

ALASKA LEGISLATURE COMMITTEE FILES

1993-1994

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○ HOUSE STATE AFFAIRS ○

38

**HB**

**152**



**FISCAL NOTE**

**STATE OF ALASKA**  
**1993 LEGISLATIVE SESSION**

Bill No. HB 152

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act relating to magistrate BRU: Trial Courts  
           jurisdiction Components: \_\_\_\_\_  
 Sponsor: House Judiciary  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 768

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

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
FUND SOURCE:						

**FUNDING: (Thousands of Dollars)**

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECEIPTS						
1006 GF/MHTIA						
OTHER						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: None

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

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228  
 Division: Alaska Court System Date: 02/18/93

Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CS* Date: 02/18/93  
 Agency: Alaska Court System

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



Alaska Court System  
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

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February 23, 1993

The Honorable Al Vezey  
Chairman, House State Affairs Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Vezey:

Thank you for scheduling House Bill 152, relating to magistrate jurisdiction. This bill was introduced by the Judiciary Committee at the request of the supreme court.

Magistrates preside over certain district court matters in areas of the state where the services of a full-time district court judge are not required. Magistrates are the highest ranking judicial officer in approximately 40 district court locations. Magistrates also serve in metropolitan areas to handle routine matters and to ease the workload of the district court. Unlike other types of judicial officers, magistrates are not appointed by the governor; instead, they serve at the pleasure of the presiding judge of their judicial district.

HB 152 proposes two changes to AS 22.15.120, the statute which sets forth magistrate jurisdiction. The first change modifies magistrate jurisdiction with respect to "minor offenses." A minor offense is a non-criminal offense such as a speeding ticket. An offense is deemed minor and non-criminal if it cannot be punished by a jail sentence, by an excessive fine, or by the loss of a valuable license. Because a minor offense is classified as non-criminal, a person who is charged with a minor offense is not entitled to a jury trial or to a public defender.

Currently, magistrates are authorized to hear minor offense cases if the minor offense is contained in Title 11 (Criminal Law), Title 05 (Amusements and Sports), or Title 28 (Motor Vehicles). However,

The Honorable Al Vezey  
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over the years many minor offenses have been added to other titles, such as Title 16 (Fish and Game). HB 152 would authorize magistrates to hear any minor offense case, regardless of its placement in the Alaska Statutes. This change will result in operating efficiencies for the court system.

The second change modifies magistrate jurisdiction with respect to post-conviction relief. It corrects an oversight in court system legislation which was enacted in 1990.

Grounds for post-conviction relief are set forth in Criminal Rule 35.1, a copy of which is attached. This rule codifies the common law right of an offender to petition the convicting court to reconsider his case. For example, if new evidence is discovered several years after a person is convicted, the person can request the convicting court to reconsider the conviction in light of the new evidence.

Until 1990, jurisdiction to hear petitions for post-conviction relief rested with the superior court, even if the conviction had been entered in the district court. In that year, legislation was enacted which provided that district judges would have jurisdiction in post-conviction relief cases, if the conviction took place in the district court. Through an oversight, this change only applied to district judges, and not to magistrates, who also hear cases in district court. HB 152 rectifies this oversight, by providing that magistrates may provide post-conviction relief, if the underlying conviction was within the magistrate jurisdiction.

Thank you for your courtesy. Please feel free to contact me if you have any questions or comments.

Very truly yours,



C. S. Christensen III  
Staff Counsel

enclosure

imposed under this rule. *Rollefson v. Municipality of Anchorage*, Op. No. 983, 782 P2d 305 (Alaska App. 1989).

Where request for reduction of sentence came almost three years after defendant's conviction was affirmed on appeal, and there was nothing in the record to suggest that he intended to make the request within 120-days permitted by the rule or was somehow frustrated by his attorney or the court system in taking action, the trial court did not err in refusing to relax the 120-day time limit. *S.B. v. State*, Op. No. 997, 785 P2d 900 (Alaska App. 1989).

If a defendant intends to bring a motion within the 120-day period but negligently calculates the time, or if defense counsel refuses to bring the motion or discourages defendant from bringing the motion, it might be an abuse of discretion to refuse to relax the 120-day time limit of this rule. *Cook v. State*, Op. No. 1052, 792 P2d 682 (Alaska App. 1990).

Although convicted sex offender's motion to reduce sentence would have failed if made within the 120-day time limit of this rule because his completion of an institutional sex-offender program, upon which the motion was based, did not occur until after the time limit, the trial court did not err in refusing to relax the time limit. *Cook v. State*, Op. No. 1052, 792 P2d 682 (Alaska App. 1990).

### Rule 35.1. Post-conviction Procedure.

(a) Scope. Any person who has been convicted of, or sentenced for, a crime and who claims:

(1) that the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of Alaska;

(2) that the court was without jurisdiction to impose sentence;

(3) that the sentence imposed exceeded the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;

(4) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(5) that his sentence has expired, his probation, parole or conditional release have been unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;

(6) that the conviction or sentence is otherwise subject to collateral attack upon any ground or alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy; or

(7) that there has been a significant change in law, whether substantive or procedural, applied in the process leading to applicant's conviction or sentence, when sufficient reasons exist to allow retroactive application of the changed legal standards; may institute a proceeding under this rule to secure relief.

(b) Not a Substitute for Remedies in Trial Court — Replaces All Other Remedies for Challenging the Validity of a Sentence. This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. It is intended to provide a standard procedure for accomplishing the objectives of all of the constitutional, statutory or common law writs.

(c) Commencement of Proceedings — Filing — Service. A proceeding is commenced by filing an application with the clerk of the court in which the conviction occurred. Application forms will be furnished by the clerk of court. An application may be filed at any time. The clerk shall open a new file for the application, promptly bring it to the attention of the court and give a copy to the district attorney.

(d) Application — Contents. The application shall (1) identify the proceedings in which the applicant was convicted, (2) state the date shown in the clerk's certificate of distribution on the judgment complained of, (3) state the sentence complained of and the date of sentencing, (4) specifically set forth the grounds upon which the application is based, and (5) clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be under oath. Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or sentence. Argument, citations and discussion of authorities are unnecessary. Applications which are incomplete shall be returned to the applicant for completion.

(e) Indigent Applicant. If the applicant is indigent, filing fees, transcript and other court costs shall be borne by the state. Where the court determines that the application shall not be summarily disposed of on the pleadings and record pursuant to subdivision (f) of this rule, but that the issues raised by the application require an evidentiary hearing, counsel shall be appointed to assist indigent applicants.

(f) Pleadings and Judgment on Pleadings.

(1) Within 30 days after the filing of the application, or within such further time as the court may fix, the state shall respond by answer or by motion which may be supported by affidavits. At any time prior to entry of judgment the court may grant leave to withdraw the application. The court may make appropriate orders for amendment of the application or any pleading or motion, for pleading over, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering

the application the court shall consider substance and disregard defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.

(2) When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record shall not be made when a material issue of fact exists.

(3) The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

(g) **Hearing — Evidence — Order.** The application shall be heard in, and before any judge of, the court in which the conviction took place. An electronic recording of the proceeding shall be made. All rules and statutes applicable in civil proceedings, including pre-trial and discovery procedures are available to the parties. The court may receive proof by affidavits, depositions, oral testimony, or other evidence. The court may order the applicant brought before it for the hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to arraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. The order made by the court is a final judgment.

(h) **Waiver of or Failure to Assert Claims.** All grounds for relief available to an applicant under this rule must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequate-

ly raised in the original, supplemental, or amended application.

(Added by SCO 822, effective August 1, 1987)

#### Annotations

##### Cases

- I. In General
- II. Vacation of Conviction
  - A. In General
  - B. Specific Grounds
- III. Procedure
  - A. In General
  - B. Hearing on Motion
  - C. On Review
- IV. Time Limits

##### I. In General

Appellate Rule 46 was invoked where strict adherence to the 40-day time limit for appeal under Criminal Rule 35 would have prevented consideration of appellant's contentions that his conditions of imprisonment deprived him of his right to rehabilitation and reformation and to be free of cruel and unusual punishment. *Abraham v. State*, Op. No. 1747, 585 P2d 526 (Alaska 1978).

Post-conviction relief proceeding is not another trial; it is separate from the original criminal proceeding and is governed primarily by rules of civil procedure. *Hensel v. State*, Op. No. 1983, 604 P2d 222 (Alaska 1979).

The Criminal Rules promulgated by the Alaska Supreme Court are part of the general "laws" of Alaska as the term is used in this rule. *Price v. State*, Op. No. 100, 647 P2d 611 (Alaska App. 1982).

An attorney, appointed to represent an indigent in bringing his first application for post-conviction relief based on alleged ineffective assistance of counsel, was not permitted to withdraw on the basis that there were no nonfrivolous issues to be presented to the court where the indigent was unwilling to forego the application; the court, rather than counsel, had to determine the merits of petitioner's contention. *Hertz v. State*, Op. No. 806, 755 P2d 406 (Alaska App. 1988).

Res judicata applies in post-conviction relief proceedings; accordingly where a party thoroughly litigates an issue and has his appeal resolved on the merits, the trial court can dismiss a claim for post-conviction relief on that issue. *Brown v. State*, Op. No. 1099, 803 P2d 887 (Alaska App. 1990).

District court did not have jurisdiction to entertain applications for post-conviction relief made under this rule. *State v. Danielson*, Op. No. 1128, 809 P2d 937 (Alaska App. 1991).

##### II. Vacation of Conviction

##### A. In General

At a fact hearing upon a post-conviction petition which alleged that petitioner was coerced by appointed trial counsel to enter a guilty plea and also alleged that trial counsel had given the petitioner false assurance regarding probation, specific findings must be made in the record as to as many of the following matters that may be applicable in addition to others possibly raised, namely the court's jurisdiction, the adequacy of petitioner's representation, intelligent waiver of counsel if there was such, questions of suppression of evidence

or knowing use of perjured testimony, use of involuntary confessions, competency of petitioner to understand the proceedings and statutory range of sentence. *Thompson v. State*, Op. No. 334, 412 P2d 628 (Alaska 1966).

Order denying petition to vacate on ground that plea of guilty was coerced by threats and promises of probation officer was reversed and remanded directing the court below to place the probation officer under oath, to afford full opportunity for cross-examination at a full fact hearing on petitioner's charges, to weigh the testimony and to file written findings and decision. *Nichols v. State*, Op. No. 398, 425 P2d 247 (Alaska 1967).

If the record of a post-conviction hearing is silent with regard to an issue and the witnesses are unable to remember, the State has not failed to substantiate its case. Instead, the prisoner has failed in his collateral attack on the judgment of conviction. *Merrill v. State*, Op. No. 568, 457 P2d 231 (Alaska 1969).

To secure relief in a habeas corpus proceeding, the petitioner has the burden of alleging and proving by a preponderance of the evidence all facts necessary to overturn the prior judgment of conviction. *Merrill v. State*, Op. No. 568, 457 P2d 231 (Alaska 1969).

Where the counsel for a prisoner seeking post-conviction relief is unable to find witnesses having information to substantiate a jury-tampering claim, the trial court may dismiss the claim. *Flores v. State*, Op. No. 642, 475 P2d 37 (Alaska 1970).

A defendant is precluded from raising on application for post-conviction relief the contention that the jury was improperly constituted where no challenge to the composition of the jury panel was made at the trial. *Fajerlak v. State*, Op. No. 761, 520 P2d 795 (Alaska 1974).

A genuine issue of material fact, precluding summary disposition of an application for post-conviction relief, is presented where it is alleged that the district attorney, by resort to threats and intimidation, prevented potential defense witnesses from testifying. *Fajerlak v. State*, Op. No. 1021, 520 P2d 795 (Alaska 1974).

Vacation of conviction for failure to comply with Criminal Rule 11 will only be granted when noncompliance affected substantial rights of defendant. *Lewis v. State*, Op. No. 1447, 515 P2d 846 (Alaska 1977).

A defendant seeking to set aside a conviction on grounds of newly discovered evidence must prove by a preponderance of the evidence those facts which entitle him to have the conviction set aside. *Hensel v. State*, Op. No. 1983, 604 P2d 222 (Alaska 1979).

Defendant has the burden of proving by a preponderance of the evidence that newly discovered evidence would be likely to change the result of the trial, that is, that the evidence could be sufficient to create a reasonable doubt as to his guilt. *Hensel v. State*, Op. No. 1983, 604 P2d 222 (Alaska 1979).

Defendant had burden of proving by a preponderance of the evidence that newly discovered evidence of diminished capacity would be sufficient to create a reasonable doubt in a retrial. *Hensel v. State*, Op. No. 1983, 604 P2d 222 (Alaska 1979).

Defendant's new evidence did not require a new trial since it was cumulative of information which he could have presented at trial and since there was not reasonable possibility that the new evidence would produce an acquittal in a new trial. *Charles v. State*, Op. No. 963, 780 P2d 377 (Alaska App. 1989).

#### B. Specific Grounds

Conviction set aside under this rule and case remanded for new trial, because trial court's exclusion from evidence of tape recorded inconsistent statements of state witness had resulted in keeping from jury relevant and important facts on the trustworthiness of crucial testimony even though witness had admitted making the statements. *Bentley v. State*, Op. No. 270, 397 P2d 976 (Alaska 1965).

Motion to vacate judgment of conviction under this provision based on the ground that plea of guilty made in 1952 was not voluntary in the meaning of federal criminal rule 11, was properly denied where records showed that the petitioner had discussed the plea with counsel of his own choice and that the judge had made a determination that the plea was not improvidently made. *Oughton v. State*, Op. No. 377, 420 P2d 452 (Alaska 1966).

Record of post-conviction hearing on remand disclosed sufficient basis for superior court's finding that appellant's change of plea to guilty was made voluntarily and with understanding of the nature of the charge. *Thompson v. State*, Op. No. 408, 426 P2d 995 (Alaska 1967).

The allegations of a petitioner for post-conviction relief that he had taken drugs some 12 hours prior to time he changed his plea to guilty and that at the time he appeared in court to enter his change of plea he was under the influence of drugs, and thus rendered incompetent, were sufficient to require an evidentiary hearing. Despite the apparent regularity of the competency hearing, the change of plea and the sentencing proceedings, the possibility still exists that the petitioner did not knowingly and understandingly plead to the offense as charged. *Wildermyre v. State*, Op. No. 540, 452 P2d 885 (Alaska 1969).

Where a prisoner seeking post-conviction relief refuses to waive the attorney-client privilege so that his trial counsel can testify on the question of the adequacy of representation, and the prisoner thus forestalls further inquiry into such ground for relief, the claim of inadequate representation by trial counsel is deemed to have been abandoned. *Flores v. State*, Op. No. 642, 475 P2d 37 (Alaska 1970).

A defendant is not deprived of a public trial merely because a newspaper reporter is unable to enter the building in which the courtroom is located, where such exclusion is unintentional, is for less than one hour and takes place at a time after submission of the case to the jury, while the jury is listening to a replay of certain recorded testimony. *Flores v. State*, Op. No. 642, 475 P2d 37 (Alaska 1970).

Proof that the State intimidated potential material defense witnesses and prevented them from testifying requires the granting of a new trial. A defendant, seeking post-conviction relief, will not have to demonstrate prejudice. *Fajerlak v. State*, Op. No. 1021, 520 P2d 795 (Alaska 1974).

Where a defendant successfully proves on application for post-conviction relief that his confidential communications with his attorney were electronically monitored, he ordinarily

must be granted a new trial, even without demonstrating that he was prejudiced by such action. *Fajerlak v. State*, Op. No. 1021, 520 P2d 795 (Alaska 1974).

After conviction as accomplice to burglary not in a dwelling and malicious destruction of property, evidence of diminished capacity was admissible to negate showing by state that defendant had knowledge of the criminal enterprise and that defendant specifically intended, by his conduct, to aid, abet, assist or participate in the criminal enterprise. *Hensel v. State*, Op. No. 1983, 604 P2d 222 (Alaska 1979).

Where attorney did not inform his client of the possibility of a diminished capacity defense, but did himself consider it in preparing for trial, his failure to explain the possible defense did not render his legal assistance ineffective when the chances of acquittal or conviction on a lesser offense due to the use of the diminished capacity defense were improbable. *Larson v. State*, Op. No. 2128, 614 P2d 776 (Alaska 1980).

In order to obtain post-conviction relief for ineffective assistance of counsel, defendant must first show that his lawyer's skill fell below that of a lawyer with ordinary training and skill in the criminal law, and second, that the lawyer's defective performance contributed in some way to defendant's conviction. *Larson v. State*, Op. No. 2128, 614 P2d 776 (Alaska 1980).

In attempting to eliminate consideration of the nature of the offense from its consideration of relevant factors at sentencing, the superior court committed reversible error. *Kelly v. State*, Op. No. 2258, 622 P2d 432 (Alaska 1981).

### III. Procedure

#### A. In General

A petitioner seeking post-conviction relief on the grounds that she was transported out of the state for purposes of out-of-state incarceration prior to the expiration of the ten-day period within which she is required to file a notice of appeal, should attempt to show what impact her physical removal from the state has had on her ability to file a timely notice of appeal. She should further show what attempt she has made during the period between the imposition of sentence and the alleged removal from the state to engage services of trial counsel. *Pore v. State*, Op. No. 537, 452 P2d 433 (Alaska 1969).

An appeal from the denial of a petition for writ of habeas corpus is characterized as one from the denial of a motion for post-conviction relief. *Knaub v. State*, Op. No. 489, 443 P2d 44 (Alaska 1968).

If the trial court determines conclusively that a petitioner is entitled to no post-conviction relief after an examination of the files and records of a case, it may properly deny the petition without hearing. *Knaub v. State*, Op. No. 489, 443 P2d 44 (Alaska 1968).

A trial judge in acting upon a motion for post-conviction relief is entitled to rely upon his recollection of the proceedings during the trial. *Knaub v. State*, Op. No. 489, 443 P2d 44 (Alaska 1968).

It is not necessary to hold an evidentiary hearing concerning an alleged deprivation of the right to appeal where petitioner alleges she requested her trial defense counsel to file an appeal from her conviction, but fails to indicate time, location, manner and circumstances under which she had

requested her counsel to make such appeal. *Pore v. State*, Op. No. 537, 452 P2d 433 (Alaska 1969).

The determination that a petition for post-conviction relief alleging the deprivation of the right to appeal does not require the holding of an evidentiary hearing does not preclude the petitioner from making a second application for post-conviction relief and presenting evidence supporting the assertion, first presented on appeal from a denial of the first post-conviction motion, that she was transported out of the state for purposes of out-of-state incarceration prior to the expiration of the ten-day period within which she was required to file her notice of appeal. *Pore v. State*, Op. No. 537, 452 P2d 433 (Alaska 1969).

If the trial court can determine conclusively that the petitioner is not entitled to post-conviction relief after examining the files and records of the case, it may properly deny the petition without hearing. *Widmermyre v. State*, Op. No. 540, 452 P2d 885 (Alaska 1969).

Post-conviction relief is an appropriate vehicle for the effectuation of the right of appeal where counsel has failed to file a timely notice of appeal. *McCracken v. State*, Op. No. 677, 482 P2d 269 (Alaska 1971).

Where a convicted defendant presents important questions of substantive criminal law never before decided in the state, the court will consider the merits of the issues, even though the petitioner had not asserted his claims in prior motions. *Mead v. State*, Op. No. 731, 489 P2d 738 (Alaska 1971).

If an applicant for post-conviction relief is represented by counsel in the first application, there will be no presumption in his favor in a second application, and he will incur the burden of showing sufficient reason for any failure to raise grounds for relief in the first application. *Thompson v. State*, Op. No. 792, 496 P2d 651 (Alaska 1972).

Indigent prisoners seeking relief under this rule must be provided with counsel at the time their application is filed. *Donnelly v. State*, Op. No. 965, 516 P2d 396 (Alaska 1973).

Generally, a petitioner for post-conviction relief has a right to represent himself without counsel in criminal proceedings. *McCracken v. State*, Op. No. 986, 518 P2d 85 (Alaska 1974).

The right to self-representation on a petition for post-conviction relief is not absolute. In order to prevent a perversion of the judicial process, the trial judge should first ascertain whether a prisoner is capable of presenting his allegations in a rational and coherent manner before allowing him to proceed pro se, and the trial judge should satisfy himself that the prisoner understands precisely what he is giving up by declining assistance of counsel. The advantages of legal representation should be explained to the prisoner in some detail, and in the event of an evidentiary hearing at which the prisoner is present he should be given the option of having legal counsel available for consultation. *McCracken v. State*, Op. No. 986, 518 P2d 85 (Alaska 1974).

Where a petitioner for post-conviction relief desires to represent himself, the trial judge should determine whether the prisoner is willing to conduct himself with at least a modicum of courtroom decorum, but the hearing judge must bear in mind that prisoners are not experienced trial lawyers, and are not practiced in the formalities of courtroom etiquette. *McCracken v. State*, Op. No. 986, 518 P2d 85 (Alaska 1974).

Where pleadings filed by a petitioner seeking post-conviction relief demonstrate a certain knowledge of the merits of his allegations, and indicate at least to some extent that he might have the ability to represent himself, his rights might best be vindicated by an order permitting him to represent himself with the assistance of counsel from the public defender's office appointed by the court. If it should be determined that the prisoner's presence would be necessary at a hearing, a more thorough inquiry into the propriety of permitting him to represent himself could be undertaken at that time. *McCracken v. State*, Op. No. 986, 518 P2d 85 (Alaska 1974).

Even though post-conviction applications are assigned to the original trial judge, he is not chargeable with knowledge of the entire original trial record, where the transcript and record is extremely lengthy and the trial took place several years earlier. Portions of the record relied on for post-conviction relief should be specifically indicated to the judge. *Fajertak v. State*, Op. No. 1021, 520 P2d 795 (Alaska 1974).

All post-conviction challenges other than by direct appeal or motion after trial must be initiated in the trial court in which the conviction occurred. *McKinnon v. State*, Op. No. 1075, 526 P2d 18 (Alaska 1974).

A sentence is imposed at the time it is first announced upon the record by the court. *State v. Trunnel*, Op. No. 1260, 549 P2d 550 (Alaska 1976).

Rule 35(b) proceeding is separate from original criminal proceeding, is governed by civil procedure, results in a final judgment and may be appealed by either state or applicant. *State v. Hannagan*, Op. No. 1374, 559 P2d 1059 (Alaska 1977).

When a criminal appeal has been dismissed, though no mandate has been issued, the appellant may seek relief in superior court under Criminal Rule 35(a). *Singletary v. State*, Op. No. 1711, 583 P2d 847 (Alaska 1978).

Criminal Rule 35(a) is not the appropriate procedural vehicle to seek relief as to conditions within custodial institutions or the civil rights of inmates. *Rust v. State*, Op. No. 1668, 534 P2d 38 (Alaska 1978).

An appeal from denial of a supplemental application for correction of sentence presents only the question of whether the denial of reconsideration of the original application was proper and does not bring up for review the decision denying the original application for correction of sentence. *Abraham v. State*, Op. No. 1747, 585 P2d 526 (Alaska 1978).

The provisions of Criminal Rule 35(g)(2) [now 35(h)(2)] are applicable only to post-conviction proceedings under Criminal Rule 35(b) and are not applicable to requests for relief under Criminal Rule 35(a). *Winslow v. State*, Op. No. 1767, 587 P2d 738 (Alaska 1978).

Where defendant in probation revocation proceeding did not file motion for post-conviction relief on form provided by court, or file the motion in the court where the original conviction occurred, he did substantially comply with requirements of Criminal Rule 35 by filing separate "Motion to Dismiss Probation Revocation Proceeding, or in the Alternative, to Strike Felony Conviction" and by sending copy of the motion to judge who presided in the original case, where judge by special arrangement ruled on the motion while in the

jurisdiction where probation revocation hearing was held. *Holton v. State*, Op. No. 1967, 602 P2d 1228 (Alaska 1979).

Post-conviction relief proceeding is not another trial; it is separate from the original criminal proceeding and is governed primarily by rules of civil procedure. *Hensel v. State*, Op. No. 1983, 604 P2d 222 (Alaska 1979).

An error need not be of constitutional magnitude in order to be attacked under this rule. *Price v. State*, Op. No. 100, 647 P2d 611 (Alaska App. 1982).

Errors in jury instructions which render a criminal trial fundamentally unfair warrant relief under this rule. *Price v. State*, Op. No. 100, 647 P2d 611 (Alaska App. 1982).

Defendant's failure to object at trial to jury instruction forfeited his right to challenge the instruction in a post-conviction proceeding where the instruction did not significantly change the law so as to excuse a timely failure to object, and defendant did not show either good cause for failing to object or substantial prejudice. *Marrone v. State*, Op. No. 156, 653 P2d 672 (Alaska App. 1982).

Trial court is not obligated to dismiss an application for post-conviction relief *sua sponte* even if it is convinced it has no merit. *Hampton v. Huston*, Op. No. 155, 653 P2d 1058 (Alaska App. 1982).

Trial court erred in ruling on pro se appellant's motion for post-conviction relief without a knowing, intelligent and voluntary waiver of counsel by appellant and without determining whether or not appellant was competent to represent himself. *Hampton v. Huston*, Op. No. 155, 653 P2d 1058 (Alaska App. 1982).

Summarily dismissing defendant's motion for post-conviction relief which alleged ineffective assistance of counsel, without advance notice to defendant indicating the court's intention to dismiss the motion or its reasons for the proposed dismissal, was reversible error, even though the motion itself did not establish a prima facie case of ineffective assistance of counsel. *Wood v. Endell*, Op. No. 488, 702 P2d 248 (Alaska App. 1985).

In post-conviction relief actions, particularly in cases involving pro se applicants who are incarcerated and do not have ready access to court documents, the court's discretion to relax technical pleading requirements should be liberally exercised. *State v. Jones*, Op. No. 832, 759 P2d 558 (Alaska App. 1988).

Sentenced prisoners may avail themselves of the rule recognizing extraordinary potential for rehabilitation as a nonstatutory mitigating factor permitting referral to a three-judge panel to avoid manifest injustice if they can make a prima facie case for referral based upon the original sentencing record. *S.B. v. State*, Op. No. 997, 785 P2d 900 (Alaska App. 1989).

Defendant did not waive claim that his confession should have been suppressed by not raising the issue in his original application for post-conviction relief where his court-appointed counsel had been appointed only to investigate ineffective assistance of counsel claims. *Billingsley v. State*, Op. No. 1117, 807 P2d 1102 (Alaska App. 1991).

#### B. Hearing on Motion

On his first application to vacate or set aside sentence and to withdraw plea of guilty on ground of coercion, an indigent prisoner had a constitutional right to have counsel appointed by the court to represent him at such hearing. *Nichols v. State*, Op. No. 398, 425 P2d 247 (Alaska 1967).

The allegations of a petitioner for post-conviction relief that he had taken drugs some 12 hours prior to time he changed his plea to guilty and that at the time he appeared in court to enter his change of plea he was under the influence of drugs, and thus rendered incompetent, were sufficient to require an evidentiary hearing. Despite the apparent regularity of the competency hearing, the change of plea and the sentencing proceedings, the possibility still exists that the petitioner did not knowingly and understandingly plead to the offense as charged. *Widermyre v. State*, Op. No. 540, 452 P2d 885 (Alaska 1969).

A prisoner seeking post-conviction relief is not denied a fair determination of his motion merely because he is not present in person at hearings on the motion. *Flores v. State*, Op. No. 642, 475 P2d 37 (Alaska 1970).

In a post-conviction proceeding, the attorney who has served as trial counsel for the defendant properly refuses to testify on the question of the adequacy of his representation, in the absence of a waiver of the attorney-client privilege. *Flores v. State*, Op. No. 642, 475 P2d 37 (Alaska 1970).

Normally, whether to produce the prisoner is a decision left to the discretion of the court, but where the defendant's own testimony would be an essential prerequisite to proper adjudication of an issue raised on application for post-conviction relief, the defendant should be permitted to testify. *Fajerlak v. State*, Op. No. 1021, 570 P2d 795 (Alaska 1974).

Where the court elects to consider a petition for post-conviction relief summarily, it must give advance warning of its decision to the parties in a written order spelling out in some detail its reasons for concluding that the petition warrants summary disposition. *Hampton v. Huston*, Op. No. 155, 653 P2d 1058 (Alaska App. 1982).

#### C. On Review

Where appellant claimed that he was coerced into a plea of guilty by court appointed counsel who had also given him alleged false assurances of probation, and upon a post-conviction petition under this rule the trial court had found that these charges were unsubstantiated basing its finding upon matter not contained in the record, the case was remanded to the trial court for further proceedings to create a record upon appropriate and specific findings. *Thompson v. State*, Op. No. 334, 412 P2d 628 (Alaska 1966).

The rule contemplates that the sentencing court should be initially called upon to review the sentence. *State v. Pete*, Op. No. 372, 420 P2d 338 (Alaska 1966).

The sole question before a reviewing court when confronted with an order denying, without hearing, a motion for post-conviction relief is whether the petitioner in his application for relief made such a showing as to require a hearing. *Widermyre v. State*, Op. No. 540, 452 P2d 885 (Alaska 1969).

On an appeal from a motion attacking a sentence, the factual findings of the lower court are judged by the same criterion as findings made in a judge-tried civil case. *Merrill v. State*, Op. No. 568, 457 P2d 231 (Alaska 1969).

Where the defendant does not move for an evidentiary hearing or base his motion for a new trial on misconduct by the bailiff, the issue of whether the trial court erred in failing to grant him an evidentiary hearing concerning an allegedly improper statement made by the bailiff to the jury during the course of their deliberations is not properly before the Supreme Court. The defendant is not precluded from raising the issue in a future proceeding on a motion for a new trial or through other means seeking post-conviction relief. *Howard v. State*, Op. No. 754, 491 P2d 154 (Alaska 1971).

Trial court's finding that new evidence, if presented at a new trial, would probably not create a reasonable doubt as to defendant's guilt will be upheld unless such finding constitutes an abuse of discretion. *Hensel v. State*, Op. No. 1983, 604 P2d 222 (Alaska 1979).

Standard for review of trial court's denial of motion for post-conviction relief is one of abuse of discretion. *Hensel v. State*, Op. No. 1983, 604 P2d 222 (Alaska 1979).

An appellant should not be able to raise issues on appeal from the denial of an application for post-conviction relief that he would have been barred from raising on direct appeal from his original conviction. *Marrone v. State*, Op. No. 156, 653 P2d 672 (Alaska App. 1982).

Ad hoc procedural course followed by the trial court departed markedly from the orderly procedure for the expeditious disposition of non-mentionous applications for post-conviction relief contemplated by this rule, depriving the state of a fair opportunity to contest defendant's application for post-conviction relief and requiring reversal of the trial court order setting aside defendant's convictions. *State v. Jones*, Op. No. 832, 759 P2d 558 (Alaska App. 1988).

#### IV. Time Limits

Appellate Rule 46 was invoked where strict adherence to the 40-day time limit for appeal under Criminal Rule 35 would have prevented consideration of appellant's contentions that his conditions of imprisonment deprived him of his right to rehabilitation and reformation and to be free of cruel and unusual punishment. *Abraham v. State*, Op. No. 1747, 585 P2d 526 (Alaska 1978).

A person moving to withdraw a guilty plea under Criminal Rule 32(d) and moving for post-conviction relief under Criminal Rule 35(b) need not show that the former motion was made with "due diligence". *Swensen v. Municipality of Anchorage*, Op. No. 2179, 616 P2d 874 (Alaska 1980).

#### Rule 35.2. Discharge and Set-Aside of Conviction.

(a) Where the court has suspended imposition of sentence, the defendant has completed the probationary term without imposition of sentence and no petition to revoke probation is pending, the court shall discharge the defendant from probation. At the time discharge is entered, which shall occur 30 days after defendant's probationary term has expired, or at such later time as the court for cause may direct, the court shall consider whether the conviction should be set-aside. If the court determines that the conviction should be set-aside, it shall issue a certifi-

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

February 25, 1993

**SUBJECT:** Magistrate Jurisdiction (Work Order No. 8-LS0617E)

**TO:** Representative Al Vezey

**FROM:** Jerry Luckhaupt *JEL*  
Legislative Counsel

Enclosed is the final committee substitute you requested. I have one comment about the committee substitute. The committee substitute removed the language "that are not minor offenses" from page 2, line 5 of the bill following "misdemeanors." The removal of this language creates a conflict between AS 22.15.120(6) and (7). In AS 22.15.120(6) magistrates are given the authority to hear, try, and enter judgments in misdemeanors with the consent of the defendant. In AS 22.15.120(7), as amended by the bill, magistrates are given the authority to hear, try, and enter judgments in all cases involving minor offenses. The definition of "minor offense" in section 2 of the bill includes "(3) a statutory offense for which a conviction cannot result in incarceration, a fine greater than \$300, or the loss of a valuable license." There are any number of offenses labeled as misdemeanors that fit this category. See e.g., AS 03.40.060, 03.40.240, 03.40.260, AS 05.12.010, 05.30.110, and AS 18.50.900(c). While AS 22.15.120(7) would give a magistrate jurisdiction to hear these misdemeanor or offense, AS 22.15.120(6) provides that the magistrate does not have jurisdiction unless the defendant consents in writing. The language that was removed in the committee substitute would remedy this conflict.

If you have any questions, please contact me at your convenience.

GPL:gc  
93-164.glc

Enclosure

**HB**

**175**



## Representative Cliff Davidson

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Alaska State House

State Capitol • Juneau, Alaska 99801-1182 • (907) 465-2487

TO: Representative Al Vezey, Chair  
House State Affairs Committee

FROM: Representative Cliff Davidson *CD*

DATE: 22 March 1993

SUBJECT: House Bill 175

Last Friday HB 175, an act appropriating \$15,000 as Alaska's contribution toward the construction of the Women in the Military Memorial in Arlington National Cemetery, was referred to your committee. This memorial is authorized by federal legislation introduced by Senator Murkowski in 1986. It has broad national support and would provide long overdue recognition for American military women.

This legislation needs to pass this year since fund raising for the memorial is scheduled to be completed by November 1993. Because of the need for action this year, the non-controversial nature of the bill and because the issue is primarily financial in nature, I would like to request that the House State Affairs Committee waive HB 175 to the next committee of referral, House Finance.

If you would like any further information on HB 175 please contact me or my staff Jay Nelson (X2840). Thank you for your expeditious consideration of this request.

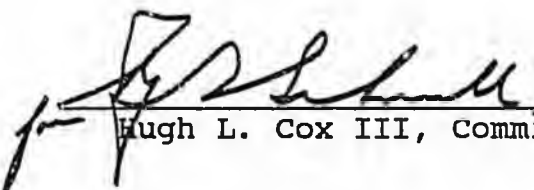
DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

HB175 POSITION PAPER

For: An Act making an appropriation for a grant for construction of the Women in Military Service Memorial

Background: The Women in Military Service for America Memorial Foundation, Inc. has undertaken a project to develop a memorial to women in military service to be placed at the gateway to Arlington National Cemetery. Funding for this memorial must be provided by non-federal donations, according to federal law. The Foundation has requested individual states to contribute to the construction fund, and has requested the State of Alaska to contribute the amount of \$15,000 for the construction of the memorial.

Department Position: The Department of Military and Veterans Affairs feels that women in military service deserve special recognition, and that the proposed memorial is an appropriate way to provide that recognition. The question of whether or not the state should provide funding for a contribution to the construction of the memorial, and the amount of that contribution, is one of fiscal policy, which is the prerogative of the legislative branch.

 ASST. Comm. Date: 03-22-93  
Hugh L. Cox III, Commissioner

[File: PPHB175]



Women In Military Service For America  
Memorial Foundation, Inc.

Dept. 560  
Washington, D.C. 20042-0560  
(703) 533-1155 1-800-222-2294 (703) 931-4208 (FAX)

March 1, 1993

Representative Cliff Davidson  
State Capitol  
Juno, Alaska 99801

Dear Representative Davidson:

I am writing to request your assistance in a vital project that will directly benefit the 5,000 women veterans who live in the state of Alaska. The Women In Military Service Memorial, to be built at the gateway to Arlington National Cemetery, will pay tribute to these women and the other 1.8 million who have served throughout history. We are delighted that you have agreed to sponsor an appropriation of \$15,000 for the construction of this Memorial, joining the states of Florida, Montana, and Arkansas in supporting this worthy effort. Similar bills are also pending in South Dakota, Hawaii, Georgia, New Jersey, Virginia, and New York.

This will be the first major national memorial recognizing the contributions of women, and telling their stories for future generations. Many great women hail from the state of Alaska, including Colonel Mary Louise Rasmusen, US Army, Retired, former Director of the Women's Army Corps from 1957 - 1962, a critical period for women's continued service in the military.

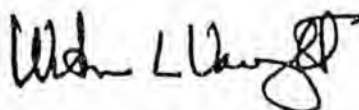
By law, the Memorial must be funded through non-Federal donations. Sufficient funds to complete the project and provide for maintenance must be on hand before construction can begin. The fundraising goal is \$14 million and authority expires on November 5, 1993.

A contribution from the state of Alaska at this stage could provide tremendous momentum and lead to support from many other states. Additionally, this contribution can help sponsor the 5,000 women veterans who do not have sufficient funds for the \$25 registration donation for their names and record of service to be included in the Memorial's register. All states making contributions will be permanently recognized in the Memorial.

Support for the Memorial has already come from a variety of sources within the state of Alaska. Our National Tribute Committee includes Senators Frank Murkowski, who sponsored the original legislation, and Ted Stevens. In fact, Senator Murkowski is expected to assist us by sponsoring a bill in the Senate that would authorize the minting of a Women In Military Service coin, to benefit the Foundation.

Please feel free to call us if we can do anything to assist your efforts. Again, thank you for your efforts to honor the women who have served, in Alaska and nationwide, with valor and dedication.

Sincerely,

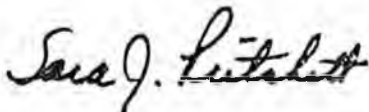


Wilma L. Vaught  
Brigadier General, USAF (Ret.)  
President

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Women In Military Service For America  
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Dept. 560  
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(703) 533-1155 1-800-222-2294 (703) 931-4208 (FAX)

## ABOUT THE MEMORIAL

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**WHAT:** Women In Military Service Memorial to honor the more than 1.8 million women who have served or are serving in the armed forces starting with the American Revolution.

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**WHERE:** The gateway to Arlington National Cemetery.

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**WHEN:** Construction to start in December, 1993.

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**WHO:** Spearheaded by the Women In Military Service For America Memorial Foundation (WIMSA).

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**THOSE TO BE HONORED:** All U. S. servicewomen. WIMSA is seeking names, addresses, photos and memorable experiences of women who have served. Descendents of deceased servicewomen are asked to register them.

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**HISTORY:** Bill to honor military women introduced by Congresswoman Mary Rose Oakar (D-Ohio) and Senator Frank Murkowski (R-Alaska). Signed into law by President Reagan in November, 1986.

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**DESIGN:** Ms. Marion Gail Weiss and Mr. Michael Manfredi of Weiss/Manfredi, New York City, winners of national competition.

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The Memorial features an upper terrace with views of Arlington National Cemetery and the monuments of Washington. On the terrace, there will be an arc of glass "pages" in which quotations from servicewomen are etched. This arc of glass also introduces natural light into the Memorial's visitor center. At the lower terrace in front of the Hemicycle wall are the reflecting pool and Court of Honor. The visitors center located behind the Hemicycle houses a Hall of Valor, theater, and a computer Register of servicewomen. Through the data base, visitors may access photos, military histories, and individual stories of registered women.

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**FUNDING:** The cost for building the Memorial -- an estimated \$14 million -- must be raised through non-Federal funds. This sum must be available by November, 1993. So far, more than \$1 million is committed to the building fund.

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**DONATIONS AND REGISTRATIONS:** Donations and histories of servicewomen can be sent to: Women In Military Service Memorial, Dept. 560, Washington, D. C. 20042-0560. Toll-free telephone: 1 - 800 - I - SALUTE (1-800-472-5883.)

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The Memorial is a registered member of the Combined Federal Campaign, the annual workplace fundraising drive conducted by the U. S. Government for all military, civilian agency and postal workers worldwide. In state and corporate campaigns, donors should designate "Women In Military Service For America Memorial" on their pledge card.

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Women In Military Service For America  
Memorial Foundation, Inc.

Dept. 560  
Washington, D.C. 20042-0560  
(703) 533-1155 1-800-222-2294 (703) 931-4208 (FAX)

April 1, 1992

For more information, contact: Rae Lee  
Fay Fulton  
703/533-1155

**WOMEN IN MILITARY SERVICE MEMORIAL  
TO HONOR AMERICA'S SERVICEWOMEN THROUGHOUT THE AGES**

The Women In Military Service For America Memorial Foundation (WIMSA) was founded to create a Memorial to honor the 1.8 million women who have served in the U.S. military services throughout history, from the American Revolution through Operation Desert Storm and beyond. Authorized by Congress in 1986, the Women in Military Service Memorial will provide a legacy to future generations by capturing the undocumented history of our American servicewomen. It will be unique in that it will be a place of honor for both the living and deceased; those who served in the past, those who serve today, as well as those who will serve in the future.

This Memorial is unique in other ways. It will use an existing site and its structures at the gateway to Arlington National Cemetery, our most honored military resting ground. The wall there, or Hemicycle, suffers from years of neglect and is badly in need of repair. The Hemicycle will be restored and modified to add four stairways to the upper level of the wall, a walkway with views of Arlington National Cemetery and monumental Washington. A key feature of the terrace will be an arc of glass tablets bearing quotations of servicewomen etched thereon. These glass tablets will also form a series of skylights into the Memorial's interior Visitors Center. The Visitors Center will house an underground theater and a computerized data base where the public can access the photos, military history and individual stories of the women who have served. The Foundation relies on servicewomen, veterans and their descendants to "Register" their stories and photos so that the history of women in the military is brought to light for all Americans.

Support for the Memorial has come from a number of sources. The governments of Kuwait, Saudi Arabia and Qatar announced their support, in honor of the women who served in the Persian Gulf. State governments also provided financial support in 1991, including Montana, Florida and Arkansas. Corporations which contributed include: The Coca-Cola Company, Martin Marietta Corporation, RJR Nabisco, Northrop Corporation, Raytheon Company, Xerox Corporation and Tambrands Corporation. A number of veterans and service organizations have supported the project in a variety of ways, many through publicity to their membership and group registration of their female members. The Veterans of Foreign Wars Auxiliary voted last year to accept WIMSA as a group project. Each activity and contribution brings this tribute closer to reality for the many women who have served throughout the years.

The cost for building this Memorial — an estimated \$12 million - must be raised through non-Federal funds. Public Law #102-216, passed in November 1991, extended by two years WIMSA's deadline for raising the remaining monies needed to build the memorial. With 20 months remaining in the deadline, this project needs the support and help of all Americans.

One example of how women have fought for their country is Deborah Sampson Gannett. Gannett disguised herself as a man to serve in the Army in the Revolutionary War. She was shot in battle and escaped detection by removing the musket ball from her thigh by herself. Some two years later, when she was hospitalized with a fever, the attending doctor found that this soldier was a woman. She is one of thousands of women whose story will be told through the Memorial Register.

Today's heroine does not have to disguise herself, but the dangers are just as real. Major Marie Rossi, who became a familiar sight on television screens during the Persian Gulf War when CNN broadcast an interview with her, was killed one day after the cease fire while operating a supply helicopter. There are many more women who have contributed in defense of our nation that deserve our recognition, too.

Now all of these women, veterans, active duty, Guard and Reservists, will receive the honor and recognition they have earned.

Those wanting more information on how to register for the Memorial or support this tribute to military women, please call 1-800-4-SALUTE or write to Women In Military Service Memorial, Department 560, Washington, DC 22042-0560.

###



Women In Military Service For America  
Memorial Foundation, Inc.

Dept. 560  
Washington, D.C. 20042-0560  
(703) 533-1155 1-800-222-2294 (703) 931-4208 (FAX)

**NUMBER OF FEMALE  
VETERANS IN EACH STATE\***

<u>State</u>	<u>Female Veterans</u>	<u>State</u>	<u>Female Veterans</u>
Alabama	17,000	Montana	4,700
Alaska	5,000	Nebraska	6,900
Arizona	25,000	Nevada	9,200
Arkansas	9,800	New Hampshire	7,200
California	146,200	New Jersey	26,000
Colorado	21,000	New Mexico	9,600
Connecticut	14,100	New York	56,300
Delaware	3,600	North Carolina	30,600
Dist. of Columbia	3,700	North Dakota	2,600
Florida	85,400	Ohio	40,500
Georgia	31,000	Oklahoma	13,800
Hawaii	7,100	Oregon	17,000
Idaho	4,600	Pennsylvania	46,300
Illinois	34,800	Rhode Island	4,600
Indiana	19,500	South Carolina	16,800
Iowa	8,600	South Dakota	3,000
Kansas	9,300	Tennessee	17,000
Kentucky	11,900	Texas	72,800
Louisiana	14,300	Utah	4,800
Maine	7,400	Vermont	3,400
Maryland	28,900	Virginia	42,900
Massachusetts	26,500	Washington	33,500
Michigan	33,100	West Virginia	5,700
Minnesota	15,100	Wisconsin	17,400
Mississippi	9,100	Wyoming	2,300
Missouri	19,800		
		<b>TOTAL</b>	<b>1,106,600</b>

\*Information courtesy of the Department of Veterans Affairs (1992).

These numbers are exclusive of the number of women on active duty and in the national Guard, Reserves and Coast Guard in each state.



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STATISTICS ON WOMEN IN THE MILITARY

Number of Women on Active Duty as of March 31, 1992

<u>Active Duty</u>		<u>Reserve and Guard</u>
Army	76,887	62,954
Navy	54,849	22,007
Air Force	70,917	15,567
Marine Corps	<u>8,643</u>	<u>1,524</u>
Total DoD	211,364	102,052
Coast Guard	2,776	1,393
Total	214,140	103,445

Number of women who served in Operation Desert Storm, by Service

Army	26,000
Navy	2,600
Air Force	3,800
Marine Corps	952
Coast Guard	<u>13</u>
Total	33,365

Number of women held Prisoners of War during individual military conflicts

World War II	88	(all officers, all nurses)
Desert Storm	2	(one doctor; one, the first, enlisted woman)

Number of women who served in the military conflicts

Civil War	6,000
Spanish/American War	1,500
World War I	34,000
World War II	400,000+
Korea	22,000
Vietnam	7,500
Grenada	116
Panama	1,200
Desert Storm	33,365



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**A SUMMARY HISTORY OF  
WOMEN'S SERVICE IN THE MILITARY**

The history of America's military women begins with the birth of our nation. It is a dramatic story of persistence, courage and foresight in the face of repeated frustrations and the built-in institutional resistance of the tradition-bound military subculture. It is set against the background of peace and war, of social evolution and of advancement in the technology of warfare.

During the 18th and 19th centuries, women were routinely present with the armies in battle. Indeed, with constant manpower shortages, sustaining Washington's army during the American Revolution in field or in garrison would have been next-to-impossible without women. Women also were hired employees, and the medical service, for example, was allowed one matron and ten nurses per hundred wounded.

It was common and accepted practice for poor but respectable wives, mothers and daughters to go along with their men when they went off with the army; often, they had no practical alternative. Women also served in less-conventional capacities, and in their little-known history are many stories of women masquerading successfully as male soldiers until wounded and medical attention revealed their deception. In the War of 1812, the "first girl Marine" is reputed to have served for three years on the USS Constitution as George Baker.

During the Civil War, women on both sides became active on an unprecedented scale, as many of the social conventions were set aside. In addition to their usual functions of nursing, cooking, sewing and foraging for supplies, many women -- both black and white -- served as saboteurs, scouts and couriers. They led troops into battle as color bearers, blew up bridges, cut telegraph wires, burned arsenals and warehouses, and help prisoners and slaves escape. One woman, Dr. Mary Walker, was awarded the Congressional Medal of Honor for her contributions.

In the Spanish-American War of 1898, an epidemic of typhoid fever forced the recruitment of women by the Army under a civilian contract. Eventually, 1,500 served, leading initially to the formation of the Army Nurse Corps in 1901, and later to the formation of the Navy Nurse Corps in 1908. When involvement in World War I became inevitable, the nursing services were organized and ready to serve, but full military status would not be accorded women until 1948.

During World War I, both the Navy and Marine Corps enlisted women as clerks, translators, and radio electricians, with about 12,000 serving, along with a few in the Coast Guard. About 23,000 Army and Navy nurses served in field hospitals and in mobile, evacuation, base, and convalescent hospitals, on troop trains and transport ships. Some died, some were wounded and many were decorated, including three who received the Distinguished Service Cross, a combat medal second only to the Congressional Medal of Honor.

World War II saw the first class of female officers in the history of the U.S. Armed Forces assembled for training at Fort Des Moines, Iowa, in July of 1942. Eventually, more than 400,000 women -- all volunteers -- served in all branches and in all military theaters. The casualties, more than 200, included Army nurses and members of the Women Airforce Service Pilots, and there were 88 women held as prisoners of war.

Until demobilization began in 1945, women's service in the military had followed much the same pattern as Washington's army in the American Revolution. When the war was over, the Continental Army disbanded, leaving a force the size of a Corporal's guard - some 80 men. Women were not granted full and permanent military status in the U.S. Armed Forces until that attitude toward preparedness changed. At the close of World War II, when the exodus home began, military leaders began to have second thoughts about letting all the women go. At General Dwight D. Eisenhower's direction, legislation was drafted to establish a Women's Army Corps in the Regular and Reserve of the peacetime Army. It died in controversy but led to the Integration Act, passed by Congress as the Women's Armed Services Act of 1948. On June 12 of that year, President Harry S. Truman signed the measure that finally established a permanent place for women in the Army, Navy, Air Force and Marine Corps.

The Integration Act did not guarantee equity for military women, and after the debacle of an ill-planned recruiting program during the Korean War, women's programs in the subsequent Cold War years barely survived. Women's roles in the military, once a route to education and jobs previously reserved for men, became token in the fifties and early sixties -- tolerated but not taken seriously. Instead of serving as a springboard for further integration and equality for woman, the Act had become the base of a system of institutional segregation and unequal treatment. Unlike their predecessors in World War II and Korea, American servicewomen were not taxiing aircraft, running motor pools or teaching aerial gunnery. The Pentagon's official attitude was that women would not be employed at jobs that "are not in conformance with the present cultural pattern of utilizing women's services in this country." This situation, however, changed when the demand for recruitment for the war in Vietnam could not be met with available manpower of acceptable quality and ultimately resulted in a renewed expansion of roles for woman.

The next step was real integration: the abolition of separate services for women military members. The Army's Chief of Staff, General Bernard W. Rogers, recognized that support was necessary from the top to the very bottom of the organization and sent a message to his commanders in May, 1978, emphasizing the Army's commitment to integration of women and to accomplishing it "smoothly and rapidly."

Qualified women now have the opportunity to serve in all but a few specific combat units and combat specialties. In availing themselves of the opportunity, women, like their male counterparts, must accept the responsibility for sharing all risks and enduring all hardships inherent in their specialty. Some people believe that women soldiers will not be deployed in the event of hostilities, that they are only to be part-time soldiers -- here in peace, gone in war. Some women are being used in skills other than those for which they were trained and some are being excused from performance of unit duties. The Army cannot operate effectively in this manner. Women are an essential part of the force; they will deploy with their units and they will serve in the skills in which they have been trained... The first considerations in the assignment of women in the Army have been, and will continue to be, the mission of the Army itself, and the uniquely demanding nature of Army service in wartime. Within that context, women can make many important contributions; indeed they are doing so now. The burden which rests on leaders at every level is to provide knowledgeable, understanding, affirmative and even-handed leadership to all our soldiers.

Clearly, women are and continue to be an essential factor in the volunteer services, qualitatively and quantitatively. In 1979 for example, had the services not enlisted some 42,000 women, recruiting shortfalls would have been even larger. Their ability to meet 1980 recruiting goals was due in large part to the enlistment of 50,000 women, the largest number of women since World War II.

In 1988, the Secretary of Defense wrote to the Service Secretaries that decisions that military women could be assigned to missions and units under the combat exclusion laws but only with the understanding that they would be assigned to them both in peacetime and during conflict. He said they should not be assigned duties which they could not fulfill during mobilization or national emergency since there would be no plans or instructions to remove or evacuate them.

Recent history has raised the awareness of American public about women in the military. A few women had deployed with their units to the island of Grenada. However, when some commanders realized they were there, the women were ordered back to their United States bases. Eventually, that order was lifted and the women continued their duties without fanfare. Women servicemembers also deployed to Panama although the stories of their performance tended to overshadow their actual contributions.

It was Operation Desert Storm in the Persian Gulf, however, which proved to be a determining factor in women's futures as members of the military. According to the Women's Research and Education Institute, more than 33,300 U.S. military women served in key combat-support positions. They piloted and crewed planes and helicopters, directed artillery, drove trucks, ran prison-of-war facilities, served on support and repair ships and in port security units and construction battalions, and did a myriad of other jobs crucial to the success of Operations Desert Shield/Desert Storm. And, of course, many women served in the vital medical and administrative jobs where women always have been well-represented.

As a result of their performance, both the Senate and the House of Representatives passed legislation lifting the combat exclusion laws as they pertain to women serving in aviation.

Today, more than 400,000 women are on active duty, and in the National Guard and the Reserves of the Army, Marine Corps, Navy, Air Force and Coast Guard, and comprise more than 11 percent of the active duty personnel and 13 percent of the ready reserves of the country's armed forces. It is estimated that there are more than 1.2 million living women veterans.

It is intended that the Women In Military Service For America Memorial, the first to honor women's contributions in the defense of our nation, will help write their history for all to read. The memorial's unique inclusion of all the women, in all the wars faced by the country -- from the American Revolution through the Persian Gulf -- and in peacetime, is an opportunity for the public recognition of a part of our collective heritage that has gone unnoticed for too long. The location of the memorial, at the ceremonial entrance to the nation's most-hallowed resting place for its military and national heroes, is the appropriate setting. The goal of the memorial's cultural and educational center is to tell the history of the dedication, commitment and sacrifice of women in partnership with men in service to their country, and to inspire our youth to emulate these women, to follow and to surpass them.

# Women's role in U.S. military saluted today

By Tracy Walmer  
USA TODAY

Forty-seven years ago today, Staff Sgt. Paula Burrows was nervously waiting and watching as the D-day invasion unfolded in France, carrying out plans she had carefully helped orchestrate.

She stood watch from an office outside London — behind the scenes and away from the battle lines, like most of the 400,000-plus U.S. women who served in World War II. Burrows received a Bronze Star for her work.

Today, her fellow female soldiers get their due when luminaries join military women and families at ceremonies at the Capitol in Washington.

The celebrators hope to erect a memorial to honor the estimated 1.6 million women who have served in the U.S. military since the Revolutionary War.

When Chinook helicopter pilot Marie Rossi died a day after the Persian Gulf war ended — and a week after she captured the hearts of many Americans through a CNN interview — her parents decided to turn their loss into a gift to military women.

They'll be on hand at today's tribute, where Marie will be honored as a highly visible symbol of women who for so long have been largely invisible to the public.

"It's not just about my



Photos by Women in Military Service Memorial

**IN VIETNAM:** Carol Kenefick DeMeo, now 47, says it was especially hard for women to feel appreciated for serving in that war.

daughter. It's about all the women who served," says Gertrude Nolan Rossi.

Agnes Jensen Mangerich, 76, is one.

A World War II Army flight nurse, her tour nearly ended in disaster, when a cargo plane carrying Mangerich and 29 other nurses, medics and crew was shot down over Albania in November 1943.

The next two months were a horror of dysentery, typhoid, malnutrition and midnight hikes through German lines as the group was guided by frightened, hungry Albanian sympathizers to a rescue boat on the Adriatic coast.

"When I think about it now, the hairs just stand up on my head," says Mangerich. "You know, when you're 20 you just



**BURROWS:** Worked behind the scenes in World War II



**ROSSI:** Helicopter pilot died day after gulf war ended

think you're invincible."

Betsy Ross Menin, 58, liked her Korean War service.

"I'd do it again if I was young enough," says Menin, who joined the Marines when she was 19. She spent eight years working the jobs available to women — stenographer, clerk, court reporter and drill instructor.

In Vietnam, between being

## 50-state tribute for the women of Desert Storm

Today's tribute in Washington kicks off a 50-state campaign to honor the women who served in Operation Desert Storm, and to raise money to build a memorial to all U.S. military women.

Authorized by Congress in 1986, the memorial is slated to go up in Arlington National Cemetery by 1993. Plans call for a computer database with photographs and information on every woman who has served.

About 60,000 of the estimated 1.6 million military women are in the database so far.

The privately funded memorial will cost \$25 million. Raised so far: \$3 million.

For more information, call Women in Military Service for America Memorial Foundation at 800-472-5883.

a female and dealing with widespread anti-war feelings at home, it was hard to feel appreciated, says Carol Kenefick DeMeo, 47.

"You just buried your feelings. It was a time you didn't talk about," says DeMeo, now a civilian nurse. "The memorial is important. It will help."

► Snapshot, 1A

# Memorial created for women's role in armed services

By <sup>5/13/91</sup> NANCY PRICE

TIMES WRITER

Wilhelmina Daniels left her New Orleans home at the age of 20 to enlist in the Coast Guard during World War II, crisscrossing the United States as a radio operator.

The east Anchorage resident describes her career in the Coast Guard as "two really nice years of my life" but thinks it is time women vets had more than their memories to commemorate their service in the U.S. armed forces.

She and 60,000 other women vets want a permanent registry and memorial for the women who have served in the country's military.

"I think it's a great idea, I really do," she said. "An awful lot of women in the service went overseas (during World War II).

"I think we did our part, we did the same things in my department that the men did. I think we deserve a memorial."

Daniels is one of more than 60,000 women vets who have registered with the Women In Military Service Memorial. The register will be housed eventu-

'I think we did our part, we did the same things in my department that the men did. I think we deserve a memorial.'

— Wilhelmina Daniels  
Anchorage resident

ally in a memorial center to be constructed at the Arlington National Cemetery's Hemicycle and marked by 10 glowing glass spires.

The Women In Military Service Memorial Foundation hopes to register the nation's estimated 1.6 million servicewomen who have served from the Revolutionary War to the present. Their histories and photographs will be entered in a computer register that will be accessible to the memorial's visitors.

But the memorial still faces a few hurdles, spokeswoman Rae Lee said Friday.



Times photo by MICHAEL DINNEEN

Wilhelmina Daniels is registered for the Women's Veterans Memorial in Washington, D.C.

The foundation, headed by retired Air Force Brig. Gen. Wilma L. Vaught, is trying to raise \$15 million toward the memorial's construction and still must win approval of its design from three Washington committees, Lee said.

The memorial's establishing legislation expires in November, but legislation already has been introduced to extend the congressional mandate for two more years, she said.

Women veterans and their

families are being asked to contribute \$25 toward the registry, but registrations are accepted regardless of ability to pay, Lee said.

The foundation even has a toll-free number — 1-800-222-2294 — for registrations and contributions.

Carolyn Van Laar of Ketchikan is trying to locate Alaska's estimated 4,000 women vets.

Van Laar, herself a World War II vet who served as a Navy WAVE, is one of the memorial's

570 field representatives. She has kept busy lately, contacting television and radio stations to get public service announcements broadcast, getting announcements posted in retirement homes and organizing booths in a Ketchikan mall.

The search for women veterans has not been easy, Van Laar said.

"They're all hiding, but I'm finding them," the Ketchikan lodge owner said.

Anchorage Times, AK  
July 27, 1991

es: Ellipse hosts  
rk of weavers

2

age: David Petrucci  
ner theaters' fate

2

# Style

3

Names & Faces: South Africa  
to Michael Jackson: 'Bad!'

4

Weekend TV: Highlights  
and listings

scape

## Women's Memorial: Stunning Surprise

Arlington, It's a Splendid Addition, but Dollars Are Scarce as Deadline Looms

By Benjamin Forgey  
Washington Post Staff Writer

Women in Military Service for America Memorial, like so many others, has had its ups and downs. Conceived by a team of architects from New York, it started with a grand plan and ended up short, began high and ended low, originated as a series of verticals and finished as flat as a pancake—or the Washington skyline.

The ending is a happy surprise: As the design is approved by the Washington establishment, the design is approved and through a splendid one.

Originally situated at the entrance to Arlington National Cemetery, the memorial will, if built, constitute a significant addition to the city's catalogue of special places.

The if factors are big. After the second of two triumphant design review hearings this week, retired Air Force Brig. Gen. Wilma L. Vaught, president of the memorial foundation, pointed out that with \$1 million in hand, the foundation remains \$13 million short of the amount needed to build the structure. A congressionally mandated deadline looms. Vaught and colleagues have but 15 months to raise the hefty sum.

And despite congressional approval by the National Capital Planning Commission on Wednesday and the approval of the Fine Arts on Thursday, the design still faces preservation reviews. The federal Advisory Council on Historic Preservation and Virginia's historic preservation officer have yet to utter their critical judgments.

But the memorial clearly deserves broad support. Symbolically it is a perfect gesture in a proper place at a fitting moment.

Women have served this country in the military from the Revolutionary War to the present day, and have done so against major odds and obstacles. But their contributions have gone vastly underrecognized in the national pantheon that is Washington. By prominently honoring all who served, and not just this or that branch in this or that conflict, the memorial finally would correct a long-lasting mistake.

Aesthetically, the design is a gem. Encompassing the neoclassical, semicircular wall at the entrance to the cemetery, the memorial as designed by architects Marion Gail Weiss and Michael Manfredi would positively transform the wall and the space around it.

As it now stands, the 60-year-old retaining wall admirably if grandiloquently performs a single function: It is the end piece of the visual axis linking the Lincoln Memorial across Washington's prettiest bridge to the cemetery and Arlington House (the Custis-Lee Mansion) up above. The beauty and symbolic resonance of this view rarely fail to impress. Connecting north and south of a once-divided republic, the vista embodies the nation's profound collective memories and its high aspirations.

But the role of the granite hemicycle, with its blind niches and its tall central apse, is best appreciated from a distance. Up close, shrouded by haphazard plantings at its base, it is an unvisited and almost unvisitable dead space. Up very close, it is obvi-



Forgey finds the design for the Women in Military Service for America Memorial a perfect gesture in a proper place at a fitting moment.

STYLE, Page B1

ously a wreck, its heavy stones discolored and chipped, its joints caked with rock-hard calcified salts.

It may be, as Vaught believes, that the initial, competition-winning Weiss-Manfredi design did not receive a fair hearing. Featuring 10 39-foot-tall, translucent, inner-lit glass pylons set in an arc on the terrace atop the hemicycle, it was opposed from the outset by the National Park Service, Arlington Cemetery's caretaker, and the pylons were negotiated out of existence behind closed doors. Whether justified or not, this kind of opposition usually produces unsatisfactory design results, the sorts of compromises we've witnessed in the designs of the memorials to the veterans of the Vietnam and Korean wars.

Not this time. To their everlasting credit, Weiss and Manfredi jettisoned their disappointment and went back to basics, focusing again on the fundamental purposes of the memorial and their own deep responses to the site. The relative merits of the two designs are of course debatable, but the fortunate outcome is not. The revised design is sensitive, internally consistent and subtly poetic. It offers a wonderful opportunity to fix what is broken at this important spot, physically and symbolically.

In fact, it promises great improvement, changing a passive place to an active one, transforming a retaining wall into a handsome building facade, and resurrecting for public enjoyment an exhilarating view of monumental Washington, on the one side, and of the great cemetery on the other.

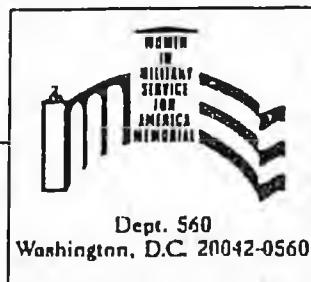
The crucial decision was to eliminate the pylons altogether, rather than to try some stubby in-between. Instead, the architects created a slightly tilted bank of cast-glass "pages" or "tablets," each inscribed with a fitting quotation from a woman veteran, and running the entire length of the high terrace behind the hemicycle. At the base of the hemicycle will be a paved "Court of Honor" with a centered, circular reflecting pool, framed by formal bosques of trees. Generous openings will be cut in the northern and southern extremities of the wall; behind the wall will be a curved gallery and a sequence of rooms—a 250-seat auditorium, a "register room" containing computerized information on individual veterans, a special exhibition hall and offices.

Water plays a major part. It will flow continuously over the tablets, symbolizing "singular voices," to be gathered as a "chorus of voices" in a sheetlike waterfall at the central apse, and from there to flow in a narrow channel into the reflecting pool, completing the story. Likewise, the role of light is intrinsic. The translucent pages will softly illuminate the interior spaces during the day; the shadowy inscriptions, moving in sundial fashion, will play mysteriously on interior surfaces. At night the subtly lit niches and pages will contribute a fitting new note to the stunning view from across the Potomac.

Critical to the success of the design is the idea of ascension. In a bold move, the architects propose to place stairwells in four of the hemicycle niches. If there is a stumbling block in the historic preservation review process, this is likely to be it—the stairwells are a major change. But the benefits are immense. These passages, visible through glass panels in the gallery, unify the space inside and outside. And they tie the memorial together bottom to top, thereby reclaiming that magnificent, still perspective up to Arlington House and the dynamic view back to the always moving city. Reviewers are strongly urged to consider the stairwells as a completion of the architecture, a brilliant, up-to-date realization of its full potential.

As to the comparative qualities of the two designs, well, something may have been lost in the change. The "candles," as the competition jurors so nicely called the pylons, possessed an undeniable, poetic power. They could have been lit oh-so-softly, like a necklace on the plush darkness of the Arlington hill.

But something definitely was gained. It's not simply that Vaught had the tactical sense to realize the argument would have gone on and on, though that she did. It's that Marion Weiss and Michael Manfredi, by rethinking the entire design, were able to produce a wholly satisfying substitute. The second design is safer than the first, in some particulars more unified, and, in all respects save one, as evocative.



## WOMEN IN MILITARY SERVICE FOR AMERICA MEMORIAL DESIGN CONCEPT

The Women in Military Service for America Memorial will honor all servicewomen, past and present. The data register, in the Memorial's educational center, will tell their stories of service, sacrifice, and achievement in the defense of our country.

The Memorial site, the main gate of Arlington National Cemetery, is defined by an existing hemicycle wall completed in 1932 by the renowned architectural firm of McKim, Meade & White.

A broad and simply landscaped plaza forms the front of the Memorial. The circular reflecting pool in the forecourt marks the beginning of the journey for the visitor. An amphitheater of stone terraces extends to the face of the hemicycle wall and connects to a public terrace above by a series of ascending stairs which pass through arches in the hemicycle wall, framing views into the cemetery and toward the city.

The upper public terrace is marked by an arc of glass "pages" bearing inscriptions by and about the women who have served. Their words are etched upon the individual pages of glass, bearing witness to the history of women's contributions from the American Revolution through Desert Storm. A number of pages will remain unmarked, awaiting the contributions of future generations.

During the day, the sunlight passing through the arc of glass will cast the shadow of the inscriptions onto the walls of the gallery in the Memorial Center behind the hemicycle wall. Like the shadow of a sundial, the shadow of quotes will change with every passing hour, marking the continuous passage of time.

A thin veil of water descending over the inscriptions "carries" their singular voices to a collecting pool behind the central niche; the "voices" pass together through the niche forming a collective voice symbolized by the sound of the falling water. These voices finally come to rest at the reflecting pool, signaling the completion of their story.

**HB**

**192**

8-LS0603\K  
Bannister  
3/31/93

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 192(STA)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**EIGHTEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE STATE AFFAIRS COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVE MULDER**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to construction contractors."**

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

3 **\* Section 1. AS 08.18.051 is amended by adding new subsections to read:**

4 (d) A person may not advertise for work in the state as a contractor unless the  
5 person has a current certificate of registration issued by the department under  
6 AS 08.18.011 for the type of contractor activity being advertised.

7 (e) In addition to the other requirements of this section, a contractor who  
8 advertises for work in the state by using a print or broadcast medium shall provide the  
9 publisher or producer of the medium with proof of the validity of the contractor's  
10 certificate of registration. In this subsection, "print or broadcast medium" does not  
11 include

12 (1) newspapers, magazines, journals, and other types of print media that  
13 are produced outside the state for distribution in more than one state; or

14 (2) broadcasts that originate outside the state.

1 (f) In this section, "advertise" includes

2 (1) the issuance of a card, sign, or device to a person;

3 (2) the causing, permitting, or allowing of a sign or marking on or in  
4 a vehicle or a building or other structure; and

5 (3) a notice in a directory, unless the notice is solely a name, address,  
6 and phone number listing under the classification of contractor.

7 \* Sec. 2. AS 08.18.141(a) is repealed and reenacted to read:

8 (a) Except as provided by AS 08.18.119, a person who violates a provision of  
9 this chapter is guilty of a violation. Notwithstanding AS 12.55.035(b) and (c), the  
10 maximum fine for each violation is \$10,000.

11 \* Sec. 3. AS 08.18.161 is amended to read:

12 Sec. 08.18.161. EXEMPTIONS. This chapter does not apply to [:]

13 (1) an authorized representative of the United States government, the  
14 State of Alaska, or a political subdivision or agency of the state;

15 (2) an officer of a court when acting within the scope of office;

16 (3) a public utility operating under the regulations of the public service  
17 commission in construction, maintenance, or development work incidental to its own  
18 business;

19 (4) a construction, repair, or operation incidental to the discovering or  
20 producing of petroleum or gas, or the drilling, testing, abandoning, or other operation  
21 of a petroleum or gas well or a surface or underground mine or mineral deposit when  
22 performed by an owner or lessee;

23 (5) the sale or installation of finished products, materials, or articles of  
24 merchandise that [WHICH] are not actually fabricated into and do not become a  
25 permanent, fixed part of a structure;

26 (6) construction, alteration, or repair of personal property;

27 (7) a person who only furnished materials, supplies, or equipment  
28 without fabricating them into, or consuming them in the performance of, the work of  
29 the contractor;

30 (8) work on one project under one or more contracts, the aggregate  
31 contract price of which for labor and materials and all other items is less than \$5,000

1           [\$10,000], this work being considered as of a casual, minor, or inconsequential nature;  
2           this exemption does not apply when the work is only a part of a larger or major  
3           operation, whether undertaken by the same or a different person [CONTRACTOR],  
4           or when the work is divided into contracts of amounts less than \$5,000 [\$10,000] for  
5           the purpose of evasion of this chapter or otherwise; this exemption does not apply to  
6           a person who advertises or puts out a sign or card or other device that [WHICH]  
7           might indicate to the public that the person is a contractor, or that the person is  
8           qualified to engage in the contracting business; a person [CONTRACTOR] who  
9           performs work priced at \$2,500 or more, under this exemption, shall nevertheless keep  
10          in force public liability and property damage insurance with coverage in at least the  
11          amounts set out in AS 08.18.101;

12                       (9) an owner who contracts for a project with a registered contractor;

13                       (10) a person working on that person's own property, whether occupied  
14          by the person or not, and a person working on that person's own residence, whether  
15          owned by the person or not;

16                       (11) an owner or tenant of commercial property who uses the owner's  
17          or tenant's own employees to do maintenance, repair, and alteration work upon that  
18          property;

19                       (12) an owner who acts as the owner's own contractor and in doing so  
20          hires workers on an hourly basis, hires subcontractors, purchases materials, and, as  
21          such, sees to the paying for all labor, subcontractors, and materials; in this case, the  
22          owner shall be limited to construction of one home, duplex, triplex, four-plex, or one  
23          commercial building per year;

24                       (13) a person performing construction work incidental to farming,  
25          dairying, agriculture, horticulture, stock or poultry raising, mining, logging, fishing,  
26          clearing, or other work upon the land in rural districts for fire prevention purposes, or  
27          access road building, unless the person is a licensee.

SSHB 192  
SPONSOR STATEMENT

OVERVIEW

House Bill 192, an Act relating to construction contractors, was introduced to try and eliminate abuses to contractor licensing in the State of Alaska. It came to my attention that there were several problems with illegal and improperly registered tradesman/contractors in Alaska. These illegal tradesman portray themselves as qualified contractors through advertising in newspapers or on the radio. This creates a few problems; one, these individuals do not have proper licenses, qualifications or insurance, which creates danger for the consumer, and; two, it creates a disadvantage to those tradesmen/contractors who pay a higher business cost to possess the insurance, license and bond qualifications necessary to meet state requirements.

In the past, the Department of Labor considered advertising as part of the work performed. Because a contractor could not legally perform work without a certificate of registration, the Dept. of Labor would enforce improper advertising by issuing Cease and Desist Orders or citations for improper Compliance and Registration. On February 14, 1992, the Court of Appeals for Alaska heard *State v. Alford* 825 P.2d 937 (Alaska App. 1992). This case ruled that advertising for work as a contractor **did not** come within the statutory prohibition against submitting a bid or working as a contractor without a certificate of registration. After this decision was issued, the Dept. of Labor discontinued the enforcement of improper advertising by non-contractors. House Bill 192 would add language to prohibit advertising for work by non-certified contractors in print or broadcast mediums that originate in Alaska.

House Bill 192 also alters the current "Handyman" exemption. Currently, this exemption allows individuals to perform work of a casual, minor or inconsequential nature as long as the aggregate contract price of the project (including labor, materials and all other items) does not exceed \$10,000. This exemption does not apply when the work is only part of a larger or major operation or when the work is divided into contracts of less than \$10,000 for the purpose of evasion of this statute. The individuals who qualify for this exemption are not allowed to advertise to indicate to the public that they are contractors.

The Division of Occupational Licensing estimates that there is a large abuse of this exemption (there are currently 2,000 business licenses that are under this classification). Abusers get the exemption from Occupational Licensing and then continue to operate and portray themselves as licensed contractors. These exempt businesses are not required to carry a surety bond, giving them an unfair advantage

over other certified specialty contractors and also cause concern for the consumer. House Bill 192 reduces the aggregate contract price allowed under this exemption from \$10,000 to \$5,000, narrowing the abuse of this exemption.

#### **WHAT HOUSE BILL 192 DOES**

House Bill 192 does three specific things: (1) prohibits individuals from advertising for work in the state as a contractor unless they have a current certificate of registration, and; (2) establishes a penalty to individuals who violate this by assessing a maximum fine of \$1000 for each violation, and; (3) lowers the aggregate contract price for what is termed the "handyman exemption" from \$10,000 to \$5,000.

This legislation is aimed at ridding the marketplace of the "fly-by-night" operators who pose a danger to the consumer and unfairly compete with properly licensed contractors. I feel that this is a worthwhile effort and I hope I can have your support.



Department of Transportation  
and Public Facilities

# POSITION PAPER

BILL NO: HB 192

APPROVED: *Handy Simon*

TITLE: Advertising by Unregistered  
Contractors

DATE: 3/12/93

Section 1 adds additional requirements to AS 08.18.051. Identification requirements that a person may not advertise for work as a contractor unless they have a current certification of registration and publishers may not publish advertisement unless the contractor's registration number is included.

Section 2 provides that the contractor is guilty of a misdemeanor if they violate this chapter.

Section 3 provides exemptions to the chapter. It is in this section that State of Alaska is listed.

It appears that the proposed bill would not have an impact on the department.

For Further Information contact Katy McHugh at 465-3900.

**FISCAL NOTE**

Revision Date:  
Title: Advertising by Unregistered Contractors

Department Affected: DOT&PF  
BRU: E&OS

Sponsor: Mulder  
Requestor:

Component: D&C  
Component Serial Number: 547

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

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

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

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL FUNDING:</b>	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: \$0

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

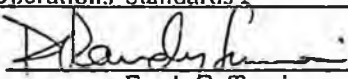
Section 3 of the proposed bill exempts the State of Alaska

Prepared by: Loren Rasmussen

Phone: 465-2960

Division: Engineering & Operations Standards

Date: March 9, 1993

Approved by Commissioner:   
Frank G. Turpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: March 12, 1993

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# FISCAL NOTE

**STATE OF ALASKA**  
**1993 LEGISLATIVE SESSION**

**BILL NO.**                      **HB 192**

Revision Date: \_\_\_\_\_ Dept. Affected: Commerce & Economic Development  
 Title: An Act relating to advertising by BRU: Occupational Licensing  
construction contractors. Component: Operations  
 Sponsor: Rep. Mulder  
 Requestor: House State Affairs COMPONENT SERIAL NO. 1844

**Expenditures/Revenues:** (Thousands of Dollars)

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

CAPITAL						
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REVENUE FUND SOURCE:	.0	.0	.0	.0	.0	.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						
<b>TOTAL</b>	.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 (FY 93) Impact: \$           None          

**ANALYSIS:** (Attach a separate page if necessary)  
 The bill requires publishers or producers of print or broadcast medium to obtain proof that a company holds a current license prior to publishing or broadcasting that the company is a construction contractor. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144  
 Division: Occupational Licensing Date: 3/19/93  
 Approved by Commissioner: Paul Fuhs Date: 3/19/93  
 Agency: Commerce & Economic Development

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# ALASKA STATE LEGISLATURE HOUSE OF REPRESENTATIVES

**REPRESENTATIVE ELDON MULDER**  
DISTRICT 23 MULDOON-FT. RICHARDSON

- CHAIR -  
LEGISLATIVE COUNCIL

- CO-CHAIR -  
HOUSE SPECIAL COMMITTEE ON  
MILITARY AND VETERANS AFFAIRS

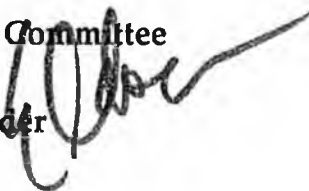
- CO-CHAIR -  
MILITARY AFFAIRS FOR  
ANCHORAGE CAUCUS

## MEMORANDUM

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**TO:** Representative Al Vezey  
Chair, House State Affairs Committee

**FROM:** Representative Eldon Mulder 

**SUBJ:** Hearing of HB 192

**DATE:** March 20, 1993

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---

I respectfully request that the House State Affairs Committee postpone the hearing HB 192, scheduled for Saturday, March 20, 1993. I have just been made aware of some technical problems with the bill and have requested a sponsor substitute. If you have any questions, please contact Howard Joyce at 3889. Thank you.

(7)

Date Referred: March 24, 1993

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 4-3-93

The STATE AFFAIRS Committee considered:

SSHB 192

SPON. SUB. FOR HOUSE BILL NO. 192

ADVERTISING BY UNREGISTERED CONTRACTORS

"An Act relating to construction contractors."

RECOMMENDATIONS: 55

the same title

be replaced with CSHB 192 (STA)

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

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

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

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

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

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

zero fiscal note \_\_\_\_\_

zero fiscal note(s) OUT OF 3/12/93  
CYED 3/19/93

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

*[Signature]*  
CHAIRMAN'S SIGNATURE

**HB**

**1966**

## SPONSOR STATEMENT

AS 39.25.159 currently establishes an employment preference for veterans. This preference, however, is limited by specific statutory language, as follows: "Except as provided in (c) of this section, a person who has been appointed, after receiving preference points under this subsection, to a permanent position in the classified service is not entitled to a further hiring preference under this subsection." SSHB 196 would eliminate this limitation.

Hiring preferences traditionally are justifiable as conducive to the achievement of several important state goals. Among those goals may be included the following:

- (a) Encouraging qualified men and women to volunteer for military duty;
- (b) Rewarding those men and women who, either as a result of enlistment or through conscription, sacrificed their time, effort, and sometimes their health, to protect those liberties and freedoms which Alaskans and all Americans hold dear;
- (c) Assisting veterans into making the oftentimes difficult transition from military to civilian status; and,
- (d) Securing for the State the services of men and women of proven discipline and integrity.

See Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256 (1979) for a discussion of the traditional goals of veterans preferences statutes.

It respectfully is submitted that the above articulated goals are desirable and proper for the State of Alaska. SSHB196 enhances Alaska's ability to achieve these important goals.

Alaska is facing uncertain economic times and a projected decline in revenues. Any given civil service position may be of very short duration. A veteran who uses his or her one-time preference in securing a position may quickly be without that position. When that occurs, the above mentioned state goals are not significantly advanced. These goals can not be achieved if the veteran, having once asserted the preference, is thereafter foreclosed from utilizing it again to secure employment. To more fully achieve state goals it therefore is necessary to remove the limitation now contained in the statute and permit veterans to re-assert their preference rights in

securing employment. SSHB 196 endeavors to accomplish that end,  
and it is heartily commended to you for your consideration.

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

March 10, 1993

**SUBJECT:** Sectional Summary of SSHB 196 (State employment preference for veterans and prisoners of war)

**TO:** Representative Pete Kott

**FROM:** Teresa B. Cramer *TBC*  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill is not considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

**Section 1** amends the existing state employment preference for veterans and prisoners of war to permit its use more frequently.

**Sec. 2** repeals a subsection of the existing state employment preference for veterans to conform to the changes made in sec. 1.

TBC:gc  
93-221.glc

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. SSHB 196

Revision Date: \_\_\_\_\_

Department Affected: Administration

Title: "State employment preference for veterans and prisoners of war."

BRU: Personnel/OEEO

Sponsor: Representative Kott

Component: Personnel/OEEO

Requestor: House Special Committee on Military and Veterans Affairs.

COMPONENT SERIAL NO. 56

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: Kevin Ritchie, Director  
Division: Personnel/OEEO

Phone: 465-4429  
Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usara  
Agency: Administration

Date: 3/12/93

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# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. SSHB 196

Revision Date: \_\_\_\_\_ Dept. Affected: DMVA  
 Title: State employment preference for BRU: NA  
veterans and prisoners of war Component: \_\_\_\_\_  
 Sponsor: Rep. Kott  
 Requestor: Rep. Kott 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						
TOTAL OPERATING						

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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)

Zero fiscal impact

Prepared by: Jeff Morrison, Director  
 Division: Administrative Support & Services  
 Approved by Commissioner: Hugh L. Cox III  
 Agency: Military & Veterans Affairs

Phone: 465-4730  
 Date: 15 Mar 93  
 Date: 3/15/93

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Alaska State Legislature  
House of Representatives

COMMITTEES:  
HEALTH, EDUCATION  
& SOCIAL SERVICES  
JUDICIARY  
STATE AFFAIRS

SPECIAL COMMITTEES:  
MILITARY & VETERANS AFFAIRS  
OIL & GAS




HOME:  
9843 CHICHAGOF LOOP  
EAGLE RIVER, AK 99577  
PHONE (907) 694-7943

DURING SESSION:  
STATE CAPITOL  
JUNEAU, AK 99811  
PHONE (907) 465-3777

Representative Pete Kott

DATE:: March 18, 1993

TO: Representative Al Vezey  
Chairman  
House State Affairs Committee

FROM: Representative Pete Kott 

RE: Request for Hearing  
Sponsor Substitute House Bill 196

I respectfully request that Sponsor Substitute House Bill 196 be set on for a hearing before the House State Affairs Committee as soon as possible.

SS HB 196 modifies existing law in Alaska to enhance veterans employment preference rights.

Please find enclosed herewith the following:  
Sponsor Substitute House Bill 196  
Sponsor Statement  
Fiscal Notes:  
Administration  
Military and Veterans Affairs  
Sectional Analysis

Thank you in advance for your kind assistance in this matter.



**HB**

**197**

SPONSOR STATEMENT  
HB 197

"An Act making an appropriation to the Alyeska Settlement Fund and making appropriations from the Alyeska Settlement Fund; and providing for an effective date."

House Bill 197 appropriates \$28,200,00 from the Alyeska Settlement Fund as stipulated under the Agreement and Consent Decree dated November 25, 1992.

The blackmail clauses on page 11 and page 12 necessitates that action be taken this session.

This is a very simple bill that merely appropriates, as defined, the funds.

\*\*\*\*\*

It should be noted that the original agreement totaled \$31,700,000. Of that amount, HB 197 appropriates \$28,200,000. Upon the Funding Date, Alyeska paid the federal government \$2,000,000 for expenses incurred and paid the State \$1,500,000 for 1989 tax revenues under AS 43.75 (Fisheries Business Tax), which would be refunded to local governments under AS 43.75.130. (SLA 92, Ch. 111).

**FISCAL NOTE**

Revision Date:  
Title: Approp: Alyeska Settlement

Department Affected: DOT&PF  
BRU:

Sponsor: Olberg  
Requestor:

Component:  
Component Serial Number:

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

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

CAPITAL	20,500.0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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**FUNDING: (Thousands of Dollars)**

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	20,500.0	0	0	0	0	0
<b>TOTAL FUNDING:</b>	20,500.0	0	0	0	0	0

**POSITIONS**

FULL-TIME	1	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)**

Prepared by: Norm Piispanen

Phone: 451-2385

Division: Northern Region Planning

Date: March 15, 1993

Approved by Commissioner: 

Phone: 465-3901

Frank G. Turpin

Agency: Department of Transportation and Public Facilities

Date: March 15, 1993

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*Department of Transportation  
and Public Facilities*

# POSITION PAPER

BILL NO: HB 197

APPROVED: *[Signature]*

TITLE: Approp: Alyeska Settlement

DATE: March 15, 1993

DOT&PF supports appropriation for construction of a road from Cordova to Shepard Point. The proposed road to Shepard Point would serve the additional purposes of access to community expansion land and access to a future port. The port, when developed, would enhance marine access to Cordova, as well as to eastern Prince William Sound. Ultimately the road and port would serve the tourist industry, the fishing industry, the timber industry, and the general Cordova Community. DOT&PF is neutral on the construction of storage facilities, acquisition of equipment, and the purchase of inholdings.

*For Further Information contact Katy McHugh at 465-3904.*



UNITED STATES OF AMERICA,

Plaintiff,

v.

EXXON CORPORATION, EXXON SHIPPING  
COMPANY, EXXON PIPELINE COMPANY,  
ALYESKA PIPELINE SERVICE  
COMPANY, AMERADA HESS PIPELINE  
CORPORATION, ARCO PIPE LINE COMPANY,  
MOBIL ALASKA PIPELINE COMPANY,  
PHILLIPS ALASKA PIPELINE CORPORATION,  
BP ALASKA PIPELINES, INC., and  
UNOCAL ALASKA PIPELINE  
COMPANY, in personam, and the  
T/V EXXON VALDEZ, in rem,

Defendants.

Case No. A91-082 CIV

AGREEMENT AND  
CONSENT DECREE

AGREEMENT AND CONSENT DECREE

This Agreement and Consent Decree (this "Agreement") is made and entered into by the State of Alaska (the "State") and the United States of America (the "United States") (collectively referred to as the "Governments"), on the one hand, and Alyeska Pipeline Service Company ("Alyeska"), Amerada Hess Pipeline Corporation, ARCO Transportation Alaska, Inc., formerly known as ARCO Pipe Line Company, BP Pipelines (Alaska), Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company (collectively, except for Alyeska, referred to as the "Alyeska Owner Companies"), on the other hand.

Introduction

Late in the evening of March 23 or early in the morning of March 24, 1989, the T/V EXXON VALDEZ, owned by Exxon Shipping

AGREEMENT AND CONSENT DECREE

[52946.1]

2Company, went aground on Bligh Reef in Prince William Sound, Alaska. As a result of the grounding, several of the vessel's cargo tanks ruptured and approximately 11 million gallons of crude oil owned by Exxon Corporation spilled into Prince William Sound (hereinafter as further defined in Paragraph 6(g), the "Oil Spill").

Alyeska responded to the Oil Spill pursuant to its 1987 Contingency Plan. Prior to the Oil Spill, Alyeska's 1987 Contingency Plan had been submitted to and approved by the State as being in compliance at the time of approval with all applicable statutes and regulations, including without limitation AS 46.04, and the Right-Of-Way Lease for Trans-Alaska Pipeline with the State, including all Stipulations thereto. In addition, prior to the Oil Spill, Alyeska's 1987 Contingency Plan had been submitted to and approved by the United States as being in compliance at the time of approval with all applicable federal statutes and regulations, including without limitation 43 U.S.C. §§ 1651 et seq., and the Grant and Agreement of Right-of-Way for Trans-Alaska Pipeline with the United States, including the Stipulations thereto.

In August 1989, the State filed an action in the Superior Court for the State of Alaska, Third Judicial District, identified as State of Alaska v. Exxon Corporation, et al., Civil No. 3AN-89-6852, against, inter alia, Alyeska and the Alyeska Owner Companies, asserting claims arising from the Oil Spill. Alyeska and the Alyeska Owner Companies asserted counterclaims

against the State in that action. Exxon Pipeline Company subsequently stipulated to the dismissal with prejudice of its counterclaim. In February 1992, that action was removed to the United States District Court for the District of Alaska, and in August 1992, the State's motion to remand was denied except with regard to the remaining counterclaim filed against the State, which was remanded to the Superior Court. Thus, with the exception of the counterclaim filed against the State (hereinafter the "Alyeska Counterclaim"), the action now is pending in the United States District Court for the District of Alaska, where it has been assigned Case No. A92-175 CIV (hereinafter the "State Action").

On March 13, 1991, the United States filed a complaint in the United States District Court for the District of Alaska against, inter alia, Alyeska and the Alyeska Owner Companies, asserting civil claims relating to or arising from the Oil Spill (hereinafter the "U.S. Action"). Exxon Pipeline Company asserted counterclaims against the United States in its response to the United States' complaint in the U.S. Action. The counterclaim of Exxon Pipeline Company was dismissed with prejudice on January 15, 1992. The U.S. Action remains pending against Alyeska and the Alyeska Owner Companies.

The parties to this Agreement recognize and acknowledge (1) that the payments called for in this Agreement are compensatory and remedial in nature and do not include any payment for or in consideration of claims for punitive damages, the Governments

having concluded, based on consideration of their claims, that an award to the Governments of punitive damages would not be sought, (2) that the payments are made to the Governments in response to their pending civil claims for compensatory damages and other civil relief against Alyeska and the Alyeska Owner Companies arising from the Oil Spill, (3) that the monies paid by Alyeska pursuant to this Agreement are to compensate the State for damages suffered as the result of the Oil Spill, and (4) that the projects to be funded with these monies are not undertaken to fulfill requirements of state law.

NOW, THEREFORE, the parties hereto agree and stipulate, and it is hereby ORDERED, ADJUDGED, AND DECREED, as follows:

Jurisdiction

1. The Court has jurisdiction over the subject matter of the claims set forth in the State Action and the U.S. Action and over the parties to this Agreement pursuant to, among other authorities, 28 U.S.C. §§ 1331, 1333 and 1345. This Court has personal jurisdiction over the State of Alaska, which solely for the purposes of this Agreement, waives all objections and defenses that it may have to the jurisdiction of this Court, including all objections and defenses to the jurisdiction of this Court it may have asserted previously.

Parties

2. "United States" means the United States of America, in all its capacities, including as public trustee and parens patriae, and including all departments, divisions, independent

boards, administrations, natural resource trustees, and agencies of the federal government.

3. "State" means the State of Alaska, in all its capacities, including as public trustee and parens patriae, and including all departments, divisions, independent boards, administrations, natural resource trustees, and agencies of the state government.

4. "Alyeska" means Alyeska Pipeline Service Company.

5. "Alyeska Owner Companies" means Amerada Hess Pipeline Corporation, ARCO Transportation Alaska, Inc., formerly known as ARCO Pipe Line Company, BP Pipelines (Alaska), Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company.

#### Definitions

6. Whenever the following capitalized terms are used in this Agreement, they shall have the following meanings:

(a) "TAPL Fund" means the Trans-Alaska Pipeline Liability Fund, a federally chartered corporation, organized and existing under the laws of the State of Alaska.

(b) "Joint Trust Fund" means the trust fund established by the Memorandum of Agreement and Consent Decree between the State and the United States entered in August 1991 in United States of America v. State of Alaska, Civil Action No. A91-081 CIV.

(c) "Natural Resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and

RR. PEASE  
& KURTZ  
CONSULTING CORPORATION  
810 N STREET  
ORANGE, AK 99801  
(907) 276-6100

other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976, 16 U.S.C. §§ 1801 et seq.), the State, or both the United States and the State.

(d) "Natural Resource Damages" means compensatory and remedial relief recoverable by the Governments in their capacity as trustees of Natural Resources on behalf of the public for injury to, destruction of, or loss of any and all Natural Resources resulting from the Oil Spill, whether under the Clean Water Act, 33 U.S.C. §§ 1251, et seq., the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. §§ 1651, et seq., or any federal or state statute or maritime or common law relating to the environment, including (1) costs of damage assessment, (2) compensation for loss, injury, impairment, damage or destruction of Natural Resources, whether temporary or permanent, or for loss of use value, non-use value, option value, amenity value, bequest value, existence value, consumer surplus, economic rent, or any similar value of Natural Resources, and (3) costs of restoration, rehabilitation or replacement of injured Natural Resources or the acquisition of equivalent resources.

(e) "Party" or "Parties" means Alyeska, the Alyeska Owner Companies and each of them, the United States, and the State, or any of them.

R. PEASE  
KURTZ  
SIONAL CORPORATION  
O N STREET  
AGE, AK 99501  
) 276-6100

(f) "Exxon Consent Decree" means the Agreement and Consent Decree entered in State of Alaska v. Exxon Corporation, et al., Case No. A91-083 CIV, and in United States of America v. Exxon Corporation, et al., Case No. A91-082 CIV, and approved by this Court on October 8, 1991.

(g) "Oil Spill" means the occurrence described in the first paragraph of the Introduction above, and all consequences caused by or arising from that occurrence, including, without limitation, response, cleanup, damage assessment and restoration activities.

(h) "Effective Date" shall mean the earliest date on which all Parties have signed this Agreement.

(i) "Final Approval" shall mean the earliest date on which all of the following have occurred: (1) the Court has approved and entered this Agreement as a judgment, without modification materially adverse to any Party prior to or at the time of approval; and (2) the time for appeal from that judgment has expired without the filing of an appeal, or the judgment has been upheld on appeal and either the time for further appeal has expired without the filing of a further appeal or no further appeal is allowed.

(j) "Funding Date" means the later of (1) 10 days after Final Approval, or (2) 10 days after the receipt by Alyeska of both (i) written instructions as to payment consistent with Paragraphs 11 - 14 of this Agreement signed jointly by the Attorney General of the State of Alaska and the Assistant

Attorney General, Civil Division, of the United States Department of Justice, and (ii) written certification by the Attorney General of the State of Alaska of the establishment of a separate expendable trust fund within the State's Treasury ("Alyeska Settlement Fund") to receive and hold those settlement proceeds designated by Paragraphs 11 and 12 of this Agreement to be paid into this separate fund pending disbursement pursuant to the terms of this Agreement.

Effect of Entry of Decree

7. Upon approval and entry of this Agreement by this Court, this Agreement and Consent Decree constitutes a final judgment between the Governments, on the one hand, and Alyeska and the Alyeska Owner Companies, on the other hand, in accordance with its terms.

Description of Projects and Establishment of Separate Fund

8. The State shall establish the Alyeska Settlement Fund for the purpose of receiving, holding and disbursing certain of the settlement proceeds to be paid hereunder. The monies shall be deposited into the Alyeska Settlement Fund pursuant to the terms of this Agreement and shall be disbursed solely for the following purposes and subject to the following allocations:

(a) \$14,500,000 for the construction of response storage facilities and docks at Tatitlek and Chenega and the pre-positioning of oil spill response equipment at both locations, as described in more detail in Appendix A hereto;

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(b) \$6,000,000 for the construction of a road from Cordova to Shepard Point and, when appropriate, for work related to the construction of a response storage facility and the pre-positioning of oil spill response equipment at that location, as described in more detail in Appendix B hereto;

(c) \$7,500,000 for the acquisition of land to be included in and made a part of the Kachemak Bay State Park, as described in more detail in Appendix C hereto; and

(d) \$200,000 for the acquisition and installation by the State of communications equipment to be owned by the State, and to be used by the United States Coast Guard and the State and to be installed at the Valdez Emergency Operations Center ("VEOC") when it is constructed, with \$120,000 of the \$200,000 allocated for equipment to be selected and used by the United States Coast Guard and \$30,000 of the \$200,000 allocated for equipment to be selected and used by the State, as described in more detail in Appendix D hereto.

9. (a) The projects described in subparagraphs (a) and (b) of the preceding paragraph ("response projects") are intended to enhance the capability to respond in the event of future oil spills or other catastrophic events in Prince William Sound, as is the project described in subparagraph (d) of the preceding paragraph.

(b) The allocations of settlement proceeds to the response projects as described in the preceding paragraph are based on good faith estimates and are preliminary only. If the

*FUNSHALE* →

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actual costs of a specific response project are less than the allocated sum, together with interest, if any, earned on the allocated sum after monies are received by the State, the excess funds may be used to pay for any of the other response projects whose actual cost may exceed the initial estimate. If the actual costs of the response projects are less than the combined allocation of \$20,500,000, then the excess funds will be paid into the Joint Trust Fund.

(c). The response projects will require further detailed planning and are subject to various land acquisition issues and state and federal permitting requirements that have yet to be resolved. Subject to an appropriation by the Alaska State Legislature, the State will make a good faith effort to design, construct and complete the response projects. If the Attorney General of the State of Alaska determines that either of the response projects is impossible or impracticable for any reason, including the fact that the revised estimated cost would exceed the allocation (and other identified sources of funding, if any) or that the State is unable to obtain appropriate permits or acquire appropriate sites, the funds allocated for that particular response project will be treated as excess funds under subparagraph (b) above. If either of the response projects is rendered impossible because appropriations from the Alyeska Settlement Fund for the purposes specified are not enacted on or before September 15, 1993, then the monies not appropriated will be treated as excess funds under subparagraph (b) above.

will be 17

(d) If the acquisition of land described in subparagraph (c) of the preceding paragraph is rendered impossible either because of the inability of the interested parties to finalize a purchase and sale, the lack of sufficient additional sources of funding, or otherwise, the funds allocated for this project will be paid into the Joint Trust Fund. If the acquisition is rendered impossible because these funds have not been appropriated for the purpose specified by December 31, 1993, the funds allocated for this project will be paid into the Joint Trust Fund.

(e) If the acquisition and installation of communications equipment described in subparagraph (d) of the preceding paragraph costs less than the money allocated for that project, the balance remaining shall be paid into the Joint Trust Fund. If the acquisition and installation is rendered impossible because these funds have not been appropriated for the purpose specified by December 31, 1995, the funds allocated for this project will be paid into the Joint Trust Fund.

(f) The State will have final authority and responsibility for the design, specification and implementation of the response projects. The State will have final authority to utilize the funds allocated to the acquisition project described in subparagraph (c) of the preceding paragraph. The United States will have final authority to select communications equipment for use by the United States Coast Guard, as described in subparagraph (d) of the preceding paragraph, up to \$120,000;

and the State will have final authority to select communications equipment for use by the State, as described in subparagraph (d) of the preceding paragraph, up to \$80,000.

Payment Terms

10. The payments to be made by Alyeska pursuant to the terms of this Agreement total \$31,700,000. The payments shall be made in accordance with the provisions and schedules set forth below.

11. Payments with respect to the projects described in Paragraphs 8(a), 8(b) and 8(c) above shall be made in accordance with the following provisions:

(a) Alyeska shall pay \$28,000,000 into the Alyeska Settlement Fund in accordance with the following schedule:

- (1) \$4,500,000 shall be paid on the Funding Date;
- (2) \$10,500,000 shall be paid on the first anniversary of the Funding Date; and
- (3) \$13,000,000 shall be paid on the second anniversary of the Funding Date.

(b) If, at any time prior to the second anniversary of the Funding Date, there should be insufficient funds in the Alyeska Settlement Fund to enable payments to be made which are necessary in order for these projects to proceed, the State may give written notice to Alyeska of the amount of the shortfall and Alyeska shall, within 30 days of its receipt of that notice, deposit in the Alyeska Settlement Fund the amount of that

shortfall; provided, however, that in no event shall Alyeska be required to contribute more than \$28,000,000 to the Alyeska Settlement Fund with respect to these particular projects. In the event any accelerated payments are requested and made pursuant to the provisions of this subparagraph, Alyeska shall be entitled to deduct the amount of each accelerated payment from the next payment due under the payment schedule set forth in subparagraph (a) above.

12. Upon the Funding Date, Alyeska shall pay into the Alyeska Settlement Fund the sum of \$200,000 to be used as described in Paragraph 8(d) above.

13. Upon the Funding Date, Alyeska shall pay to the State the sum of \$1,500,000 for 1989 tax revenues under AS 43.75 (Fisheries Business Tax), which would be refunded to local governments under AS 43.75.130. This sum shall be in addition to any amount which has been or will be allowed to any party by the TAPL Fund and shall not be used by the TAPL Fund as an offset against claims by any party for such tax revenues.

14. Upon the Funding Date, Alyeska shall pay to the United States, or to such other person or persons as the United States may direct, the sum of \$2,000,000 for expenses incurred by the United States in response to the Oil Spill which would have been subject to reimbursement from the Joint Trust Fund.

Other Consideration

15. Alyeska and the Alyeska Owner Companies previously have committed to build the VEOC either within the City of Valdez at

the Valdez Port or at the Alyeska Terminal. Alyeska and the Alyeska Owner Companies hereby reaffirm that commitment. In addition to that undertaking, Alyeska and the Alyeska Owner Companies commit as follows:

(a) Subject to Alyeska obtaining the necessary permits, approvals and leases, and subject to Alyeska being able to obtain a suitable parcel of real property, the VEOC will be constructed in the City of Valdez, at a presently estimated approximate cost of \$14,000,000, and not at the Alyeska Terminal;

(b) The VEOC will include a reasonable amount of space for the United States Coast Guard and State of Alaska communications center in which the equipment to be purchased by the Governments as contemplated by Paragraph 8(d) will be located;

(c) The VEOC will be designed to support the Ship Escort Response Vessel System ("SERVS"), which will remain based in Valdez;

(d) The VEOC will be designed so that it can be used to provide oil spill response training; and

(e) Subject to Alyeska obtaining the necessary permits, approvals and leases, and subject to Alyeska being able to obtain a suitable parcel of real property, the construction of the VEOC will begin no later than June 1, 1994.

Releases and Covenants Not to Sue by the Governments

16. Effective upon Final Approval, the Governments, in addition to the releases contained in Paragraphs 15 and 23 of the

Exxon Consent Decree, release and covenant not to sue or to file any administrative claim against Alyeska, the Alyeska Owner Companies, or their parents or affiliates with respect to any and all civil claims relating to or arising from the Oil Spill, including claims for any civil relief of a compensatory and remedial nature which have been or may be asserted by the Governments, or either of them, including without limitation any and all civil claims under all federal or state statutes and implementing regulations, common law or maritime law, that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on: (1) any of the civil claims asserted in the State Action, including a claim for tax revenues which would have been or would be collected under existing AS 43.75 but for the Oil Spill, (2) any of the civil claims asserted in the U.S. Action, or (3) any other civil claims that could be asserted by either or both of the Governments against Alyeska, the Alyeska Owner Companies, or their parents or affiliates relating to or arising from the Oil Spill; provided, however, that nothing in this Agreement shall affect or impair the following:

(a) claims by either Government to enforce this Agreement;

(b) claims by the State against the TAPL Fund for tax revenues which would have been or would be collected under existing AS 43.75 (Fisheries Business Tax) but for the Oil Spill;

(c) exclusively private claims, if any, by Alaska Native Villages and individual Alaska Natives, other than claims for Natural Resource Damages, seeking damages for private harms to Native subsistence well being, community, culture, tradition and way of life resulting from the Oil Spill, including private claims for private harms to Alaska Native Villages and individual Alaska Natives resulting from the impairment, destruction, injury or loss of Natural Resources caused by the Oil Spill and any other exclusively private claims that are available to Alaska Native Villages and individual Alaska Natives; and

(d) exclusively private claims, if any, by Alaska Native Corporations, other than claims for Natural Resource Damages, seeking damages for private harms resulting from injuries caused by the Oil Spill to lands in which a Native Corporation holds any present right, title, or interest, including private claims for lost or diminished land values, for preservation, protection and restoration of archaeological or cultural resources and archaeological sites found on the lands described in this subparagraph, for private harms resulting from injuries to Natural Resources found on lands described in this subparagraph, for impairment of riparian or littoral rights, if any, and any other claims that are available to Alaska Native Corporations as private landowners: provided, however, that such claims shall not include any claims based upon injuries to tidelands or submerged lands.

17. The State acknowledges that certain entities in addition to the State have asserted a right to recover tax revenues which would have been or would be collected under existing AS 43.75. However, it is the State's legal position that it is the only entity which possesses any claim under existing AS 43.75 and that it is the only entity which is authorized or entitled to pursue a claim under existing AS 43.75.

18. Effective upon Final Approval, each of the Governments covenants not to sue any present or former director, officer, or employee of Alyeska or the Alyeska Owner Companies with respect to any and all civil claims or other civil remedies of a compensatory or remedial nature which have been or may be asserted by the Governments, including without limitation any and all civil claims under all federal or state statutes and implementing regulations, common law or maritime law, that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on the Oil Spill, including, without limitation, claims arising from any of the subject matter underlying the civil claims asserted in the State Action or the U.S. Action; provided, however, that if any such present or former director, officer, or employee brings any action against the Governments, or either of them, for any claim whatsoever arising from or relating to the Oil Spill (or if an action against the Governments is pending at the time of Final Approval, and the director, officer, or employee fails to dismiss the action within 15 days of Final Approval), this covenant not to

sue shall be null and void with respect to the director, officer, or employee bringing such action. In the event either Government obtains a judgment against any present or former director, officer, or employee of Alyeska or the Alyeska Owner Companies for liability relating to or arising from the Oil Spill, the Governments shall enforce the judgment only to the extent that the individual or individuals against whom the judgment was obtained are able to satisfy the judgment, without indemnification by Alyeska or the Alyeska Owner Companies, personally or through insurance policies purchased by the individual or individuals.

Releases and Covenants Not To Sue

by Alyeska and Alyeska Owner Companies

19. Effective upon Final Approval, Alyeska and the Alyeska Owner Companies release and covenant not to sue or to file any administrative claim against each of the Governments and their current or former employees with respect to any and all claims relating to or arising from the Oil Spill, including without limitation, claims for Natural Resource Damages and cleanup costs, under federal or state statutes and implementing regulations, common law or maritime law, that arise from, relate to, or are based on: (a) the Alyeska Counterclaim; or (b) any other civil claims that have been or could be asserted by Alyeska or the Alyeska Owner Companies against either of the Governments relating to or arising from the Oil Spill, except that nothing in

this Agreement shall affect or impair the rights of Alyeska or the Alyeska Owner Companies to enforce this Agreement.

Dismissal of Actions and Claims

20. Not later than 15 days after Final Approval, each of the claims relating to or arising from the Oil Spill and asserted by the State and/or the United States against Alyeska, the Alyeska Owner Companies, Exxon Corporation or Exxon Shipping Company, including the claims asserted in the State Action, the U.S. Action and as third-party claims in various other lawsuits, and all claims relating to or arising from the Oil Spill and asserted by Alyeska and the Alyeska Owner Companies against the State, including the Alyeska Counterclaim, shall be dismissed with prejudice and without an award of costs or attorneys fees to any Party. Alyeska, the Alyeska Owner Companies, the United States, and the State shall enter into and execute all Stipulations of Dismissal, with prejudice, necessary to implement the provisions of this paragraph.

Trans-Alaska Pipeline Liability Fund

21. The release in Paragraph 19 shall not be construed to bar any claim by Alyeska or the Alyeska Owner Companies against the TAPL Fund relating to or arising from the Oil Spill. If the TAPL Fund asserts any claims against the Governments that are based upon subrogation rights arising from any monies paid to Alyeska or the Alyeska Owner Companies by the TAPL Fund, Alyeska and the Alyeska Owner Companies agree to indemnify and hold the Governments harmless from any liability that they have to the

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TAPL Fund based on such claims. However, the foregoing indemnity (a) shall not be enforceable with respect to any amount in excess of value actually received by Alyeska or the Alyeska Owner Companies from the TAPL Fund, and (b) shall be enforceable only if the Governments assert in good faith all defenses they may have to such claims.

#### Third Party Litigation

22. (a) Except as provided in subparagraph (b) of this paragraph, if any person or entity not a party to this Agreement ("Third Party") asserts a claim relating to or arising from the Oil Spill in any present or future litigation against Alyeska or the Alyeska Owner Companies and the Governments, or against Alyeska or the Alyeska Owner Companies and either the United States or the State, each of these sued Parties ("Sued Parties") shall be responsible for and will pay its share of liability, if any, as determined by the proportional allocation of liability contained in any final judgment in favor of such Third Party, and no Sued Party shall assert a right of contribution or indemnity against any other Sued Party. However, notwithstanding any other provision of this Agreement, the Sued Parties may assert any claim or defense against each other necessary as a matter of law to obtain an allocation of liability among the Sued Parties in a case under this paragraph. Any such actions between or among the Sued Parties shall be solely for the purpose of allocating liability, if any. The Sued Parties shall not enforce any judgment against each other in such cases. Further,

notwithstanding any other provision of this Agreement, the Sued Parties may seek indemnification or contribution from any other party to the action or from any third party (including Exxon Corporation and Exxon Shipping Company), other than one of the Sued Parties, and the rights of the Alyeska Owner Companies to reallocate costs among themselves or to seek indemnification or contribution from each other shall not be affected in any way by this Agreement.

(b) If any person or entity, other than the TAPL Fund, asserts claims against the Governments, or either of them, that are based upon contribution or indemnity or any other theory of recovery over against the Governments arising from any liability of or payment by said person or entity to Alyeska or the Alyeska Owner Companies relating to or arising from the Oil Spill or based upon subrogation rights arising from any monies paid to Alyeska or the Alyeska Owner Companies, Alyeska shall indemnify and hold the Governments harmless from any liability that the Governments have to such person or entity based on such claims. The foregoing indemnity (i) shall not be enforceable with respect to any amount in excess of value actually received by Alyeska or the Alyeska Owner Companies, and (ii) shall be enforceable only if the Governments assert in good faith all defenses they may have to such claims.

23. Neither Alyeska nor the Alyeska Owner Companies shall assert any right of contribution or indemnity against either Government in any action relating to or arising from the Oil

Spill where that respective Government is not a party. Neither Government shall assert any right of contribution or indemnity against Alyeska or the Alyeska Owner Companies in any action relating to or arising from the Oil Spill where Alyeska or the Alyeska Owner Companies are not parties, except that either Government may assert against Alyeska and the Alyeska Owner Companies the rights to indemnification as expressly provided in Paragraph 21.

24. Any liability which Alyeska or the Alyeska Owner Companies incur as a result of a suit by a Third Party, as described in Paragraphs 22 or 23, shall not be attributable to or serve to reduce the payments required to be paid by Alyeska pursuant to Paragraphs 11 - 14.

25. The Parties agree that they will not tender each other to any Third Party as direct defendants in any action relating to or arising from the Oil Spill pursuant to Rule 14(c) of the Federal Rules of Civil Procedure.

26. If a Third Party, which previously has reached or hereafter reaches a settlement with Alyeska or the Alyeska Owner Companies, brings an action against the Governments, or either of them, the sued Government(s) shall undertake to apportion liability, if any, according to principles of comparative fault without the joinder of Alyeska or the Alyeska Owner Companies, and shall assert that joinder of Alyeska or the Alyeska Owner Companies is unnecessary to obtain the benefits of allocation of fault. Notwithstanding any other provision of this Agreement, if

the court rejects the sued Government(s)' efforts to obtain a proportional allocation of fault without Alyeska or the Alyeska Owner Companies' joinder, the sued Government(s) may institute third-party actions against Alyeska or the Alyeska Owner Companies solely for the purpose of obtaining allocation of fault. The Governments in such third-party actions shall not enforce any judgment against Alyeska or the Alyeska Defendants.

27. If a Third Party, which previously has reached or hereafter reaches a settlement with the Governments, or either of them, brings or pursues an action against Alyeska or the Alyeska Owner Companies, or any of them (collectively, the "Alyeska Defendants"), the Alyeska Defendants shall undertake to apportion liability, if any, according to principles of comparative fault without the joinder of either of the Governments, and shall assert that joinder of the Governments, or either of them, is unnecessary to obtain the benefits of allocation of fault. Notwithstanding any other provision of this Agreement, if the court rejects the Alyeska Defendants' efforts to obtain a proportional allocation of fault without joinder of the Governments, or either of them, the Alyeska Defendants may institute third-party actions against the Governments, or either of them, solely for the purpose of obtaining allocation of fault. The Alyeska Defendants in such third-party actions shall not enforce any judgment against the Governments.

### Effect on TAPS Tariff

28. Solely for the purpose of resolving the issues in dispute in this litigation over the Oil Spill and without in any way conceding that the monies paid pursuant to this Agreement are not properly included in the tariff rates charged for the use of the Trans-Alaska Pipeline System, the Alyeska Owner Companies agree that the payments made under the terms of this Agreement shall not be included, directly or indirectly, in the tariff rates charged by the Alyeska Owner Companies for the use of the Trans-Alaska Pipeline System. Notwithstanding the foregoing, the Alyeska Owner Companies reaffirm that it is their belief that such amounts would properly be included in the tariff rates charged and that they are agreeing not to include such amounts only as part of the compromise and settlement reflected in this Agreement. The State acknowledges that the compromise and agreement set forth in this paragraph will not be used in any other action or proceeding or otherwise urged as precedent that monies paid in settlement of litigation are not properly included in the tariff rates charged for the use of the Trans-Alaska Pipeline System.

### Interest for Late Payments

29. If the payments required by Paragraphs 11 - 14 of this Agreement are not made by the dates specified, Alyeska shall be liable to the Governments for interest on the overdue amount, from the time payment was due until full payment is made, at the rate established by the Department of the Treasury under 31

U.S.C. § 3717(a)(1) and (2). Interest on an overdue payment shall be paid in the same manner as the payment on which it accrued.

#### Reservations of Rights

30. This Agreement is the result of a compromise and does not constitute an admission of liability by any Party to this Agreement. Except as expressly stated in this Agreement, each Party reserves against all persons or entities all rights, claims or defenses available to it relating to or arising from the Oil Spill. Except as expressly stated in this Agreement, nothing in this Agreement is intended to affect legally the claims, if any, of any person or entity not a Party to this Agreement.

31. Nothing in this Agreement creates, nor shall it be construed as creating, any claim in favor of any person not a Party to this Agreement.

32. Except as explicitly stated herein, nothing in this Agreement alters, amends, modifies, or, in any way, affects the legal rights and duties of the Governments, on the one hand, and Alyeska or the Alyeska Owner Companies, on the other hand, under the Exxon Consent Decree.

33. Nothing in this Agreement alters, amends, modifies, or, in any way, affects the legal rights and duties under the following judgments or agreements:

(a) the Memorandum of Agreement and Consent Decree entered into between the United States and the State in United