Look at Sitka today. Sure tourism is great and hopefully fishing will continue to be good, but face it, who can survive on a few months' employment?

Look what Alaska Pulp Corp. has done for the people of Sitka, let alone Sitka itself.

That bale of pulp that Alaska Pulp Corp. produces provides many dollars, not only in direct payroll wages for the employees, but taxes (to operate the City of Sitka, schools, etc.) and those of us employed on the fringes, such as, but not limited to, long-shoremen, tug boat operators, marine pilots, government officials, customs, immigrations, U.S. Coast Guard, Forest Service employees, loggers, teachers, etc. Then take a look at the domino effect of each dollar paid out in wages, and calculates where they go. Such as the grocery clerks, gas station attendants, clothing and hardware store personnel, city and borough employees.

I own several hundred feet of waterfront property in Sitka — will someone show me the so-called pollution?

I was born and raised in Everett, Wash., where there were four pulp mills — the smelly kind — but these mills meant a prosperous community. I believe there is now one mill, the others are closed, along with a lot of unemployment. These closures were the result of declining market conditions and fortunately there are other jobs available in that area, but not in Sitka. If and when the mill locks the door, where is the future of the mill employees and yours? Who is going to buy your homes? Where do you go for employment?

It is time for the often silent majority affected by the environmentalist actions to speak out.

Cliff R. Taro, Ketchikan

## LETTERS TO THE EDITOR

### Supports APC

Dear Editor: Some months ago, I don't recall when (time flies when ...), I was driving out Sawmill Creek Road along Silver Bay on one of those rare, clear, sunny days that are so beautiful it takes your breath away.

I was on my way to the Alaska Pulp Corp. mill, a customer where for the last 12 years or so I have called at the cafeteria every Tuesday at about 1:30 p.m. As I rounded the last turn to where I could see the mill I was struck by how much it had changed since I was employed there in the late '60s. The buildings were painted and in good repair, the grounds were neat and clean and, most of all, there was little, if any, odor. The old pall of smoke and fumes that used to hang over the mill were gone except for a few plumes of steam over a couple of buildings and the main stacks. My thoughts at the time were that the mill management should be congratulated on the great clean up job they were doing.

So you can imagine my surprise when, as I went into the cafeteria, I was told about some idiots who had chained themselves to the barge dock ramp in protest of something. My comment at that time, was, "drop the ramp and let's see how far they can swim in their chains."

I live on Mome Island just west of the entrance to Silver Bay. I have commuted daily, rain or shine/snow or blow since 1969. I know whereof I speak when I say there have been major improvements in air and water quality. I see the changes daily. I can't remember when I last noticed any odor from the mill. The water, which on occasion was stained by red liquor, is now clear and clean. The number of logs floating around is greatly reduced to the loss of the firewood cutters.

Fishing is the best I have seen since I moved there and there are more whales, sea lions, mink, otter and other wildlife than ever.

Now, I suppose you could argue that the mill would not have spent the money to clean up without community pressure. By the same token, everyone in our community is dragged kicking and screaming into civilized behavior by that same pressure. So imagine yourself walking down the street in your Sunday best. Perhaps you had just taken a bath and found an old pair of long underwear you had thought you had lost. You're pretty proud of yourself, feeling good and looking for a little recognition. Instead, some "Mrs. Olsen" type (remember those ridiculous TV commercials?) tells you that you have ring-around-the-collar. I think you would tell Mrs. Olsen (or Larry-the-lip) to go pound sand.

I hope everyone understands the point I am trying to make. But for the brain dead my point is: 1) let's give credit where and when it is due, 2) let's stop the confrontation-style politics that only enriches some lawyer, and 3) let's try to find a forum, other than the courts, to resolve the issue; if there is one.

I don't understand Larry's agenda. I would like to think he means well but I suspect his motives. He owns a lot on Galanken Island where he has built a tarpaper shack that is black and ugly. I would hope it is not representative of the condition of soul. I have to look at it every day and consider it visual pollution. Perhaps I could find 150 anonymous individuals to enter a class action suit to require him to either paint it or remove it.

Tom Preuss, Sitka

# Sitka Assembly to Face Decision On APC Suit

By WILL SWAGEL  
Sentinel Staff Writer

3/31/92  
The City and Borough of Sitka, along with state and federal agencies, will probably have to decide at some point whether they want to participate in the class action suit lodged by a Sitka resident against Alaska Pulp Corp., City Attorney Theron Cole told City and Borough Assembly members at a work session Monday.

The suit by Larry Edwards alleges that waterfront property owners are adversely affected by the APC mill's discharges into Silver Bay.

City officials noted that most of the waterfront in the area mentioned by the suit is owned by the city, state and local governments.

Cole told the Assembly the city probably would be given the chance to "opt out" of the suit, which seeks compensatory and punitive damages that plaintiff attorneys say could amount to millions of dollars. The suit was filed February in Superior Court in Juneau.

Edwards is the only plaintiff so far, but his complaint states that another 150 owners of shoreline property also may be considered members of the affected class.

Assembly members said they probably would wish to go for the opt out provision, but Assembly member Pete Hallgren noted that various governments' large holdings might put them in a position to control the lawsuit.

Hallgren, who owns and lives on

Brest Island near Galankin Island, said he probably would opt out as an individual. Mayor Dan Keck said he believed the city would not want to participate in a suit against the mill.

Cole stressed that it was yet very early in the suit and the city should wait for correspondence from the court that the identification of class members is under way.

Cole was asked to talk to federal and state officials to gauge their intentions.

He was also asked, after a question from a reporter, to research conflict of interest questions for Assembly members who own waterfront property, as do Hallgren and Assembly member Frank Richards.

Assembly member Dan Hackett, an APC engineer, said he would not vote on the matter since he works for the mill, but he would participate in at least some of the discussions.

Environmental activist Nancy Hope said Assembly members should not opt out of the suit without considering the views of people who might support the legal action. She said, for instance, money gained from the suit could be used to mitigate pollution.

Keck said the public would have a chance to testify at hearings when the issue comes up for a decision and that the Assembly would listen to all opinions.

"That's one of the miserable jobs you get when you're elected," Keck joked.

## LETTERS TO THE EDITOR

### Supports APC

Dear Editor: This is my first letter to the editor in the 46 years I have lived in Sitka, but I feel compelled to write concerning the class-action suit against Alaska Pulp Corporation. I believe I am one of the silent majority and think it is time to speak out. I have lived, worked and retired here in this beautiful town and am a waterfront property owner.

The comments that I have heard about Sitka is that it is "a beautiful place and they want to keep it that way." This is true. However, it was not as beautiful before the APC came to town. I lived here before and after APC. At the time I came to town there was a mill right in the heart of the city, the Columbia Lumber Company. This mill belched smoke and ashes all day long in downtown Sitka on Lincoln Street. The sewer ran directly into Crescent Harbor from the homes along Lincoln Street and the smell was potent. We had mostly dirt roads that were filled with mud most of the time. Any car would rust out in a few years. At this time our meat came in frozen. The fruits and vegetables arrived about once a month and were not in very good shape on arrival. When we had a heavy rain the water would be brown. The only way to Mt. Edgecumbe was by ferry boat. We had few paved streets. There were two narrow dirt roads to Old Sitka and the site of the present APC. We had few harbor regulations. Dogs ran loose in packs and made a mess of the storefronts. We had no undertaker.

Then APC came to town. Things changed!

One of the first things APC did was purchase a good portion of the Lakeview property and proceed to build homes for the incoming employees. They built the mill 10 miles south of town, away from the population. The building of the mill enabled many of the fishermen here out of work in the wintertime to have jobs. New people came to town, businesses expanded, new schools were built and with the additional tax revenues the city was able to improve the schools, the police department, the fire department, sidewalks and paved roads. Two hospitals have been built as well as several churches. We have a bridge to Mt. Edgecumbe and an airport. Our water and electricity vastly improved. The city was able to secure more funding from federal and state to build a highway leading to the mill and one to

Old Sitka. The mill downtown disappeared and in its place we now have the Centennial Building and park along the harbor. An undertaker also came to town!

I believe that the changes that have been made since APC came to Sitka have all been for the good and that we should do all that we can to help them stay in business. The bottom line is Sitka needs a good economic base in order to sustain our present quality of life.

Inez E. Snowden, Sitka

### Mill Support

Dear Editor: As a waterfront resident and landowner, I wish to state that I agree with the comments made over the past couple of weeks by various waterfront owners. I have lived in Jamestown Bay for over 27 years and do not agree with the lawsuit filed by Mr. Larry Edwards and 150 concerned waterfront residents against the Alaska Pulp Corporation.

It was a lot of fun this past fall and winter to watch the whales as they went back and forth into Silver Bay, to watch the salmon jumping in front of our house and to see the eagles in the trees.

I feel that Alaska Pulp has done an outstanding job of pollution control and applaud the work that they continue to do.

Roger D. Higley, Sitka

4 Sitka Sentinel 4-2-72

## Supports APC

Dear Editor: This is in regard to the class-action suit brought on by Mr. Larry Edwards against the Alaska Pulp Corporation, and it is also my first letter to the editor. The various letters in your paper voice concern that this drastic action creates the false impression that the quality of life in Sitka has been degraded and property values lowered. According to Mr. Edwards' statement, "150 waterfront property owners have suffered this damage."

"I agree with the letter writers' concerns that the statements of Mr. Edwards are in error. I have lived on Jamestown Bay for 47 years and still enjoy the scenery and the ducks and herons feeding along the shore. Also the otters regular visits and seals and sea lion accompanying the spring herring ritual. As to the water, it looks clean to me as does the beach. As to smell, I haven't detected any odor other than occasional wood stove smoke in years."

I have a further greater concern and that is the economic health of Sitka. I have just returned from visiting 17 towns in Alaska. During January and February, as state president of the Pioneers of Alaska, and with no offense to the gracious residents of the other towns, I am so proud and happy to return to Sitka with its beautiful setting — the healthy downtown business district, with its well-kept buildings, landscaping and economy.

Economy: this, to me, brings up my real reason of concern of the suit against the pulp mill and that it is a thinly disguised effort to close the mill. The recent Tongass bill was meant to do just that; by starving the mill for logs. Now the apparent strategy is to sue the mill to death.

I know there are people in Sitka who don't like the mill, for one reason or another, and that is their privilege, but I would like to remind all of our most recent citizens that the year before the mill went on the tax roll, the millage rate was 16 mills on our property taxes. However, with the added \$5 million value of the mill on the books, the millage dropped to 5 mills. If the mill is closed and its value is deleted from the tax rolls, it is reasonable to assume our taxes would at least triple, possibly more from the domino effect of failed businesses and defaulted mortgages.

I ask, is the pulp mill so bad that we must risk such an economic disaster?

Joe Ashby, Sitka

4/8/92

SITKA SENTINEL

## Supports APC

Dear Editor: Beautiful, beautiful Sitka! What a joy it is to return from time to time to see all the great progress Sitka continues to make.

Having read the negative reporting recently in the Anchorage Times I can't believe they were reporting the Sitka I have known for almost 50 years.

I first saw Sitka when it was a small fishing village; the military had pulled out and the town was not too prosperous. We were excited when the Bureau of Indian Affairs school moved to ML Edgumbe in February 1947. These few new jobs meant more financial stability to Sitka.

I recall the concerted effort of the Chamber of Commerce and the "city fathers" to secure the pulp mill, as well as the airport.

I saw this small fishing village become a progressive community.

My husband owned property in Sitka long before I appeared on the scene, and we still own some property on Halibut Point Road where we have a fantastic view of the ocean and the many islands.

I recall reading one article in the Anchorage Times concerning the contamination and pollution at the Verstovia School. Our property is very near the school, and the only pollution I have detected has been the smell of wood burning — the latest was on April 5, 1992. On that day I could see for miles in every direction of breathtaking pristine beauty.

There was air and water pollution when the mill first went into production. They certainly have made great strides in solving those problems.

Just to mention some of the benefits I have seen due to the mill's operation are, but not limited to:

1. City office expanded from a cubby-hole in the Lutheran Church building with only a handful of employees to its expanded size with numerous employees.

2. An extended paved road system with sidewalks.

3. Hundreds of new homes. Their tax valuation adds to the city's financial base. Sitka now enjoys a very good bond rating.

4. There were only a few cars, a couple of taxis, and the transfer trucks — used to deliver groceries and caskets to the cemetery.

5. Dr. Charteris and Dr. Hodgins (dentist) were the medical staff. Babies were born in the old Salvation Army Home.

6. The Sitka Sentinel was a half-page weekly. The owner-publisher-reporter and his wife rode their bikes to work.

If the pulp mill is forced to close and Sitka reverts to the small fishing village of the past, how many of those who have moved there since the construction of the mill and who oppose it will remain and shoulder the higher taxes to support Sitka? If they think there is pollution here, they should move to Anchorage.

I wonder how many days, if any, the pollution level exceeds the U.S. standards.

Citizens of Sitka, wake up! Think and act! — Don't let outsiders and the Cheechakos control your destiny.

Helen L. Dolenc, Palmer

# Class Action Suit Filed Against APC

*Sitka Daily Sentinel*  
March 2, 1992

By Sentinel Staff and the Associated Press

Some Sitka residents have filed a class-action suit against Alaska Pulp Corp., claiming the mill recklessly polluted the community, damaging the quality of life of waterfront property owners.

The suit was filed Friday in Juneau Superior Court by four law firms — two from Alaska, one from Washington, D.C., and another from Vermont.

It seeks an undetermined amount of damages on behalf of environmental activist Larry Edwards and about 150 owners of waterfront property they claim is affected by mill pollution.

"As of this date, other than collecting fines from APC, no remedial action has been undertaken by state or federal regulators," Washington, D.C., lawyer Terrance Reed was quoted by the Associated Press.

"The regulatory inaction in the face of pollution of this magnitude and persistence is certainly why some members of the community feel frustrated," Reed said.

The suit not only seeks money but also demands the mill change its way

of handling pollution. It asks that Alaska Pulp be ordered to install a water recycling system so its more than 40 million gallons of daily industrial waste water does not end up in Sitka's Silver Bay. The mill operates primary and secondary treatment of its waste water.

The plaintiffs did not make any prior announcement of their suit in Sitka, and first word of it was made over the weekend in The Anchorage Times, a daily newspaper that is a subsidiary of an oilfield service firm, and which has been outspokenly critical of the Sitka pulp mill.

Alaska Pulp spokesman Rollo Pool said he and other mill officials are confused by the timing of the suit — when the company's pollution controls are the best they have ever been and the amount of pollution the least.

"It seems to us that the timing doesn't seem to jibe as to what's happening in our environment," he told the Sentinel today.

Regulators have fined the company more than \$1.3 million since 1986, the Associated Press said.

Mill officials have spent nearly \$100 million on pollution control since 1968 and report operating expenses of the equipment totaling \$12 million a year.

Pool said today the company had not received a copy of the suit and could not yet comment on any particulars.

The Associated Press said Sitka lawyer James McGowan, who also represents the plaintiffs, said he has been approached for years by people who wanted to find some way to stop the mill from polluting the community.

"It's impossible to live in this town and not notice the dirty water and dirty air," he was quoted. McGowan was out of town and not available for comment to the Sentinel today. Edwards was also unavailable for comment to the Sentinel.

Reed is doing most of the scientific work for the lawsuit, said Pete Ehrhardt, a former Sitka attorney now practicing in Soldotna and the second Alaska attorney on the case, with McGowan. Ehrhardt said his firm recently won a \$50 million settlement in the 1987 Cook Inlet oil spill and presently represents a "substantial" number of litigants in the 1989 Exxon spill in Prince William Sound. The Vermont attorney, Pete Langrock, has particular expertise in suing other pulp mills, said Ehrhardt.

Ehrhardt said he did not expect the case to come to trial for at least a year.

Greg Kellogg, regional chief of water compliance for the U.S. Environmental Protection Agency, and Ron Flinn, acting supervisor of the Southeast Regional Office of the Alaska Department of Environmental Conservation, said they had not seen the suit.

"Until I see this thing I shouldn't even say a word," Kellogg said. "We'd be anxious to see it."

The suit has been planned for more than a year, Edwards was quoted by the Associated Press. Edwards, one of the mill's most outspoken critics, said he agreed to represent the class — waterfront property owners — to prevent others from facing the financial liability if the suit fails.

Alaska law allows the defendant to recover legal fees from the plaintiff of a failed class-action suit.

"I realize that I'm at risk," Edwards said. "The other class members would not be. I feel the case is exceptionally strong, and I feel it's something that should be done."

March 26, 1992

Mr. Thad Poulson  
Editor - Daily Sitka Sentinel  
112 Barracks St.  
Sitka, Alaska 99835

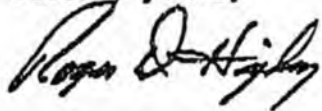
Dear Mr. Poulson,

As a waterfront resident and landowner, I wish to state that I agree with the comments made over the past couple of weeks by various waterfront owners. I have lived in Jamestown Bay for over 27 years and do not agree with the lawsuit filed by Mr. Edwards and 150 concerned waterfront residences against the Alaska Pulp Corporation.

It was a lot of fun this past fall and winter to watch the whales as they went back and forth into Silver Bay, to watch the salmon jumping in front of our house and to see the Eagles in the trees.

I feel that Alaska Pulp has done an outstanding job of pollution control and applaud the work that they continue to do.

Sincerely yours,



Roger D. Higley  
P. O. Box 1082  
Sitka, Alaska 99835

copy to: Frank Roppel  
Alaska Pulp Corporation

April 7, 1992  
514 Halibut Pt. Rd.  
Sitka, AK 99835

Alaska Pulp Corporation  
4600 Sawmill Creek Road  
Sitka, AK 99835

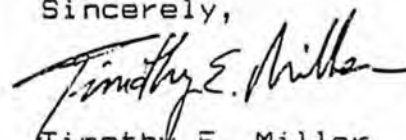
Dear Sirs:

Thank you for sponsoring the listing of churches in our local newspaper each Friday. This is a very generous thing for you to do. We appreciate your concern for our community and its churches.

Please know that we, here at First Baptist Church, pray for the pulp mill and its success on a regular basis. We are fully aware of the impact our community would suffer if the mill were ever closed. We are praying that we will never see the lay-offs, unemployment, closing of businesses dependent on pulp mill employed customers, and the decrease of the larger Sitka tax base. We are praying that petty environmentalists will stop harassing you with never-ending, unnecessary lawsuits and appeals. You shouldn't have to spend so much money defending yourself against groundless charges.

If there is ever anything more we can do to help you, please let me know. Thank you again for the church listing in the newspaper.

Sincerely,



Timothy E. Miller  
Pastor  
First Baptist Church

S B

190

(7) \_\_\_\_\_  
Date Referred: April 18, 1994

HOUSE COMMITTEE REPORT  
FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 5-6-94

The STATE AFFAIRS Committee considered:

CSSB 190(FIN) am

CS FOR SENATE BILL NO. 190(FIN) am

ENFORCEMENT OF SUPPORT ORDERS

"An Act relating to income withholding and other methods of enforcement for orders of support; relating to medical support orders; amending Alaska Rule of Civil Procedure 90.3(d); and providing for an effective date."

RECOMMENDATIONS:  the same title  
be replaced with HCSCSSB-190 (STA)  a new title  
 have attached amendments(s)  
 do pass  
 do not pass  
 no recommendations  
 individual recommendations  
 additional referral to the \_\_\_\_\_ Committee

ADOPTS: SENATE letter of Intent

ATTACHES NEW FISCAL NOTE(s): \_\_\_\_\_ (Dept)

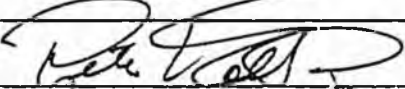
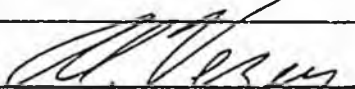
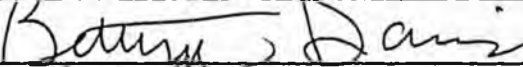
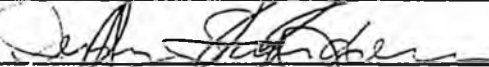
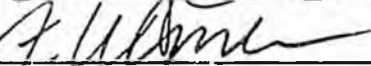

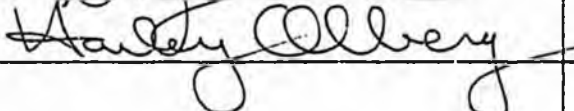
APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact \_\_\_\_\_

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

zero fiscal note HSTA

zero fiscal note(s) ALASKA COURT SYSTEM

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
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CHAIRMAN'S SIGNATURE

8-LS1001NM  
Lauterbach  
4/28/94

HOUSE CS FOR CS FOR SENATE BILL NO. 190(STA)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to income withholding and other methods of enforcement for  
2 orders of support; relating to medical support orders; amending Alaska Rule of  
3 Civil Procedure 90.3(d); and providing for an effective date."

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

5 \* Section 1. AS 25.27.020(a) is amended to read:

6 (a) The agency shall

7 (1) seek enforcement of child support orders of the superior courts of  
8 the state in other jurisdictions and shall obtain, enforce, and administer the orders in  
9 this state;

10 (2) adopt regulations to carry out the purposes of this chapter, including  
11 regulations that establish

12 (A) schedules for determining the amount an obligor is liable  
13 to contribute toward the support of an obligee under this chapter and under 42  
14 U.S.C. 651 - 669 (Title IV-D, Social Security Act);

1 (B) procedures for hearings conducted under AS 25.27.170; and  
2 (C) subject to AS 25.27.025 and to federal law, a uniform rate  
3 of interest on arrearages of support that shall be charged the obligor upon  
4 notice if child support payments are 10 or more days overdue or if payment is  
5 made by a check backed by insufficient funds; however, an obligor may not be  
6 charged interest on late payment of a child support obligation, other than a  
7 payment on arrearages, if the obligor is

8 (i) employed and income is being withheld from the  
9 obligor's wages under an income withholding order;

10 (ii) receiving unemployment compensation and child  
11 support obligations are being withheld from the obligor's unemployment  
12 payments under AS 23.20.401; or

13 (iii) receiving compensation for disabilities under  
14 AS 23.30 and child support obligations are being withheld from the  
15 obligor's compensation payments;

16 (3) administer and enforce AS 25.25 (Uniform Reciprocal Enforcement  
17 of Support Act);

18 (4) establish, enforce, and administer child support obligations  
19 administratively under this chapter;

20 (5) administer the state plan required under 42 U.S.C. 651 - 669 (Title  
21 IV-D, Social Security Act) as amended;

22 (6) disburse support payments collected by the agency to the obligee,  
23 together with interest charged under (2)(C) of this subsection;

24 (7) establish and enforce administratively under this chapter, or through  
25 the superior courts of the state, child support orders from other jurisdictions pertaining  
26 to obligors within the state;

27 (8) enforce and administer spousal support orders if a spousal support  
28 obligation has been established with respect to the spouse and if the support obligation  
29 established with respect to the child of that spouse is also being administered; and

30 (9) obtain a medical support order as part of a child support order if  
31 health care coverage is available to the obligor at a reasonable cost; the agency shall

1 consider whether adequate health care is available to the child through the Indian  
2 Health Service or other insurance coverage before it orders an obligor to provide  
3 health care coverage through insurance or other means.

4 \* Sec. 2. AS 25.27.060(c) is amended to read:

5 (c) In a court proceeding where the support of a minor child is at issue, the  
6 court may order either or both parents to pay the amount necessary for support,  
7 maintenance, nurture, and education of the child. The court shall issue a medical  
8 support order as part of a child support order if health care coverage is available to the  
9 obligor at a reasonable cost. The court shall consider whether the child is eligible  
10 for services through the Indian Health Service or other insurance coverage before  
11 ordering the obligor to provide health care coverage through insurance or other  
12 means. Upon a showing of good cause the court may order the parents required to  
13 pay support to give reasonable security for payments.

14 \* Sec. 3. AS 25.27.062(a) is amended to read:

15 (a) A judgment, court order, or order of the agency under this chapter  
16 providing for support must contain an income withholding order. Except as provided  
17 in (m) of this section, the income withholding order must provide for immediate  
18 income withholding if the support order is

19 (1) being enforced by the agency and was issued or modified on or  
20 after the effective date of this Act: or

21 (2) not being enforced by the agency and was issued on or after the  
22 effective date of this Act [AN INCOME WITHHOLDING ORDER UNDER THIS  
23 SECTION MAY NOT BE ENFORCED UNLESS THE OBLIGOR HAD NOTICE OF  
24 THE ORDER WHEN IT WAS MADE OR AN APPLICATION FOR THE ORDER  
25 WAS SERVED ON THE OBLIGOR IN THE MANNER PROVIDED FOR SERVICE  
26 OF A SUMMONS UNDER RULE 4, ALASKA RULES OF CIVIL PROCEDURE].

27 \* Sec. 4. AS 25.27.062(b) is amended to read:

28 (b) An income withholding order must direct the obligor, the obligor's  
29 employer, future employer, and any person, political subdivision, or department of the  
30 state to withhold money due or to be due the obligor and pay the money to the agency,  
31 in an amount determined under (i) of this section. A court that issues a support

1 order on or after the effective date of this Act shall send a copy of the order to  
2 the agency.

3 \* Sec. 5. AS 25.27.062(c) is repealed and reenacted to read:

4 (c) Income withholding under a support order that does not require immediate  
5 withholding may be initiated under AS 25.27.150 if the support order is being enforced  
6 by the agency, or under (d) of this section if the support order is not being enforced  
7 by the agency, if

8 (1) the obligor requests withholding;

9 (2) the payments that the obligor has failed to make within 30 days of  
10 the monthly due date specified in the support order are equal to or greater than the  
11 support payable for one month; or

12 (3) the obligee requests withholding and

13 (A) the agency approves the request because all or part of the  
14 monthly payment of the obligor has been more than 10 days overdue more than  
15 one time in the preceding 12 months or there is reason to believe that the  
16 obligor might withdraw assets to avoid payment of support; in this paragraph,  
17 "10 days overdue" means occurring 10 days after the monthly due date  
18 specified in a support order, or

19 (B) the court approves the request for good cause.

20 \* Sec. 6. AS 25.27.062(d) is repealed and reenacted to read:

21 (d) Income withholding under a support order that does not require immediate  
22 income withholding and that is not being enforced by the agency may be initiated by  
23 filing a motion with the court and complying with applicable court rules. The court  
24 shall order the beginning of income withholding under this subsection if the court finds  
25 that any of the grounds in (c)(1), (c)(2), or (c)(3)(B) of this section is satisfied. It is  
26 not a defense to a motion based on (c)(2) of this section that less than one full month's  
27 payment is past due by 30 days if at least one full month's payment was past due by  
28 30 days on the date the motion was filed. Notice to the obligor of income withholding  
29 ordered under this subsection must be given in a manner that complies with court  
30 rules. In this subsection, "past due by 30 days" means unpaid 30 days after the  
31 monthly due date specified in the support order.

1 \* Sec. 7. AS 25.27.062(e) is amended to read:

2 (e) The [OBLIGEE OR PERSON OR PUBLIC] agency or the person who  
3 obtains an [THAT REQUESTED THE] income withholding order under this chapter  
4 shall immediately send a copy of the income withholding order, a copy of the relevant  
5 provisions of AS 25.27.260 and this section, and an explanation of the effect of the  
6 statutes [BY CERTIFIED MAIL] to persons who may owe money to an obligor.  
7 These items may be sent by first class mail or certified mail, return receipt  
8 requested, or they may be served personally by a process server. An income  
9 withholding order made under this chapter [SECTION] is binding upon a person,  
10 employer, political subdivision, or department of the state immediately upon receipt  
11 of a copy of the income withholding order. An employer shall begin withholding the  
12 specified amount from the employee's wages (1) 14 working days after the mailing  
13 date on the order [NOTICE] of withholding or 14 working days after the date on  
14 which the order was personally served, whichever is applicable, or (2) on the first  
15 day of the next pay period, if earlier. The amount withheld shall be sent to the agency  
16 within 10 working days after the date the employee is paid. An employer may,  
17 for each payment made under an order, deduct \$5 from other wages or salary  
18 owed to the obligor.

19 \* Sec. 8. AS 25.27.062(f) is amended to read:

20 (f) An employer may not discharge, discipline, or refuse to employ an obligor  
21 on the basis of an income withholding order issued under this chapter [SECTION].  
22 If an employer discharges, disciplines, or refuses to employ an obligor because of an  
23 income withholding obligation, the court, after notice and hearing, may order  
24 reinstatement or restitution to the obligor, or both. A person who violates this  
25 subsection or a regulation adopted to implement it, is liable for a civil penalty of not  
26 more than \$1,000.

27 \* Sec. 9. AS 25.27.062(g) is amended to read:

28 (g) An income withholding order under this chapter [SECTION] has priority  
29 over all other attachments, executions, garnishments, or other legal process brought  
30 under state law against the same property unless otherwise ordered by the court. An  
31 income withholding order is not limited to the wages of an obligor but may include

1 all money owed to the obligor not otherwise exempt by law. Exemptions under  
2 AS 09.38 do not apply to income withholdings under this chapter [SECTION].

3 \* Sec. 10. AS 25.27.062(h) is amended to read:

4 (h) The court may order payment of all court costs that resulted from an  
5 income withholding proceeding under this chapter [SECTION].

6 \* Sec. 11. AS 25.27.062(k) is repealed and reenacted to read:

7 (k) An employer who is withholding income of an obligor under an order that  
8 provides that the withheld income shall be paid to the agency shall notify the agency  
9 promptly when the obligor gives or receives notice of termination of employment and  
10 provide to the agency the obligor's last known home address and the name and address  
11 of the obligor's new employer, if known. The employer shall keep a record of the  
12 order to withhold income from the obligor for three years after the employer notifies  
13 the agency that the obligor has terminated employment. If, within that three-year  
14 period, the obligor is reemployed by the former employer, the employer shall  
15 immediately implement the order against the obligor's earnings unless the employer  
16 has received notice from the agency that the order is no longer applicable to the  
17 obligor. If the obligor is reemployed by the former employer after that three-year  
18 period, the employer is not required to implement a withholding order against the  
19 obligor's earnings until the employer receives a new order to withhold the obligor's  
20 income under this chapter.

21 \* Sec. 12. AS 25.27.062(l) is repealed and reenacted to read:

22 (l) Unless modified or terminated by the agency or the court, an order to  
23 withhold income under this chapter remains in effect, except as provided in (k) of this  
24 section, until the support order is satisfied. The agency or court may not terminate or  
25 modify an income withholding order solely on the ground that the obligor has paid all  
26 arrearages. Upon satisfaction of a support order, if the order is

27 (1) being enforced by the agency, the agency shall, within 15 working  
28 days, notify all persons served by the agency with the income withholding order that  
29 withholding is no longer required; if the agency receives money from an obligor under  
30 an income withholding order after the underlying support order has been satisfied and  
31 the agency was enforcing the support order at the time it became satisfied, the agency

1 shall immediately return the overpayment to the obligor; if the agency fails to return  
2 an overpayment as required under this paragraph, the state is liable to the obligor for  
3 the amount of the overpayment, plus interest at the rate imposed under AS 43.05.225,  
4 and a person to whom the agency erroneously disbursed the overpayment is liable to  
5 the state for the amount disbursed, plus interest at the rate imposed under  
6 AS 43.05.225;

7 (2) not being enforced by the agency, the obligor shall file a motion  
8 in court requesting termination of the withholding order and serve the motion on the  
9 obligee; the court shall enter an order terminating the withholding order if the court  
10 determines that the support order has been satisfied; the obligor may deliver a copy  
11 of the termination order to persons who were served with the income withholding  
12 order; when a termination order is entered, the obligee shall, upon request of the  
13 obligor, notify the obligor of all persons who have been served with the income  
14 withholding order by the obligee.

15 \* Sec. 13. AS 25.27.062 is amended by adding new subsections to read:

16 (m) An income withholding order described in (a)(1) - (2) of this section is  
17 not subject to immediate withholding if the support order is

18 (1) being enforced by the agency and the obligor agrees to keep the  
19 agency informed of the obligor's current employer and the availability of employment-  
20 related health insurance coverage for the children covered by the support order until  
21 the support order is satisfied and

22 (A) the agency has entered into its record a written agreement  
23 between the obligor and the obligee that provides for an alternative  
24 arrangement and income withholding has not been terminated previously and  
25 subsequently initiated; the agency must also be a party to an agreement under  
26 this paragraph if support has been assigned to the state; or

27 (B) the obligor or obligee demonstrates and the agency, in  
28 compliance with applicable federal law, finds good cause not to require  
29 immediate income withholding because it would not be in the best interests of  
30 the child and, in a case involving the modification of a support order, the  
31 obligor has made voluntary support payments under a court or agency order

1 and has not been in arrears in an amount equal to the support payable for one  
2 month; in this paragraph, "in arrears" means failing to make a support payment  
3 within 30 days of the monthly due date specified in the order;

4 (2) not being enforced by the agency and the obligor agrees to keep the  
5 obligee informed of the obligor's current employer and the availability of employment-  
6 related health insurance coverage for the children covered by the support order until  
7 the support order is satisfied and

8 (A) the court finds that (i) a written agreement exists between  
9 the obligor and the obligee that provides for an alternative arrangement and (ii)  
10 income withholding has not been terminated previously and subsequently  
11 initiated; the agency must also be a party to an agreement under this paragraph  
12 if support has been assigned to the state; or

13 (B) the obligor or obligee demonstrates, and the court, in  
14 compliance with applicable federal law, finds good cause not to require  
15 immediate income withholding because it would not be in the best interests of  
16 the child and, in a case involving the modification of a support order, the  
17 obligor has made voluntary support payments under a court or agency order  
18 and has not been in arrears in an amount equal to the support payable for one  
19 month; in this paragraph, "in arrears" means failing to make a support payment  
20 within 30 days of the monthly due date specified in the order; or

21 (3) an order that involves an obligor who is receiving social security  
22 or other disability compensation that includes regular payments to the children who are  
23 the subjects of the support order, except to the extent that the payments to the children  
24 do not equal the child support due each month.

25 (n) In calculating the amount of child support to be withheld under an income  
26 withholding order, the agency shall give credit to the obligor for the cost to the obligor  
27 of medical and dental insurance for the children and educational payments for the  
28 children to the extent that the insurance coverage and educational payments are  
29 required in the applicable child support order and are actually paid for by the obligor.

30 \* Sec. 14. AS 25.27.100 is amended to read:

31 Sec. 25.27.100. ALL PERSONS MAY USE AGENCY: FEES FOR

1        SERVICES. The agency shall provide aid to any person due child support under the  
2        laws of this state upon application. Subject to (b) of this section, the [THE] agency  
3        may, by regulation, impose a fee for services provided under this chapter.

4        \* Sec. 15. AS 25.27.100 is amended by adding a new subsection to read:

5            (b) To the extent allowed under federal law, for each payment made by the  
6            agency to a custodian from money sent to the agency under an income withholding  
7            order issued under this chapter, the agency shall impose a fee of \$5 on the custodian.  
8            To the extent allowed under federal law, the agency shall subtract this fee from the  
9            money it receives under the income withholding order before disbursing the balance  
10           of the money to the custodian.

11        \* Sec. 16. AS 25.27.140(b) is amended to read:

12            (b) If a support order has been entered, the agency may enforce the support  
13            order utilizing the procedures prescribed in AS 25.27.062, 25.27.150. [AS 25.27.150]  
14            and 25.27.230 - 25.27.270.

15        \* Sec. 17. AS 25.27.150 is repealed and reenacted to read:

16            Sec. 25.27.150. INITIATED INCOME WITHHOLDING; REQUIRED  
17            NOTICE AND HEARING. (a) In order to initiate income withholding for a support  
18            order being enforced by the agency for which immediate income withholding is not  
19            required under AS 25.27.062(a), the agency shall serve a notice of its intent to initiate  
20            income withholding on the obligor. Notice under this subsection shall be served upon  
21            the obligor by certified mail to the obligor's last known address, and service is  
22            complete when the notice is properly addressed, certified, and mailed.

23            (b) The notice must state the amount of the overdue support that is owed, if  
24            any, and the amount of income that will be withheld.

25            (c) The notice shall inform the obligor that the income withholding order will  
26            take effect 15 days after the date on which the notice is served unless the obligor  
27            requests a hearing within 15 days after the notice is served. If the obligor requests a  
28            hearing, an income withholding order may not take effect until the conclusion of the  
29            hearing.

30            (d) If the obligor requests a hearing, it shall be conducted under the  
31            department's regulations for informal conferences and shall be held within 15 days of

1 the date of the request. The hearing may only be held to determine if there is a  
2 mistake of fact that makes the income withholding order improper because the amount  
3 of current or overdue support is incorrect, the identity of the obligor is inaccurate, or,  
4 for initiated withholding based on AS 25.27.062(c)(3)(A), the alleged facts regarding  
5 overdue payments or potential withdrawal of assets are incorrect. The order is not  
6 subject to any other legal defenses. It is not a defense to an income withholding order  
7 issued under AS 25.27.062(c)(2) that less than one full month's payment is past due  
8 if at least one full month's payment was past due on the date notice was served under  
9 this section.

10 (e) The appeals officer shall inform the obligor, either at the hearing or within  
11 15 days after the hearing, whether or not the withholding will occur and of the date  
12 on which it is to commence.

13 (f) If the appeals officer determines that withholding will occur, the obligor  
14 may request a formal hearing, as provided in the department's regulations. The  
15 income withholding order shall be issued and withholding shall begin under the  
16 procedures in AS 25.27.062, whether or not the obligor requests a formal hearing,  
17 unless the obligor posts security or a bond in the amount that would have been  
18 withheld pending the outcome of a formal hearing.

19 \* Sec. 18. AS 25.27.160(b) is amended to read:

20 (b) The notice and finding of financial responsibility served under (a) of this  
21 section must state

22 (1) the sum or periodic payments for which the alleged obligor is found  
23 to be responsible, calculated by taking into consideration the need of the alleged  
24 obligee, the alleged obligor's liability to the state under AS 25.27.120 [AS 25.27.130]  
25 if any, and the duty of support under the law;

26 (2) the name of the alleged obligee and the obligee's custodian;

27 (3) that the alleged obligor may appear and show cause in a hearing  
28 held by the agency why the finding is incorrect, should not be finally ordered, and  
29 should be modified or rescinded, because

30 (A) no duty of support is owed; or

31 (B) the amount of support found to be owed is incorrect;

1 (4) that if the person served with the notice and finding of financial  
2 responsibility does not request a hearing within 30 days, the property and income of  
3 the person will be subject to execution under AS 25.27.062 and 25.27.230 - 25.27.270  
4 [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the  
5 finding without further notice or hearing.

6 \* Sec. 19. AS 25.27.170(b) is amended to read:

7 (b) If a request for a formal hearing under (a) of this section is made, the  
8 execution under AS 25.27.062 and 25.27.230 - 25.27.270 may not [AS 25.27.230 -  
9 25.27.270 SHALL] be stayed unless the obligor posts security or a bond in the  
10 amount of child support that would have been due under the finding of financial  
11 responsibility pending the decision on the hearing [, OR THE DECISION OF A  
12 COURT, IF APPEALED]. If no request for a hearing is made, the finding of  
13 responsibility is final at the expiration of the 30-day period.

14 \* Sec. 20. AS 25.27.170(d) is amended to read:

15 (d) The hearing officer shall determine the amount of periodic payments  
16 necessary to satisfy the past, present, and future liability of the alleged obligor under  
17 AS 25.27.120 [AS 25.27.130], if any, and under any duty of support imposable under  
18 the law. The amount of periodic payments determined under this subsection is not  
19 limited by the amount of any public assistance payment made to or for the benefit of  
20 the child.

21 \* Sec. 21. AS 25.27.170(f) is amended to read:

22 (f) If the alleged obligor requesting the hearing fails to appear at the hearing,  
23 the hearing officer shall enter a decision declaring the property and income of the  
24 alleged obligor subject to execution under AS 25.27.062 and 25.27.230 - 25.27.270  
25 [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the  
26 notice and finding of financial responsibility.

27 \* Sec. 22. AS 25.27.180(b) is amended to read:

28 (b) Liability to the state under AS 25.27.120 [AS 25.27.130] is limited to the  
29 amount for which the obligor is found to be responsible under (a) of this section.

30 \* Sec. 23. AS 25.27.230(a) is amended to read:

31 (a) At the expiration of 30 days from either (1) the date of distribution of an

1 income withholding order under AS 25.27.062 [SERVICE OF NOTICE UNDER  
2 AS 25.27.150], or (2) the date of service of a notice and finding of financial  
3 responsibility under AS 25.27.160, the agency may assert a lien upon the real or  
4 personal property of the obligor, in the amount of the obligor's liability.

5 \* Sec. 24. AS 25.27.230(c) is amended to read:

6 (c) The lien shall attach to all real and personal property of the obligor and be  
7 effective on the date of recording of the lien with the recorder of the recording district  
8 in which the property attached is located. A lien against earnings shall attach and be  
9 effective upon filing with the recorder of the recording district in which the employer  
10 does business or maintains an office or agent for the purpose of doing business. A  
11 lien filed at the offices of the Commercial Fisheries Entry Commission in Juneau  
12 against a limited entry permit issued under AS 16.43 is considered to have been  
13 filed against the permit in all recording districts in which the permit holder uses  
14 the permit.

15 \* Sec. 25. AS 25.27.250(a) is amended to read:

16 (a) At the expiration of either (1) 15 [30] days from the date of service of an  
17 income withholding order under AS 25.27.062 or notice under AS 25.27.150, or (2)  
18 30 days from the date of service of a notice and finding of financial responsibility  
19 under AS 25.27.160, the agency may issue to any person, political subdivision, or  
20 department of the state an order to withhold and deliver property.

21 \* Sec. 26. AS 25.27.250(b) is amended to read:

22 (b) All real or personal property belonging to the obligor is subject to an order  
23 to withhold and deliver, including, but not limited to, earnings that are due, owing, or  
24 belonging to the debtor. In calculating the amount to be withheld and delivered  
25 under an order issued under this section, the agency shall give credit to the  
26 obligor for the cost to the obligor of medical and dental insurance for the children  
27 and educational payments for the children to the extent that the insurance  
28 coverage and educational payments are required in the applicable child support  
29 order and are actually paid for by the obligor.

30 \* Sec. 27. AS 25.27.250(f) is amended to read:

31 (f) If a person, political subdivision, or department of the state upon whom

1 service of an order to withhold and deliver has been made possesses property due,  
2 owing, or belonging to the obligor, that person, subdivision, or department shall  
3 withhold the property immediately upon receipt of the order and shall deliver the  
4 property to the agency [UPON DEMAND] after the expiration of the 14-day period  
5 from the date of service of the order or expiration of the period specified in  
6 AS 25.27.062(e), whichever is earlier. The agency shall hold property delivered  
7 under this subsection in trust for application against the liability of the obligor under  
8 AS 25.27.062, 25.27.120, or 25.27.160 [AS 25.27.130] or for return, without interest,  
9 depending on final determination of liability or nonliability under this chapter. The  
10 agency may accept a good and sufficient bond to secure payment of past, present,  
11 and future support conditioned upon final determination of liability in lieu of  
12 requiring delivery [DELIVERING] of property under this subsection.

13 \* Sec. 28. AS 25.27.250 is amended by adding a new subsection to read:

14 (j) A person, political subdivision, or department that fails to comply with an  
15 order to withhold and deliver served under this subsection is subject to penalties under  
16 AS 25.27.260. A person, political subdivision, or department may, for each payment  
17 made under an order to withhold and deliver, deduct \$5 from other wages or salary  
18 owed to the obligor.

19 \* Sec. 29. AS 25.27.255(a) is amended to read:

20 (a) The agency shall pay to the obligee all money recovered by the agency  
21 from the obligor under an income withholding order except for court costs and money  
22 assigned to the agency under AS 25.27.120 - 25.27.130. However, if there is more  
23 than one income withholding order under this chapter against an obligor, the  
24 agency shall allocate amounts available for withholding in a manner that gives  
25 priority to current support up to the limits imposed under 15 U.S.C. 1673(b)  
26 (sec. 303(b), Consumer Credit Protection Act). Notwithstanding the priority given  
27 to current support, the agency shall establish procedures for allocation of support  
28 among obligees so that in no case will the allocation result in a withholding order  
29 for one obligee not being implemented.

30 \* Sec. 30. AS 25.27.260 is amended to read:

31 Sec. 25.27.260. CIVIL LIABILITY UPON FAILURE TO COMPLY WITH

1 AN ORDER OR LIEN. If a [ANY] person, political subdivision, or department of the  
2 state (1) fails to make an answer to an order to withhold and deliver within the time  
3 prescribed in AS 25.27.250; (2) fails or refuses to deliver property in accordance with  
4 an order issued under AS 25.27.250; (3) pays over, releases, selis, transfers, or conveys  
5 real property subject to a lien recorded under AS 25.27.230 to or for the benefit of the  
6 obligor or any other person; (4) fails or refuses to surrender upon demand property  
7 attached; or (5) intentionally fails or refuses to honor an assignment of wages or an  
8 income withholding order under AS 25.27.062 that was served [PRESENTED] by the  
9 agency through personal service by a process server or through certified mail,  
10 return receipt requested, the person, political subdivision, or department of the state  
11 is liable to the agency in an amount equal to 100 percent of the amount constituting  
12 the basis of the lien, order to withhold and deliver, attachment, or withholding of  
13 wages or income, together with costs, interest, and reasonable attorney fees.

14 \* Sec. 31. AS 25.27.260 is amended by adding a new subsection to read:

15 (b) A person, political subdivision, or department of the state that intentionally  
16 fails or refuses to honor a properly served income withholding order under  
17 AS 25.27.062 that is not being enforced by the agency is liable to the obligee in an  
18 amount equal to 100 percent of the amount ordered to be withheld together with costs,  
19 interest, and reasonable attorney fees.

20 \* Sec. 32. AS 33.30.131(b) is amended to read:

21 (b) Unless alternative arrangements are expressly approved by the  
22 commissioner, when a prisoner is employed outside a correctional facility as part of  
23 a prerelease or short-duration furlough program, or as part of serving time in a  
24 correctional restitution center under AS 33.30.151 - 33.30.181, the earnings of the  
25 prisoner shall be delivered to the commissioner. If an employer transmits the earnings  
26 to the commissioner, the employer has no liability to the prisoner for the earnings. The  
27 commissioner shall disburse the earnings of the prisoner, in an order determined  
28 appropriate, under procedures adopted by the commissioner to

29 (1) pay for the room, board, and personal expenses of the prisoner in  
30 an amount or at a rate determined by the commissioner;

31 (2) pay any restitution or fine ordered by the sentencing court;

1 (3) reimburse the state for an award made for violent crimes  
2 compensation under AS 18.67 arising out of the criminal conduct of the prisoner;

3 (4) pay a civil judgment arising out of the criminal conduct of the  
4 prisoner; and

5 (5) support the dependents of the prisoner, and to provide child support  
6 payments as required by AS 25.27 [AS 25.27.062].

7 \* Sec. 33. Alaska Rule of Civil Procedure 90.3(d) is amended to read:

8 (d) HEALTH INSURANCE - CREDITS. The court shall address coverage of  
9 the children's health care needs and require health insurance if insurance is available  
10 to either parent at a reasonable cost. The court shall consider whether the children  
11 are eligible for services through the Indian Health Service or other insurance  
12 coverage before ordering the obligor to provide health care coverage through  
13 insurance or other means. In calculating a child support award, credit will be given  
14 for medical and dental insurance, or educational payments for the children which are  
15 required by the court or administrative order and actually paid.

16 \* Sec. 34. AS 25.27.255(b), 25.27.255(c), and secs. 2 and 5, ch. 75, SLA 1991, are  
17 repealed.

18 \* Sec. 35. TRANSITIONAL PROVISION. (a) Notwithstanding other provisions of this  
19 Act, in the case of a support order issued by a court on or after January 1, 1994, and before  
20 the effective date of this Act, the court shall, upon filing of a motion by an obligee who is the  
21 subject of the support order, issue an immediate income withholding order for support,  
22 regardless of whether support payments are in arrears, unless

23 (1) a written agreement exists between the obligor and the obligee that  
24 provides for an alternative arrangement;

25 (2) the obligor demonstrates, and the court finds, that there is good cause not  
26 to require immediate income withholding; or

27 (3) the support order is being enforced by the child support enforcement  
28 agency.

29 (b) An immediate income withholding order issued under this section is governed by  
30 AS 25.27, as amended by this Act, and shall be treated as an immediate income withholding  
31 order issued under AS 25.27.062(a).

1 \* Sec. 36. This Act takes effect on the 10th day after the date it becomes law under  
2 AS 01.10.070(a).

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSSB-190(FIN)

Revision Date: April 4, 1994 Dept. Affected: Revenue  
 Title: Enforcement of Support Orders BRU: Child Support Enforcement Div.  
 Component: Child Support Enforcement Div.  
 Sponsor: Senate Judiciary Committee  
 Requestor: Senate Judiciary Committee COMPONENT SERIAL NO. \_\_\_\_\_

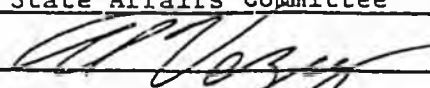
Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CAPITAL EXPENDITURE:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimate of any current year (FY94) cost: \$ 0

POSITIONS	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Rep. Al Vezey, Chairman HSTA Phone: 465-3719  
 Division: House State Affairs Committee Date: May 2, 1994  
 Approved by Commissioner:  Date: \_\_\_\_\_  
 Agency: \_\_\_\_\_

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# FISCAL NOTE

Bill Version: 0938 190(FN)

(S) Publish Date: 4-11-94

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Revision Date: 04/11/94 Dept. Affected: Alaska Court System  
 Title: An Act relating to income withholding BRU: Trial Courts  
 and other methods of enforcement for orders of child support Components: \_\_\_\_\_  
 Sponsor: Senate Judiciary by request  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 768

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) cost: \$ None

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

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228  
 Agency: Alaska Court System Date: 04/11/94

Approved by: Arthur H. Snowden, II, Administrative Director Date: 04/11/94  
 Agency: Alaska Court System

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FISCAL NOTE

# FISCAL NOTE

No. 1  
 Bill Version: SB 190  
 (S) Publish Date: 2-28-94

STATE OF ALASKA  
 1994 LEGISLATIVE SESSION

BILL 1

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Enforcement of Support Orders RRU: Child Support Enforcement Division  
 Component: Child Support Enforcement Division  
 Sponsor: Senate Judiciary Committee  
 Requestor: Senate Judiciary Committee COMPONENT SERIAL NO. 111

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	71.6	147.3	104.5	0.0	0.0	0.0
TRAVEL				0.0	0.0	0.0
CONTRACTUAL	14.6	29.1	21.8	0.0	0.0	0.0
SUPPLIES	2.0	4.0	3.0	0.0	0.0	0.0
EQUIPMENT	20.8	41.5	31.2	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS				0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>109.0</b>	<b>221.9</b>	<b>160.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL						
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REVENUE FUND SOURCE:	60.0	60.0	60.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
4 GF	109.0	221.9	160.5	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1016 Fed Incent						
<b>TOTAL</b>	<b>109.0</b>	<b>221.9</b>	<b>160.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME	2	4	3	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0

**ANALYSIS:** (Attach a separate page if necessary.)  
 Section 101 of the Family Support Act of 1988 (P.L. 100-485) requires that all child support orders issued by the courts after January 1, 1994 include a provision for immediate income withholding unless an exemption is granted by the court because there is good cause or an alternative written agreement by the parties and approved by the court. The intent of this provision of the Family Support Act is to provide the mechanism for collecting child support through wage withholding without applying for services from Child Support Enforcement Division (CSED). This requires CSED to provide payment only services for orders where neither party has applied for services or is receiving AFDC. This payment only processing and record keeping would require additional personnel to set up case files, process payments, audit cases and review cases for cost of living adjustments. The services required for these cases are not eligible for federal financial participation and must be funded by the state. The state may charge fees for his service and recover the full cost of administering the requirement. (continued)

Prepared by: Mary Gay, Director *Mary Gay* Phone: 263-6270  
 Division: Child Support Enforcement Division Date: 2/21/94  
 Approved by Commissioner: Darrel J. Rexwinkel *Darrel J. Rexwinkel* Date: 2/21/94  
 Title: Department of Revenue

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changes in CSM SB 190 (JIP)  
 have no fiscal impact. This  
 fiscal note is appropriate.  
*2/21/94*

Director's Legislative Office

# FISCAL NOTE

No. 2

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**B**

Bill Version: CSSB 190 (FIN)

(S) Publish Date: 4-6-94

Revision Date: April 4, 1994  
 Title: Enforcement of Support Orders  
 Sponsor: Senate Judiciary Committee  
 Requestor: Senate Finance Committee

Dept. Affected: Revenue  
 BRU: Child Support Enforcement Division  
 Component: Child Support Enforcement Division

COMPONENT SERIAL NO. 111

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	71.6	71.6	71.6	71.6	71.6	71.6
TRAVEL						
CONTRACTUAL	14.6	14.6	14.6	14.6	14.6	14.6
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	20.8	20.8	20.8	20.8	20.8	20.8
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>109.0</b>	<b>109.0</b>	<b>109.0</b>	<b>109.0</b>	<b>109.0</b>	<b>109.0</b>

CAPITAL						
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REVENUE FUND SOURCE:	60.0	60.0	60.0	60.0	60.0	60.0
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**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	109.0	109.0	109.0	109.0	109.0	109.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1016 Fed Incant						
<b>TOTAL</b>	<b>109.0</b>	<b>109.0</b>	<b>109.0</b>	<b>109.0</b>	<b>109.0</b>	<b>109.0</b>

**POSITIONS:**

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0

**ANALYSIS:** (Attach a separate page if necessary.)  
 Section 101 of the Family Support Act of 1988 (P.L. 100-485) required that all child support orders issued by the courts after January 1, 1994 include a provision for immediate income withholding unless an exemption is granted by the court because there is good cause or an alternative written agreement by the parties and approved by the court. The intent of this provision of the Family Support Act is to provide the mechanism for collecting child support through wage withholding without applying for services from Child Support Enforcement Division (CSED). This requires CSED to provide payment only services for orders where neither party has applied for services or is receiving AFDC. This payment only processing and record keeping would require additional personnel to set up case files, process payments, audit cases and review cases for cost of living adjustments. The services required for these cases are not eligible for federal financial participation and must be funded by the state. The state will charge fees for this service to recover partial costs of administering the requirement. (continued)

Prepared by: Mary Gav. Director *[Signature]* Phone: 263-6270  
 Division: Child Support Enforcement Division Date: \_\_\_\_\_  
 Approved by Commissioner: Darrel J. Rexwinkel *[Signature]* Date: 4/6/94  
 Agency: Department of Revenue

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# FISCAL NOTE

No. 5

Pill Version: CSSB 190 Fin

(S) Publish Date: 4-12-94

STATE OF ALASKA  
94 LEGISLATIVE SESSION

BILL N

Revision Date: April 11, 1994  
Title: Enforcement of Support Orders

Dept. Affected: Revenue  
BRU: Child Support Enforcement Division  
Component: Child Support Enforcement Division

Sponsor: Senate Judiciary Committee  
Requestor: Senate Finance

COMPONENT SERIAL NO. 111

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	71.6	71.6	71.6	71.6	71.6	71.6
TRAVEL						
CONTRACTUAL	9.6	9.6	9.6	9.6	9.6	9.6
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	20.8	20.8	20.8	20.8	20.8	20.8
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>104.0</b>	<b>104.0</b>	<b>104.0</b>	<b>104.0</b>	<b>104.0</b>	<b>104.0</b>

CAPITAL						
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REVENUE FUND SOURCE:	60.0	60.0	60.0	60.0	60.0	60.0
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**FUNDING:**

(Thousands of Dollars)

2 Federal Receipts						
1003 GF Match						
1004 GF	109.0	109.0	109.0	109.0	109.0	109.0
1005 GF: Program Receipts						
1006 GF: MHTIA						
Other 1016 Fed Incent						
<b>TOTAL</b>	<b>109.0</b>	<b>109.0</b>	<b>109.0</b>	<b>109.0</b>	<b>109.0</b>	<b>109.0</b>

**POSITIONS:**

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0

**ANALYSIS:** (Attach a separate page if necessary.)  
Section 101 of the Family Support Act of 1988 (P.L. 100-485) required that all child support orders issued by the courts after January 1, 1994 include a provision for immediate income withholding unless an exemption is granted by the court because there is good cause or an alternative written agreement by the parties and approved by the court. The intent of this provision of the Family Support Act is to provide the mechanism for collecting child support through wage withholding without applying for services from Child Support Enforcement Division (CSED). This requires CSED to provide payment only services for orders where neither party has applied for services or is receiving AFDC. This payment only processing and record keeping would require additional personnel to set up case files, process payments, audit cases and review cases for cost of living adjustments. The services required for these cases are not eligible for federal financial participation and must be funded by the state. The state will charge fees for this service to recover partial costs of administering the requirement. (continued)

Prepared by: Mary Gay, Director  
Division: Child Support Enforcement Division  
Approved by Commissioner: Darrel J. Rexwinkel  
Agency: Department of Revenue

Phone: 263-6270  
Date: 4/12/94

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# FISCAL NOTE

No. 3  
 Bill Version: CS98 19D (FIN)  
 (S) Publish Date: 4-6-94

STATE OF ALASKA  
 1994 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Alaska Court System  
 Title: An Act relating to income withholding BRU: Trial Courts  
 and other methods of enforcement for orders of child support Components: \_\_\_\_\_  
 Sponsor: Senate Judiciary by request  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 768

**EXPENDITURES/REVENUES** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	31.7	31.7	31.7	31.7	31.7	31.7
TRAVEL						
CONTRACTUAL	2.0	2.0	2.0	2.0	2.0	2.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	33.7	33.7	33.7	33.7	33.7	33.7
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	33.7	33.7	33.7	33.7	33.7	33.7
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	33.7	33.7	33.7	33.7	33.7	33.7

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) cost: \$ None

**ANALYSIS:** (Attach a separate page if necessary)  
 See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 264-8228  
 Agency: Alaska Court System Date: 03/15/94  
 Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CSC*  
 Agency: Alaska Court System Date: 03/15/94

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ALASKA COURT SYSTEM  
 FISCAL ANALYSIS  
 CSSB 190 (JUD)

The court system anticipates being able to implement this legislation by 7/1/94. The bill affects all child support orders issued starting 1/1/94 and will require review of all orders issued from 1/1/94 through 6/30/94. During 1993, 3,727 child support orders were issued. It is estimated that with the same rate of disposition, 1,864 orders will be issued during the first six months of 1994 and will require processing by the court system. This fiscal analysis divides the new responsibilities for the court system into two parts - retroactive work and on-going work. The court system has estimated the impact of the retroactive requirements, but cannot estimate at this time the on-going work costs.

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
<u>Retroactive file processing required by legislation</u>			
Court Clerk II, range 10A, permanent part-time, 6 months, Anchorage	\$12,006	\$5,710	\$17,716

*Clerical staff will be required to pull and review an estimated 1,864 files issued from 1/1/94 through 6/30/94. An Anchorage divorce master estimates that 50% or 932 of the child support orders will require preparation and mailing of notices to both parties and a complete retyping of the child support order. This process is estimated to require 1/2 hour of clerical time for each child support order.*

Pro Tem Superior Court Judge, fully vested, permanent part-time, 4 months, Anchorage	\$8,050	\$5,912	\$13,962
--	---------	---------	----------

*It is estimated that 50% of the 932 (above) or 466 child support orders will require a court hearing, lasting approximately 1/2 hour each. All 932 of the new child support orders will require judicial review and signature, which will take approximately 1/4 hour each.*

Ongoing requirements of legislation

*It is not possible to accurately estimate the additional resources needed for the on-going requirements of this legislation. However, judicial staff will be needed for each withholding order hearing. These hearings are estimated to last approximately 1/2 hour each. The legislation also will result in large amounts of paperwork for the court clerical staff to process and file. With the stringent time requirements of this legislation, court staff must be diverted from other duties to process child support matters. It is anticipated that the staff needed for the retroactive work will continue during the on-going period.*

Contractual

Postage for mailing notices and notifying all attorneys of changes - retroactive period	2,000
---	-------

Other Costs

The court system anticipates, but has not estimated, additional costs for designing and printing notices, meetings of the forms committee to design and develop new forms and procedures, and for mailing forms and notices to the parties to child support cases.

Estimated initial costs of the legislation

\$33,678

# FISCAL NOTE

Bill Version: 4 CSSB 190(F.N)  
(S) Publish Date: 4-11-94

## STATE OF ALASKA 1994 LEGISLATIVE SESSION

Revision Date: 04/11/94 Dept. Affected: Alaska Court System  
 Title: An Act relating to income withholding BRU: Trial Courts  
and other methods of enforcement for orders of child support Components: \_\_\_\_\_  
 Sponsor: Senate Judiciary by request  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 768

### 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						
<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						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

### FUND SOURCE (Thousands of Dollars)


1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1008 GF/MHTA						
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>

### POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) cost: \$ None

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

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228  
 Agency: Alaska Court System Date: 04/11/94

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 04/11/94  
 Agency: Alaska Court System

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CSED-DIRECTOR

Mary Gay, Director  
Alaska Child Support  
Enforcement Division  
Revenue Division  
550 West 7th, Suite 410  
Anchorage, Alaska 99501-3556

Dear Ms. Gay:

We have received and reviewed the documentation submitted to our office dated September 30, 1992.

As noted on the enclosed preprint page 2.12-10-1: Review and Adjustment of Child Support Obligations, your submission has been given final approval in this area. We are unable to approve section 2.12-1: Wage Withholding. The reason we cannot approve this section is because Alaska CSED does not have statutes and procedures in this area as required by Section 101 (b) of the Family Support Act. As you know, Section 101 (b) of the Family Support Act amends Section 466 (a)(8) of the Social Security Act requiring states, as a condition of state plan approval, to enact laws requiring the use of procedures under which all child support orders issued in the state on or after January 1, 1994, will include appropriate language requiring Immediate Wage Withholding. Congress enacted this provision to ensure that Immediate Wage Withholding would be available to all custodial parents without the need of filing an application for child support services. The state clearly has in place provisions for immediate wage withholding generally.

However, Alaska Statute 25.27.062 (d) describes the method for contesting wage withholding, and, as the statute now stands it is unapprovable. Federal regulations require states to have procedures for contesting a wage withhold order only if there exist "mistakes of fact." Alaska Statute 25.27.062 (d) is in conflict with 45 Code of Federal Regulations § 303.100(b)(1)(iii) because it goes further than federal law intended by adding "...or any other legal defense."

LTR'S TO MARY GAY

Page 2

By adding this option for contesting a wage withholding order, the state is giving the non-custodial parent an opportunity to include areas not intended by federal regulations, in terms of contesting the wage withholding order.

It is my understanding that you have had telephone conversations with Phyllis Benton regarding your noncompliance with the Wage Withholding requirement. In that conversation you were able to resolve one of our concerns regarding whether or not the days referenced in Alaska's statutes and procedures are calendar days as required by federal requirements. According to federal policy, when days are stated in state statutes and procedures, as below 10 days, they are universally counted as working days. When days are listed as 10 days or more, they are counted as calendar days. I understand that this issue has been resolved and Alaska uses the federal policy when referring to days. I also understand that a bill will be introduced in the Alaska legislature by a legislator that will modify Alaska Statute 25.27.062. As of your last conversation with Ms. Benton you did not know when the bill would be written and introduced.

As Alaska's state plan now stands, it is not approvable. Failure to enact an appropriate revised statutory provision and to correct the areas we noted in your state plan submission may mean that your state plan is not approvable. This may result in the cessation of federal reimbursement of expenditures for your child support program and possible Title IV-A financial sanctions.

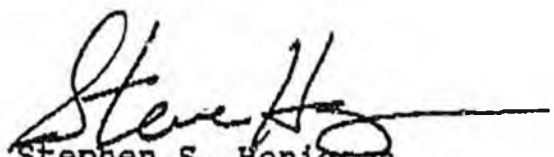
Based on information available at this time, my office will defer approval or disapproval of your state plan. We prefer to allow the state to pursue securing the necessary legislation. To that end we ask that Alaska submit its new statute 90 days after the legislative session ends, or by August 31, 1993, with a new transmittal sheet.

Again, the sole area of noncompliance that we are citing here is the state statutory provision enabling non-custodial parents to contest a wage withhold order, not only as to "mistake of fact," but also as to "any other legal defense."

Page 3 - Mary Gay

I hope this information has been helpful. My office is available to assist you in meeting your state Plan requirements. Please contact Phyllis Benton at (503) 553-0943 if you have any questions.

Sincerely,



Stephen S. Henigson  
Regional Administrator

Enclosure

cc: Darrel J. Rexwinkel, Commissioner  
Department of Revenue  
Larry Lufkin, Area Audit Supervisor



## DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Administration for  
Children and FamiliesRECEIVED  
APR 27 1994Region X  
M/S \_\_\_\_\_  
2201 Sixth Avenue  
Seattle, WA 98121

CSED-DIRECTOR

APR 26 1994

Mary Gay  
Director  
Child Support Enforcement Division  
550 West 7th, 4th Floor  
Anchorage, Alaska 99501-3556

Dear Ms. Gay:

Please advise me of the current status of your efforts to bring the Alaska State plan into compliance with federal requirements.

As we have previously advised you, the Alaska State plan is currently out-of-compliance with two federal requirements, as follows:

1. Federal Regulations at 45 CFR 303.100(d)(1)(iii) provide that the only defense for contesting wage withholding is a "mistake of fact". Whereas your state plan allows "any other legal defense."
2. Alaska has never implemented the provisions of Section 101 of the Family Support Act of 1988, effective January 1, 1994, which requires immediate wage withholding in all child support orders initially issued in the state which are not being enforced under Title IV-D of the Social Security Act.

Approval or disapproval of your state plan was deferred to allow the state to secure amendments to the Alaska State statute during this session which is scheduled to end on May 10, 1994.

As indicated in our previous correspondence, it is imperative that legislation addressing these areas of wage withholding be passed this legislative session. Should Alaska fail to enact this legislation we will have no other alternative but to recommend disapproval of your state plan to the Assistant Secretary for the Administration for Children and Families. At such time as the Assistant Secretary concludes that Alaska is not in conformance with these requirements, all Title IV-D funding to the state of Alaska will be suspended until such time as a IV-D state plan can be approved. In addition, Alaska would be subject to reductions in Title IV-A funding for failure to comply substantially with the requirements of Section 402(a)(27) of the Social Security Act. These reductions will be governed by Section 404(d) of the Act.