

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7941 HOUSE LABOR & COMMERCE



1 All notices shall be effective upon confirmed receipt.  
2 12. Default Upon default in payment of any obligation  
3 owed under this Agreement or reporting under Paragraph 3 which  
4 remains uncured for 30 days after written notice of default  
5 ("Notice of Default") specifying the amount in dispute ("Disputed  
6 Amount"), the State shall be entitled to all remedies available at  
7 law or equity including, without limitation, the right to foreclose  
8 the deed of trust, and the right to accelerate, and declare  
9 immediately due and payable, the entire unpaid balance owed under  
10 this Agreement unless Tesoro pays the Disputed Amount in full  
11 within 30 days following the written Notice of Default.

12 If Tesoro pays the Disputed Amount in full, Tesoro may  
13 accompany its payment with a statement that it is paying under  
14 protest. Any portion of the payment found not to be owed shall be  
15 subject to refund to Tesoro. Any refund will be made as a credit  
16 to Tesoro and shall bear interest at the Bank of America rate  
17 specified in Paragraph 3.B. If Tesoro does not initiate an action  
18 in the Superior Court of the State within 180 days of paying the  
19 Disputed Amount to determine whether the Disputed Amount is owed,  
20 the Disputed Amount shall be deemed owed the State.

21 If Tesoro does not pay the Disputed Amount in full and if  
22 the State elects to accelerate payment of the unpaid balance, the  
23 unpaid balance shall be calculated as follows:  
24

1           A.    If default occurs before the second business day of 2002,  
2                    the unpaid balance shall be equal to 110 per cent of the  
3                    Prepayment Amount (including any past due amounts, with  
4                    interest) calculated as of the date of the State's  
5                    written Notice of Default.  If default occurs prior to  
6                    December 31, 1993, the Prepayment Amount shall be  
7                    interpolated for 1993 as if there had been a Prepayment  
8                    Amount of \$86.5 million at December 31, 1992.

9           B.    If default occurs on or after the second business day of  
10                   2002, the unpaid balance shall be equal to \$60 million  
11                    (plus any past due amounts, including interest) plus all  
12                    cents per barrel payments which accrue during the  
13                    pendency of the default minus the amount of all  
14                    prepayments made pursuant to the second paragraph of  
15                    Paragraph 3.C.

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17           13.   Payments and Interest.  All payments due under this  
18                    Agreement from Tesoro shall be made by wire transfer under  
19                    instructions provided from time-to-time by the State.  Except under  
20                    the limited circumstances specified in Paragraphs 3.B. and 12, all  
21                    amounts not paid when due or which are later determined to be due  
22                    as an adjustment shall bear interest from the date due at the rate  
23                    for royalty payments provided in AS 38.05.135(d) as it may be  
24                    amended from time-to-time ("Default Rate").  The "date due" for

1 cents per barrel payments is the 20th day of the month following  
2 the month the barrels are charged to the Alaska Refinery (as  
3 provided in Paragraph 3.B.).  
4

5 14. Forum For Dispute Resolution. This Agreement shall  
6 be governed by the laws of the State. Any litigation concerning  
7 this Agreement shall be filed in the Superior Court of the State in  
8 Juneau unless another State Superior Court is the required forum.  
9

10 15. No Intended Third Party Beneficiaries. No person or  
11 entity, including Chevron, is an intended third party beneficiary  
12 of this Agreement.  
13

14 16. Counterparts. This Agreement may be executed in  
15 multiple counterparts. Each counterpart shall be deemed to be an  
16 original and all counterparts shall be deemed to be the same  
17 document.  
18

19 17. Effective Date. This Agreement is dated December  
20 15, 1992 for reference purposes. It is effective when executed by  
21 all parties and payment is made in accordance with paragraph 3.A.  
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STATE OF ALASKA

By: \_\_\_\_\_  
Commissioner of Natural Resources  
Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Attorney General  
Date Signed: \_\_\_\_\_

STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT ) ss:  
)

The foregoing instrument was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 1993, by \_\_\_\_\_,  
Commissioner of Natural Resources of the State of Alaska.

\_\_\_\_\_  
NOTARY PUBLIC in and for Alaska  
My commission expires: \_\_\_\_\_

STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT ) ss:  
)

The foregoing instrument was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 1993, by \_\_\_\_\_,  
Attorney General for the State of Alaska.

\_\_\_\_\_  
NOTARY PUBLIC in and for Alaska  
My commission expires: \_\_\_\_\_

TESORO SETTLEMENT AGREEMENT/19



EXHIBIT B

PARCEL I:

That portion of Section 22 and the Northeast 1/4 of Section 21, Township 7 North, Range 12 West, Seward Meridian, records of the Kenai Recording District, Third Judicial District, State of Alaska, described as follows:

Commencing at the 1/4 corner common to Section 22 and Section 27, Township 7 North, Range 12 West, Seward Meridian, Alaska, marked by an Alaska Department of Highways survey monument found; proceed East 2640.92 feet along the section line, Basis of Bearing for this description, according to General Land Office datum for the Section corner common to Sections 22, 23, 26 and 27 marked by an Alaska Department of Highways monument found; thence N 00°07'44" W 1982.23 feet along the section line common to Section 22 and Section 23 to the northeast corner of the Seaman property, the true Point of Beginning for this description, marked by a 5/8" X 30" rebar with 2" aluminum cap attached, set; thence S 89°58'52" W 330.15 feet along the north boundary line of the Seaman property to the northwest corner of said property, marked by a 5/8" X 30" rebar with 2" aluminum cap attached, set; thence S 00°07'59" E 660.69 feet along the western boundary of the Seaman property to the southwest corner of said property, marked by a 5/8" X 30" rebar with 2" aluminum cap attached, set; thence S 89°59'26" W 2310.72 feet to the CS 1/16 corner of Section 22, marked by a 3 1/4" aluminum monument 4928-S, found; thence N 00°08'43" W 1320.75 feet to the C 1/4 of Section 22, marked by a brass cap G.L.O. monument 610-S, found; thence S 89°58'28" W 1320.53 feet to the CW 1/16 corner, marked by a brass cap monument 610-S, found; thence S 89°56'49" W 991.57 feet to a property corner which is situated in a small pond; thence North 00°05'58" W 1170.92 feet to a property corner marked by a 5/8" X 30" rebar, set; thence N 89°59'53" W 330.64 feet to the section line common to Section 21, Section 22 and HES 74, marked by a brass capped monument, found; thence N 89°59'53" W 659.87 feet to a property corner situated along the easterly right-of-way line of the North Kenai Road; thence N 20°33'50" W 19.36 feet along said right-of-way to a point of curvature; thence along a curve of said right-of-way whose radius point bears northeasterly 1357.50 feet, delta of 1°25'49", arc

1 length 33.89 feet to a property corner marked by a 5/8" X 30" rebar with 2"  
2 aluminum cap attached, set; thence S 89°59'53" E 678.10 feet to a property  
3 corner situated on the east line of Section 21, marked by a 5/8" X 30" rebar  
4 with 2" aluminum cap attached, set; thence N 00°05'14" W 100.68 feet to the  
5 N 1/16 corner common to Section 21 and Section 22, marked by a brass cap  
6 monument 610-S, found; thence S 89°59'34" E 1320.96 feet to the NW 1/16  
7 corner Section 22, marked by a 3-1/4" aluminum monument 4928-S found;  
8 thence S 89°57'03" E 322.87 feet to the Southwest corner of Tract A, K.R.D.  
9 86-135, marked by a 5/8" rebar with aluminum cap attached, found; thence N  
10 00°10'25" W 131.00 feet to the northwest corner of said tract, marked by a  
11 5/8" rebar with aluminum cap attached, found; thence S 89°59'05" E 997.56  
12 feet to the northeast corner of said tract, marked by a 5/8" rebar with  
13 aluminum cap attached, found; thence N 00°10'25" W 413.73 feet along the  
14 N-S centerline of Section 22 to a property corner, marked by 5/8" X 30" rebar  
15 with 2" aluminum cap attached, set; thence N 85°16'01" E 1324.75 feet to a  
16 property corner, marked by a 5/8" X 30" rebar with 2" aluminum cap attached,  
17 set; thence N 00°09'47" W 668.93 feet to the E 1/16 corner common to  
18 Section 15 and Section 22, marked by a 3 1/4" aluminum cap monument 4928-  
19 S set; thence N 89°58'44" E 1320.69 feet along the section line to the section  
20 corner common to Sections 15, 14, 22 and 23, marked by a brass cap  
21 monument 631-S, found; thence S 00°06'52" E 1320.60 feet to the N 1/16  
22 corner common to Section 22 and Section 23, marked by a survey monument  
23 3808-S, found; thence S 00°15'44" E 780.99 feet to the W.C. 1/4 corner  
24 common to Section 22 and Section 23, marked by a brass cap monument  
25 G.L.O., found; thence S 00°07'44" E 1200.83 feet to the northeast corner of  
26 the Seaman property and the true Point of Beginning.  
27  
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29 PARCEL II:

30  
31 That certain portion of U.S. Government Lot Sixty (60) of Section 23, Township 6 North,  
32 Range 12 West, Seward Meridian, that lies West of Existing Westerly right-of-way line of  
33 the North Kenai Highway, in the Kenai Recording District, Third Judicial District, State of  
34 Alaska.  
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SUBORDINATION AGREEMENT

1. **APPLICABILITY AND DEFINITIONS.** This SUBORDINATION AGREEMENT is an exhibit to the Settlement Agreement dated for reference purposes December 15, 1992, and to the Deed of Trust, Security Agreement, and Bond, attached as Exhibits to that Settlement Agreement. The terms of this SUBORDINATION AGREEMENT are incorporated by reference to each.

1.1 The reference to the "State" herein shall mean the State of Alaska in its capacity under the Settlement Agreement and as the Secured party under the Security Agreement, Beneficiary under the Deed of Trust, or Holder of the Bond as appropriate to each of the Security Documents.

1.2 The "Security Documents" shall collectively mean the Deed of Trust, the Security Agreement, the Bond, and the Non-Standard Financing Statement.

1.3 The "Subordinated Debt" is the obligations of Tesoro under the Settlement Agreement and the Security Documents.

1.4 All other terms and words used herein shall be given the same meaning as given in the Settlement Agreement, its exhibits, and the Security Documents.

2. **SUBORDINATION.** Paragraph 6 of the Settlement Agreement sets forth the extent of the Subordination of the obligations created by the Settlement Agreement and Security Documents to the Senior Debt as defined below. Paragraph 6 reads:

The rights of the State and obligations owed the State under this Agreement and the State's collateral interest in the Alaska Refinery shall be subordinate to no more than \$175 million in other obligations of Tesoro, at any one time outstanding, plus Expansion Debt as defined below on the terms and to the extent provided in Exhibit 7. Expansion Debt means debt incurred by Tesoro which is used to finance all or part of any improvements, replacements, or additions, including land, to the Alaska Refinery.

1 Except as provided in the immediately preceding paragraph, other  
2 obligations of Tesoro for borrowed money, lease obligations which  
3 are required to be included as debt on the balance sheet of Tesoro  
4 under generally accepted accounting principles, and the deferred  
5 purchase price for property, plant and equipment, other than trade  
6 payables in the ordinary course of business, incurred after the  
7 effective date of this agreement shall be subordinate to all  
8 obligations (including, without limitation, cents per barrel  
9 payments, interest, and the \$60 million bond) owed the State  
10 under this Agreement.

11  
12 3. **DEFINITION OF SENIOR DEBT.** "Senior Debt" means all principal,  
13 interest, fees, expenses, indemnities and all other amounts, contingent or otherwise, now or  
14 hereafter existing or owing by Tesoro (whether directly or as a result of a guarantee) up to  
15 but not to exceed ONE HUNDRED SEVENTY FIVE MILLION AND NO/100 DOLLARS  
16 (\$175,000,000.00) and Expansion Debt, which by its terms expressly provides in writing that  
17 it is Senior Debt.

18  
19 4. **NO PAYMENT ON THE SUBORDINATED DEBT.** If Tesoro defaults in the  
20 payment of any principal of, or interest or other payment on, any Senior Debt when the  
21 same becomes due and payable, whether on demand, at stated maturity, at a date fixed for  
22 prepayment, upon acceleration or otherwise, then, unless and until such default shall have  
23 been remedied or waived or shall have ceased to exist, no direct or indirect payment (in  
24 cash, property or securities or by set-off or otherwise) shall be made or agreed to be made  
25 on account of any Subordinated Debt, or as a sinking fund for the Subordinated Debt.

26  
27 5. **OTHER DEFAULTS.** If Tesoro receives from any holder of Senior Debt  
28 a notice of occurrence of a default or Event of Default other than a default described in  
29 Paragraph 4 above, no direct or indirect payment (in cash, property or securities or by set-  
30 off or otherwise) shall be made or agreed to be made on account of any Subordinated Debt  
31 or as a sinking fund for the Subordinated Debt, or in respect of any redemption, retirement,  
32 purchase or other acquisition of any of the Subordinated Debt; provided, however, that if  
33 such default or Event of Default shall be cured or waived, or such default or Event of  
34 Default shall continue for a period of 365 or more days after the receipt by the Issuer of  
35 such notice without the same being cured or waived, then this restriction shall no longer  
36 apply.

37  
38 6. **DISSOLUTION, WINDING UP, ETC.** In the event of (i) any insolvency,  
39 bankruptcy, receivership, liquidation, reorganization, readjustment, composition or other  
40 similar proceeding relating to Tesoro, its creditors as such or its property, (ii) any  
41 proceeding for the liquidation, dissolution or other winding-up of the Tesoro voluntary or

1 involuntary, whether or not involving insolvency or bankruptcy proceedings. (iii) any  
2 assignment by Tesoro for the benefit of creditors or (iv) any other marshalling of the assets  
3 of Tesoro, all Senior Debt shall first be paid in full before any payment or distribution,  
4 whether in cash, securities or other property, shall be made to any holder of any  
5 Subordinated Debt on account of any Subordinated Debt. Any payment or distribution,  
6 whether in cash, securities or other property (other than securities of Tesoro or any other  
7 corporation provided for by a plan or reorganization or readjustment the payment of which  
8 is subordinate, at least to the extent provided in these subordination provisions with respect  
9 to Subordinated Debt, to the payment of all Senior Debt at the time outstanding and to any  
10 securities issued in respect thereof under any such plan of reorganization or readjustment),  
11 which would otherwise (but for these subordination provisions) be payable or deliverable  
12 in respect of this Subordinated Debt shall be paid or delivered directly to the holders of  
13 Senior Debt in accordance with the priorities then existing among such holders until all  
14 Senior Debt shall have been paid in full.

15  
16 7. CERTAIN PAYMENTS HELD IN TRUST. If any payment or distribution  
17 of any character or any security whether in cash, securities or other property (other than  
18 securities of Tesoro or any other corporation provided for by a plan of reorganization or  
19 readjustment the payment of which is subordinate, at least to the extent provided in these  
20 subordination provisions with respect to Subordinated Debt, to the payment of all Senior  
21 Debt at the time outstanding and to any securities issued in respect thereof under any such  
22 plan of reorganization or readjustment), shall be received by any holder of Subordinated  
23 Debt in contravention of any of the terms hereof and before all Senior Debt shall have been  
24 paid in full, such payment or distribution or security shall be received in trust for the benefit  
25 of, and shall be paid or delivered and transferred to, the holders of the Senior Debt at the  
26 time outstanding in accordance with the priorities then existing among such holders for  
27 application to the payment of all Senior Debt remaining unpaid, to the extent necessary to  
28 pay all such Senior Debt in full. In the event of the failure of any holder of any  
29 Subordinated Debt to endorse or assign any such payment, distribution or security, each  
30 holder of Senior Debt is hereby irrevocably authorized to endorse or assign the same.

31  
32 8. RIGHTS NOT IMPAIRED. No present or future holder of any Senior  
33 Debt shall be prejudiced in the right to enforce the subordination of any Subordinated Debt  
34 by an act or failure to act on the part of Tesoro. Except as provided in paragraphs 4, 5, 6,  
35 7, 11 and 12, nothing contained herein shall impair, as between Tesoro and the holder of  
36 any Subordinated Debt, the obligation of Tesoro to pay to the holder thereof the principal  
37 thereof and interest thereon as and when the same shall become due and payable in  
38 accordance with the terms thereof, or prevent the holder of any Subordinated Debt from

1 exercising all rights, powers and remedies otherwise permitted by applicable law under any  
2 instrument evidencing or relating to such Subordinated Debt upon a default, all subject to  
3 the rights of the holders of the Senior Debt to receive cash, securities or other property  
4 otherwise payable or deliverable to the holders of any Subordinated Debt.  
5

6 9. SUBROGATION. Upon payment in full of all Senior Debt, the holders  
7 of any Subordinated Debt shall be subrogated to all rights of any holders of Senior Debt  
8 to receive any further payments or distributions applicable to the Senior Debt until the  
9 Subordinated Debt shall have been paid in full, and, for the purposes of such subrogation,  
10 no payment or distribution received by the holders of Senior Debt of cash, securities, or  
11 other property to which the holders of the Subordinated Debt would have been entitled  
12 except for these subordination provisions shall, as between Tesoro and its creditors other  
13 than the holders of Senior debt, on the one hand, and the holders of Subordinated Debt,  
14 on the other, be deemed to be payment or distribution by Tesoro on account of Senior  
15 Debt.  
16

17 10. SUBORDINATION OF LIENS AND SUBSEQUENT RECORDATION. The  
18 security interests, mortgages, and liens created by the Security Documents are and shall  
19 continue to be subject and subordinate to all security interests, mortgages, and liens, now  
20 or hereafter securing, or in favor of, the Senior Debt. The effect of this subordination is  
21 effective over documents representing Senior Debt but recorded or filed subsequent to this  
22 "Subordinated Debt."  
23

24 11. RIGHTS UNDER THE SECURITY DOCUMENTS. Rights and obligations  
25 under the Security Documents, by way of example but not by limitation, of the State, to  
26 receive insurance proceeds (as provided in Paragraph 5.7 of the Security Agreement and  
27 Paragraph 1.3 of the Deed of Trust) and rents, issues, royalties, profits, awards and proceeds  
28 (as provided in Paragraph 1.8 and 2.5 of the Deed of Trust), to be named as insured or loss  
29 payee, or receive originals of insurance policies, to exercise powers of attorney or other  
30 rights, or to grant approvals or negotiate on behalf of the grantor of the Security  
31 Documents, are subject to and subordinate to the Senior Debt and the rights of the holders  
32 of the Senior Debt with respect thereto as provided in the Senior Debt or the documents  
33 securing the Senior Debt.  
34

35 12. DEFAULT. Promptly following any default under the Security  
36 Documents, the Settlement Agreement or the Bond (and in all events prior to the State  
37 exercising any remedies contained in the Security Documents), the State will give any Senior  
38 Debt holder written notice of the default, subject to the following conditions:  
39

40 12.1 For purposes of this Subordination Agreement, the Subordinated  
41 Debt shall not be deemed in default until (1) 30 days have passed from the State's issuance

1 of a written Notice of Default as defined in paragraph 12 of the Settlement Agreement and  
2 (2) Tesoro's failure to pay the Disputed Amount or failure to satisfy the Subordinated Debt  
3 in its entirety;

4  
5 12.2 The State shall not be required to give a notice of default to any  
6 Senior Debt holder unless the Senior Debt holder has given the State written notice of the  
7 person to whom and place to which the notice should be sent.  
8

9 12.3. The State will not, for a period of 30 days following receipt by  
10 the Senior Debt holder (identified under 12.2 above) of the notice of default from the State,  
11 file an action to foreclose judicially any of Tesoro's real property, record a notice of non-  
12 judicial foreclosure of any of Tesoro's real property or otherwise take any action permitted  
13 by Section 2 of the Deed of Trust, or file an action to take possession of any of Tesoro's  
14 personal property or otherwise take any action permitted by Section 8.1 of the Security  
15 Agreement.  
16

17 12.4. Subject to the right to cure set forth in paragraph 12.5, at the  
18 expiration of the 30 day period following the date the Senior Debt holder received notice  
19 from the State of Tesoro's default, the State shall be entitled to institute foreclosure  
20 proceedings or initiate other remedies as specified in the Security Documents, subject to  
21 paragraphs 4, 5, 6 and 7 above and the other provisions of this Subordination Agreement.  
22 Subject to paragraphs 4, 5, 6 and 7 above and the other provisions of this Subordination  
23 Agreement, the State may file any actions, record any notices, or take any other actions it  
24 deems necessary to enforce its remedies. The State will not, however, take possession of  
25 or sell or cause to be sold any of Tesoro's real property or any of Tesoro's personal  
26 property or cause a receiver to be appointed for any of Tesoro's property prior to the 121st  
27 day following the day on which the Senior Debt holder received the notice from the State  
28 of default by Tesoro.  
29

30 12.5 At any time during the 120 day period following the date the  
31 Senior Debt holder received the notice from the State of Tesoro's default, the Senior Debt  
32 holder may cure or cause Tesoro to cure the default by paying the Disputed Amount (as  
33 defined in the Settlement Agreement) plus interest from the date due at the rate for  
34 royalty payments provided in AS 38.05.135(d) as it may be amended from time-to-time, plus  
35 the State's reasonable actual attorney fees and costs incurred in conjunction with the  
36 default. If the Senior Debt holder cures or causes Tesoro to cure Tesoro's default, the  
37 State shall take no further action against Tesoro based on the default.  
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39 12.6 The right to cure after foreclosure proceedings have been  
40 initiated as granted by this Paragraph 12 may not be used more than two times in any 12  
41 month period.  
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STATE OF ALASKA

By: \_\_\_\_\_  
Commissioner of Natural Resources

By: \_\_\_\_\_  
Attorney General

STATE OF ALASKA                    )  
                                          ) ss:  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1993, by The Commissioner of Natural Resources of the State of Alaska.

\_\_\_\_\_  
NOTARY PUBLIC in and for Alaska  
My commission expires: \_\_\_\_\_

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STATE OF ALASKA )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1993, by \_\_\_\_\_, Attorney General for the State of Alaska.

\_\_\_\_\_  
NOTARY PUBLIC in and for Alaska  
My commission expires: \_\_\_\_\_

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CONSENT & ESTOPPEL

Tesoro Petroleum Company, a Delaware Corporation and the parent of Tesoro Alaska, hereby consents to the execution of the SUBORDINATION AGREEMENT, by Tesoro Alaska, affirms the representations and warranties made herein by Tesoro Alaska and affirms the State's material reliance on the warranties, covenants and representations made herein.

Tesoro Petroleum Company

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1993, by \_\_\_\_\_, \_\_\_\_\_ of Tesoro Petroleum Company, a \_\_\_\_\_ corporation, on behalf of the corporation.

\_\_\_\_\_  
NOTARY PUBLIC in and for \_\_\_\_\_

My commission expires: \_\_\_\_\_



1 Principal Amount except upon the failure to pay the Principal Amount and then in  
2 accordance with and subject to the terms of Paragraph 13 of the Agreement.  
3  
4           1.       **PAYMENT.** Principal and the prepayment premium of this Bond shall  
5 be payable to the Registered Holder if this Registered Holder is the State of Alaska, in  
6 accordance with Paragraph 13 of the Agreement, and to all other Registered Holders at the  
7 corporate office of the Issuer located in Anchorage, Alaska (the "Place of Payment") upon  
8 the surrender for cancellation of this Bond.  
9  
10           If the specific date for any such payment shall be a Saturday, a Sunday or  
11 legal holiday or the equivalent for banking institutions generally (other than legal  
12 moratorium) at the place where payment thereof is to be made, then such payment may be  
13 made on the next succeeding day which is not one of the foregoing days without interest and  
14 with the same force and effect as if made on the specified date for such payment. All such  
15 payments shall be made in such coin or currency of the United States of America as at the  
16 time of payment is legal tender for payment of public and private debts.  
17  
18           2.       **PREPAYMENT.** This Bond may be prepaid at any time at the option of  
19 the Issuer in accordance with Paragraph 3.D of the Agreement.  
20  
21           3.       **SECURITY.** This Bond and the obligations hereunder are secured by a  
22 Deed of Trust substantially in the form of and covering the property described in Exhibit 3  
23 to the Agreement.  
24  
25           4.       **CERTAIN RIGHTS OF HOLDERS.** If a default shall occur under  
26 Paragraph 12 of the Agreement, the principal amount of this Bond, together with a  
27 prepayment amount, may be declared due and payable in the manner and with the effect  
28 provided in the Agreement.  
29  
30           5.       **TRANSFER AND EXCHANGE.** This Bond is transferable on the  
31 registration books of the Issuer to be maintained by the Issuer, upon surrender of this Bond  
32 for transfer at the office of the Issuer in the Place of Payment duly endorsed by, or  
33 accompanied by a written instrument of transfer in form reasonably satisfactory to the Issuer  
34 duly executed by the Registered Holder hereof or its attorney duly authorized in writing and  
35 thereupon a new Bond will be issued to the designated transferee.  
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No service charge will be made for any such transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Issuer, and any agent of the Issuer, may treat the person in whose name this Bond is registered on the registration books maintained by the Issuer as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes whether or not this Bond shall be overdue.

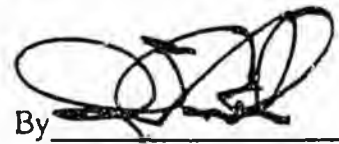
6. SUBORDINATION. The obligations of this Bond are subordinate to Senior Debt on the terms set forth in the Subordination Agreement, a form of which is attached as Exhibit 7 to the Agreement, the terms of which are expressly incorporated herein.

7. WAIVER OF NOTICE, ETC. The Issuer hereby waives presentment, demand, protest, notice of intent to accelerate and any other notice of any kind except as provided in the Agreement or the Deed of Trust.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law, that all acts, conditions and things required to exist and necessary to be done or performed precedent to and in the issuance of this Bond to render the same lawful, valid and binding have been properly done and performed and have happened in regular and due time, form and manner as required by law, that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to and in the execution and delivery of the Agreement have been done and performed and have happened in regular and due form as required by law; and that the issuance of the Bond does not contravene or violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be duly executed.

TESORO ALASKA PETROLEUM COMPANY



By \_\_\_\_\_  
Sr. [Vice] President  
Chief Financial Officer

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TESORO PETROLEUM CORPORATION



By \_\_\_\_\_  
[Vice] President  
Chief Financial Officer

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SUBORDINATION AGREEMENT

1. **APPLICABILITY AND DEFINITIONS.** This SUBORDINATION AGREEMENT is an exhibit to the Settlement Agreement dated for reference purposes December 15, 1992, and to the Deed of Trust, Security Agreement, and Bond, attached as Exhibits to that Settlement Agreement. The terms of this SUBORDINATION AGREEMENT are incorporated by reference to each.

1.1 The reference to the "State" herein shall mean the State of Alaska in its capacity under the Settlement Agreement and as the Secured party under the Security Agreement, Beneficiary under the Deed of Trust, or Holder of the Bond as appropriate to each of the Security Documents.

1.2 The "Security Documents" shall collectively mean the Deed of Trust, the Security Agreement, the Bond, and the Non-Standard Financing Statement.

1.3 The "Subordinated Debt" is the obligations of Tesoro under the Settlement Agreement and the Security Documents.

1.4 All other terms and words used herein shall be given the same meaning as given in the Settlement Agreement, its exhibits, and the Security Documents.

2. **SUBORDINATION.** Paragraph 6 of the Settlement Agreement sets forth the extent of the Subordination of the obligations created by the Settlement Agreement and Security Documents to the Senior Debt as defined below. Paragraph 6 reads:

The rights of the State and obligations owed the State under this Agreement and the State's collateral interest in the Alaska Refinery shall be subordinate to no more than \$175 million in other obligations of Tesoro, at any one time outstanding, plus Expansion Debt as defined below on the terms and to the extent provided in Exhibit 7. Expansion Debt means debt incurred by Tesoro which is used to finance all or part of any improvements, replacements, or additions, including land, to the Alaska Refinery.

1 Except as provided in the immediately preceding paragraph, other  
2 obligations of Tesoro for borrowed money, lease obligations which  
3 are required to be included as debt on the balance sheet of Tesoro  
4 under generally accepted accounting principles, and the deferred  
5 purchase price for property, plant and equipment, other than trade  
6 payables in the ordinary course of business, incurred after the  
7 effective date of this agreement shall be subordinate to all  
8 obligations (including, without limitation, cents per barrel  
9 payments, interest, and the \$60 million bond) owed the State  
10 under this Agreement.

11  
12 3. **DEFINITION OF SENIOR DEBT.** "Senior Debt" means all principal,  
13 interest, fees, expenses, indemnities and all other amounts, contingent or otherwise, now or  
14 hereafter existing or owing by Tesoro (whether directly or as a result of a guarantee) up to  
15 but not to exceed ONE HUNDRED SEVENTY FIVE MILLION AND NO/100 DOLLARS  
16 (\$175,000,000.00) and Expansion Debt, which by its terms expressly provides in writing that  
17 it is Senior Debt.

18  
19 4. **NO PAYMENT ON THE SUBORDINATED DEBT.** If Tesoro defaults in the  
20 payment of any principal of, or interest or other payment on, any Senior Debt when the  
21 same becomes due and payable, whether on demand, at stated maturity, at a date fixed for  
22 prepayment, upon acceleration or otherwise, then, unless and until such default shall have  
23 been remedied or waived or shall have ceased to exist, no direct or indirect payment (in  
24 cash, property or securities or by set-off or otherwise) shall be made or agreed to be made  
25 on account of any Subordinated Debt, or as a sinking fund for the Subordinated Debt.

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27 5. **OTHER DEFAULTS.** If Tesoro receives from any holder of Senior Debt  
28 a notice of occurrence of a default or Event of Default other than a default described in  
29 Paragraph 4 above, no direct or indirect payment (in cash, property or securities or by set-  
30 off or otherwise) shall be made or agreed to be made on account of any Subordinated Debt  
31 or as a sinking fund for the Subordinated Debt, or in respect of any redemption, retirement,  
32 purchase or other acquisition of any of the Subordinated Debt; provided, however, that if  
33 such default or Event of Default shall be cured or waived, or such default or Event of  
34 Default shall continue for a period of 365 or more days after the receipt by the Issuer of  
35 such notice without the same being cured or waived, then this restriction shall no longer  
36 apply.

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38 6. **DISSOLUTION, WINDING UP, ETC.** In the event of (i) any insolvency,  
39 bankruptcy, receivership, liquidation, reorganization, readjustment, composition or other  
40 similar proceeding relating to Tesoro, its creditors as such or its property, (ii) any  
41 proceeding for the liquidation, dissolution or other winding-up of the Tesoro voluntary or

1 involuntary, whether or not involving insolvency or bankruptcy proceedings, (iii) any  
2 assignment by Tesoro for the benefit of creditors or (iv) any other marshalling of the assets  
3 of Tesoro, all Senior Debt shall first be paid in full before any payment or distribution,  
4 whether in cash, securities or other property, shall be made to any holder of any  
5 Subordinated Debt on account of any Subordinated Debt. Any payment or distribution,  
6 whether in cash, securities or other property (other than securities of Tesoro or any other  
7 corporation provided for by a plan or reorganization or readjustment the payment of which  
8 is subordinate, at least to the extent provided in these subordination provisions with respect  
9 to Subordinated Debt, to the payment of all Senior Debt at the time outstanding and to any  
10 securities issued in respect thereof under any such plan of reorganization or readjustment),  
11 which would otherwise (but for these subordination provisions) be payable or deliverable  
12 in respect of this Subordinated Debt shall be paid or delivered directly to the holders of  
13 Senior Debt in accordance with the priorities then existing among such holders until all  
14 Senior Debt shall have been paid in full.

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16 7. CERTAIN PAYMENTS HELD IN TRUST. If any payment or distribution  
17 of any character or any security whether in cash, securities or other property (other than  
18 securities of Tesoro or any other corporation provided for by a plan of reorganization or  
19 readjustment the payment of which is subordinate, at least to the extent provided in these  
20 subordination provisions with respect to Subordinated Debt, to the payment of all Senior  
21 Debt at the time outstanding and to any securities issued in respect thereof under any such  
22 plan of reorganization or readjustment), shall be received by any holder of Subordinated  
23 Debt in contravention of any of the terms hereof and before all Senior Debt shall have been  
24 paid in full, such payment or distribution or security shall be received in trust for the benefit  
25 of, and shall be paid or delivered and transferred to, the holders of the Senior Debt at the  
26 time outstanding in accordance with the priorities then existing among such holders for  
27 application to the payment of all Senior Debt remaining unpaid, to the extent necessary to  
28 pay all such Senior Debt in full. In the event of the failure of any holder of any  
29 Subordinated Debt to endorse or assign any such payment, distribution or security, each  
30 holder of Senior Debt is hereby irrevocably authorized to endorse or assign the same.

31  
32 8. RIGHTS NOT IMPAIRED. No present or future holder of any Senior  
33 Debt shall be prejudiced in the right to enforce the subordination of any Subordinated Debt  
34 by an act or failure to act on the part of Tesoro. Except as provided in paragraphs 4, 5, 6,  
35 7, 11 and 12, nothing contained herein shall impair, as between Tesoro and the holder of  
36 any Subordinated Debt, the obligation of Tesoro to pay to the holder thereof the principal  
37 thereof and interest thereon as and when the same shall become due and payable in  
38 accordance with the terms thereof, or prevent the holder of any Subordinated Debt from

1 exercising all rights, powers and remedies otherwise permitted by applicable law under any  
2 instrument evidencing or relating to such Subordinated Debt upon a default, all subject to  
3 the rights of the holders of the Senior Debt to receive cash, securities or other property  
4 otherwise payable or deliverable to the holders of any Subordinated Debt.  
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6 9. SUBROGATION. Upon payment in full of all Senior Debt, the holders  
7 of any Subordinated Debt shall be subrogated to all rights of any holders of Senior Debt  
8 to receive any further payments or distributions applicable to the Senior Debt until the  
9 Subordinated Debt shall have been paid in full, and, for the purposes of such subrogation,  
10 no payment or distribution received by the holders of Senior Debt of cash, securities, or  
11 other property to which the holders of the Subordinated Debt would have been entitled  
12 except for these subordination provisions shall, as between Tesoro and its creditors other  
13 than the holders of Senior debt, on the one hand, and the holders of Subordinated Debt,  
14 on the other, be deemed to be payment or distribution by Tesoro on account of Senior  
15 Debt.  
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17 10. SUBORDINATION OF LIENS AND SUBSEQUENT RECORDATION. The  
18 security interests, mortgages, and liens created by the Security Documents are and shall  
19 continue to be subject and subordinate to all security interests, mortgages, and liens, now  
20 or hereafter securing, or in favor of, the Senior Debt. The effect of this subordination is  
21 effective over documents representing Senior Debt but recorded or filed subsequent to this  
22 "Subordinated Debt."  
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24 11. RIGHTS UNDER THE SECURITY DOCUMENTS. Rights and obligations  
25 under the Security Documents, by way of example but not by limitation, of the State, to  
26 receive insurance proceeds (as provided in Paragraph 5.7 of the Security Agreement and  
27 Paragraph 1.3 of the Deed of Trust) and rents, issues, royalties, profits, awards and proceeds  
28 (as provided in Paragraph 1.8 and 2.5 of the Deed of Trust), to be named as insured or loss  
29 payee, or receive originals of insurance policies, to exercise powers of attorney or other  
30 rights, or to grant approvals or negotiate on behalf of the grantor of the Security  
31 Documents, are subject to and subordinate to the Senior Debt and the rights of the holders  
32 of the Senior Debt with respect thereto as provided in the Senior Debt or the documents  
33 securing the Senior Debt.  
34

35 12. DEFAULT. Promptly following any default under the Security  
36 Documents, the Settlement Agreement or the Bond (and in all events prior to the State  
37 exercising any remedies contained in the Security Documents), the State will give any Senior  
38 Debt holder written notice of the default, subject to the following conditions:  
39

40 12.1 For purposes of this Subordination Agreement, the Subordinated  
41 Debt shall not be deemed in default until (1) 30 days have passed from the State's issuance

1 of a written Notice of Default as defined in paragraph 12 of the Settlement Agreement and  
2 (2) Tesoro's failure to pay the Disputed Amount or failure to satisfy the Subordinated Debt  
3 in its entirety;

4  
5 12.2 The State shall not be required to give a notice of default to any  
6 Senior Debt holder unless the Senior Debt holder has given the State written notice of the  
7 person to whom and place to which the notice should be sent.

8  
9 12.3. The State will not, for a period of 30 days following receipt by  
10 the Senior Debt holder (identified under 12.2 above) of the notice of default from the State,  
11 file an action to foreclose judicially any of Tesoro's real property, record a notice of non-  
12 judicial foreclosure of any of Tesoro's real property or otherwise take any action permitted  
13 by Section 2 of the Deed of Trust, or file an action to take possession of any of Tesoro's  
14 personal property or otherwise take any action permitted by Section 8.1 of the Security  
15 Agreement.

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17 12.4. Subject to the right to cure set forth in paragraph 12.5, at the  
18 expiration of the 30 day period following the date the Senior Debt holder received notice  
19 from the State of Tesoro's default, the State shall be entitled to institute foreclosure  
20 proceedings or initiate other remedies as specified in the Security Documents, subject to  
21 paragraphs 4, 5, 6 and 7 above and the other provisions of this Subordination Agreement.  
22 Subject to paragraphs 4, 5, 6 and 7 above and the other provisions of this Subordination  
23 Agreement, the State may file any actions, record any notices, or take any other actions it  
24 deems necessary to enforce its remedies. The State will not, however, take possession of  
25 or sell or cause to be sold any of Tesoro's real property or any of Tesoro's personal  
26 property or cause a receiver to be appointed for any of Tesoro's property prior to the 121st  
27 day following the day on which the Senior Debt holder received the notice from the State  
28 of default by Tesoro.

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30 12.5 At any time during the 120 day period following the date the  
31 Senior Debt holder received the notice from the State of Tesoro's default, the Senior Debt  
32 holder may cure or cause Tesoro to cure the default by paying the Disputed Amount (as  
33 defined in the Settlement Agreement) plus interest from the date due at the rate for  
34 royalty payments provided in AS 38.05.135(d) as it may be amended from time-to-time, plus  
35 the State's reasonable actual attorney fees and costs incurred in conjunction with the  
36 default. If the Senior Debt holder cures or causes Tesoro to cure Tesoro's default, the  
37 State shall take no further action against Tesoro based on the default.

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39 12.6 The right to cure after foreclosure proceedings have been  
40 initiated as granted by this Paragraph 12 may not be used more than two times in any 12  
41 month period.  
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STATE OF ALASKA

By: \_\_\_\_\_  
Commissioner of Natural Resources

By: \_\_\_\_\_  
Attorney General

STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT ) ss:  
)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1993, by The Commissioner of Natural Resources of the State of Alaska.

\_\_\_\_\_  
NOTARY PUBLIC in and for Alaska  
My commission expires: \_\_\_\_\_

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STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

)  
) ss:  
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The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1993, by \_\_\_\_\_, Attorney General for the State of Alaska.

\_\_\_\_\_  
NOTARY PUBLIC in and for Alaska  
My commission expires: \_\_\_\_\_

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CONSENT & ESTOPPEL

Tesoro Petroleum Company, a Delaware Corporation and the parent of Tesoro Alaska, hereby consents to the execution of the SUBORDINATION AGREEMENT, by Tesoro Alaska, affirms the representations and warranties made herein by Tesoro Alaska and affirms the State's material reliance on the warranties, covenants and representations made herein.

Tesoro Petroleum Company

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1993, by \_\_\_\_\_ of Tesoro Petroleum Company, a \_\_\_\_\_ corporation, on behalf of the corporation.

\_\_\_\_\_  
NOTARY PUBLIC in and for \_\_\_\_\_

My commission expires: \_\_\_\_\_

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SUBORDINATION AGREEMENT

1. **APPLICABILITY AND DEFINITIONS.** This SUBORDINATION AGREEMENT is an exhibit to the Settlement Agreement dated for reference purposes December 15, 1992, and to the Deed of Trust, Security Agreement, and Bond, attached as Exhibits to that Settlement Agreement. The terms of this SUBORDINATION AGREEMENT are incorporated by reference to each.

1.1 The reference to the "State" herein shall mean the State of Alaska in its capacity under the Settlement Agreement and as the Secured party under the Security Agreement, Beneficiary under the Deed of Trust, or Holder of the Bond as appropriate to each of the Security Documents.

1.2 The "Security Documents" shall collectively mean the Deed of Trust, the Security Agreement, the Bond, and the Non-Standard Financing Statement.

1.3 The "Subordinated Debt" is the obligations of Tesoro under the Settlement Agreement and the Security Documents.

1.4 All other terms and words used herein shall be given the same meaning as given in the Settlement Agreement, its exhibits, and the Security Documents.

2. **SUBORDINATION.** Paragraph 6 of the Settlement Agreement sets forth the extent of the Subordination of the obligations created by the Settlement Agreement and Security Documents to the Senior Debt as defined below. Paragraph 6 reads:

The rights of the State and obligations owed the State under this Agreement and the State's collateral interest in the Alaska Refinery shall be subordinate to no more than \$175 million in other obligations of Tesoro, at any one time outstanding, plus Expansion Debt as defined below on the terms and to the extent provided in Exhibit 7. Expansion Debt means debt incurred by Tesoro which is used to finance all or part of any improvements, replacements, or additions, including land, to the Alaska Refinery.

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Except as provided in the immediately preceding paragraph, other obligations of Tesoro for borrowed money, lease obligations which are required to be included as debt on the balance sheet of Tesoro under generally accepted accounting principles, and the deferred purchase price for property, plant and equipment, other than trade payables in the ordinary course of business, incurred after the effective date of this agreement shall be subordinate to all obligations (including, without limitation, cents per barrel payments, interest, and the \$60 million bond) owed the State under this Agreement.

3. **DEFINITION OF SENIOR DEBT.** "Senior Debt" means all principal, interest, fees, expenses, indemnities and all other amounts, contingent or otherwise, now or hereafter existing or owing by Tesoro (whether directly or as a result of a guarantee) up to but not to exceed ONE HUNDRED SEVENTY FIVE MILLION AND NO/100 DOLLARS (\$175,000,000.00) and Expansion Debt, which by its terms expressly provides in writing that it is Senior Debt.

4. **NO PAYMENT ON THE SUBORDINATED DEBT.** If Tesoro defaults in the payment of any principal of, or interest or other payment on, any Senior Debt when the same becomes due and payable, whether on demand, at stated maturity, at a date fixed for prepayment, upon acceleration or otherwise, then, unless and until such default shall have been remedied or waived or shall have ceased to exist, no direct or indirect payment (in cash, property or securities or by set-off or otherwise) shall be made or agreed to be made on account of any Subordinated Debt, or as a sinking fund for the Subordinated Debt.

5. **OTHER DEFAULTS.** If Tesoro receives from any holder of Senior Debt a notice of occurrence of a default or Event of Default other than a default described in Paragraph 4 above, no direct or indirect payment (in cash, property or securities or by set-off or otherwise) shall be made or agreed to be made on account of any Subordinated Debt or as a sinking fund for the Subordinated Debt, or in respect of any redemption, retirement, purchase or other acquisition of any of the Subordinated Debt; provided, however, that if such default or Event of Default shall be cured or waived, or such default or Event of Default shall continue for a period of 365 or more days after the receipt by the Issuer of such notice without the same being cured or waived, then this restriction shall no longer apply.

6. **DISSOLUTION, WINDING UP, ETC.** In the event of (i) any insolvency, bankruptcy, receivership, liquidation, reorganization, readjustment, composition or other similar proceeding relating to Tesoro, its creditors as such or its property, (ii) any proceeding for the liquidation, dissolution or other winding-up of the Tesoro voluntary or

1 involuntary, whether or not involving insolvency or bankruptcy proceedings, (iii) any  
2 assignment by Tesoro for the benefit of creditors or (iv) any other marshalling of the assets  
3 of Tesoro, all Senior Debt shall first be paid in full before any payment or distribution,  
4 whether in cash, securities or other property, shall be made to any holder of any  
5 Subordinated Debt on account of any Subordinated Debt. Any payment or distribution,  
6 whether in cash, securities or other property (other than securities of Tesoro or any other  
7 corporation provided for by a plan or reorganization or readjustment the payment of which  
8 is subordinate, at least to the extent provided in these subordination provisions with respect  
9 to Subordinated Debt, to the payment of all Senior Debt at the time outstanding and to any  
10 securities issued in respect thereof under any such plan of reorganization or readjustment),  
11 which would otherwise (but for these subordination provisions) be payable or deliverable  
12 in respect of this Subordinated Debt shall be paid or delivered directly to the holders of  
13 Senior Debt in accordance with the priorities then existing among such holders until all  
14 Senior Debt shall have been paid in full.

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16 7. CERTAIN PAYMENTS HELD IN TRUST. If any payment or distribution  
17 of any character or any security whether in cash, securities or other property (other than  
18 securities of Tesoro or any other corporation provided for by a plan of reorganization or  
19 readjustment the payment of which is subordinate, at least to the extent provided in these  
20 subordination provisions with respect to Subordinated Debt, to the payment of all Senior  
21 Debt at the time outstanding and to any securities issued in respect thereof under any such  
22 plan of reorganization or readjustment), shall be received by any holder of Subordinated  
23 Debt in contravention of any of the terms hereof and before all Senior Debt shall have been  
24 paid in full, such payment or distribution or security shall be received in trust for the benefit  
25 of, and shall be paid or delivered and transferred to, the holders of the Senior Debt at the  
26 time outstanding in accordance with the priorities then existing among such holders for  
27 application to the payment of all Senior Debt remaining unpaid, to the extent necessary to  
28 pay all such Senior Debt in full. In the event of the failure of any holder of any  
29 Subordinated Debt to endorse or assign any such payment, distribution or security, each  
30 holder of Senior Debt is hereby irrevocably authorized to endorse or assign the same.

31  
32 8. RIGHTS NOT IMPAIRED. No present or future holder of any Senior  
33 Debt shall be prejudiced in the right to enforce the subordination of any Subordinated Debt  
34 by an act or failure to act on the part of Tesoro. Except as provided in paragraphs 4, 5, 6,  
35 7, 11 and 12, nothing contained herein shall impair, as between Tesoro and the holder of  
36 any Subordinated Debt, the obligation of Tesoro to pay to the holder thereof the principal  
37 thereof and interest thereon as and when the same shall become due and payable in  
38 accordance with the terms thereof, or prevent the holder of any Subordinated Debt from

EXHIBIT 7 TO THE SETTLEMENT AGREEMENT DATED 12/15/92

-3-

1 exercising all rights, powers and remedies otherwise permitted by applicable law under any  
2 instrument evidencing or relating to such Subordinated Debt upon a default, all subject to  
3 the rights of the holders of the Senior Debt to receive cash, securities or other property  
4 otherwise payable or deliverable to the holders of any Subordinated Debt.  
5

6 9. SUBROGATION. Upon payment in full of all Senior Debt, the holders  
7 of any Subordinated Debt shall be subrogated to all rights of any holders of Senior Debt  
8 to receive any further payments or distributions applicable to the Senior Debt until the  
9 Subordinated Debt shall have been paid in full, and, for the purposes of such subrogation,  
10 no payment or distribution received by the holders of Senior Debt of cash, securities, or  
11 other property to which the holders of the Subordinated Debt would have been entitled  
12 except for these subordination provisions shall, as between Tesoro and its creditors other  
13 than the holders of Senior debt, on the one hand, and the holders of Subordinated Debt,  
14 on the other, be deemed to be payment or distribution by Tesoro on account of Senior  
15 Debt.  
16

17 10. SUBORDINATION OF LIENS AND SUBSEQUENT RECORDATION. The  
18 security interests, mortgages, and liens created by the Security Documents are and shall  
19 continue to be subject and subordinate to all security interests, mortgages, and liens, now  
20 or hereafter securing, or in favor of, the Senior Debt. The effect of this subordination is  
21 effective over documents representing Senior Debt but recorded or filed subsequent to this  
22 "Subordinated Debt."  
23

24 11. RIGHTS UNDER THE SECURITY DOCUMENTS. Rights and obligations  
25 under the Security Documents, by way of example but not by limitation, of the State, to  
26 receive insurance proceeds (as provided in Paragraph 5.7 of the Security Agreement and  
27 Paragraph 1.3 of the Deed of Trust) and rents, issues, royalties, profits, awards and proceeds  
28 (as provided in Paragraph 1.8 and 2.5 of the Deed of Trust), to be named as insured or loss  
29 payee, or receive originals of insurance policies, to exercise powers of attorney or other  
30 rights, or to grant approvals or negotiate on behalf of the grantor of the Security  
31 Documents, are subject to and subordinate to the Senior Debt and the rights of the holders  
32 of the Senior Debt with respect thereto as provided in the Senior Debt or the documents  
33 securing the Senior Debt.  
34

35 12. DEFAULT. Promptly following any default under the Security  
36 Documents, the Settlement Agreement or the Bond (and in all events prior to the State  
37 exercising any remedies contained in the Security Documents), the State will give any Senior  
38 Debt holder written notice of the default, subject to the following conditions:  
39

40 12.1 For purposes of this Subordination Agreement, the Subordinated  
41 Debt shall not be deemed in default until (1) 30 days have passed from the State's issuance

EXHIBIT 7 TO THE SETTLEMENT AGREEMENT DATED 12/15/92

-4-

1 of a written Notice of Default as defined in paragraph 12 of the Settlement Agreement and  
2 (2) Tesoro's failure to pay the Disputed Amount or failure to satisfy the Subordinated Debt  
3 in its entirety;  
4

5 12.2 The State shall not be required to give a notice of default to any  
6 Senior Debt holder unless the Senior Debt holder has given the State written notice of the  
7 person to whom and place to which the notice should be sent.  
8

9 12.3. The State will not, for a period of 30 days following receipt by  
10 the Senior Debt holder (identified under 12.2 above) of the notice of default from the State,  
11 file an action to foreclose judicially any of Tesoro's real property, record a notice of non-  
12 judicial foreclosure of any of Tesoro's real property or otherwise take any action permitted  
13 by Section 2 of the Deed of Trust, or file an action to take possession of any of Tesoro's  
14 personal property or otherwise take any action permitted by Section 8.1 of the Security  
15 Agreement.  
16

17 12.4. Subject to the right to cure set forth in paragraph 12.5, at the  
18 expiration of the 30 day period following the date the Senior Debt holder received notice  
19 from the State of Tesoro's default, the State shall be entitled to institute foreclosure  
20 proceedings or initiate other remedies as specified in the Security Documents, subject to  
21 paragraphs 4, 5, 6 and 7 above and the other provisions of this Subordination Agreement.  
22 Subject to paragraphs 4, 5, 6 and 7 above and the other provisions of this Subordination  
23 Agreement, the State may file any actions, record any notices, or take any other actions it  
24 deems necessary to enforce its remedies. The State will not, however, take possession of  
25 or sell or cause to be sold any of Tesoro's real property or any of Tesoro's personal  
26 property or cause a receiver to be appointed for any of Tesoro's property prior to the 121st  
27 day following the day on which the Senior Debt holder received the notice from the State  
28 of default by Tesoro.  
29

30 12.5 At any time during the 120 day period following the date the  
31 Senior Debt holder received the notice from the State of Tesoro's default, the Senior Debt  
32 holder may cure or cause Tesoro to cure the default by paying the Disputed Amount (as  
33 defined in the Settlement Agreement) plus interest from the date due at the rate for  
34 royalty payments provided in AS 38.05.135(d) as it may be amended from time-to-time, plus  
35 the State's reasonable actual attorney fees and costs incurred in conjunction with the  
36 default. If the Senior Debt holder cures or causes Tesoro to cure Tesoro's default, the  
37 State shall take no further action against Tesoro based on the default.  
38

39 12.6 The right to cure after foreclosure proceedings have been  
40 initiated as granted by this Paragraph 12 may not be used more than two times in any 12  
41 month period.  
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STATE OF ALASKA )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of January, 1993, by CHARLES E. COLE, Attorney General for the State of Alaska.

Pauletto M. Lippin  
NOTARY PUBLIC in and for Alaska  
My commission expires: 1/3/96

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CONSENT & ESTOPPEL

Tesoro Petroleum Corporation, a Delaware Corporation and the parent of Tesoro Alaska, hereby consents to the execution of the SUBORDINATION AGREEMENT, by Tesoro Alaska, affirms the representations and warranties made herein by Tesoro Alaska and affirms the State's material reliance on the warranties, covenants and representations made herein.


Tesoro Petroleum Corporation

By: 

Its: Vice President  
Chief Financial Officer

STATE OF TEXAS )  
 ) ss:  
COUNTY OF BEXAR )

The foregoing instrument was acknowledged before me this 15th day of January, 1993, by Bruce A. Smith, V.P., CFO of Tesoro Petroleum Corporation, a Delaware corporation, on behalf of the corporation.

  
NOTARY PUBLIC in and for Texas  
My commission expires: \_\_\_\_\_





Structural

Mechanical

Electrical

Civil

Project and

Construction

Management

March 18, 1993

The Honorable Bill Hudson  
State Capitol  
Room 108  
Juneau, Alaska 99801-1182

Reference: HOUSE BILL 185

Dear Mr. Hudson:

Coffman Engineers would like to express our support for passage of proposed House Bill HB 185.

We believe passage of this bill will promote capital projects by refiners in Alaska. These projects would result in potential jobs for people in the Alaska engineering and construction community, as well as an increase in support services and operations jobs in the local communities.

Promoting development and job growth in Alaska is very important, especially with the current uncertainty of funding for federal and military development. Therefore, we encourage you to also support passage of this bill.

Thank you for your time and consideration.

Sincerely,

COFFMAN ENGINEERS, INC.

Will Veelman, P.E.  
Principal

30319/06217/HB185

H B

1 8 7



# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

REPLY TO:

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

KEY BANK BUILDING  
100 CUSHMAN ST. SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 452-1568  
FAX: (907) 456-1317

P.O. BOX K — STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295  
*465-6735*

March 6, 1993

Honorable Bill Hudson  
Chairman, House Labor & Commerce Committee  
Alaska House of Representatives  
Room 108  
State Capitol  
Juneau, AK 99801

Re: HB 187

Dear Representative Hudson:

We understand that the "wiretapping bill" of the governor's crime package (HB 187) has been referred to your committee. The Department of Law urges an early hearing on this important legislation (HB 187).

Prosecutors and law enforcement personnel throughout the state have indicated to the Department of Law that Alaska statutes need this tailored amendment. The attorney general has indicated to me that he wishes to personally testify before the legislature to explain the importance of this bill.

We appreciate your consideration of this request. If you need more information, please let me know.

Sincerely,

CHARLES E. COLE  
ATTORNEY GENERAL

By: *Deborah E. Behr*  
Deborah E. Behr  
Assistant Attorney General

DEB:tg

cc: Charles E. Cole, Attorney General  
Dean Guaneli, Assistant Attorney General  
Lori Nottingham, Deputy Legislative Liaison

FISCAL NOTE

No. 4  
 Bill Version: HB 187  
 (H) Publish Date: 3/1/93

STATE OF ALASKA  
 1993 LEGISLATIVE SESSION

Revision Date: February 16, 1993  
 Title: "...authorizing the interception of private communications related...to criminal offenses..."  
 Sponsor: Rules Committee/Req. of the Governor  
 Requestor: Governor's Office/OMB

Department Affected: Department of Law  
 BRU: Prosecution  
 Component: All  
 COMPONENT SERIAL NO. 0085 through 0090

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:						
----------------------	--	--	--	--	--	--

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.

*Richard I. Peques*

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

Phone: 465-3672  
 Date: February 16, 1993

Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law

Date: February 16, 1993

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. 187  
NO. 4  
Pg 2 of 2

ANALYSIS (Continued):

This bill would authorize the interception of private communications by state law enforcement officers to investigate the serious crimes of murder, kidnapping, and specified drug offenses. Federal law allows states to enact wiretapping laws only if, like this bill, they are at least as restrictive and protective of private communications as federal law.

These protections include allowing only the attorney general or a person designated in writing or by law to act for the attorney general to apply to the court for an order to authorize the wiretapping; limiting the authorization to investigations for only the very serious crimes of murder, kidnapping, or unclassified felony drug offenses; limiting the time period for which the wiretap is authorized; requiring a showing to the court that normal investigative procedures have failed to succeed or are too dangerous to employ; requiring that there be probable cause to believe that the wiretap will secure the evidence being sought; and requiring stringent records keeping and security procedures of law enforcement agencies in the conduct of a wiretapping operation.

Additionally, the bill requires that careful reports about each interception made during the year must be prepared by the attorney general and filed with the federal government. All tapes or other recordings must be transferred to the court, where they are to be kept under seal. Furthermore, notice of the interception must be given by the court in almost all circumstances following the interception. Any evidence derived from an unlawful interception will be suppressed. Finally, the bill increases the criminal penalty for eavesdropping or unauthorized interception, publication, or use of private communications to a class A misdemeanor. These substantial safeguards have been carefully tailored to insure that state constitutional protections, such as Alaska's right of privacy, have been met.

Under the bill, the Department of Law's involvement will include applying for court orders to permit the interception of private communications and the preparation and filing the annual report about interceptions. We do not anticipate that there will be a large number of interceptions, because of the limited circumstance under which they may or could be undertaken. Therefore, we do not believe that the bill will have a fiscal impact for the Department of Law.

**BILL NO:** HB 187

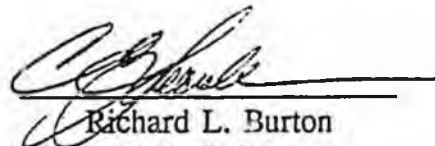
**DATE:** March 24, 1993

**TITLE:** "An Act authorizing the interception of private communications related to the commission of certain criminal offenses. . ."

**CONTACT:** C.E. Swackhammer  
Deputy Commissioner  
465-4322

HB 187 permits the interception of communications (wire tapping) for the purpose of investigating certain felony crimes. Crimes for which wire tapping may be used to investigate: 1) Murder in the First Degree; 2) Murder in the Second Degree; 3) Kidnapping; 4) Class A or unclassified drug offenses which are for Misconduct Involving a Controlled Substance (MICS) in the first degree, an unclassified felony; 5) and (MICS) in the second degree, a class A felony offense.

This legislation will provide Alaskan law enforcement agencies with a valuable tool presently utilized by the Federal government and many states, to intercept communications to aid in investigating individuals who have committed, are committing, or are planning to commit a very serious offense.

  
Richard L. Burton  
Commissioner

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO: HB 187

Revision \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: "An act authorizing the interception of private communications" BRU: Alaska State Troopers  
 Sponsor: House Rules Component: Criminal Investigations Bureau  
 Requestor: House Labor & Commerce COMPONENT SERIAL NO. 830

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	75.6	75.6	75.6	75.6	75.6	75.6
TRAVEL	4.2	4.2	4.2	4.2	4.2	4.2
CONTRACTUAL	12.0	12.0	12.0	12.0	12.0	12.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	20.2	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>112.0</b>	<b>91.8</b>	<b>91.8</b>	<b>91.8</b>	<b>91.8</b>	<b>91.8</b>
<b>CAPITAL</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>
REVENUE FUND SOURCE:						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	112.0	91.8	91.8	91.8	91.8	91.8
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>112.0</b>	<b>91.8</b>	<b>91.8</b>	<b>91.8</b>	<b>91.8</b>	<b>91.8</b>

**POSITIONS:**

FULL-TIME					
PART-TIME					
TEMPORARY					

Estimate of current year (FY 93) impact: \$ \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

See attached analysis.

Prepared By: Francis C. Allan Phone: 269-5691  
 Division: Alaska State Troopers Date: 3/17/93  
 Approved by Commissioner: *[Signature]* Date: 3/25/93  
 Agency: Richard J. Burton, Dept. of Public Safety

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The court authorized interception of private communications by law enforcement officers to investigate serious crimes such as murder, kidnapping, and specified drug offenses is an effective tool for law enforcement, however, it has proven to be extremely labor intensive. The following impact is based primarily upon discussions with federal and state law enforcement officials that have utilized wiretap provisions in their jurisdictions.

It is anticipated that warrants will be obtained to authorize monitoring for periods of approximately 10 to 14 days even though warrants could be obtained to extend the monitoring for longer periods. This monitoring can be complicated by the fact that some conversations monitored may involve non-English speaking participants which will necessitate the need for bi-lingual interpreters and transcribers to augment the investigators on a 24-hour a day basis. If monitoring for example, involves more than one phone line or location, then additional monitoring teams will have to be established, further increasing the costs for personnel, professional and contractual services.

The following is a summary of the estimated costs based upon three wiretaps being utilized each year. This estimate only includes those additional costs that may be incurred to train, equip, implement, monitor, record and document the wiretap in accordance with statutory requirements that may be incurred during a criminal investigation.

Personal Services

Additional overtime for existing personnel:

A) Investigators

(Calculated at Range 77 Step K):

24 hrs x \$54 per x 15 days x 3 cases = \$58.3

B) Clerical support

(Calculated at Range 8 Step D):

16 hrs X \$24 per x 15 days x 3 cases = 17.3

Personal Services Subtotal \$75.6

Travel

Training courses covering wiretapping  
equipment, laws & regulations - 6 x  
Investigators (2 per shift / 6 per day),  
7 days, travel & per diem 4.2

Contractual

A) Utilities

Call Line Identification

\$181 x 3 cases = \$543 .5

Pen Register / Monitoring Unit

\$224 x 3 cases = \$672 .7

B) Translator / interpreter

24 hrs x \$30 per x 15 days x 1 case = 10.8

Contractual Subtotal 12.0

Equipment

Monitoring unit x 2 = 20.2

Total \$112.0

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

No. 1  
Bill Version: HB 187  
(H) Publish Date: 3/1/93

Revision Date: \_\_\_\_\_  
Title: 'An Act authorizing the interception of private communications. . .'  
Sponsor: Governor  
Requestor: Rules Committee

Department Affected: Administration  
BRU: Office of Public Advocacy  
Component: Office of Public Advocacy

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

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

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

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
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee, Public Advocate  
Division: Office of Public Advocacy

Phone: 274-1684  
Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usura  
Agency: Administration

Date: 2/10/93

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

No. 2  
Bill Version: HB 187  
(H) Publish Date: 3/1/93

Revision Date: \_\_\_\_\_  
Title: "An Act relating to wiretapping for criminal investigations  
or murder, kidnapping and serious drug offenses . . ."  
Sponsor: Rules Committee  
Requestor: Governor

Department Affected: Administration  
BRU: Public Defender Agency  
Component: Public Defender Agency  
COMPONENT SERIAL NO. 1631

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	.	.	.	.	.	.

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	.	.	.	.	.	.

POSITIONS:

FULL-TIME	.	.	.	.	.	.
PART-TIME						
TEMPORARY	.	.	.	.	.	.

Estimate of current year (FY93) impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
See Attached.

Prepared by: John Salemi, Public Defender  
Division: Public Defender Agency

Phone: 279-7541  
Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usera  
Agency: Administration

Date: 2/10/93

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. 187

X10.2

pg 2 of 2

ANALYSIS: (continued)

This wiretapping bill is limited to certain types of offenses (murder, kidnapping and serious drug offenses). While it is unlikely that authorized wiretapping would be regularly used in kidnapping or murder cases, the pool of serious drug offenses presents a separate matter. As public counsel in criminal cases the Public Defender Agency would be required to review all applications for wiretapping authorization, would necessarily prepare challenges to said applications, and would ultimately defend the cases. In the context of defense preparation significant time might have to be spent reviewing the contents of the "wired" conversations. There is no question that the passage of this bill will increase the work of the Public Defender Agency. To what extent there is an increase would be highly speculative.

HB

190

# HOUSE COMMITTEE REPORT

(7)

Date Referred: March 1, 1993

FURTHER REFERRALS:

HESS

Date of Committee Action: 3/25/93

The LABOR AND COMMERCE Committee considered:

HB 190

HOUSE BILL NO. 190

AK SCIENCE & TECHNOLOGY FOUNDATION GRANTS

"An Act relating to grants awarded by the Alaska Science and Technology Foundation."

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

ADOPTS: \_\_\_\_\_ letter of Intent

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

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

[ ] fiscal impact \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

zero fiscal note Revenue

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

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

*[Signature]*  
CHAIRMAN'S SIGNATURE

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 190

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Revenue  
 Title: An act relating to grants BRU: AK Science & Tech. Foundat  
awarded by ASTF Component: \_\_\_\_\_  
 Sponsor: Terry Martin  
 Requestor: Terry Martin COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0					

<b>CAPITAL</b>						
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<b>REVENUE FUND SOURCE:</b>	0					
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**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other	0					
<b>TOTAL</b>	0					

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ N/A

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

Prepared by: *Paula Rasmus-Dede*  
 Division: AK Science & Technology Foundation  
 Approved by Commissioner: *T. Martin*  
 Agency: Department of Revenue

Phone: 907-272-4333  
 Date: 3/22/93  
 Date: 3/24/93

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## Analysis

### Assumptions:

That by the addition of the word "university" to AS 37.17.090(h), the Alaskan universities will somehow receive a preference they are not currently benefiting from. This is a semantic change only as section AS 37.17.090(h) currently states "the board of directors shall give preference to an applicant who is an Alaska resident, association, organization, or institution." It is the position of ASTF that this language is inclusive of university(s).

### Program Summary

1. This fiscal note does not fund any additional positions.
2. This fiscal note does not justify major expenditure items.
3. This fiscal note does not result in a change in revenue and is not the basis of any estimate for "federal" or "other" funds.
4. **Section Cost Analysis**—The total cost of HB190 is \$0.00.

**Economic Impact**—HB190, An Act relating to grants awarded by the Alaska Science & Technology Foundation has no economic impact.

# Summary of Grant Activity

		<u>TOTAL</u>		<u>UA</u>
Full Proposals (Reviewed)	442	\$131,229,149	107	\$23,230,075
Full Proposals Funded	92	\$12,905,193	28	\$3,202,772
Proposals Requested to Resubmit	9	\$959,446	2	\$119,467
In-Kind and Matching Support		\$21,331,193		\$4,812,137

**ALASKA SCIENCE & TECHNOLOGY FOUNDATION***—Putting Innovation to Work for Alaska—***FACSIMILE TRANSMISSION**

**Transmitted To:** *Representative Bill Hudson  
Representative Terry Martin*

**Fax Number:** 465-4565 & 465-6790

**Date:** March 24, 1993      **Time:** 5:40pm

**Pages** *(including this one):* 2      **Sent By:** John Sibert

**MESSAGE:**

*The enclosed table shows the ASTF grant activity over the past two years and the portion which involved the University of Alaska. Approximately 30% of the grants involved the university, but nearly all also involved an outside partner. In order to meet ASTF criteria, successful research must ultimately be used - we do not fund basic research. Experience has shown that the most effective way to achieve this application of technology is to insure that all the necessary players are involved from the beginning. For this reason, much of the basic research conducted at the university is not appropriate for ASTF funding.*

*I will be able to speak to any questions you might have on this issue of university research and ASTF's role via teleconference tomorrow during the hearing on HB 190.*

550 West 7th Avenue, Suite 360, Anchorage, Alaska 99501-3555

Telephone: (907) 272-4333

Fax: (907) 274-6228

HB

203



**MIKE'S REFRIGERATION  
& AIR CONDITIONING**

P.O. BOX 21687  
JUNEAU, ALASKA 99802  
(907) 463-3290

DATE 3/16/93 TIME \_\_\_\_\_  A.M.  P.M. NUMBER OF PAGES (Including Cover Letter): 1

NOTE: If you did not receive all of the pages or if you have a question, please call the verifying number (below).

TO: Bill Hudson

FROM:

CO. NAME	NAME
ADDRESS	<u>MIKE TENANSON</u>
ATTENTION	SUBJECT
<u>REP. Bill Hudson</u>	<u>HB 203</u>
FAX NO.	FAX NO.
<u>465-6790</u>	<u>463-2660</u>
	VERIFYING NO.

**FAX Transmission**

REMARKS:

I AM OPPOSED TO HB 203, MAYBE WE SHOULD BE LOOKING AT CUTTING BACK GOVERNMENT INSTEAD OF SUPPORTING IT. I'M ALREADY PAYING 9 PER HUNDRED FOR WORKMANS COMP. WHICH I THINK IS A LITTLE OUT OF ~~THE~~ HAND.

THANK YOU  
Mike

## Fax Transmission Message

Date: 03-16-93

Re: HB 203, No, No

From: Bryant Bearfield Jr.  
K.W.S.S.I., Inc.  
789-4150 Fax  
789-0332 Voice

To: Representative Hudson  
Alaska Legislature  
465-6790 Fax

---

Dear Representative Hudson:

As a small business we would ask you to vote no on HB203. An increase in work comp rates would hurt us.

Joyce Hogan  
Bryant Bearfield  
Knightwatch Security

Very truly yours,

Bryant Bearfield Jr.  
K.W.S.S.I., Inc.

75/31843-4  
March 15, 1993

Representative Bill Hudson  
Chairman, House Labor & Commerce Committee

Dear Representative Hudson:

This fax is to advise you that I believe that HB 203 is a very bad approach to government spending and promotion of economic stability in the State of Alaska.

Any government imposed cost, whether you call it a tax or a fee has the same effect. It takes money out of the private sector, where it creates jobs. This is a thinly disguised attempt to impose a new tax burden on business so that bureaucrats can keep their jobs, benefits, and perks, most of which are better than most of us in the private sector enjoy. Since I am a small business owner, I can attest to the perks and benefits in the private sector.

The Worker's Compensation program is possibly one of the most abused programs in existence. The Department of Labor (DOL) should be given authority to retain up to 2.5% on Worker's Compensation premiums for operations, provided that DOL earns those fees by recapture of payments from fraudulent claims and those that provide the documentation to support those claims. The premium, as a percentage of wages, should be capped at current levels and the legislation should provide for DOL reporting total wages and premiums to the Legislature on an annual basis to insure integrity in the system. The cap would allow for adjustments between industries to reflect loss rates, but restrict the total premiums to the present percentage of total wages. The Legislature should enact legislation imposing civil penalties equal to three times the Worker's Compensation Claim amount on anyone knowingly aiding or abetting a fraudulent claim. Worker's Compensation is a worthwhile and necessary program that is presently plagued with abuse. The elimination of the abuse should be the top priority, otherwise, the cost of Worker's Compensation will eventually destroy the program.

I am faxing you this straight from the computer and requesting that you advise the other members of the House Labor and Commerce Committee of my objection to HB 203 and recommendations for addressing the Worker's Compensation issue.

John D. Cooper, P.E.  
CCE  
8183 Threadneedle  
Juneau, Alaska 99801

A MEMBER OF THE REALTOR FINANCIAL NETWORK



WHITING REALTY

March 16, 1993

9310 GLACIER HIGHWAY  
JUNEAU, AK 99801  
RUS. (907) 789-0555  
FAX (907) 789-8400

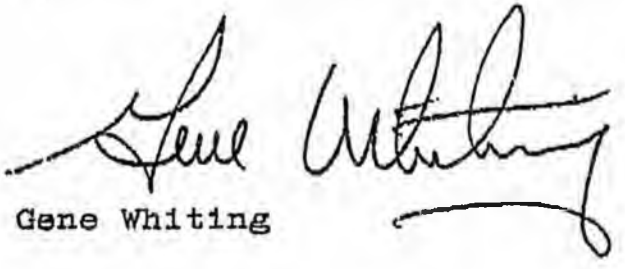
Representative Bill Hudson  
Chairman, House Labor and Commerce Committee  
Alaska State Legislature  
Juneau, Alaska 99811

RE: HB 203

This is another example of the State placing a burden on the small businessperson, and then charging him/her a fee to comply with it.

The benefit of this program accrues to the employee, and the bureaucrats who are employed to administer it. The fee should come from those who benefit.

Please vote AGAINST HB 203.

  
Gene Whiting

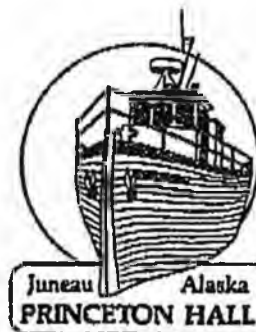
**ADMIRALTY TOURS**

9040 GLACIER HIGHWAY, JUNEAU, ALASKA 99801

Office: (907) 789-1965

Dale Anderson, Owner

Fax: (907) 789-7038



DATE

3-15-93**FAX TRANSMITTAL FORM**
 REP. BILL HUDSON  
 TO HOUSE HARBOR & COMMERCE

TELEFAX #

465-6790

TELEPHONE #

NO. OF PAGES

1  
(including this form)

FROM

DALE ANDERSON

TELEPHONE #

790-3253

FAX #

REMARKS:

REF: HPO 203

I'M OPPOSED TO IT! "THE ONE THING SMALL BUSINESS DOES NOT NEED IS A NEW "FEE" (BETTER KNOWN AS A TAX.)". IT JUST ENDS UP AS ONE MORE STRAW THAT WILL EVENTUALLY END UP BREAKING THE CAMELS BACK. YOU SAID IN A SPEECH RECENTLY AT HOME BUILDER'S ASSOC. THAT YOU WANTED TO SHOW WHAT SMALL BUSINESS FELT SO BURDENED. "FEES" LIKE THIS ARE PERFECT EXAMPLES. PLEASE DON'T LET THIS OUT!

— Thank, Dale

Trophy Sportfishing and Hunting Charters • Sightseeing  
Exploring the Scenic Wonders of Southeast Alaska

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 203

Revision Date: \_\_\_\_\_  
Title: 'An Act imposing a fee for the administration of the workers' compensation program.'  
Sponsor: \_\_\_\_\_  
Requestor: \_\_\_\_\_

Department Affected: Administration  
BRU: Risk Management  
Component: Risk Management  
COMPONENT SERIAL NO. \_\_\_\_\_

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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	35.0	70.0	105.0	140.0	157.5	173.3
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	35.0	70.0	105.0	140.0	157.5	173.3

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

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	35.0	70.0	105.0	140.0	157.5	173.3
TOTAL	35.0	70.0	105.0	140.0	157.5	173.3

POSITIONS:

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

Estimate of current year (FY93) impact: 0

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

Prepared by: Don Hitchcock  
Division: Risk Management

Phone: (907) 465-2180  
Date: 3-9-93

Approved by Commissioner: Nancy Bear Usura  
Agency: Administration

Date: 3/10/93

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 203

ANALYSIS: (continued)

HB 203 would assess an administrative fee of 2.25 percent of workers' compensation claims paid during the fiscal year after reduction by contributions to the second injury fund. Since the State is self-insured, this fee would be added to the State's total workers' compensation costs. The fiscal note is based on State paid claims of \$7,000,000 (FY 92 was \$6,800,000). Second injury fund payments by the State in FY 92 were \$104,844. Workers' Compensation paid loss is increasing 5 to 10 percent per year due primarily to medical cost increases. These costs would be passed to each of the State agencies based on our "cost of risk" allocation formula.

03/16/93  
14:07:03

PUBLIC OPINION MESSAGE SYSTEM  
MEMBER OFFICE#HUD Hudson

POMS100  
#LHSCDEB

From: #Ms. Ritchie Sonner  
17650 Glacier Hwy.

#  
#Juneau

#AK#99801

#Tel:#790-2908

Bill# #HB 203 #Title:#ADMINISTRATIVE FEE FOR WORKERS' COMP.  
#Subject#

#OPPOSES THIS LEGISLATION

Message:#I VIEW THIS AS A FORM OF TAXATION ON EMPLOYERS. WORKERS'  
COMPENSATION EXPENSES ARE ALREADY HIGH ENOUGH.

#  
#  
#  
#

Entered By: LIOCJIM on 3/16/93

PomID 7030

Distribution# 1

MSG:#  
Enter#Next Message #PF4#Menu #PF6#WasteBasket #PF7#Previous POM #PF10#BigWaste

4B[

M-M27 LINE 1 COL 1

March 16, 1993

To: Members House Labor and Commerce Committee

From: Ron Flint  
Manager, The Nugget Alaskan Outfitter  
President, Greater Juneau Chamber of Commerce

Re: HB 203 Workers Compensation "Fees"

Dear Committee members;

Talk of user fees on purchasers of Workmans Compensation insurance brings to mind a number of issues for me.

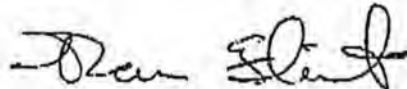
First, I think of how this will be one more obstacle for Alaskan businesses to overcome in our struggle to be competitive with firms operating outside the state.

Second, it seems like user fees generated by State agencies circumvent the budget process. We elect you to set their budgets.

Third, I realize user fees are more than just "trendy" and that the future is bound to bring more of them. Now I know I'm biased, but I'm having a little trouble when it seems government looks at business as something of a "special interest" group. I know times are changing but I think we'd better be careful about getting the cart in front of the horse.

Forth, wasn't it just a little while ago that your speaker formed a task force to find out what government could do to make it easier to operate a business in Alaska? Please submit HB 203 to her on my behalf.

Thanks for your consideration,



Ron Flint

cc: Rees Jerral NFIB  
Joe Poor GJCC



816 WEST WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1781  
PHONE: (907) 586-3101

Dear Mr Hudson

In response to HB 203.

Just received notice of March 16<sup>th</sup>  
3:PM meeting on this H.B. No time  
to respond other than by FAX

When are you going to stop  
trying to Tax Business out of  
Business ?? How are we suppose  
to live money to keep employ  
on the job if you keep taxing us.

Thank You  
David W Green  
Vice President  
Foodland Super Mkt.

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 203

Revision Date: \_\_\_\_\_  
 Title: "An Act imposing a fee for the administration of the workers' compensation program."  
 Sponsor: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

Department Affected: All Agencies  
 BRU: All Agencies  
 Component: \_\_\_\_\_  
 COMPONENT SERIAL NO. \_\_\_\_\_

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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>35.0</b>	<b>70.0</b>	<b>105.0</b>	<b>140.0</b>	<b>157.5</b>	<b>173.3</b>

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

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1003 GF Match	0	0	0	0	0	0
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1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>35.0</b>	<b>70.0</b>	<b>105.0</b>	<b>140.0</b>	<b>157.5</b>	<b>173.3</b>

POSITIONS:

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

Estimate of current year (FY93) impact: 0

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

Prepared by: Don Hitchcock  
 Division: Risk Management

Phone: (907) 465-2180  
 Date: 3-4-93

Approved by Commissioner: Nancy Bear Useran  
 Agency: Administration

Date: 2/10/93

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 203

ANALYSIS: (continued)

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# MEMORANDUM

# STATE OF ALASKA DEPARTMENT OF LABOR Workers' Compensation Division

TO: C.W. Mahlen  
Commissioner

DATE: January 20, 1993

FILE: FUNCTION

PHONE: 465-2790

FROM:   
Paul B. Arnoldt  
Director

SUBJECT: Functional Overview  
Workers' Compensation  
Division

## INTRODUCTION

Workers' compensation began in Europe and spread to the United States in the early 1900's. Before workers' compensation laws, the injured worker often sued his employer, sought help from private charitable organizations or had to use his own resources. The results frequently were inadequate for both the worker and the employer.

To avoid the high cost of lawsuits, workers' compensation laws were passed. While taking away the injured worker's right to sue the employer, these plans provided relatively speedy compensation for a work-related injury regardless of fault.

The Alaska Workers' Compensation Act requires all employers with one or more employees to insure its employees for workers' compensation liability. When a worker is injured in the course of employment, the employer is responsible for 100% of all medical costs directly related to the injury, 80% of the worker's spendable income in lieu of full wages, permanent partial impairment costs, and vocational retraining benefits associated with the injury. The employer is also responsible for providing survivor benefits in the event of a work related death. These benefits are paid by the insurance company or the self-insured employer.

The Workers' Compensation Division is the administrative arm of the Alaska Workers' Compensation Board and provides the management system and support staff necessary to carry out the quasi-judicial functions of the Board and the provisions of the Alaska Workers' Compensation Act.

The eleven member Alaska Workers' Compensation Board is composed of five two-member panels and the Commissioner of Labor's designee who chairs the full Board. The full Board meets 2-3 times a year to advise the division on workers' compensation matters.

Each two-member panel and one division attorney hearing officer comprise the quasi-judicial Board that hears workers' compensation case appeals. Each panel consists of one member representing labor and one member representing industry. These panels

function much like an informal judicial court, taking testimony, reviewing records, listening to evidence, interpreting statutes, and finally issuing a Decision and Order for the case being heard. Last fiscal year, the Board panels conducted approximately 300 hearings. Each hearing lasts from 1-2 hours up to several days. As you can see, the Board is very much a working board and is very familiar with the Act and the operations of the division.

The division has offices in Anchorage, Fairbanks and Juneau, and employs 34 full-time equivalent personnel in support of the workers' compensation act and 3 personnel in support of the Fishermen's Fund.

The division is divided into six functional areas:

### ADJUDICATION

The adjudication section is the heart of the division. Injured workers, employers and other parties all have rights and responsibilities under the Act. Besides the formal hearings discussed above, division compensation officers act as mediators to resolve disputes before they end up before a Board panel. These officers are paralegals with considerable experience in workers' compensation. Last year roughly 2,000 prehearings were held with 1,500 claims being resolved at these prehearings.

This program of informal mediation by skilled para-professionals places the division in the vanguard of the "Alternative Dispute Resolution" movement. While still new to civil litigation, we have found it an extremely cost-effective method of clearing cases which would otherwise require much more expensive formal hearings before a two-member Board panel and an attorney hearing officer.

Besides the hearings and pre-hearings, adjudication staff answer hundreds of information requests each week. They also arrange for independent medical examinations in those cases where the injured worker's treating physician and the employer's examining physician disagree.

While there have been many efficiencies following the 1988 amendments to the Workers' Compensation Act, the fact that today's adjudication staff is one-half of what it was in 1984 should indicate the constraints under which the division is operating. I draw your attention to this because in 1982, the State Attorney General settled a case on behalf of the division involving missed statutory deadlines for issuing Decisions and Orders. The division's under-staffing cost the State \$250,000. (1984: 10 hearing officers and 1 section chief. Today: 4.5 hearing officers and 1/2 section chief. *Robert Gordon v. AWCB, 1982, \$10.00/day/D&O 1979-1985.*)

### 2nd INJURY FUND

The Second Injury Fund provides an incentive for employers to hire disabled workers. For example, if a worker has a preexisting impairment and the employer has written

knowledge of that impairment, and the worker is subsequently injured, the employer is still liable for the "second" injury. However, the Second Injury Fund will reimburse the employer for all compensation payments in excess of 104 weeks. The Fund only reimburses disability payments; it does not reimburse medical or other costs. Money used by the Fund comes from contributions made by insurance carriers and self-insured employers. In FY92, the Fund made reimbursement payments of approximately \$2 million. *(875 potential claims and 350 accepted claims.)*

Staff in this section also administer the self-insurance program. Under this program, an employer may make application to the Workers' Compensation Board for self insurance in lieu of purchasing workers' compensation insurance through an insurance company. Staff review the application and financial statements and make a recommendation to the Board. Approval is granted one year at a time. At the time of renewal, the financial statements and loss information are again reviewed. *(27 self-insured employers.)*

Staff is also responsible for compiling the Alaska Workers' Compensation Annual Report. By March 1 of each year, insurers, adjusters, and self-insurers are required to file an annual report with the Board. The report shows the amount paid on every workers' compensation claim during the preceding calendar year. *(59 respondents: 27 self-insured employers, 20 insurers, 12 adjusters.)*

### REHABILITATION BENEFITS

The rehabilitation benefits program offers training to those injured workers who, because of their injury, cannot return to the jobs they previously held. This program is voluntary. If staff determine that the worker is eligible for the program, the worker's case is assigned to a private sector rehabilitation specialist. The specialist evaluates the worker's work history and skills to first determine that no jobs exist for which the worker is already qualified and which will pay 60% of the wages earned at the time of the injury. Next the specialist identifies other potential jobs for which the worker will qualify after training.

If the worker wishes to proceed with training, the worker selects a rehabilitation specialist, usually the same one who did the evaluation, and a rehabilitation plan is developed. The cost of the specialist is paid by the employer. The cost of retraining, up to \$10,000, is also paid by the employer. A stipend equivalent to 60% of spendable income is available to the individual who needs assistance to meet living expenses during training. The stipend is available for 24 months and, again, is paid by the employer. *(FY92: 1132 applications, 455 evaluations, 360 plan activities. Average costs: evaluations=\$1,250, write plan=\$2,500, monitor plan=\$2,700, retraining=\$7,400, stipend=\$13,300.)*

### ADMINISTRATION

For the most part, the name of this section is self explanatory. It develops budgets, pays bills, develops statistical reports, maintains the files and inputs data to the computer.

Not too exciting, but very essential. What is unique is the 30,000 new claims it handles each year, the 80,000 active files it maintains, and the 20,000 files it microfilms each year. Transferring this volume of files among the three offices is one of the reasons the division is requesting a capital appropriation for Imaging.

Besides the filing and data entry, this section also provides the clerical support to the Board panels. It maintains pre-hearing and hearing schedules, provides information to claimants, insurance companies, attorneys and adjustors. With roughly 59,000 phone calls, 10,000 walk-ins and 6,000 copy requests annually, this section is busy.

### **DATA PROCESSING**

A two member data processing section oversees all aspects of the division's computer systems. Both positions are funded by the Administrative Services Division. One position supports the division's personal computers. The other position is dedicated full-time during the day to development of a new mainframe computer system. During evenings, this person works in overtime status to perform only essential maintenance on the existing system.

A capital improvement project was approved in FY92 to develop this new data processing system. Texas Instruments was awarded the contract which is scheduled to be completed by December 1993.

### **FISHERMEN'S FUND**

This fund was established in 1951 to provide for treatment and care of Alaska licensed commercial fishermen who are injured or become ill due to commercial fishing activities in Alaska. Accidents which may be covered are those directly connected with work on the fishing grounds, tying up the boat, storing gear, repairing the boat or gear. Covered illness, generally, must arise out of an accident or illness directly caused by and/or aggravated by the commercial fishing endeavor.

The fund is supported by 60% of the money derived from each crew member fishing license and an equal amount of money derived from each commercial fisherman issued a gear permit. Approximately 32,100 resident fishermen contribute \$18 a year and 18,800 nonresident fishermen contribute \$54. The interest earned on those funds goes to the State's General Fund for appropriation elsewhere.

Benefits provided by statute are medical care and/or hospitalization, transportation to the nearest adequate medical facility, and prescription costs. The total allowance for one injury or disablement shall not exceed \$2,500. Additional benefits may be allowed based on consideration of the Fund reserve balance. There is no death benefit.

The division's three member staff is the administrative arm of the Fishermen's Fund Advisory and Appeals Council. Division staff handle the day-to-day processing of claims and respond to inquiries regarding the fund. The Council is composed of five members

January 20, 1993

appointed by the Governor and the Commissioner of Labor's designee who chairs the council. The council meets during November and March for approximately one week to discuss fund issues and to rule on disputed claims. In FY92, the fund received approximately 1,800 claims, of which 1,250 were approved, paying benefits in the amount of \$600,000.

Attachments

# ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 25512



Juneau, Alaska 99802-5512

March 4, 1993

Senator Steve Frank  
Senator Druce Pearce  
Co-chairs Senate Finance Committee

Representative Eileen MacLean  
Representative Ron Larson  
Co-chairs House Finance Committee

Dear Finance Committee Co-chairs:

The Alaska Workers' Compensation Board at its recent board meeting held on March 1-2, 1993, discussed in great detail the funding shortfalls that are seriously affecting the Workers' Compensation Division's ability to properly administer the Workers' Compensation Act.

The Board is unanimous in its position that the division has already undergone substantial budget cuts in previous years and that the proposed cuts to the budget currently before you must be restored: specifically, the \$85,000 cut of Board review of Compromises & Releases and approximately half of the vacancy factor the division has been assessed.

The Board is not only concerned about these cuts, but also the lack of funding to investigate uninsured employers, to address escalating medical costs, and other issues that will help to reduce the cost of Workers' compensation, stimulate the economy, and create a "level playing field" for Alaska businesses.

The Board is also unanimous in its support of "users fees" to fund the proper administration of the Workers' Compensation Act.

Sincerely,

/s/ John Giuchici  
John Giuchici  
Labor Member  
Fairbanks  
(W) 452-1547

/s/ Steve Hagedorn  
Steve Hagedorn  
Industry Member  
Anchorage  
(W) 265-2493

/s/ Ray Kimberlin  
Ray Kimberlin  
Industry Member  
Fairbanks  
(W) 456-4201

/s/ Don Koenigs  
Don Koenigs  
Industry Member  
Petersburg  
(W) 772-4204

/s/ Mike McKenna  
Mike McKenna  
Labor Member  
Anchorage  
(W) 269-4356

/s/ Robert W. Nestel  
Robert Nestel  
Industry Member  
Anchorage  
(H) 274-5949

/s/ Nancy Ridgley  
Nancy Ridgley  
Labor Member  
Ward Cove  
(W) 228-5466

/s/ Darrell Smith  
Darrell Smith  
Labor Member  
Anchorage  
(H) 248-9548

/s/ Marc D. Stemp  
Marc Stemp  
Industry Member  
Copper Center  
(W) 822-3476

/s/ Jeff Wertz  
Jeff Wertz  
Labor Member  
Anchorage  
(W) 279-6636

# MEMORANDUM


# STATE OF ALASKA DEPARTMENT OF LABOR Workers' Compensation Division

TO: C.W. Mahlen  
Commissioner

DATE: December 14, 1992

FILE: Funding Issues

PHONE: 465-2790

FROM:   
Paul B. Arnoldt  
Director

SUBJECT: Major Issues Facing  
Workers' Compensation

Alaska's workers' compensation is faced with three major issues: (1) skyrocketing medical costs, (2) escalating rehabilitation requests, and (3) inadequate resources to manage the workers' compensation act.

**MEDICAL COSTS:** As depicted on the chart, medical costs have risen from \$22.9 million in 1988 to \$54.8 million in 1991. This represents roughly a 140% increase in three years. In 1988, medical payments accounted for 25% of all workers' compensation payments; in 1991, it increased to 44% of total compensation.

In 1988, legislation was enacted and regulations were promulgated capping medical charges at 90% of usual, customary and reasonable. However, funding for preparing a medical fee schedule was not provided, so the division selected a company to develop a fee schedule; developmental charges are being recovered by the company by charging each subscriber \$4.8 for a copy of the schedule. Consequently, many insurers are not using the schedule for payment comparisons. Without funding, the division cannot hire staff to audit insurers to verify compliance and to develop other cost containment measures. A medical benefit consulting firm should be under contract to assist the division in medical cost containment. Cost containment measures might include options such as second opinions, pre-authorization, peer reviews. The division is not equipped to address the problem with skyrocketing medical costs. Proven cost containment measures are available, but without funding these cannot be implemented. *Funding: \$85.0 contractual (consulting), \$58.1 personal services (WC Officer II-auditing), \$6.0 travel & \$5.0 equipment.*

**REHABILITATION BENEFITS:** In 1982 and again in 1988 rehabilitation benefits underwent major legislative rewrites which have culminated in a relatively good program for all parties involved. In FY89 the rehabilitation section was handling 289 requests for benefits. In FY93 the number will grow to about 1,400. As graphically shown, this is roughly a 5 fold increase in requests. There doesn't seem to be any single reason for the increase. Some of the increase is due to more familiarity with the program. Some may be due to the success of the program in retraining. Some may be due to the economy which is forcing some disabled workers to seek rehabilitation in order to improve their chances of reemployment. Whatever the reason, eligible injured workers

are using the program as a means to bridge unemployment following work related injuries. The rehabilitation section is staffed with 2 full time and 1 part time personnel. Such a small staff has not been able to keep pace with the large increase in workload. As a result, many of the statutory deadlines for processing rehabilitation requests are not being met. This slows the transition of workers from unemployment to employment and drives up the cost of workers' compensation. *Funding: \$58.1 personal services (WC Officer II) & \$5.0 equipment.*

**INADEQUATE RESOURCES:** Besides the issues discussed above, the Workers' Compensation Division is faced with other serious funding shortfalls:

(1) Compromises & Releases: The division has been taxed with an \$85.0 budget reduction for FY94. A cut of this magnitude cannot be absorbed within the division's existing budget without a corresponding reduction in program responsibility. The division is faced with cutting one hearing officer in Fairbanks and to cease the review of compromise and release agreements (C&R's).

The division receives about 775 C&R's a year for review. Most require minimal board involvement while some develop into full hearings with the board issuing decisions and orders.

The division believes the mere fact that C&R's are reviewed tends to produce more equitable agreements. One of the most prevalent items the board will not approve is the waiver of future medical benefits. There are always some claimants who would rather take a lump sum settlement today in lieu of future benefits. Most claimants are represented by lawyers, but a few are not. Staff intuitively believe those claimants represented by counsel fair better than those who aren't. We do not have any statistics to support this contention.

The current process of review does result in smoothing out difficulties and misunderstandings. Once agreements are approved by the board, they become final. If there should be an appeal, the Superior Court gives considerable weight to the board's action. Thus, the board's involvement adds to the strength of the agreement reached between the parties. Ceasing board review will mean disputes between insurers and claimants will now be directed to the courts. This only shifts the cost from one agency of government to another. Probably a number higher than those currently contested before the board will end up in litigation, but this is only speculation. *Funding: \$85.0 personal services (WC Hearing Officer).*

(2) Uninsured Employers: It is the expressed intent of the legislature in amending AS 23.30.075(b) and 23.30.155 that the Workers' Compensation Division strictly enforce the punishment authorized under AS 23.30.075(b) and the reporting requirements and penalties for non-compliance under AS 23.30.155. These sections address employers who do not provide workers' compensation insurance and the penalties for non-compliance with the workers' compensation act. Beginning with FY92 the uninsured employer investigator position was vacated to meet funding reductions.

The division is able to identify uninsured employers, but no staff to do the investigation. We estimate there are potentially 1,775 uninsured employers with an undetermined number of workers. This creates three problems: (1) injured workers are unprotected, (2) employers with workers' compensation coverage are competitively disadvantaged in the market place, and (3) the state loses revenues under the insurance premium tax. *Funding: \$51.1 personal services (WC Officer I), \$5.0 equipment & \$4.0 travel.*

(3) Cost of Living Allowance (COLA): AS 23.30.175 requires the division to annually determine the differential between the cost of living in Alaska and other areas in which worker compensation recipients reside and to adjust their compensation accordingly. Beginning in 1988, the division contracted annually with Runzheimer International to prepare a COLA comparison study. This study cost approximately \$50.0 annually. Industry was advised of the results of the study and recipient benefits were adjusted accordingly. The last COLA study was prepared in 1990, but because of budget cuts, no new studies have been prepared. Recent research indicates approximately 260 recipients reside in roughly 76 city areas in 33 states. The COLA benefit reduction for these recipients amounts to approximately \$150.3 annually. Industry has expressed concern about using a COLA study that has not been updated as required by statute. The original Runzheimer studies were based on surveying about 250 cities. By cutting the scope of this survey back to the 76 city areas currently affected, the cost of the study would be reduced to \$20.0. The legislature may wish to provide a mechanism for industry to reimburse the division for the cost of the study. Otherwise, if a study is to be done, the division's contractual budget will have to be increased. *Funding: \$20.0 contractual.*

(4) Data Processing Personnel: The Department of Labor is currently implementing a common data base system. It is anticipated that this system will become fully operational during December 1993. The equivalent of one department programmer/analyst supports Workers' Compensation portion of the project. As the system becomes operational, the division will be responsible for its operation and maintenance. Texas Instrument's contract manager has advised the division that once the new system is implemented, the division will require two full-time programmer/analysts to maintain the system. *Funding: \$135.0 personal services (two programmer/analysts) & \$5.0 equipment.*

(5) Other Obligations: The division anticipates increased data processing chargeback from the Department of Administration, inadequate travel funding for newly appointed board members, shortfalls for copier maintenance agreements, telephone systems and postage (mailing of files between offices). The division's vacancy assessment factor is 6%. The division's staff (34.3 full-time equivalents) is small and seasoned. To achieve a 6% vacancy factor, staff will have to be terminated. The impact of this "underfunding" has not been identified in terms of program delivery, but it is clear that "to absorb the impact" is no longer an option. The fat is gone, it is all flesh. *Funding: \$34.5 DP chargeback, \$7.0 Board travel & \$59.6 personal services (3% vacancy).*