ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672 425

8160 HOUSE STATE AFFAIRS

aggrieved by the DNR's decision to lease tracts of land in Sale 75A. In addition, Trustees did not participate in DNR's administrative proceedings for Sale 75A.

First, Trustees lacked standing to challenge DNR's decision to proceed with Sale 75A because Trustees suffered no actual injury as a result of DNR's decision to lease tracts of land in the sale area. In their points on appeal filed with the superior court, Trustees maintained they were organizations "concerned about sustaining the many values of the region, including the cultural, fish, wildlife, scenic and other values." This abstract concern, however, is not a special damage different in kind from that of the public generally, and it is not the concrete personal injury required by the Court to establish that Trustees were factually aggrieved by DNR's decision to offer the Sale 75A lands for lease.

With respect to the members of the appellant organizations, Trustees' only claim was that their members use and enjoy the sale area for a variety of purposes such as recreation, cultural activities, hunting, fishing, wildlife observation and scientific studies. <u>However, the surface estate of the Sale 75A area is private property wholly owned by the Kuukpik Corporation</u>. The members of the appellant organizations thus have no right to use the privately held surface estate for their activities. Consequently, Trustees could not honestly assert that any individual member their organizations sustained an actual injury when DNR determined that leasing the Sale 75A area was in the best interests of the state.

In order to establish standing to appeal Sale 75A, Trustees also needed to demonstrate that they participated in the administrative proceedings below. DNR's adherence to the administrative process required by law provided ample opportunity for public participation and comment on proposed Sale 75A. <u>See</u>, <u>e.g.</u>, January 15, 1993 Call for Comments; and March 23, 1993 Notice of Intent to Issue a Final Finding (inviting the public to submit written comment on any aspect of the sale, and giving notice of an April 14, 1993 public hearing scheduled in accordance with AS 38,05.180(d)(2)). Trustees <u>never</u> availed themselves of those opportunities. Therefore, Trustees lacked standing to challenge DNR's decision and their appeal of Sale 75A was frivolous.

OIL AND GAS LEASE SALE 78 (LOWER COOK INLET)

The appeal of Oil and Gas Lease Sale 78 was initiated on November 19, 1993, when the appellants filed their notice of appeal, statement of points on appeal

and designation of record with the superior court in Kenai.[7] Seven weeks after filing their appeal, on the eve of the sale, the appellants filed their "emergency" motion for stay. Late on January 24, 1994, less than 18 hours before the sale was scheduled to occur, the superior court issued its decision staying Sale 78.

In its order staying the sale, the court held that DNR did not comply with 6 AAC 80.040 when making its coastal consistency determination. The court's superficial analysis on this point states in full:

> First, there is no discussion of the priority required in 6 AAC 80.040. Has the Commissioner considered both offshore oil and gas development and a fishery as water dependant and [sic] activities? Or, is oil and gas [sic] a water related activity? The Court cannot determine whether the sale is consistent with either standard absent a finding.

With this limited analysis, the court failed to recognize the "plain meaning" of the regulation, and it ignored both DNR's discussion of this regulation and the restrictions DNR placed through the terms of its leases and mitigating measures on potential future offshore oil and gas development.

6 AAC 80.040(a) states that "[i]n planning for and approving development in coastal areas, districts and state agencies shall give in the following order, priority to . . . . " As was discussed in detail in DNR's Opposition to the Stay -- and apparently conceded to by the court -- an oil and gas lease sale is not itself "development." Development, if and when it ever occurs, requires permits, plans of operation, and other authorizations. Therefore, the relevant part of this regulation would be "planning for . . . development." The oil and gas lease sale itself has no direct impact on other water-dependent activities, and in planning for potential future

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[7] The appellants' statement of points on appeal for Sale 78 wholly fails to identify any specific issues with regard to DNR's best interest finding and coastal consistency determination. The appellants only allege that DNR's Sale 78 best interest finding is arbitrary and capricious because: (1) it fails to "properly weigh the pros and cons of the lease sale," and (2) it fails to "evaluate standards in AS 38.05.035 (e), (g), the ACMP, and applicable local coastal management plans." The appellants did not identify any of the "cons" DNR failed to address, nor do they specify which of the standards in the cited statutes and regulatory programs DNR failed to evaluate. Even after the state asked the court to require a more specific description of the points on appeal, the court refused, thereby indicating its willingness to accept anything.

activities, DNR cannot give priority to either of these two water-dependent uses (fishing and the offshore oil and gas industry) because neither by its nature has a priority over the other.

The appellants argued, and the court appeared to accept without question, that potential offshore oil and gas development is not a water-dependent activity. [8] However, the appellants' argument that offshore development cannot be water-dependent simply ignores the plain meaning of the term "offshore,"[9] a characteristic of areas of this sale described over and over in the final finding and the preliminary finding.

Moreover, the appellants acknowledged the water-dependency of potential offshore oil and gas activity when they stated in their Memorandum that "DNR should have required in the lease terms directional drilling to access all tracts south of Kasilof and tracts 20 and 21 wherever possible." If directional drilling is not possible and yet the oil or gas prospect is offshore, the appellants' statement concedes to the obvious: that the exploration or development of that prospect cannot be carried out without being in or on the water and therefore must be "water-dependent."

The appellants and the court ignored the numerous Mitigation Measures imposed to avoid potential conflicts between two such activities that must each be carried out in or on the water.[10] Since no specific projects can or have been proposed at the lease sale stage, DNR cannot determine if, where or when any restriction might be invoked, but it has planned for such. Where possible, in order to avoid conflict, DNR has reserved the right to require that fishing be accorded accommodation by allowing only directional drilling in offshore oil and gas development. Where such measures are not possible, no priority exists between

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[8] "[W]ater-dependent" means a use or activity which can be carried out only on, in or adjacent to water areas because the use requires access to the water body." An offshore oil or gas deposit cannot be found anywhere except in water.

[9] Although DNR did not make an explicit and redundant statement of the obvious, the water-dependent status of potential offshore oil and gas development is reflected in DNR's statement in the Preliminary Finding that "[t]he following proposed Mitigation Measures are designed to prevent significant interference with other water-dependent and water-related activities . . . . "

[10] For example, Mitigation Measures 9(b) (addressing offshore pipelines); 13 (restrictions to avoid conflict with fishing); 16(d) (offshore disposal); 20 (offshore seismic activities).

these two activities, neither of which can be carried out onshore, but other measures to mitigate any potential conflicts between the two uses have been imposed. Therefore, DNR's consistency determination complied with 6 AAC 80.040, and deference should have been given to its decision.

The superior court's order also stated summarily that DNR's consistency determination does not discuss the requirements of 6 AAC 80.130(d) and therefore cannot be consistent with the ACMP standards. The court failed, however, to acknowledge that 6 AAC 80.130(d), upon which it relies exclusively in this argument, is invoked only when "uses and activities in the coastal area which will not conform to the standards contained in (b) and (c) of [6 AAC 80.130]" exist. The court never discussed or analyzed the requirements of 6 AAC 80.130 (b) or (c). 6 AAC 80.130(b) states as follows:

> The habitats contained in (a) of this section must be managed so as to maintain or enhance the biological, physical, and chemical characteristics of the habitat which contribute to its capacity to support living resources.

6 AAC 80.130(c) provides a standard for the management of each of the different habitats listed in 6 AAC 80.130(a) excluding "important upland habitat." The court did not discuss or cite evidence that the habitats are not being managed so as to maintain such characteristics or standards.

DNR took a hard look at the requirement and issues of 6 AAC 80.130.[11] First DNR imposed numerous stipulations and mitigation measures that are specifically designed to achieve maxim compliance with the 6 AAC 80.130(c) standards of maintaining and enhancing the coastal habitats.[12] DNR's analysis points out that:

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[11] DNR's discussion of and actions taken in response to 6 AAC 80.130 reflect that, to the extent possible at the lease sale stage, DNR has dealt with the "knowns," and further, even tried to provide for future possibilities by requiring mitigation measures. This comported fully with the Supreme Court's recent case law under the ACMP developed in the Camden Bay II decision (DNR must identify known hazards and known archeological sites). Still, the superior court did not accept or defer to the agency's analysis and decision.

[12] There is no requirement that DNR include all of its analysis in its conclusive consistency determination. The Supreme Court had held that DNR must only "establish a record which reflects the basis for [its] decision."

Issuance of oil and gas leases in itself authorizes no uses or activities in the sale area. The measures discussed in this section of the consistency analysis are designed to minimize the impact of post-lease sale oil and gas activity on the environment and to conform to 6 AAC 80.130(b) 6 AAC 80.130 (c), and the MSBCMP and KPBCMP policies.

Second, DNR acknowledged that despite these precautions, "[p]articularly if oil and gas deposits are discovered in the proposed sale area, there may be uses or activities in the sale area which will not 'maintain or enhance the biological, physical, and chemical characteristics' of the coastal habitat in which they are located." DNR then parsed through, analyzed, and responded to each of the three parts of 6 AAC 80.130(d).

Therefore, since the court held that there was no irreparable harm shown nor any clear showing of probable success on the merits of the appellants' arguments against the best interest finding, and there is no basis for any showing of probable success on the merits with regard to 6 AAC 80.140 and .130, the stay of Sale 78 should not have been imposed and was issued in error. Nevertheless, DNR's appeal of this obviously flawed decision was summarily dismissed by the Alaska Supreme Court in a one sentence order.

CONCLUSION

Only the legislature can take some of the unpredictability out of judicial review of DNR's best interest findings and coastal consistency determinations. To do so, Title 38 and Title 46 must be amended to explicitly grant DNR the discretion to define the scope of its analyses and to require that issues be brought to DNR's attention during public review of a proposed disposal if they are later to be the subject of an appeal to the courts.

8-LS1689\X.3
Chenoweth
4/20/94

AMENDMENT

OFFERED IN THE SENATE BY SENATOR PEARCE

TO: CSSB 308(FIN)

Page 2, line 22:

Delete "necessary"

Insert "required by the state"

Page 3, line 2, after "completion":

Insert "but is not intended to artificially divide or segment a proposed development project to avoid thorough review of the project or to avoid consideration of potential future environmental, sociological, or economic effects"

Page 4, line 16, after "department":

Insert "describes its reasons for a decision to phase and"

Page 6, line 29, after "finding":

Insert ", if required."

Page 7, line 11, after "a":

Insert "preliminary or"

Page 8, line 18, after ";":

Insert "and"

Page 8, lines 19 - 29:

Delete "in a preliminary written finding. facts that are known to the director at the time of preparation of the finding and that are

(A) material to issues that the department identifies.

whether or not material to a matter set out in (B) of this paragraph, and within the scope of the administrative review established by the director under (e)(1) of this section; or

(B) material to a matter described in (1)(B) of this subsection [A SUMMARY OF AGENCY AND PUBLIC COMMENTS RECEIVED AND THE DEPARTMENT'S RESPONSES TO THOSE COMMENTS]; and

(3)"

Insert "[A SUMMARY OF AGENCY AND PUBLIC COMMENTS RECEIVED AND THE DEPARTMENT'S RESPONSES TO THOSE COMMENTS; AND

(3)]"

Page 9, line 7:

Delete all material.

Renumber the following paragraphs accordingly.

Page 9, line 9, before "the economic":

Insert "except as otherwise provided in AS 38.05.073 for land suitable for recreational facilities development leasing,"

Page 9, line 12:

After "file"

Insert "an administrative appeal or"

After "reconsideration"

Insert ", as appropriate,"

Page 9, line 15, after "finding,":

Insert "file an administrative appeal or"

Page 9, line 16, after "file":

Insert "an administrative appeal or"

Page 9, line 20, after "comment;":

Insert "or"

Page 9, line 22:

Delete "or"

Insert "and".

Page 9, lines 23 - 26:

Delete

"(C) adopting as the person's own testimony concerns that were expressed by another, either by submitting a written statement to that effect during the period for receipt of public comment or by so declaring during a public hearing; and"

Page 9, line 28:

Delete "A"

Insert "An administrative appeal or a"

Page 9, line 30, after "deny the":

Insert "administrative appeal or reconsideration"

Page 10, line 3, after "If":

Insert "an administrative appeal or"

Page 10, line 4:

Delete "after reconsideration"

Page 10, line 8, after "request,":

Insert "an administrative appeal or"

Page 10, line 9, after "on":

Insert "administrative appeal or"

Page 10, line 13, after "person's":

Insert "administrative appeal or"

Page 13, lines 18 - 19:

Delete "proposed for that phase"

Insert "for which the consistency determination is sought"

Page 13, line 24:

Delete "proposed for that phase"

Insert "for which the consistency determination is sought"

Page 13, line 26:

Delete "prepare and issue a written statement describing"

Insert "describe in the consistency determination"

ADDITIONS/CORRECTIONS TO SENATE AMENDMENT OF CSSB 308
APRIL 20, 1994

- **Page 3, Line 2**

  Purpose: Fixes glitch - language was adopted in the wrong place.

- **Page 8, Line 18**

  Purpose: Chenowith rewrite for clarity.

- **Page 8, Line 19 - 29**

  Purpose: Chenowith rewrite for clarity.

- **Page 9, Line 7**

  Purpose: Chenowith rewrite for clarity.

- **Page 9, Line 9**

  Purpose: Chenowith rewrite for clarity.

- **Page 9, Line 12**

  Purpose: To clarify that there may be appeals or requests for reconsideration, depending upon whether or not the best interest finding is issued with the advanced review and concurrence of the commissioner.

- **Page 9, Line 15**

  Purpose: Technical amendment, same as page 9, line 12.

- **Page 9, Line 16**

  Purpose: Technical amendment, same as page 9, line 12.

- **Page 9, Line 20**

  Purpose: To clarify that a party may demonstrate meaningful participation in the administrative process by either submitting written comment or presenting oral testimony.

- **Page 9, Line 22**

  Purpose: Technical amendment, to clarify that meaningful participation for the purposes of judicial appeal requires submittal of written or oral comments and that the party is a party who is affected by the final writen finding.

- **Page 9, Line 28**

  Purpose: Technical amendment, same as page 9, line 12.

- **Page 9, Line 30**

  Purpose: Technical amendment, same as page 9, line 12.

- **Page 10, line 3**

  Purpose: Technical amendment, same as page 9, line 12.

- **Page 10, Line 4**

  Purpose: Technical amendment to conform language to changes made at page 9, line 12.

- **Page 10, Line 8**

  Purpose: Technical amendment, same as page 9, line 12.

- **Page 10, Line 9**

  Purpose: Technical amendment, same as page 9, line 12.

- **Page 10, Line 13**

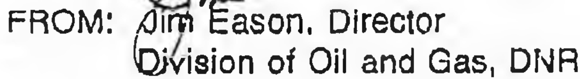
  Purpose: Technical amendment, same as page 9, line 12.

- **Page 13, Line 26**

  Purpose: Fixes glitch - eliminates redundancy; deletes "shall."

MEMORANDUM

TO: Senator Drue Pearce



FROM: Jim Eason, Director
Division of Oil and Gas, DNR

RE: CSSB 308

DATE: April 9, 1994

You have asked that I respond to the concerns raised in the "Coastal Districts' Briefing Paper on CSSB 308" dated April 7, 1994, which was addressed to members of the Senate Finance Committee. My comments below address the issues raised in that document, and summarize briefly the responsive amendments reflected in the current CSSB 308. In addition, I have outlined certain other amendments which are currently being drafted which will respond to specific recommendations received during yesterday's hearing and subsequently.

Based upon my review, I believe there may be some confusion arising from the fact that the Districts' comments are directed to the prior version of CSSB 308, version K. The work draft of CSSB 308 which the Finance Committee adopted yesterday is version U. Version U represents DNR's response to the working groups' comments and recommendations which were raised during the five meetings between the parties since S.B. 308 arrived in the Senate Finance Committee.

Version U of CSSB 308 contains many substantive amendments which were made to address concerns of the Districts, as well as others including the federal Office of Coastal Resource Management (OCRM). The changes which were incorporated to address specific concerns identified in the Coastal Districts' Briefing Paper are summarized below.

First, in response to the groups' concerns about scope of review, language was incorporated in the Findings of Section 1 to make clear that the scope of review for findings will include a response to all

concerns raised during the public review period before a disposal. For oil and gas lease sales, for example, all factors listed under current A.S. 38.05.035 (g) must be addressed plus any other issues raised by the public.

In response to concerns about potential abuse of the right to phase consideration of projects, language was added in Findings 10 and 11 to clarify intent, and Section 8 was amended to make clear that phasing of state disposals and projects would occur only under the same circumstances as federal regulations now provide.

Under both federal and state law, as amended by Version K of CSSB 308, phasing would be appropriate when not enough is known about the potential future aspects of a development project to issue just one conclusive consistency determination. If the specifics of a proposed project can be sufficiently defined in the beginning, phasing cannot be allowed.

To further strengthen this concept, Finding 11 provides explicit guidance to a director that "...consideration of a disposal as a phase of a development project is not intended to avoid consideration of potential future environmental or sociological effects, but rather is intended to allow for consideration of those issues when sufficient data are available upon which to make reasoned decisions."

The Briefing Paper expressed concern that "...certain portions of S.B. 308 may be disallowed by the federal government..." and referenced earlier correspondence from OCRM and an April 24, 1994 Alaska Attorney General's Opinion. However, both the OCRM letter and the Attorney General's Opinion were written in response to version K of S.B. 308.

The two provisions of version K which both of those documents questioned as potentially being disallowed were the effect of limiting the review of effects under both best interest findings and consistency determinations to "direct effects", and not defining the circumstances under which phased review of projects would be allowed.

We have addressed both concerns in the current version of CSSB 308 by deleting the references to "direct" in Sections 2 and 8 and, as mentioned above, by adopting the standard applied under the

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applicable federal regulations for determining when phasing is appropriate in Section 8 of version U of the CSSB 308.

The Coastal District representatives also asked that the legislature take no action on S.B. 308, and that instead it support deferral of any action until a broad-based working group addresses phasing in greater depth.

In the best of all possible worlds, we might have the luxury of a more lengthy process. It was never our intent that the legislature have to deal with these issues at all, much less under the pressures of having to bring controversial legislation forward during a session when many important issues must be addressed. However, we find ourselves having to respond to decisions by the Court, the timing of which was beyond our control.

The effect of those decisions has been to place all leasing decisions at risk to successful challenges absent amendment of both Title 38 and Title 46 as proposed in CSSB 308. As a result, we all find ourselves having to deal with these issues under less than perfect circumstances. Nevertheless, we have listened carefully to the concerns of everyone who has participated in the working group meetings on this legislation, and we have tried to accommodate those concerns where we can.

In addition to the amendments described above, version U of the CS for CSSB 308 also reflects the following amendments:

- The requirement to issue a preliminary best interest finding for oil and gas lease sales has been codified in statute. Further, the amendments provide that the preliminary finding will be issued no later than six months before a scheduled sale, and that the public will have no less than 60 days in which to comment.

- The public notice provisions for preliminary and final best interest findings have been enhanced. New minimum standards have been established to assure that notice for oil and gas disposal decisions will consist of legal notices, display ad notices, notice by electronic media and at least one other method.

- The proposed amendment to A.S. 38.05.035 (g) to limit discussion of fish and wildlife species and their habitats to those within the sale area has been deleted.

• Appeal procedures have been drafted which clarify and make more predictable for all parties the standards and timelines for appeals of final best interest findings.

Comments received during and after the hearing on April 8th are being addressed by the following amendments:

• Section 4 (B) is being amended to require that the final best interest findings for oil and gas lease sales will be issued 90 days before a scheduled sale instead of 21 days as is currently required. This amendment responds to concerns raised by Trustees for Alaska that appeal rights might otherwise be truncated.

• In response to comments received from the Kenai Peninsula Borough, an amendment is being drafted to assure that the director addresses in writing both issues either raised during public review or otherwise required by statute to be considered regardless of whether or not they are determined by the director to be material to the phase of the proposed disposal or project under consideration. The director will have to rationalize in writing the basis for his determinations of materiality.

Finally, as you well know, it is difficult, if not impossible to adopt every proposed amendment to any piece of legislation. To do so in the case of CSSB 308 would inevitably lead to legislation that would not be responsive to the problems which the Courts have identified. Nevertheless, I believe the current version of CSSB 308 represents a good faith effort to be responsive to the concerns of the Coastal Districts and others without diminishing the intent of the legislation.

If I can answer any additional questions, please feel free to call

fite

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
PHONE: (907) 762-2553
(907)762-2547

April 12, 1994

The Honorable Drue Pearce
Alaska State Legislature
State Capitol, Room 508
Juneau, Alaska 99801-1182

via fax 465-3872 and mail

Subject: Amendments to CSSB 308

Dear Senator Pearce:

By memorandum dated April 9, 1994 I discussed the amendments reflected in version U of CSSB 308. In addition, I described two amendments which were, at that time, being drafted in response to comments which had been received during and after the Senate Finance Committee hearing on April 8.

In addition to the two amendments which were being drafted at the time, eight additional amendments have now been drafted for consideration by the Finance Committee. I have summarized below the purpose for each of those amendments.

- o Amendment #3 clarifies that persons may meaningfully participate in an administrative review by presenting oral testimony or by affirmatively adopting the testimony of others by submitting a written statement to that effect during the period allowed for receipt of public comment or during the public hearing.

- o Amendment #4 was drafted in response to any public comments indicating concern that comments on proposed disposals or projects would be summarily dismissed if determined by the Director to be non-material. The amendment clarifies that the Director will discuss, in writing, the reasons for any determination of non-materiality, as well as discussing, in writing, those issues which he finds material to a proposed disposal or project.

- o Amendment #5 clarifies that the determinations of the state's best interest are those rendered under Title 38; specifically, AS 38.05.

- o Amendment #6 clarifies that it is the Legislature's intent that the public have an opportunity to timely and meaningfully participate in the Director's determination of the scope of review appropriate to a specific finding.

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The Honorable Drue Pearce
April 12, 1994
Page 2

- o Amendment #7 simply adds economic effects to environmental or sociological effects in finding #11 of CSSB 308.

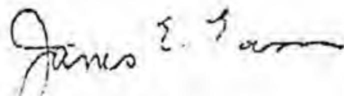
- o Amendment #8: The language of this amendment is designed to reinforce legislative intent that a Director should not "divide or segment" proposed projects in order to avoid a thorough review of the project.

- o Amendment #9 clarifies that both Oil and Gas Preliminary and Final Best Interest Findings will include a summary of agency and public comments received as of the time of each finding, as well as the department's responses to those comments. In addition, this amendment codifies the requirement that all written findings issued under AS 38.05.035 will include a summary of agency and public comments, as well as the department's response to those comments.

- o Amendment #10 establishes a requirement that when a consistency review is limited to consideration of a specific phase, the Director or the responsible agency will prepare and issue a statement describing its bases for making a consistency determination in phases.

If you have any additional questions, please feel free to call.

Sincerely,



James E. Eason
Director

041294dp.jr

APR-18-94 MON 14:34 DIV OF OIL AND GAS FAX NO. 9075623852 P. 03/07

Kodiak Island Borough

710 MILL BAY ROAD
KODIAK, ALASKA 99615-6340
PHONE (907)

April 15, 1994

VIA FAX 465-3872

Senator Drue Pearce
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

RE: SB 308 version X and proposed amendments (April 14, 1994)

Dear Senator Pearce:

Due to time constraints this letter of necessity will be brief. After careful consideration of the recent amendments proposed for version X of SB 308, the Kodiak Island Borough feels we can work with you to gain passage of this legislation.

We want to thank you and your staff, especially David Rogers, and the administration, especially Jim Eason for your efforts to resolve issues surrounding this bill. Such effort, on all sides, has improved this bill dramatically.

As you are aware, the Kodiak Island Borough previously objected to the inclusion of phasing, as a concept, in this bill. It is evident to us that the Senate intends to include phasing in this bill and to that end we have worked to make the language of the bill acceptable. We believe the most recent amendments, for the most part, accomplish this.

There are five sections of the bill that continue to contain language that is unclear to us. We believe that we have conceptual agreement on the intent of this language, however, we would like to continue discussions about the implications of this language. The language in question is: the meaning of "may address only" on line 22, page 3; the implications of "aggrieved" and

Kodiak Island Borough

"affected" on lines 13 and 27 of page 9, respectively; the meaning of "economic feasibility' on line 9 page 9; the meaning "material" on line 23 page 13; and the meaning of "for which the consistency determination is sought", to be added on page 13. We hope to continue productive, informative dialog about this language; at the same time we applaud and support your efforts to resolve the other issues we have identified in previous versions of the bill.

Again, please accept our thanks for working with us to improve the language of this bill.

Sincerely,

Linda L. Freed, Director
Community Development Director

c.c. Jerome Selby, Borough Mayor
Kodiak Island Borough Assembly

jon isaacs and associates . 2418 forest park drive . anchorage, alaska . 99517 . (907)274-9719 . fax 276-6117

April 15, 1994

Honorable Senator Drue Pearce
Chair, Senate Finance Committee

Dear Senator Pearce:

As a member of an informal coastal district working group, I have been participating in the review of Senate Bill 308 with representatives of the Department of Natural Resources, and Mr. David Rogers, who has been representing your committee. Over the last two months, I have participated in several Senate Finance Committee Meetings and workgroup discussions to develop a bill that addresses the concerns of the Department of Natural Resources without creating significant problems for the coastal districts and other municipalities.

On the afternoon of April 15, a small group of individuals worked on the significant outstanding issues identified by the informal coastal district working group. I should mention that this group does not represent or speak for all coastal districts, many of whom have other valid concerns regarding this legislation. In this meeting, we came to consensus on most of the major issues, with a few exceptions. The issues where consensus was reached was to:

- include finding language that phasing of coastal consistency determinations is not intended to artificially segment a project

- that the reasons for phasing a best interest finding are included in the preliminary finding, and are subject to public comment and appeal under appropriate avenues

- that when a consistency review is phased, the consistency review will be based on the use or activity for the consistency determination is sought rather than restricted to the phase - this allows consideration of "known facts" and reasonably foreseeable significant effects related to the use of activity

- that when a consistency review is phased, the consistency determination will include a basis for phasing the review, and that this basis is subject to standard coastal management elevation or appeal rights.

Issues where there is still some differences regarding language or resolution include:

- use of "may address only" vs. shall address reasonably foreseeable significant effects related to the use in Section 2 (A)of AS 38.05.035(e). DNR's verbal intent is that, at a minimum, reasonably foreseeable significant effects related to the use will be addressed. The appropriate language needs to be used.

• on page 5, item (6), DNR has indicated that 21 days may not be adequate time for public involvement in this step; they are researching best interest requirements and have indicated that they will come up with an appropriate number

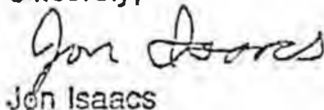
• standing to request appeal or reconsideration of a best interest finding; I understand that DNR is looking into what language may be more appropriate

• in Section 8, page 13, line 22, the concept of material to the consistency determination has not been previously used or defined; I would prefer the term relevant be used in its place or material defined

• finally, I understand that some municipalities are still concerned about the lack of guidance regarding other best interest findings besides oil and gas, mining, timber, and commercial recreation; while language in the bill requires addressing reasonably foreseeable significant effects related to the use, and the basis of phasing can be appealed, I suggest that DNR continue to consider other solutions.

I greatly appreciate the efforts of members of the Senate and particularly Senator Pearce in supporting this working group process and resulting in better legislation. I also appreciate the efforts of Jim Eason and other members of the administration, David rogers, coastal districts, fishing groups, and environmental groups in trying to reach consensus. While not a perfect bill that makes everyone happy, the language changes as provided by Mr. Rogers has addressed major concerns. Again, the legislature should be aware that I can only speak for myself and not represent or speak for all coastal districts, many of whom have other concerns. thank you all for your efforts.

Sincerely,



Jon Isaacs

April 15, 1994

Honorable Senator Drue Pearce
State of Alaska Senate

Dear Senator Pearce:

I have been part of the informal working group which has been working to try an achieve consensus on SB 308. I have had an opportunity to review Version X, and to discuss, in concept, the amendments which are to be proposed on April 15, 1994. There has been substantial improvement in the bill and I appreciate the efforts of DNR and the Senate Finance Committee to attempt to address concerns raised by the coastal districts and others. I believe the efforts of those who have worked on this bill will result in a better public process. There are a few remaining issues which need to be resolved, and I support the continued efforts of the Legislature to resolve the remaining issues this session.

There have been numerous revision made to this legislation, and I wish to highlight a few which I can support without reservation:

I support the examination of "reasonably foreseeable significant effects" and commend DNR for its selection of this as a standard for what will be examined upon the decision to phase.

I endorse the public notice provisions and the provision that a final best interest finding will be issued not less than 90 days before the sale lease or other disposal.

I also endorse the establishment of the requirement for a preliminary best interest finding for oil and gas lease sales in statute, a practice which DNR has, heretofore, undertaken voluntarily.

I commend DNR and the Senate Finance Committee for their agreement that the effects on fish and wildlife species and their habitats in the area will remain in the existing statute.

Finally, I commend DNR and the administration for adopting the federal language on phasing, into the Title 46 portions of the statute.

There are remaining issues which, I believe, can be resolved through the legislative process. Those issues are addressed below:

<u>Phasing of all land disposals under Title 38</u>

Throughout this process the some coastal districts have identified a fundamental problem with this legislation that arises under Title 38, which proposes to allow phasing for all land disposals. I believe that the provisions of section 38.05.035(g)

affords the necessary guidance to DNR to phase oil and gas lease sales. However, that same guidance is not provided for phasing of other types of disposals (timber, mining etc.) I believe that there need to be specific factors developed or referenced which the Director will examine in the decision to phase other disposals.

Phasing under Title 46 (ACMP)

There is one remaining question under Title 46. The language states that the consistency review shall be based on facts pertaining to the use or activity for which the consistency determination is sought that are "material" to the consistency determination. There is no definition of what constitutes issues which are "material" and that language does not appear elsewhere in the ACMP. Since this section addresses phasing for all projects, we believe that this vague language will result in additional litigation on the specific meaning of that word. We recommend deletion of that section. I understand that the language proposed to be added "for which the consistency determination is sought." is intended to mirror the federal scope of review for phased projects. If that intent is confirmed, then I believe this language will be adequate to meet concerns I have previously expressed about phasing under the ACMP.

Standing to Request Reconsideration/Appeal

The issue of standing is one which significantly affects public participation under this legislation. DNR has stated that the intent of this legislation is to provide for that any person who has submitted written or oral comments during the comment period be allowed to request reconsideration or, as appropriate, administrative appeal. There is remaining confusion as to whether the commenting person may raise any issue that has been identified during the public comment period, or whether the person will be limited to those issues which he or she personally raised. I believe that any issue which was raised during the administrative review should be examined on reconsideration if raised by a person who has commented during the administrative review.

I further believe that the words "is affected by the decision" (page 9, line 27) should be deleted from the bill, because it does not comport with the existing Alaska law on standing. I support the "private attorney general" theory of standing which has been endorsed by the Alaska Supreme Court. Finally, there may be some confusion by the simple addition of the word "appeal" on p. 9, line 12. I suggest the words "administrative appeal" be added so that it is not confused with an appeal to Superior Court.

Clarification of "Economic Feasibility"

Section 4 of the bill states that the director may not be required to speculate about the "economic feasibility" of ultimate development. That phrase is troubling because it is not defined, and it has implications for disposals which affect coastal

districts. In discussions with DNR it was suggested that this phrase is directed toward the economic feasibility of the applicant's ultimate development project. I believe that clarifying language should be added to state that the best interest finding shall consider the potential economic benefits and potential economic detriments from a disposal, but may not be required to speculate about future effects subject to future permitting which relate to economic feasibility, if there is no known information which can be reasonably determined.

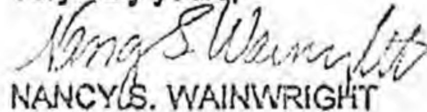
Changing the words "may address only" to "shall address"

The language in Section 2 states that the scope of review and finding of the Director "may address only" reasonably foreseeable significant effects. The use of the word "may" means that the director is not obligated to address those effects. The addition of the word "may ...only" implies that there is no ability to look further, if, in the Director's discretion, there are effects which should be analyzed. We suggest the changing of the language to read: "The Director shall address reasonably foreseeable....". This will make this requirement mandatory, but will also allow the flexibility to the Director to consider other effects.

Conclusion

I am encouraged by the progress which has been made on this bill. While every interest may not have been fully satisfied, I believe that the overall result of this bill will be better public policy decision-making, which will successfully withstand legal challenges. I look forward to working with DNR, fishing groups, environmental groups, and all other interests to resolve the few remaining issues and to develop a process which will implement this legislation successfully.

Very truly yours,



NANCY S. WAINWRIGHT

April 17, 1994

Honorable Senator Drue Pearce
Chair, Senate Finance Committee

Dear Senator Pearce:

Linda Freed and I would like to express our sincere thanks for your efforts in making possible the process for developing a sound version of Senate Bill 308. Without your support and direction for consensus based legislation, it would not have been possible to come as far as we have. Given that the bill is a priority of the Senate, and there are many other pieces of important legislation that require your attention, we appreciate your patience with us while we attempted to come up with language that addresses the concerns of the Department of Natural Resources without creating significant problems for the coastal districts and other municipalities.

David Roger's participation was invaluable in reaching a compromise over language; he was able to facilitate from a neutral position and encourage cooperation. We also appreciate the suggestions and compromises made by Mr. Eason and the administration during the course of discussion; our understanding of his concerns initiated our working group approach to finding appropriate solutions.

Over the weekend, Linda and I have contacted several of the coastal districts who have been involved with SB 308 and urged that they support the amendments introduced last Friday. We expect that some of them will contact their Senators to request support of the amendments during reconsideration. Because not everyone has seen the amended language, it remains problematic for us to speak on behalf of all coastal districts; however, we feel most of the major issues have been addressed and have expressed our position to others.

In closing, again thank you for your invaluable assistance, and we hope that you will continue to support the amendments.

Sincerely,

Jon Isaacs
Linda Freed

MATANUSKA-SUSITNA BOROUGH
RESOLUTION SERIAL NO. 94-046

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY REVISING THE BOROUGHS POSITION REGARDING PROPOSED SENATE BILL 308 OF THE ALASKA STATE LEGISLATURE.

WHEREAS, proposed Senate Bill 308 would modify administrative procedures and decisions by State agencies that relate to uses and dispositions of State land, property, and resources, and to the interests within them, and further modify administrative procedures that relate to uses and activities involving land, property, and resources, and to the interests within them that are subject to the Coastal Management Program when the use or activity is to be authorized or developed in phases; and

WHEREAS the Matanuska-Susitna Borough previously adopted MSB Resolution Serial No. 94-032 opposing House Bill 308 and its identical counterpart House Bill 474; and

WHEREAS, since the adoption of MSB Resolution Serial No. 94-032 the Borough has participated with the State of Alaska and other interested parties in review and revision of Senate Bill 308; and

WHEREAS, the Borough recognizes the cooperative review and legislative committee process is working and has produced an improved revised CS Senate Bill 308 (FIN) and significant proposed amendments to the Bill which if approved, would relieve many concerns of the Borough; and

WHEREAS, the Bill if approved by the Senate will proceed to the House of the Alaska State Legislature for further review, and possible revision; and

NOW THEREFORE BE IT RESOLVED the Matanuska-Susitna Borough supports passage by the Senate of CS Senate Bill 308 (FIN) if it is amended as proposed by Senator Pearce in accordance with the senate amendment document dated 4-18-94

BE IT FURTHER RESOLVED the Borough supports the Senate passage of a letter of intent for CS Senate Bill 308 (FIN) as submitted by Senator Suzanne Little and which reads as

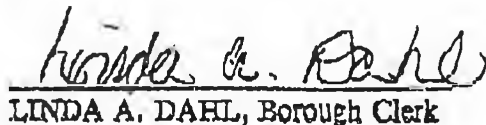
follows: ("It is the intent of the legislature that the sections of this legislation pertaining to AS 46.40 will be consistent with the federal coastal zone management program regulations and intent governing phased consistency determinations."); and

BE IT FURTHER RESOLVED that the Borough asks the State legislature to ensure the rights of the local government to protect the interests of its residents are preserved within the implementation of this act through preliminary and final best interest findings conducted under AS 38 and consistency determinations conducted under AS 46.

ADOPTED by the Matanuska-Susitna Borough Assembly this 19 day of April, 1994.

ERNEST W. BRANNON, Borough Mayor

ATTEST:



LINDA A. DAHL, Borough Clerk

HB
480

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 480

Revision Date: March 8, 1994
Title: "...relating to sales and attempted sales of handguns...magnetic strip...information..."
Sponsor: Representative Sanders
Requestor: House State Affairs Committee

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

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUNDING:						
1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
POSITIONS:						
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

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

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: March 8, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General /FOR/
Agency: Department of Law
Date: March 8, 1994

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Rev 11/93

FISCAL NOTE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 480

ANALYSIS CONTINUATION:

This bill amends various statutes to provide that the Department of Public Safety modify all drivers' licenses and identification cards issued by the department, to include an encoded magnetic strip that would indicate whether the person who has been issued the license or card is eligible or ineligible to purchase a handgun. in effect, the license or card of an eligible person serves as a permit to purchase a handgun. A person would not be eligible to purchase a handgun and the person's driver's license or identification would be encoded to indicate the person was prohibited from purchasing a handgun, if the person had been convicted of a felony, or if the person had been adjudicated mentally incompetent and five years have not elapsed since the date of the person's restoration to capacity by court order. The Department of Public Safety would be required to develop and maintain a computerized data base for this purpose.

The bill establishes comprehensive procedures to be followed by the court, and Public Safety to either seize licenses and identification cards from a person convicted of a felony and, as provided under existing law, relies on court notification when a person is adjudicated mentally incompetent. The Department of Public Safety would issue replacement licenses or cards encoded to indicate the changed (prohibited) status of the license or card holder, if a person was otherwise eligible to possess a license or card. The Department of Public Safety would also be required to provide magnetic code readers, which can read the magnetic reader strip on the driver's license and identification cards, to federally licensed firearms dealers to determine if a person is eligible to purchase a firearm. There are approximately 3,400 federally licensed firearms dealers in Alaska. When the license and card is inserted in a magnetic code reader, the code will respond with a green light meaning that the person is eligible to purchase a handgun. When a person is ineligible to purchase a handgun the code reader will respond with a red light. The bill also provides a procedure for a person to challenge a Department of Public Safety ineligibility determination and provides for a five-day period to respond to challenge.

The bill will not have a direct fiscal impact on the Department of Law. However, because of the extensive procedural steps required of the Department of Public Safety, it appears that the bill will have a substantial fiscal impact on the Department of Public Safety.

We do note that the provision in the bill, which appears to make a person eligible to purchase a handgun after five years have elapsed since a person adjudicated mentally has been restored to capacity by court order, is probably in conflict with federal firearms law under 18 USCS 925(c). This federal code section provides that a person who is prohibited from possessing or receiving firearms may apply to the Secretary of the Treasury for relief from the disabilities imposed by federal laws in respect to the acquisition, receipt, shipment, transportation, or possession of firearms. Code Section 18 USCS 922(d)(4) provides that it is unlawful for a federally licensed firearms dealer to dispose of a firearm to a person who has been adjudicated as a mental defective or has been committed to any mental institution. This disability attends to such a person until relief is granted by the Secretary of the Treasury. We also note that state gun control laws, such as proposed by this bill, do not immunize federally licensed firearms dealers from federal penalties, if these dealers violate provisions of any federal firearms laws. Indeed, neither the Brady Bill nor the underlying federal firearms laws penalize states fur noncompliance. Rather, these laws are enforced against federally licensed firearms dealers.

Representative Jerry Sanders

District 19

Vice Chair, Rules Committee
Vice Chair, Community & Regional Affairs Committee
House State Affairs Committee
Special Committee on Oil & Gas
Legislative Council
International Trade & Tourism

SPONSOR STATEMENT

HB 480

The federal 'Brady Handgun Violence Prevention Act' passed in November 1993, sets up a background check system to identify felons and persons adjudicated mentally incompetent. 'Brady' also mandates a five day waiting period before purchasing a handgun unless the purchaser has been pre-approved.

HB 480 requires the Department of Public Safety to issue driver's licenses and identification cards with a magnetic strip encoded with criminal information on the licenses of felons and those adjudicated mentally ill. This data would be encoded on the back of the criminals license in a way that would only allow the police and gun dealers to know the persons status. Gun dealers would use a special card reader that would show a green light to indicate persons approved to purchase a handgun, and a red light to indicate those persons prohibited.

Upon becoming a prohibited person, a person's license shall be void and seized by the trial court. When a prohibited person becomes eligible to obtain a new drivers license, they shall pay additional fees to cover the records check and the encoding of the required information on new license.

Once this system is in place and everyone has their new licenses, the State Troopers and City Police will be relieved of the extra time consuming burden of having to perform a complete records check every time an ordinary citizen wants to buy a gun.

SPONSOR STATEMENT

716 W. 4th Avenue • Suite 360 • Anchorage, Alaska 99501-2133 • (907) 258-8199
During Session: State Capitol • Room 13 • Juneau, Alaska 99801-1182 • (907) 465-4945

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

M E M O R A N D U M March 9, 1994

SUBJECT: Sectional Summary of HB 480 (Work Order No. 8-LS1662\A)

TO: Representative Jerry Sanders
Attn: Bob Krogseng

FROM: Jerry Luckhaupt
Legislative Counsel

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

Section 1 of the bill amends AS 11.61.210(a) to provide that a federally licensed firearms dealer commits the crime of misconduct involving weapons in the fourth degree[1/] if the dealer (1) sells a handgun to a person without waiting the federally required time period unless the dealer uses a magnetic code reader to identify the person as eligible to purchase a handgun, or (2) fails to notify law enforcement authorities of an attempt by a prohibited person to purchase a handgun.

Section 2 of the bill provides definitional references.

Section 3 of the bill makes it a crime to alter the magnetic reader handgun permit affixed to a driver's license or an identification card.

Section 4 of the bill requires a court to seize the driver's license and identification card of anyone convicted of a felony if the license or card has a magnetic reader handgun permit affixed to it.

Section 5 of the bill amends AS 18.65.310 by requiring identification cards to have a magnetic reader handgun permit affixed to them.

1/ A class misdemeanor punishable as provided in AS 12.55.135(imprisonment) and AS 12.55.035(fine).

SECT. SUMMARY

Section 6 of the bill creates the magnetic reader handgun permit system; requires the Department of Public Safety to develop a data base of persons prohibited from purchasing a handgun; provides procedures relating to the system.

Section 7 of the bill amends AS 28.15.111(a) to require that all driver's licenses have the magnetic reader handgun permit affixed to them.

Section 8 of the bill provides that a person whose driver's license is seized for conviction of a felony under sec. 4 of the bill may pay a fee and get a replacement license which has the magnetic reader handgun permit encoded so the person is identified as a prohibited person.

Section 9 of the bill provides an applicability section.

Section 10 of the bill provides a requirement for the accuracy of the data base created under sec. 6 of the bill.

Section 11 of the bill provides an effective date.

GPL:lmb:mi
94-078.lmb

(3) in subparagraph (B) by striking "$25 per year; or" and inserting "$200 for 3 years, except that the fee for renewal of a valid license shall be $90 for 3 years."; and

(4) by striking subparagraph (C).

Approved November 30, 1993.

LEGISLATIVE HISTORY—H.R. 1025 (S. 414):

HOUSE REPORTS: Nos. 103-344 (Comm. on the Judiciary) and 103-412 (Comm. of Conference).
CONGRESSIONAL RECORD, Vol. 139 (1993):
Nov. 10, considered and passed House.
Nov. 19, 20, considered and passed Senate, amended, in lieu of S. 414.
Nov. 23, House agreed to conference report.
Nov. 24, Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 29 (1993):
Nov. 30, Presidential remarks.

O

HANDGUN CONTROL, MULTIPLE FIREARM PURCHASES, AND FEDERAL FIREARMS LICENSE REFORM

Public Law 103-159
103d Congress

An Act

Nov. 30, 1993
[H.R. 1025]

To provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be contacted by firearms dealers before the transfer of any firearm.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Brady Handgun Violence Prevention Act.
Intergovernmental relations.
Law enforcement and crime.
18 USC 921 note.

TITLE I—BRADY HANDGUN CONTROL

SEC. 101. SHORT TITLE.

This title may be cited as the "Brady Handgun Violence Prevention Act".

SEC. 102. FEDERAL FIREARMS LICENSEE REQUIRED TO CONDUCT CRIMINAL BACKGROUND CHECK BEFORE TRANSFER OF FIREARM TO NON-LICENSEE.

(a) INTERIM PROVISION.—

(1) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

Effective date.
Termination date.

"(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

"(II) verified the identity of the transferee by examining the identification document presented;

"(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

"(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement

to the chief law enforcement officer of the place of residence of the transferee; and

"(ii)(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

"(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

"(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

"(C)(i) the transferee has presented to the transferor a permit that—

"(I) allows the transferee to possess or acquire a handgun; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

"(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

"(E) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

"(F) on application of the transferor, the Secretary has certified that compliance with subparagraph (A)(i)(III) is impracticable because—

"(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

"(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer: and

"(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

"(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether

receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

"(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

"(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

"(B) a statement that the transferee—

"(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

"(ii) is not a fugitive from justice;

"(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

"(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

"(v) is not an alien who is illegally or unlawfully in the United States;

"(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

"(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

"(C) the date the statement is made; and

"(D) notice that the transferee intends to obtain a handgun from the transferor.

"(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of the place of business of the transferor; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

"(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

"(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law—

Records.

"(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

"(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

"(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

"(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

"(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

"(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

"(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

"(8) For purposes of this subsection, the term 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

Publication. Public information.

"(9) The Secretary shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.".

(2) HANDGUN DEFINED.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(29) The term 'handgun' means—

"(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

"(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.".

(b) PERMANENT PROVISION.—Section 922 of title 18, United States Code, as amended by subsection (a)(1), is amended by adding at the end the following:

Effective date.

"(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless—

"(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

"(B)(i) the system provides the licensee with a unique identification number; or

"(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

"(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in

section 1028(d)(1) of this title) of the transferee containing a photograph of the transferee.

"(2) If receipt of a firearm would not violate section 922 (g) or (n) or State law, the system shall—

"(A) assign a unique identification number to the transfer;

"(B) provide the licensee with the number; and

Records.

"(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

"(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

"(A)(i) such other person has presented to the licensee a permit that—

"(I) allows such other person to possess or acquire a firearm; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

"(B) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

"(C) on application of the transferor, the Secretary has certified that compliance with paragraph (1)(A) is impracticable because—

"(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

"(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

"(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

"(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

"(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Secretary may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than $5,000.

"(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—

"(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

"(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.".

(c) PENALTY.—Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking "paragraph (2) or (3) of"; and

(2) by adding at the end the following:

"(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined not more than $1,000, imprisoned for not more than 1 year, or both.".

SEC. 103. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

Computers.
Records.
Telecommunications.
18 USC 922 note.

(a) DETERMINATION OF TIMETABLES.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall—

(1) determine the type of computer hardware and software that will be used to operate the national instant criminal background check system and the means by which State criminal records systems and the telephone or electronic device of licensees will communicate with the national system;

(2) investigate the criminal records system of each State and determine for each State a timetable by which the State should be able to provide criminal records on an on-line capacity basis to the national system; and

(3) notify each State of the determinations made pursuant to paragraphs (1) and (2).

(b) ESTABLISHMENT OF SYSTEM.—Not later than 60 months after the date of the enactment of this Act, the Attorney General shall establish a national instant criminal background check system that any licensee may contact, by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 of title 18, United States Code, or State law.

(c) EXPEDITED ACTION BY THE ATTORNEY GENERAL.—The Attorney General shall expedite—

(1) the upgrading and indexing of State criminal history records in the Federal criminal records system maintained by the Federal Bureau of Investigation;

(2) the development of hardware and software systems to link State criminal history check systems into the national instant criminal background check system established by the Attorney General pursuant to this section; and

(3) the current revitalization initiatives by the Federal Bureau of Investigation for technologically advanced fingerprint and criminal records identification.

(d) NOTIFICATION OF LICENSEES.—On establishment of the system under this section, the Attorney General shall notify each licensee and the chief law enforcement officer of each State of

the existence and purpose of the system and the means to be used to contact the system.

(e) ADMINISTRATIVE PROVISIONS.—

(1) AUTHORITY TO OBTAIN OFFICIAL INFORMATION.—Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate subsection (g) or (n) of section 922 of title 18, United States Code or State law, as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system.

(2) OTHER AUTHORITY.—The Attorney General shall develop such computer software, design and obtain such telecommunications and computer hardware, and employ such personnel, as are necessary to establish and operate the system in accordance with this section.

(f) WRITTEN REASONS PROVIDED ON REQUEST.—If the national instant criminal background check system determines that an individual is ineligible to receive a firearm and the individual requests the system to provide the reasons for the determination, the system shall provide such reasons to the individual, in writing, within 5 business days after the date of the request.

(g) CORRECTION OF ERRONEOUS SYSTEM INFORMATION.—If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate subsection (g) or (n) of section 922 of title 18, United States Code or State law, the prospective transferee may request the Attorney General to provide the prospective transferee with the reasons therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The prospective transferee may submit to the Attorney General information to correct, clarify, or supplement records of the system with respect to the prospective transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to the prospective transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

Confidential information.

(h) REGULATIONS.—After 90 days' notice to the public and an opportunity for hearing by interested parties, the Attorney General shall prescribe regulations to ensure the privacy and security of the information of the system established under this section.

(i) PROHIBITION RELATING TO ESTABLISHMENT OF REGISTRATION SYSTEMS WITH RESPECT TO FIREARMS.—No department, agency, officer, or employee of the United States may—

(1) require that any record or portion thereof generated by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons, prohibited by section 922 (g) or (n) of title 18, United States Code or State law, from receiving a firearm.

(j) DEFINITIONS.—As used in this section:

(1) LICENSEE.—The term "licensee" means a licensed importer (as defined in section 921(a)(9) of title 18, United States Code), a licensed manufacturer (as defined in section 921(a)(10) of that title), or a licensed dealer (as defined in section 921(a)(11) of that title).

(2) OTHER TERMS.—The terms "firearm", "handgun", "licensed importer", "licensed manufacturer", and "licensed dealer" have the meanings stated in section 921(a) of title 18, United States Code, as amended by subsection (a)(2).

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, which may be appropriated from the Violent Crime Reduction Trust Fund established by section 1115 of title 31, United States Code, such sums as are necessary to enable the Attorney General to carry out this section.

SEC. 104. REMEDY FOR ERRONEOUS DENIAL OF FIREARM.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 925 the following new section:

"§ 925A. Remedy for erroneous denial of firearm

"Any person denied a firearm pursuant to subsection (s) or (t) of section 922—

"(1) due to the provision of erroneous information relating to the person by any State or political subdivision thereof, or by the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act; or

"(2) who was not prohibited from receipt of a firearm pursuant to subsection (g) or (n) of section 922,

may bring an action against the State or political subdivision responsible for providing the erroneous information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the erroneous information be corrected or that the transfer be approved, as the case may be. In any action under this section, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 44 of title 18, United States Code, is amended by inserting after the item relating to section 925 the following new item:

"925A. Remedy for erroneous denial of firearm.".

SEC. 105. RULE OF CONSTRUCTION.

18 USC 921 note.

This Act and the amendments made by this Act shall not be construed to alter or impair any right or remedy under section 552a of title 5, United States Code.

SEC. 106. FUNDING FOR IMPROVEMENT OF CRIMINAL RECORDS.

(a) USE OF FORMULA GRANTS.—Section 509(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

(1) in paragraph (2) by striking "and" after the semicolon;

(2) in paragraph (3) by striking the period and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(4) the improvement of State record systems and the sharing with the Attorney General of all of the records described in paragraphs (1), (2), and (3) of this subsection and the records

required by the Attorney General under section 103 of the Brady Handgun Violence Prevention Act, for the purpose of implementing that Act.".

18 USC 922 note.

(b) ADDITIONAL FUNDING.—

(1) GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS.—The Attorney General, through the Bureau of Justice Statistics, shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used—

(A) for the creation of a computerized criminal history record system or improvement of an existing system;

(B) to improve accessibility to the national instant criminal background system; and

(C) upon establishment of the national system, to assist the State in the transmittal of criminal records to the national system.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under paragraph (1), which may be appropriated from the Violent Crime Reduction Trust Fund established by section 1115 of title 31, United States Code a total of $200,000,000 for fiscal year 1994 and all fiscal years thereafter.

TITLE II—MULTIPLE FIREARM PURCHASES TO STATE AND LOCAL POLICE

SEC. 201. REPORTING REQUIREMENT.

Section 923(g)(3) of title 18, United States Code, is amended—

(1) in the second sentence by inserting after "thereon," the following: "and to the department of State police or State law enforcement agency of the State or local law enforcement agency of the local jurisdiction in which the sale or other disposition took place,";

(2) by inserting "(A)" after "(3)"; and

(3) by adding at the end thereof the following:

Records.

"(B) Except in the case of forms and contents thereof regarding a purchaser who is prohibited by subsection (g) or (n) of section 922 of this title from receipt of a firearm, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall not disclose any such form or the contents thereof to any person or entity, and shall destroy each such form and any record of the contents thereof no more than 20 days from the date such form is received. No later than the date that is 6 months after the effective date of this subparagraph, and at the end of each 6-month period thereafter, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall certify to the Attorney General of the United States that no disclosure contrary to this subparagraph has been made and that all forms and any record of the contents thereof have been destroyed as provided in this subparagraph.".

Certification.

TITLE III—FEDERAL FIREARMS LICENSE REFORM

Federal Firearms License Reform Act of 1993.

18 USC 921 note.

SEC. 301. SHORT TITLE.

This title may be cited as the "Federal Firearms License Reform Act of 1993".

SEC. 302. PREVENTION OF THEFT OF FIREARMS.

(a) COMMON CARRIERS.—Section 922(e) of title 18, United States Code, is amended by adding at the end the following: "No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.".

(b) RECEIPT REQUIREMENT.—Section 922(f) of title 18, United States Code, is amended—

(1) by inserting "(1)" after "(f)"; and

(2) by adding at the end the following new paragraph:

"(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.".

(c) UNLAWFUL ACTS.—Section 922 of title 18, United States Code, as amended by section 102, is amended by adding at the end the following new subsection:

"(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.".

(d) PENALTIES.—Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(i)(1) A person who knowingly violates section 922(u) shall be fined not more than $10,000, imprisoned not more than 10 years, or both.

"(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.".

SEC. 303. LICENSE APPLICATION FEES FOR DEALERS IN FIREARMS.

Section 923(a)(3) of title 18, United States Code, is amended—

(1) in subparagraph (A), by adding "or" at the end;

(2) in subparagraph (B) by striking "a pawnbroker dealing in firearms other than" and inserting "not a dealer in";

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How to Exempt States from Waiting Periods and Computer Registration of Gun Owners

-- While Complying with the Brady Handgun Act

Summary: The Brady Handgun Violence Prevention Act, passed in November 1993, establishes an unconstitutional restriction on the Second Amendment. The law seriously compromises the rights of law-abiding citizens by forcing them to wait five days to exercise their right of self-defense.

Moreover, Brady sets up a background check system which can easily lead to gun owner registration. Both of these unconstitutional infringements can be avoided with a bill modeled after a federal bill (H.R. 3125) known as the "Felon Identification and Police Safety Act."

A state version of this bill -- otherwise known as the driver's license check -- can bypass both the waiting period and the gun owner registration provisions, while at the same time, complying with the Brady bill.

Waiting Periods Cost Innocent Lives

State laws requiring a waiting period before the purchase of a firearm have endangered the lives of law-abiding Americans by preventing them from legally protecting themselves, as demonstrated by the following examples:

* In 1991, Bonnie Elmasri of Wisconsin tried to get a handgun to protect herself from her estranged husband, but he returned home and killed her and her 2 children before the 48-hour waiting period required by State law had expired.[1]

* In 1990, Catherine Latta of North Carolina tried to buy a firearm but was told by police that it would take her 2 to 4 weeks to get the necessary permit. After telling the clerk she "would be dead by then," she illegally bought a handgun on the street. Five hours later she was attacked again by the man who already robbed, assaulted and raped her. She used her handgun to protect herself by shooting and killing him. Had she not had a handgun, the outcome would have been much different.[2]

* Residents of Los Angeles were forced to wait 15 days during the 1992 riots before they could legally buy a firearm for protection, in spite of the fact that police were admitting that they could not protect the people.

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1 Congressional Record, 8 May 1991, pp. H 2859, H 2862

2 David B. Kopel, "The Violence of Gun Control," Policy Review, 63 (Winter 1993), Reprint ed., p. 5

BACK UP

Why the Instant Check can lead to Gun Owner Registration

All background checks done at a gun store (whether an instant check or a waiting period) register gun owners with the government. Why? Because gun buyers are singled out at gun stores for identification by the government. When a dealer notifies the government about a potential gun buyer (for a background check), that citizen can easily remain on record as having bought a gun. That is centralized, gun owner registration.

Registration despite legal prohibitions

The Brady Act creates the very real potential for making an illegal registration list. Already, waiting periods and other gun control laws are being used to compile such lists and violate civil liberties:

* In California, officials have for years been using the state background check -- required during the waiting period -- to compile an illegal registry of handgun owners. These lists have been compiled without any statutory authority to do so.[3]

* The BATF (Bureau of Alcohol, Tobacco and Firearms) has also been compiling an illegal gun owner list by going to dealers' stores and copying the 4473 forms which are kept there.[4] By copying these forms, which contain the name and addresses of gun buyers, the BATF is violating federal law.

[In the above cases, citizens must rely on government officials to prosecute their fellow 'brothers in blue' for violations. It is much better to prevent government officials from even having the opportunity to compile such lists.]

This problem of a registration list can result from any background check conducted at the point-of-sale. Whether the check results from a waiting period or an instant check, the result is the same: government officials are given the names of gun buyers.

It is true that Brady mandates that the records of background checks are to be destroyed. But there are no penalties established to punish officials who violate the law. Thus, what guarantees are there that officials will not disregard the law, just like BATF and California officials are already doing?

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3 Ibid., p. 6.

4 "NM Gun Shop Owners Upset Over BATF's Searches," The New Gun Week, 19 November 1993; "Suit takes shot at inspections -- Gun shop owner says copying weapons registration illegal," Cincinnati Enquirer, 7 December 1989

The Office of Technology Assessment, the think-tank of the U.S. Congress, admitted there is no guarantee. Commenting on the Virginia State instant check system, the OTA said,

> The fact remains that computerized criminal records systems maintain, as standard operating procedure, transaction logs to document who is using the system, when, for what purposes. Transaction logs are needed to help assure system accountability and security. The Virginia transaction log does not include the names of firearm purchasers, but the potential exists regardless of legal prohibitions.[5] (Emphasis added.)

Registration and confiscation of firearms

While gun registration has historically led to the confiscation of firearms in other countries, one no longer needs to look abroad for examples.

Several cities (Cleveland, New York City and Chicago) have banned the very guns which were once legally registered with the police. In New York City, the police have even enforced the gun ban by confiscating the firearms of honest citizens (Daily News, 9/5/92). Clearly, once registration laws are in place, officials can easily enforce a ban since they know where the guns are.

States can Legally Bypass Waiting Periods and Registration under Brady

Title I, Section 102(a)(1)(C) of the Brady Handgun Violence Prevention Act allows for states with a permit-to-purchase system to bypass the waiting period.

In its report on the Brady bill, the House Judiciary Committee stated in November of 1993 that,

> The waiting period requirements in H.R. 1025 will apply only in States which do not currently conduct background checks. States with their own background check systems will be exempted, whether they conduct the checks with a waiting period system, an instant-check system, or a permit-to-purchase system.[6] (Emphasis added.)

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5 U.S. Congress, Office of Technology Assessment, Automated Record Checks of Firearm Purchasers: Issues and Options, OTA-TCT-497 (Washington, DC: U.S. Government Printing Office, July 1991), p. 40.

6 U.S. Congress, House of Representatives, Committee on the Judiciary, Brady Handgun Violence Prevention Act, Report 103-344, 10 November 1993.

It is this provision which provides the avenue for states to bypass the waiting period, and the driver's license check is the perfect vehicle to do it.

Driver's License Check avoids chill of gun control

The Felon-ID bill uses a person's driver's license or walking ID card to warn dealers of prohibited gun buyers. The bill only targets convicted criminals and those adjudicated mentally ill; it in no way compromises the privacy rights of gun owners.

The bill requires the state transportation agency to add criminal information on the licenses of felons and those adjudicated mentally ill. This data would be encoded on the back of a criminal's license in a way that would only allow the police and gun dealers to know the person's status. Gun dealers would only have to use a special card reader to see if a gun buyer is prohibited from making a legal purchase.

With this system, gun dealers will have a way to check for felons buying guns, without giving the government an opportunity to make a list of law-abiding gun owners. Thus, the driver's license check will avoid gun owner registration. And it will give police on the street the quickest possible access to criminal information for their safety.

Driver's License Check can fulfill provisions of Brady

Sections 4(d) and 3(b) of the driver's license bill will allow states to comply with Brady, and yet bypass both the waiting period and the gun owner registration provisions found in Brady:

* Section 4(d) defines a license which is issued by the state transportation agency to be a "permit" pursuant to the appropriate provision in Brady which allow states with such permit-to-purchase systems to bypass the waiting period.[7]

Under the Felon-ID bill, a driver's license can legitimately be called a "permit" pursuant to Brady since officials are conducting a background check before issuing the license.

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[7] Title I, Sec. 102(a)(1)(C) of the Brady Handgun Violence Prevention Act states that it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who does not have a federal firearms license, unless,

> the transferee has presented to the transferor a permit that -- allows the transferee to possess or acquire a handgun; and [such permit] was issued not more than 5 years earlier by the State in which the transfer is to take place; and the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law

* Section 3(b) authorizes the state executive department to implement a computerized background check system which will comply with the requirements established in Brady.[8] The Felon-ID bill will allow workers at the state transportation agency to access the computerized list of felons and mentally ill before they issue a license.

Questions about the Driver's License Check

Q1. What if someone commits a crime years before his license renewal; won't they be able to buy a gun with their license?

No. The Felon-ID bill provides that upon becoming a prohibited person (convicted felon or adjudicated mentally ill), a person's license or identification card is void and "shall be seized by the trial court." A new license or identification card shall, if desired by the prohibited person, be issued by the state transportation agency with the encoded information identifying the person as a prohibited person.[9]

Q2. Will this program burden the taxpayers?

No. The Felon-ID bill stipulates that funding for this program shall come from persons convicted of felonies and those adjudicated mentally ill. When adjudicated, they shall be assessed court costs sufficient to cover the expenses of the background checks. Moreover, they shall pay higher fees when acquiring a driver's license.[10]

Q3. Will this bill require everyone to have their backgrounds investigated?

No. Law-abiding citizens do not have their records checked: there is no searching of their credit rating, their mortgage payments, financial picture, etc. Felons and persons who have been adjudicated mentally incompetent are the only ones placed on a computerized list. Therefore, they are truly the only ones who are investigated.

Under this system, felons and those adjudicated mentally incompetent will be the only ones who are identified at the state transportation agency. Gun buyers will not be singled out at gun stores as a suspect class, and will not be registered with the government.

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8 Sec. 103(a) of the Brady Handgun Violence Prevention Act

9 Felon Identification and Police Safety Act, Section 4(f).

10 Ibid., Section 4(g).

Appendix:

Brady Act Opens Door for Officials to Wrongfully and Willfully Deny Honest Citizens the Right to Buy a Handgun

The Brady Handgun Violence Prevention Act allows government officials to wrongfully and intentionally deny people's rights without any reprisals.

The Act states that,

> A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages . . . for preventing such a sale or transfer [of a handgun] to a person who may lawfully receive or possess a handgun.[1]

This means that any official that willfully denies law-abiding citizens their right to buy a handgun can do so with impunity. There is no legal recourse.

Could such denials become a problem? Yes. In fact, waiting periods and background checks have already been abused by law-enforcement officials to oppress the law-abiding. In many states, applicants for gun licenses can be arbitrarily denied or experience lengthy delays. David Kopel, a former assistant district attorney in New York City, cites some examples:

* New York City routinely denies gun permits for ordinary citizens and store owners because -- as the courts have ruled -- they have no greater need for protection than anyone else in the city.[2] In fact, the authorities have refused to issue permits even when the courts have ordered them to do so.[3]

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1 Brady Handgun Violence Prevention Act, Sec. 102(a)(7).

2 David B. Kopel, "Trust the People: The Case Against Gun Control," Policy Analysis 109 (11 July 1988): p. 25.

3 Ibid., p. 26.

* And while New Jersey law requires applications to be responded to within thirty days, delays of ninety days are routine; sometimes, applications are delayed for several years for no readily apparent reason.[4]

This is what happens when gun ownership is treated as a state-granted privilege instead of a preexisting right. Officials can withdraw or delay the 'privilege' whenever they choose.

Of course, New Jersey and New York City are not the only places where officials have used background checks as a means to arbitrarily deny or delay people's rights. Consider the following examples:

* In San Jose, California, former police chief Joseph McNamara bragged in his 1984 book, Safe and Sane, that "I have made it considerably tougher for residents to get handgun permits."[5]

* In 1980, Mayor Richard Hatcher of Gary, Indiana, let it be known at a press conference that he would not be approving any citizens' gun applications. He then dared citizens to take him to court if they did not like his gun policy.[6]

* The Bureau of Alcohol, Tobacco and Firearms (BATF) has shown that lying about the results of background checks is quite easy to do. In 1993, 60 Minutes revealed that BATF agents, after conducting background checks on potential employees, had lied about the applicants' backgrounds and denied them jobs with the agency.[7]

* In the mid-1980's, Maryland police threatened to pull the licenses of gun dealers if they sold a handgun before the police could finish their background checks on potential gun buyers. So even though the state waiting period was only seven days, the "unofficial" wait could be as long as 14 days or more.[8]

The driver's license check (mentioned in the body of this Fact Sheet) will prevent officials from capriciously denying gun buyers their rights. By placing the background check at the transportation agency, officials will not be contacted when law-abiding citizens buy their handguns, and thus, officials will not even have the opportunity to abuse their power.

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4 Ibid.

5 Joseph D. McNamara, Safe and Sane: The Sensible Way to Protect Yourself, Your Loved Ones, Your Property and Possessions, 1984, p. 74

6 Kellogg v. City of Gary, Ind. Sup. Ct. (1990)

7 60 Minutes, 10 January 1993

8 Interview with Sanford M. Abrams, Vice-President of the Maryland Licensed Firearms Dealers Association, 12/23/93

HB
481

SPONSOR STATEMENT

HB 481
"An Act relating to audits of recipients of grants and of certain other financial assistance from state agencies."

The intention of HB 481 is fiscal accountability. Organizations that receive state money in the amount of $25,000 to $149,999.99 need to be accountable for the use of the money. HB 481 requires organizations that receive less than $150,000 to have a yearly financial audit in accordance with governmental auditing standards.

The State of Alaska gives varying sums of money to many organizations each year. Accountability for these funds is a must, regardless of the size of the organization. There are approximately 236 organizations receiving state financial assistance. Any organization that receives less than $150,000 is not required by the state to have an audit of any type. However, there are single audit requirements that apply to organizations receiving over $150,000.

The type of audit required by HB 481 is a financial audit. The cost to an organization for this audit is far less than a single audit. One of the major factors in determining the cost of a financial audit is the condition of an organizations records. If the records are accurate and up to date, the audit will cost far less in terms of an accountants time and effort. Therefore, this legislation will cause organizations to increase the accuracy of their records. As a result they will be able to identify more efficient uses of limited funds.

As our state budget decreases we as policy makers will be held increasingly accountable for each dollar we vote upon. Information about how our money is used must be given to us in an accurate and timely manner. If we do not demand accountability from the recipients of our state dollars we cannot expect to hold the line on our state spending. I urge your favorable consideration of HB 184.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 481

Revision Date:
Title: "An Act relating to audits of recipients of grants and of certain other financial..."
Sponsor: Rep. Bunde
Requestor: (H) State Affairs

Dept. Affected: Administration
BRU: Administrative Services
Component: Administrative Services
COMPONENT SERIAL NO. 46

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: None

POSITIONS:

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

ANALYSIS: (Attach a separate page in necessary)

This fiscal note assumes that any follow-up work on audits will be done by the Office of Management & Budget.

Prepared by: Sharon Barton
Division: Administrative Services
Phone: 465-5655
Date:

Approved by Commissioner: Nancy Bear Usera
Agency: Administration
Date: 3/14/91

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(Rev. 10/93)

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 481

Revision Date:
Title: "An Act relating to audits of recipients of grants and of certain other financial..."
Sponsor: Rep. Bunde
Requestor: (H) State Affairs

Dept. Affected: Administration
BRU: Administrative Services
Component: Administrative Services
COMPONENT SERIAL NO. 46

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: None

POSITIONS:

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

ANALYSIS: (Attach a separate page in necessary)

This fiscal note assumes that any follow-up work on audits will be done by the Office of Management & Budget.

Prepared by: Sharon Barton
Division: Administrative Services
Phone: 465-5655
Date:

Approved by Commissioner: Nancy Bear Usera
Agency: Administration
Date: 3/14/91

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FISCAL NOTE

FISCAL NOTE

STATE OF ALASKA **BILL NO.** HB481
'94 LEGISLATIVE SESSION

Revision Date:		Dept. Affected:	OFFICE OF THE GOVERNOR
Title:	Relating to Audits of Grant Recipients	BRU:	OFFICE OF MANAGEMENT & BUDGET
		Component:	Division of Audit & Management Services
Sponsor:	Bunde		
Requestor:	Bunde	COMPONENT SERIAL NO.	17

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL						

Estimate of any current year (FY94) cost: $

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Monitoring and desk reviews for the audits would need to be accomplished by present staff. Probable increase in workload in this area (.5 FTE) means less effort available for compliance, program, management and performance audits.

Prepared by: Gary Anderson, Director Phone: 465-3568
Division: Audit and Management Services Date: 3/11/94
Approved by Commissioner: Date:
Agency:

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FY 1993 State Financial Assistance Between $25,000 and $150,000

Code	Vendor	Amount
AFC84302	Advocates for Victims	133,000
AFE93056	Agency for Families Enhancement Coordination Team	85,258
AIR87362	Ak Information Radio Reading and Educ.Svs/Blind	58,470
CIA84323	Akhiok City	26,101
CIA84693	Alakanuk City	60,414
AAD89289	Alaska Association for the Deaf	36,799
ABD84323	Alaska Business Development Center	56,836
ACS89354	Alaska Community Services, Inc.	81,618
AHF86343	Alaska Health Fair	30,300
AHP84286	Alaska Health Project	82,765
AHD88091	Alaska Housing Development Corp.	41,627
AMS88257	Alaska Marine Safety Education Association	71,000
ANF84762	Alaska Native Foundation	147,865
ANH88230	Alaska Native Health (Aids Program Service)	75,830
APS92002	Alaska Power Systems, Inc.	80,142
APR84680	Alaska Public Radio Network	60,526
ARE87273	Alaska Rural Electric Cooperative	64,466
ASO84040	Alaska Special Olympics	55,135
ASF84300	Alaska State Fair	31,600
AVE84794	Alaska Village Electric Coop Inc.	105,271
ASG91065	Alaskan Shellfish Growers Association	50,542
AWC88060	Aleutians West CRSA	143,501
AML84174	American Legion	112,466
ACC85256	Anchorage Chamber of Commerce	35,000
ACO84082	Anchorage Civic Opera	50,361
ACS84311	Anchorage Clean Sweep	34,057
ACY84019	Anchorage Community YMCA	31,230
ACO84083	Anchorage Concert Association	73,340
ALP84006	Anchorage Literacy Project	71,471
AHF84002	Anchorage Museum of History & Art	62,000
AAC84195	Anchorage Senior Center, Inc.(Anchor-Age)	103,121
ASO84082	Anchorage Symphony Orchestra	45,958
CIA85353	Anderson City	85,849
CIA84461	Angoon City	73,661
ACA89039	Angoon Community Association	58,212
ATC84251	Aniak Traditional Village Council	27,839
ADC91158	Arctic Development Council, Inc.	29,929
AVC84285	Arctic Village Council	85,301
CHG93091	Arctic Winter Games-Chugiak Eagle River	31,250
ASR84187	Assoc for Stranded Rural Alaskans	52,561
ASS91186	Association of Silver Springs Area Residents	52,000
COA84027	Atqasuk City	73,763
BMH84581	Bartlett Memorial Hospital	44,944
BSC89202	Bering Straits CRSA	91,701

FY 93 STATE FINANCIAL ASSISTANCE

BUC84487	Bethel Utilities Corporation	45,698
BEL84796	Bettles Lodge Inc.	33,595
BEC84265	Betty Eliason Child Care (Attn: Mary Bowen)	32,627
BRP84273	Big River Public Broadcasting Corp.	72,410
BAM92253	Bootstraps of America, Inc.	47,500
BBA88313	Bristol Bay Area Health Corporation	147,534
BBC85270	Bristol Bay CRSA Coastal Management	111,601
BBE92318	Bristol Bay Economic Development Corporation	26,000
CBU84595	Buckland City	122,264
CCC84279	Campfire Alaska Council	95,062
CAC84378	Catholic Community Services(CCS84357)	46,959
CEC85224	Cenaliulriit Coastal Resource Area	48,707
CEP84919	Central Peninsula	90,000
CPM84847	Central Peninsula Mental Health Assn	85,533
AHS84122	Challenge Alaska	37,083
CBV86091	Chenega Bay Village Council	32,187
CIC84202	Chevak City	26,650
COC84272	Chignik City	43,368
CLV86091	Chignik Lagoon Village Council	25,000
CVC84298	Chistochina Village Council	34,631
CCB84210	Cold Bay City	111,250
CIT90073	Cook Inlet Tribal Council (HeadStart)CIT88235	78,650
CCH84373	Cordova Community Hospital (CCH84606)	91,098
CHE90043	Cultural Heritage & Education Institute	78,362
DDA91198	Ddares, Inc.	100,000
CID84317	Deering City	29,949
DEC84355	Deltana Community Corp.	50,952
DEN85269	Denakkanaaga, Inc	45,799
DEB91014	Denali Borough	114,945
DAV88322	Disabled American Veterans (Anchorage)	68,167
DIP89229	Douglas Island Pink & Chum	35,720
EGN92225	Eagle Glacier Nordic Training Center	63,000
EVC86272	Eagle Village Council	34,352
EAR92206	Earth, Inc.	30,000
ESS84337	Easter Seal Society(Crippled Children & Adult)	123,763
EAT92199	Eastern Aleutian Tribes, Inc.	36,792
CIE84061	Eek City	63,549
CIE84593	Elim City	87,774
CIE84322	Emmonak City	74,476
EWS85239	Emmonak Women's Shelter	54,525
ENC91353	Energy Concepts Co.	127,653
AAA84930	Fairbanks Art Association	90,200
FCA84017	Fairbanks Counseling & Adoption	139,404
FHP89219	Fairbanks Historical Preservation	75,000
FMH84280	Fairbanks Memorial Hospital	32,350
FAS84082	Fairbanks Symphony	75,613

FNG93081	Farthest North Girl Scout Council Inc.	88,590
TGC84987	Galena City Schools	98,189
GAM84314	Gastineau Manor	89,255
CIG84315	Golovin City	87,288
GAH89115	Great Alaska Highways Society, Inc.	62,750
GCC86092	Gustavus Community Council	32,300
HLV85239	Healy Lake Traditional Council	31,060
CHC84590	Holy Cross City	79,045
CHB84589	Hooper Bay City	65,380
HVC92253	Hughes Village Council	46,621
HUR86288	Human Resources Co.	95,537
CIH84852	Huslia City	26,701
CIH84230	Hydaburg City	146,098
ICP92261	I Care Patients Network, Inc.	55,000
IVC84285	Iliamna Village Council	61,750
INE84267	Iliamna-Newhalen Electric Cooperative	94,053
IAN84586	Institute of Alaska Native Art	148,600
IAA89173	Interior Aids Association	41,515
INW90289	Interior Weatherization Inc. (SIH)	34,239
IIL85263	Irene Ingle Public Library	72,485
IBV86056	Ivanof Bay Village Council	56,000
GJA84082	Juneau Arts & Humanities Council	72,000
KUH87169	KUHB-FM Public Radio	50,255
KVC84084	Karluk Village Council	30,000
KPB84465	Kenai Peninsula Borough	96,104
KPE88355	Kenai Peninsula Borough Economic Development	70,714
KAH85228	Ketchikan Arts and Hmanities Council, INc	40,000
KAP88351	Kids Are People, Inc.	47,812
KTC85234	Kipnuk Traditional Village Council	26,307
CIK84196	Kivalina City	28,174
CIK84312	Kobuk City	52,282
KAC85228	Kodiak Arts Councils	44,000
KIB85346	Kodiak Island Borough	26,731
KCA88258	Korean Community of Anchorage	26,600
CIK84311	Kotlik City	65,182
CIK84679	Kotzebue City	30,181
KED91120	Kuskokwim Economic Development Council	70,155
CIK84133	Kwethluk City	70,908
LPB89202	Lake and Peninsula Borough	75,142
CLB84218	Larsen Bay City	30,000
LEE87349	Leadership Experience Intl. (LEE87343)	148,411
LVC84285	Levelock Village Council	37,680
LIF87246	Library Foundation/Alaska Paroject	25,047
LIC84601	Literacy Council of Alaska	75,489
LRS90177	Little Red School House (LRS84638)	82,877
LRC85264	Louise Rude Center for Blind/Deaf	89,604

LKE91358	Lower Kuskokwim Economic Development Council	69,760
LCH85200	Lynn Canal Human Resources, Inc.	117,975
MHS90178	Manley Hot Springs Village Council	50,000
CIM84310	Manokotak City	119,818
C'F84201	Marshall City	69,192
MML86224	Martin Monson Library	25,845
MLP91241	Mat-Su Literacy Project	36,646
MST92049	Mat-Su Trails Council	41,500
CMC84599	McGrath City	146,316
MAM84408	McGrath/Anvik Community & Family Sv	98,092
CIM84109	Mekoryuk City	66,311
MHC87205	Mental Health Consumers of Alaska	115,308
MVC84171	Mentasta Lake Village Council	25,291
MIC84267	Metlakatla Indian Community (MIC84378)	128,954
MVS88357	Mid-Valley Seniors, Inc.	27,717
MVC84765	Minto Village Council	147,220
MEH89256	Mt. Edgecumbe Hospital	51,197
MVF91050	Mt. View Food Services, Inc.	32,893
MAT86224	Museum of Alaska Transportation & Industry	62,489
NEA84646	Naknek Electric Association	125,000
NMA85340	Nana Museum of the North	36,526
CIN84309	Napikaik City	103,161
NVF87275	Native Village of Ft. Yukon	30,924
NAS92220	Naval Air Station Day Care	30,476
NTC84199	Nenana Tortella Council on Aging	104,982
NIV92266	Nightmute Village Council	50,000
NIC86092	Nikolski Village Council	25,000
NSC91352	Ninilchik Senior Center, Inc	101,869
CIN84174	Nondalton City	85,956
CIN84227	Noorvik City	117,271
NCR91350	Northern Community Resources	99,591
NOF92070	Northern Forum Inc.	135,000
NSE92204	Norton Sound Economic Development Corporation	27,500
CNU84598	Nuiqsut City	91,074
NCC84026	Nulato City	129,098
CIA84112	Nunapitchuk City	35,089
OVK87148	Organized Village of Kake	29,000
CIO84469	Ouzinkie City	96,750
PCC84971	Petersburg Children's Center	89,993
TPC84315	Petersburg City Schools	145,208
PCA84465	Petersburg Council on Alcoholism	120,000
CPP92119	Pilot Point City	132,211
PLA84299	Planned Parenthood of Alaska	51,781
PNL84016	Play and Learn, Inc.	60,356
CPH84224	Point Hope City	29,729
CPL84107	Port Lions City	141,637

		Amount
HSN84171	Pratt Museum-Homer Society of Natural History	31,851
PWS91338	Prince William Sound Economic Development Council	96,476
PHC84271	Providence Hospital (PHM84232)	33,010
REA84987	REACH	30,170
RED92216	Rainbow's End Day Care	25,136
SAC92267	Regional Alcohol & Drug Abuse Counselor Training	90,000
ROE92114	Robertson Enterprise, Inc.(Carousels Child)	38,493
CIR84225	Ruby City	27,405
RAH92227	Rural Alaska Health Professions Foundation	50,604
SPB84302	Sand Point Broadcasting	56,430
CSP84235	Sand Point City	41,823
CIS84106	Savoonga City	107,926
CIS84583	Saxman City	147,276
CIS84191	Scammon Bay City	68,420
SHF84052	Sealaska Heritage Foundation	63,600
SSC84469	Seward Senior Citizens	61,038
CIS84190	Shageluk City	44,210
SOJ88104	Shanti of Juneau	35,625
CSP84522	Sheldon Point City	60,847
SSM84082	Sitka Summer Music	31,000
SOS86174	Soldotna Senior Citizens	44,562
SVA92199	Sound Vocational Alternatives	77,764
SKA84154	South Kachemak Inc.(Alcohol Program)	27,256
SPW85287	South Peninsula Women's Services (SPW84235)	98,954
SAG89172	Southeast Alaska Guidance Association(SAGA)	37,532
SOC88173	Southeast Conference	101,225
SWA87195	Southwest Alaska Municipal Conference	119,358
CST84124	St. George City (Harbor)	149,000
SGC86003	St. George Traditional Council	36,584
TSM84316	St. Mary's City School District	50,520
SVS89312	St. Vincent De Paul Society	112,968
CIS84187	Stebbins City	34,402
SAS90233	Sterling Area Senior Citizens, Inc.	120,000
SHS86237	Sunshine Health Services	44,548
TCA85205	Takotna Community Association	56,050
TVC85241	Tatitlek Village IRA Council	38,947
CIT84473	Teller City	109,343
CTS84272	Tenakee Springs City	40,285
CTH84015	Tlingit & Haida Central Council	123,132
UNB84273	Unalakleet Broadcasting Inc. (KNSA AM)	34,960
CIU84258	Unalakleet City	140,687
USA84194	Unalaskans Against Sexual Assault	59,429
VSC84173	Valdez Senior Citizens	58,364
VVC84285	Venetie Village Council	100,000
VDA84503	Veterans of Foreign Wars (Dept of Alaska)	124,167
CIW84222	Wainwright City	90,467

CIW84185	Wales City	29,806
WNH88131	Wesleyan Rehabilitation and Care Center	65,660
CWM84304	White Mountain City	98,904
CIW84474	Whittier City	29,280
WIL85266	Willow Public Library	35,282
WCH84080	Women & Childrens Health Associates	47,501
WCA84490	Wrangell Council On Alcoholism	101,832
WDC84300	Wrangell Day Care Inc.	35,293

(2) assisted living (residential II) — residents require support and protective care but do not need continuous nursing supervision or skilled nursing care; and

(3) nursing — residents require direct and extended care by professional and non-professional personnel under the supervision of a registered nurse. (Eff. 3/31/85, Register 93; am 1/1/90, Register 112)

Authority: AS 47.55.010 AS 47.55.020

2 AAC 41.090. PROPERTY OF DECEASED RESIDENTS. Upon the death of a pioneers' home resident, the resident's property that is under the control of a pioneers' home or the Department of Administration will be disposed of in accordance with direction from the court. (Eff. 3/31/89, Register 93; am 1/1/90, Register 112)

Authority: AS 47.55.070

2 AAC 41.100. STATE CLAIM FOR CARE AND SUPPORT.

Authority: AS 47.55.010 AS 47.55.070 AS 47.55.080
AS 47.55.030

Publisher's notes. — The authority line for this section is set out to reflect a renumbering of statutes.

CHAPTER 45. GRANT ADMINISTRATION

Article
10. Audit requirements

2 AAC 45.010. AUDIT REQUIREMENTS. (a) As part of the financial information required under AS 37.05.030, a state agency that enters into a financial assistance agreement to provide financial assistance to an entity shall, in coordination with any other state agencies providing financial assistance to that entity, submit to the Department of Administration through the state coordinating agency an audit of the recipient entity if that entity is subject to audit under this section. The audit must be conducted and submitted as described in this section. In order to ensure compliance with this subsection, the audit requirements of this section must be contained in any financial assistance agreement entered into by a state agency.

(b) An entity that receives state financial assistance with a cumulative total of $150,000 or more during the entity's fiscal year shall submit to the state coordinating agency, within one year after the

end of the audit period, an annual audit report covering the audit period.

(c) An audit required by this section must be conducted by an independent auditor, according to the following audit standards effective at the time of review:

(1) *Government Auditing Standards, 1988 revision* adopted by the comptroller general of the United States; or

(2) generally accepted auditing standards, as accepted by the American Institute of Certified Public Accountants on January 1, 1990 for the type of entity being audited.

(d) An audit report required under this section must address the following:

(1) the systems of internal control, and whether the recipient entity has effective control over, and proper accounting for, revenues, expenditures, assets, and liabilities;

(2) compliance with state statutes and regulations, and applicable financial assistance agreements affecting the expenditure of state money; and

(3) the recipient entity's financial transactions, financial statements, and accounts; whether those financial statements are presented fairly in accordance with generally accepted accounting principles; and whether the financial statements contain reliable financial data presented in accordance with applicable financial assistance agreements.

(e) As part of an audit report required under this section, a recipient must provide written comments (1) on any findings or recommendations contained in the audit report, including the recipient's plan for corrective action on the findings or recommendations; and (2) on the status of corrective action proposed or taken on findings or recommendations contained in the audit report last performed for the entity. If the recipient does not intend to take corrective action regarding the findings or recommendations contained in the audit report, the recipient must explain why corrective action will not be taken and submit the explanation with the audit report.

(f) An audit report required under this section need not evaluate the effectiveness of a program funded by state financial assistance. However, a program evaluation may be conducted or requested by the state agency that entered into the financial assistance agreement.

(g) An audit required by this section must cover either the entire operations of the recipient entity, or at the option of that entity, only the departments, agencies, or establishments of that entity which received, spent, or otherwise administered state financial assistance during the audit period. The state coordinating agency may consider

a series of audits of a recipient entity's individual departments, agencies, or establishments for the same fiscal year as a single audit.

(h) A recipient entity shall provide the state coordinating agency with sufficient copies of each audit report to allow submission of a copy to each state agency providing financial assistance to the entity. The state coordinating agency shall determine if auditing standards have been met and will forward a copy of the audit to the Department of Administration and other appropriate state agencies. The state coordinating agency shall coordinate resolution of audit exceptions and further audit work in accordance with (i) of this section.

(i) Unless additional audit requirements are imposed by state or federal law, a state agency that provides financial assistance to an entity shall accept the audit required by this section in satisfaction of any other audit requirement. If additional audit work is necessary to meet the needs of a state agency, the audit work must be based on the audit required by this section and be paid for by the state agency.

(j) A third party that receives financial assistance through a recipient entity, in an amount described in this section, is subject to the applicable requirements of this section. A recipient entity that disburses $150,000 or more in state financial assistance to a third party shall ensure that the third party complies with the requirements of this section. That recipient entity shall also ensure that appropriate corrective action is taken within six months after a third party's noncompliance with an applicable state statute or regulation, or financial assistance agreement, is disclosed.

(k) The amended version of this section, effective June 29, 1990, applies to an audit for a fiscal year that ends on or after June 30, 1990.

(*l*) For purposes of this section, if an entity has not identified its fiscal year, that entity's fiscal year is July 1 through June 30.

(m) Financial assistance in the following form is not included when calculating whether a recipient entity meets the threshold monetary requirement under (b) of this section: (1) state revenue sharing and municipal assistance money provided under AS 29.60.010 — 29.60.375; (2) amusement and gaming tax money provided under AS 43.35.050; (3) aviation fuel tax money provided under AS 43.40.010; (4) electric/telephone tax money provided under AS 10.25.570; (5) liquor license tax money provided under AS 04.11.610; (6) fisheries tax money provided under AS 43.75.130.

(n) Financial assistance in a form listed in (m) of this section is not exempt from compliance testing if the recipient entity meets the threshold monetary requirement under (b) of this section.

(o) For purposes of this section,

(1) "audit period" means the recipient entity's fiscal year in which the entity received financial assistance;

(2) "entity" does not include the University of Alaska or any other state agency;

(3) "financial assistance" means state grants, contracts, provider agreements, cooperative agreements, and all forms of state financial assistance to an entity, and includes all forms of state financial assistance provided through an entity to a third party; "financial assistance" does not include public assistance provided under AS 47; nor does "financial assistance" include goods or services purchased for the direct administration or operation of state government; for a third party, "financial assistance" does not include goods purchased from the third party by a recipient entity for the direct administration or operation of the recipient entity;

(4) "state coordinating agency" means the Office of Management and Budget (OMB), Office of the Governor, or OMB's designee. (Eff. 8/1/85, Register 95; am 6/29/90, Register 114)

Authority: AS 37.05.020 AS 37.05.030 AS 37.05.190

CHAPTER 50. ALASKA PUBLIC OFFICES COMMISSION: CONFLICT OF INTEREST, CAMPAIGN DISCLOSURE AND REGULATION OF LOBBYING

Article

4. Regulation of Lobbying (2 AAC 50.607)

Article 4. Regulation of Lobbying

Section

507. Civil penalty assessments

2 AAC 50.507. CIVIL PENALTY ASSESSMENTS. (a) A registration statement or report required to be filed under AS 24.45.041, 24.45.051, 24.45.061, or 24.45.081 is delinquent if not received on or before the due date.

(b) A registration statement or report continues to be delinquent and subject to a civil penalty until received.

(c) Upon receipt of a delinquent registration statement or report, commission staff will calculate the initial civil penalty at $10 for each day from the due date through the date the registration or report is submitted, and send a notice of the civil penalty assessed against the lobbyist or employer of lobbyist. The notice shall include

(1) a statement of the amount of the assessment; and

(2) an affidavit form which may be used by the lobbyist or employer of lobbyist to request a reduction or waiver of the assessment.

(d) Within 30 days of the date of the assessment notice described in (c) of this section, a lobbyist or employer of a lobbyist subject to a civil penalty assessment must

(1) submit an affidavit stating reasons for the late filing to show why a civil penalty should be reduced or waived; an affidavit

(A) is a statement in writing made under oath and upon penalty of perjury; and

(B) must be sworn to before a notary public, municipal clerk, court clerk, postmaster, or any other person authorized to administer oaths or, if none of the preceding alternatives is available, may be signed by the affiant without benefit of the oath so long as the affiant states, in writing, that the affidavit is signed under penalty of perjury; or

(2) pay the civil penalty assessed.

(e) If a lobbyist or employer of a lobbyist subject to a civil penalty assessment for the late filing of a registration statement or report refuses or fails, within the time required, to submit an affidavit or make payment, commission staff will pursue appropriate collection action. The commission will not hear an untimely request to reduce or waive an assessment. A request is untimely if an affidavit is not filed within the time required under (e) of this section.

(f) An affidavit timely filed will be considered at a regularly scheduled meeting of the commission. Affiant will be given notice of the meeting and will be given an opportunity to appear before the commission in person or by telephone. After considering the matter, the commission will issue an order setting out its decision, and the findings of fact and conclusions of law which support the decision. Staff will send the order to the affiant. If a lobbyist's or employer of a lobbyist's appeal is

(1) denied by the commission, the order will require that the civil penalty originally assessed be paid within 30 days after the date of the letter forwarding the order; or

(2) accepted, in full, by the commission, the order will state that the civil penalty assessment has been waived and that the matter is considered closed; or

(3) accepted, in part, by the commission, the order will require that the reduced civil penalty assessment be paid within 30 days after the date of the letter forwarding the order.

(g) A decision of the commission to deny a reduction or waiver of the civil penalty may be appealed to the superior court pursuant to AS 44.62.560 and Alaska Rules of Appellate Procedure 601-612. If payment of the penalty is not made or if an appeal is not filed within 30 days after the date of the letter forwarding the commission's order, commission staff will pursue appropriate collection action.

(h) If, upon review of a report or registration, the commission's staff finds substantial or continuous noncompliance with AS 24.45 or a provision of this chapter, the matter must be brought to the commission for review. After notice and an opportunity to be heard the commission may assess a civil penalty of not more than $10 per day, subject to the appeal process, for each day the registration or report did not substantially comply with the requirements of AS 24.45, or instruct its staff to begin a preliminary investigation into the matter. (Eff. 7/22/78, Register 67; am 5/14/80, Register 74; am 5/24/81, Register 78; am 9/27/91, Register 119)

Authority: AS 15.13.030
AS 24.45.021(b)
AS 24.45.041
AS 24.45.051
AS 24.45.061
AS 24.45.081
AS 24.45.131(a)
AS 24.45.141

HB
482

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 482

Revision Date:
Title: Employment information provided to the State
Sponsor: Representative Hanley, Ulmer
Requestor: House State Affairs

Dept. Affected: Revenue
BRU: Child Support Enforcement Division
Component: Child Support Enforcement Division
COMPONENT SERIAL NO. 111

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE: (GF)	310.8	326.4	342.7	359.8	377.5	396.4

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 (FY94) impact: $ 0.0

ANALYSIS: (Attach a separate page if necessary.)
A Federally funded study was mandated to determine the effect on the quantity and amount of child support collections when employers reported new hires and rehires. Significant increases in the collection rate and amount in the employer groups were shown.. There was a 35% increase in collections from the prior year attributed to employer reporting. Seasonal employers were also targeted and showed a 35% increase in the number of obligors found among seasonal workers and a 27% increase in collections.
The legislation targets employers with more than 20 employees. The revenue to the State in FY 95 would be $621.6 million; however, only 50% of that goes to the General Fund.

Prepared by: Mary Gay, Director Mary Gay (signature)
Phone: 263-6270
Division: Child Support Enforcement Division
Date: 3/14/94
Approved by Commissioner: Darrel J. Rexwinkel (signature) for
Date: 3/14/94
Agency: Department of Revenue

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(Rev 11/93) 94fiscal memo

FAX TRANSMITTAL MEMO

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 482

Revision Date: ______

Title: "An Act making permanent a temporary requirement relating to the provision of employment information..."

Sponsor: Hanley, Ulmer

Requestor: ______

Department Affected: Administration

BRU: Finance

Component: Finance

COMPONENT SERIAL NO. 59

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING SOURCE: (Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 94) cost: $ 0.0

POSITIONS:

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary.)
This bill repeals a statutory revision which was not effective until 1995. There is no impact as we are currently complying with the existing statutory language.

Prepared by: Don Wanie

Phone: 465-2240

Division: Finance

Date: 2/25/94

Approved by Commissioner: Nancy Bear Usera

Agency: Department of Administration

Date: 2/28/94

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DOF/JT/HB482.FN

FISCAL NOTE

Representative Mark Hanley

Alaska State Legislature

DATE: February 14, 1994

TO: Representative Al Vezey
Chairman, State Affairs

FROM: Representative Mark Hanley *MH*

RE: HB482: "An act making permanent a temporary requirement relating to the provision of employment information to the state."

In 1991, the legislature amended Alaska's child support laws to require employers of 20 or more employees to report new hires directly to the Child Support Enforcement Division each month(HB43). The purpose of this employer reporting system program was to improve the state's ability to find parents delinquent in their child support payments in order to ensure payment.

In years prior, employers reported information on new employees to the Dept. of Labor on a quarterly basis; the Dept. of Labor then forwarded that information to the Child Support Enforcement Division. Up to 4 months could have passed since the time of the new hire and CSED's receipt of that information. As a result, seasonal workers and other transient employees were not located in time to enforce child support orders.

Since the adoption of HB43, actual collections have increased 37%, and paternity and order establishments increased by 47%. HB43 has saved the state revenue by reducing it's losses in child support payments by more than $ 1.6 million.

The provisions of HB43 are scheduled to sunset on January 1, 1995 at which time the law would revert back to the quarterly reporting requirement. I believe this program has proven its effectiveness and should not sunset. HB 482 would eliminate the sunset clause and allow an effective program to continue. I respectfully request that you schedule HB482 for a hearing at your earliest convenience.

SPONSOR STATEMENT

Interim: 3111 C St., Suite 410, Anchorage, AK 99503 • (907) 561-2033 Session: State Capitol, Juneau, AK 99801-1182 • (907) 465-4939

EXECUTIVE SUMMARY

The Alaska Child Support Enforcement Division of the Alaska Department of Revenue has successfully established a direct employer reporting program to aid in the identification of individuals who owe child support and to speed up the process of making collections. The second year of the federally funded pilot project has extended the program to include employers which have large numbers of known obligors, brought on during the first year, and those employing seasonal workers.

There were substantial increases in the number and amount of collections from project obligors. The goal of a 25% increase in collections was more than achieved with an actual increase of 27%. The percent of payments relative to obligations reached 77% for the original employers group and 81% for the seasonal employers.

There was a substantial increase in the dollar amount of child support orders with the average obligation for employees of firms participating in the program increasing by 12% ($3,094 to $3,472). This did not quite meet the program goal of a 15% increase.

There was a more than 300% increase in the number of withhold and distribute orders in the second year of the program with the most notable increase in successful locates being found in the newly added seasonal group. The number who were successfully located increased from 4 in the pre-project year to 362 in the first year of reporting for seasonal obligors.

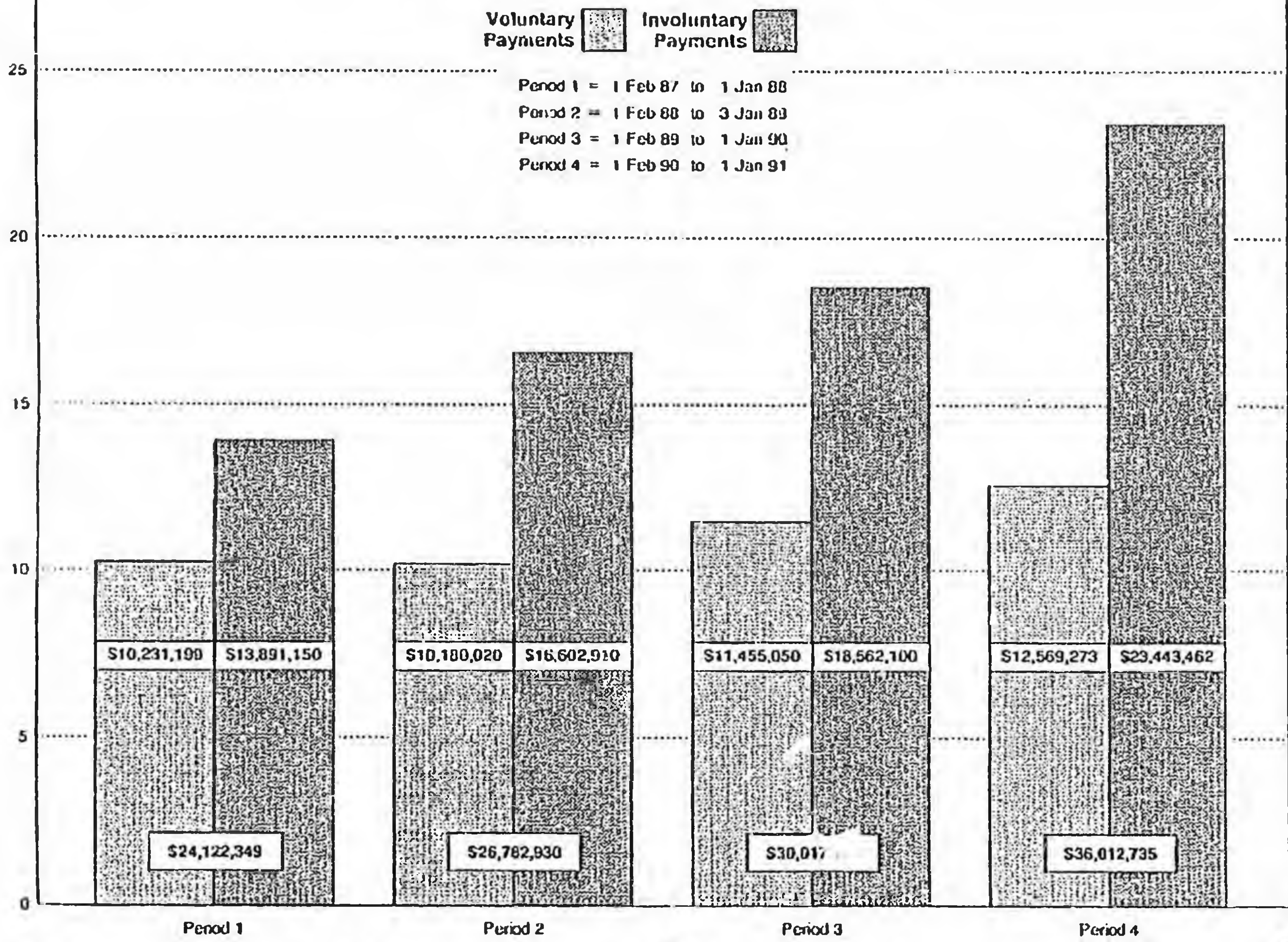
There was a ten fold increase in the number of modifications from 6 to 61 which went far beyond the 12% called for in the proposal.

The cost effectiveness ratio surpassed the target of 1:3 with approximately $3.09 collected for each dollar spent on the program. The total collection which might be attributed to the program based on an increase of 2.3 payments per obligor is $621,690.

The employer reporting system has proved successful in meeting the program goals of implementing a direct employer reporting system which speeds up the location of obligors and increases the number of payments made for child support.

The Child Enforcement Support Division made a substantial effort to increase collections and the number of reviews and modifications for all obligors. This overall activity of CSED resulted in the employer reporting groups <u>and</u> the comparison groups to achieve statistically significant gains. While the employer reporting groups consistently have the highest obligations and percentage of collections, the comparison groups made notable gains and, perhaps because of the nature of the jobs and employers, have higher average payments. This suggests that the expansion of the employer reporting system to include additional employers will result in even greater gains in collections in year three of the program.

EXEC. SUMMARY



Source of Data: Alaska Division of Child Support Enforcement Monthly Management Summary, Cash Collection Details

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House of Representatives

ROBIN L TAYLOR
MINORITY LEADER

MEMORANDUM

TO: Rep. Taylor

FROM; Joe Ambrose R.L.T.

DATE: May 14, 1991

REF: CSHB 43 (FIN)

Robin:

I talked to Ardith Lynch, Deputy Director, Division of Child Support Enforcement at 4:25 this afternoon.

She says that following the Exxon Valdez spill, Exxon, Norcon and Veco voluntarily provided employee lists to the Division. This voluntary submission led to the collection of approximately $400,000 in the year of the spill and $100,000 the following year.

Lynch characterized the industry's effort as "relatively painless".

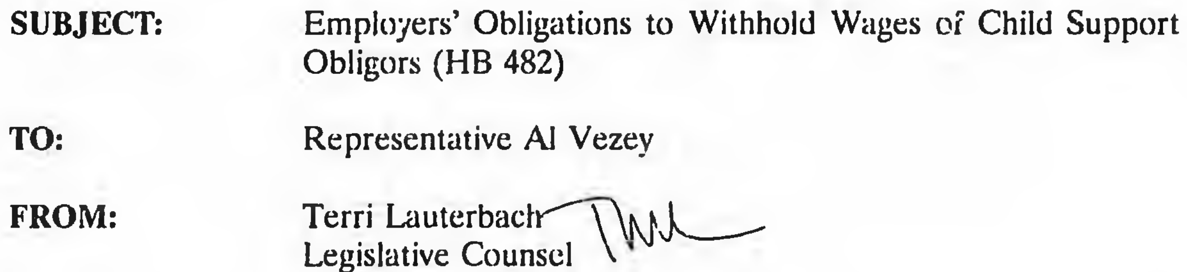
DIVISION OF LEGAL SERVICES

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

<u>**MEMORANDUM**</u> February 28, 1994



SUBJECT: Employers' Obligations to Withhold Wages of Child Support Obligors (HB 482)

TO: Representative Al Vezey

FROM: Terri Lauterbach
Legislative Counsel

You have asked me to review the federal requirements relating to the obligation of an employer to withhold wages of employees who are obligors under child support orders. As I understand from our telephone conversation on February 25, you are concerned about situations where an employee works only intermittently or seasonally or returns to employment after taking a long break. You want to know how long a wage withholding notice from the state is effective in these situations and what the record keeping requirements of the employer may be for keeping track of withholding notices for intermittent or former employees. You also wonder if Alaska's laws could be amended to put an outside time limit on an employer's continuing obligation to withhold wages of intermittent or former employees.

I have reviewed the relevant federal regulation (copy attached - 45 C.F.R. 303.-100(f)). Under the regulation, a wage withholding order is binding on the employer until further notice by the state <u>or</u> until the employee's employment is terminated. Upon termination of an employee who is a child support obligor, the employer must notify the state of the termination and provide to the state the employee's last known address and the name of the employee's new employer, if known. When an employee who is a child support obligor changes jobs, the state must notify the new employer to begin wage withholding. The new employer's obligation does not begin until the notice is received.

With regard to your concerns about intermittent employees and former employees, it is my opinion that this regulation requires the employer to implement wage withholding orders for which the employer has received notice for as long as the obligor is an employee (unless otherwise notified by the state). Therefore, if an intermittent employee or seasonal employee is not actually terminated from employment, the employer will have to implement wage withholding immediately

LEGAL SVC. MEMO 2/28/94

every time the employee comes back to work and receives wages. The way for an employer to avoid the record keeping that may be required to meet this obligation is for the employer to terminate the employee and send notice of that termination to the state. Then, each time the child support obligor returns to work for the same employer, the employer's obligation to withhold wages would not start again until a notice from the state is received. The employer would be treated by the state as a "new" employer, entitled to notice of the wage withholding order, even if there has not been an intervening employer.

I do not read the federal regulations as requiring immediate wage withholding for a former employee who returns to work for the same employer. However, the employee must actually have been terminated and the proper notice of termination sent to the state.

In summary, I do not see any room in the federal regulations for putting a time limit on how long a notice from the state is effective. However, all an employer needs to do to get out from under a wage withholding order (and record keeping requirements) in a situation involving intermittent, seasonal, or former employees, is to send a notice of employment termination to the state whenever the employee leaves employment.

Please let me know if this does not fully answer your questions or if I can be of other assistance.

TML:pl
94-163.plm

Enclosure

nt of support rights to the State, reviewed and entered in the rd by the court or administrative hority.

) *Initiated withholding in IV-D* s. In the case of wages not subject mmediate withholding under para- ph (b) of this section, including s subject to a finding of good e or to a written agreement:

) The wages of the absent parent l become subject to the withhold- on the date on which the pay- ts which the absent parent has d to make under a support order at least equal to the support pay- for one month or, if earlier, and hout regard to whether there is an arage, the earliest of:

The date on which the absent nt requests that withholding n;

) The date on which the custodial nt requests that withholding n, if the State determines, in ac- ance with such procedures and dards as it may establish, that the est should be approved; or

i) Such earlier date as State law or edure may provide.

) The State must send the advance ce required under paragraph (d) of section to the absent parent in 15 calendar days of the appro- te date under paragraph (c)(1) of section if the absent parent's ad- s is known on that date, or, if the nt parent's address is not known hat date, within 15 calendar days cating the absent parent.

The only basis for contesting a holding under this paragraph is a ake of fact, which for purposes of paragraph means an error in the unt of current or overdue support the identity of the alleged absent nt.

Advance notice to the absent nt in cases of initiated withhold- (1) On the date specified in para- h (c)(2) of this section, the State send advance notice to the nt parent regarding the initiated holding. The notice must inform bsent parent:

Of the amount of overdue sup- that is owed, if any, and the unt of wages that will be withheld;

(ii) That the provision for withholding applies to any current or subsequent employer or period of employment;

(iii) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;

(iv) Of the period within which the absent parent must contact the State in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin withholding; and

(v) Of the actions the State will take if the individual contests the withholding, including the procedures established under paragraph (e) of this section.

(2) (i) The requirement for advance notice to the absent parent under paragraph (d)(1) of this section and for State procedures when the absent parent contests the withholding in response to the advance notice under paragraph (e) of this section do not apply in the case of any State which had a withholding system in effect on August 16, 1984 if the system provided on that date, and continues to provide, any other procedures as may be necessary to meet the procedural due process requirements of State law.

(ii) Any State in which paragraph (d)(2)(i) of this section applies must meet all other requirements of this section and must send notice to the employer under paragraph (f) of this section within 15 calendar days of the appropriate date specified in paragraph (c)(1) of this section if the employer's address is known on that date, or, if the employer's address is not known on that date, within 15 calendar days of locating the employer's address.

(e) *State procedures when the absent parent contests initiated withholding in response to the advance notice.* The State must establish procedures for use when an absent parent contests the withholding. Within 45 calendar days of sending advance notice to the absent parent under paragraph (d) of this section, the State must:

(1) Provide the absent parent an opportunity to present his or her case to the State;

(2) Determine if the withholding shall occur based on an evaluation of the facts, including the absent parent's statement of his or her case;

(3) Notify the absent parent whether or not the withholding is to occur and, if it is to occur, include in the notice the time frames within which the withholding will begin and the information given to the employer in the notice required under paragraph (f) of this section; and

(4) If withholding is to occur, send the notice required under paragraph (f) of this section.

(f) *Notice to the employer for immediate and initiated withholding.* (1) To initiate withholding, the State must send the absent parent's employer a notice which includes the following:

(i) The amount to be withheld from the absent parent's wages, and a statement that the amount actually withheld for support and other purposes, including the fee specified under paragraph (f)(1)(iii) of this section, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b));

(ii) That the employer must send the amount to the State (or to such other individual or entity as the State may direct) within 10 working days of the date the absent parent is paid, and must report to the State (or to such other individual or entity as the State may direct) the date on which the amount was withheld from the absent parent's wages;

(iii) That, in addition to the amount withheld for support, the employer may deduct a fee established by the State for administrative costs incurred for each withholding, if the State permits a fee to be deducted;

(iv) That the withholding is binding upon the employer until further notice by the State;

(v) That the employer is subject to a fine to be determined under State law for discharging an absent parent from employment, refusing to employ, or taking disciplinary action against any absent parent because of the withholding;

(vi) That, if the employer fails to withhold wages in accordance with the provisions of the notice, the employer

311-165 O—92——10

is liable for the accumulated amount the employer should have withheld from the absent parent's wages;

(vii) That the withholding under this section shall have priority over any other legal process under State law against the same wages;

(viii) That the employer may combine withheld amounts from absent parents' wages in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual absent parent;

(ix) That the employer must implement withholding no later than the first pay period that occurs after 14 working days following the date the notice was mailed; and

(x) That the employer must notify the State promptly when the absent parent terminates employment and provide the absent parent's last known address and the name and address of the absent parent's new employer, if known.

(2) In the case of an immediate wage withholding under paragraph (b) of this section, the State must issue the notice to the employer specified in paragraph (f)(1) of this section within 15 calendar days of the date the support order is entered if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address.

(3) In the case of initiated withholding, if the absent parent fails to contact the State to contest withholding within the period specified in the advance notice in accordance with the requirements of paragraph (d)(1)(iv) of this section, the State must send the notice to the employer required under paragraph (f)(1) of this section within 15 calendar days of the end of the contact period if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address.

(4) If the absent parent changes employment within the State when a withholding is in effect, the State must notify the absent parent's new employer, in accordance with the requirements of paragraph (f)(1) of this section, that the withholding is binding on the new employer.

(g) *Administration of withholding.* (1) The State must designate a public agency to administer withholding in accordance with procedures specified by the State for keeping adequate records to document, track, and monitor support payments.

(2)(i) The State may designate public or private entities to administer withholding on a State or local basis under the supervision of the State withholding agency if the entity or entities are publicly accountable and follow the procedures specified by the State; and (ii) the State may designate only one entity to administer withholding in each jurisdiction.

(3) Effective October 1, 1995, the State must be capable of receiving withheld amounts and accounting information which are electronically transmitted by the employer to the State.

(4) Amounts withheld must be distributed in accordance with section 457 of the Act and §§ 302.32, 302.51 and 302.52 of this chapter.

(5) The State must reduce its IV-D expenditures by any interest earned by the State's designee on withheld amounts.

(h) *Interstate withholding.* (1) The State law must provide for procedures to extend the State's withholding system so that the system will include withholding from income or wages derived within the State in cases where the applicable support orders were issued in other States. A State may require registration of orders from other States for purposes of enforcement through withholding only if registration is for the sole purpose of obtaining jurisdiction for enforcement of the order; does not confer jurisdiction on the court or agency for any other purpose (such as modification of the underlying or original support order or resolution of custody or visitation disputes); and does not delay implementation of withholding beyond the timeframes established in paragraph (h)(5) of this section.

(2) The State law must require employers to comply with a withholding notice issued by the State.

HB-482
HSA 3/15/94

CHAP. 75 SESSION LAWS OF AK

AN ACT

1 Relating to distribution of child support collected by the child support enforcement
2 agency; requiring certain employers to provide information to the agency; requiring the
3 Department of Health and Social Services to give notice of assignments to recipients of
4 aid to families with dependent children; and providing for an effective date.
5
6
7
8 * Section 1. AS 25.27.075 is repealed and reenacted to read:
9 Sec. 25.27.075. EMPLOYMENT INFORMATION. (a) Upon notice by the agency and
10 except as provided in (b) and (c) of this section, an employer doing business in the state shall
11 report to the agency the
12 (1) hiring of a person who resides or works in this state to wh m the employer
13 anticipates paying earnings; and
14 (2) rehiring or return to work of an employee who was laid off, furloughed,
15 separated, granted a leave without pay, or terminated from employment.
16 (b) An employer is not required to report the hiring of a person who the employer
17 anticipates
18 (1) will be employed for less than one month's duration; or
19 (2) will be employed sporadically so that the employee will be paid for less than
20 350 hours during a continuous six-month period.
21 (c) An employer is not required to report under (a) of this section if the employer

employs fewer than 20 employees.

(d) An employer required to report under (a) of this section may make the report by mailing the employee's copy of the W-4 form, transmitting magnetic tape in a compatible format, or by other means as mutually agreed by the employer and the agency that will result in timely reporting.

(e) An employer required to report under (a) of this section shall submit monthly reports regarding each hiring, rehiring, or return to work of an employee during the preceding month. The report must contain

(1) the employee's name, address, social security number, and date of birth; and

(2) the employer's name, address, and employment security reference number or unified business identifier number.

(f) The agency shall retain the information received under (a), (d), and (e) of this section for a particular employee only if the agency is responsible for establishing, enforcing, or collecting a support obligation of the employee. If the employee does not owe a support obligation, the agency may not create a record regarding the employee, and the information contained in the notice shall be promptly destroyed.

(g) An employer of the obligor or a labor union of which an obligor is a member shall provide to the agency information requested regarding the obligor's employment, wages or salary, and location. The information required under this subsection is in addition to the information required under (a) of this section, if any.

(h) In addition to civil liability under AS 25.27.260, if applicable, or any other law, an employer of an obligor or a labor union of which an obligor is a member that knowingly violates this section is liable for a civil penalty of not more than $1,000.

(i) Employers required to report under this section, may charge $1 per new employee to cover the cost of reporting.

* Sec. 2. AS 25.27.075 is repealed and reenacted to read:

Sec. 25.27.075. EMPLOYMENT INFORMATION. (a) An employer of an obligor or a labor union of which an obligor is a member shall provide to the agency information requested regarding the obligor's employment, wages or salary, and location.

(b) An employer of an obligor or a labor union of which an obligor is a member that

knowingly violates this section is liable for a civil penalty of not more than $1,000.

* Sec. 3. AS 25.27.130 is amended by adding new subsections to read:

(d) Except as provided in (f) of this section, if the obligee is not receiving assistance under AS 47.25.310 - 47.25.420 at the time the state recovers money in an action under this section, the recovery of any amount for which the obligor is liable shall be distributed to the obligee for support payments that have become due and unpaid since the termination of assistance under AS 47.25.310 - 47.25.420 under a support order in favor of the obligee.

(e) After payment to the obligee under (d) of this section, the state may retain an amount not to exceed the total unreimbursed assistance paid on behalf of the obligee under AS 47.25.310 - 47.25.420.

(f) Notwithstanding (d) of this section, the state shall, if required under federal law or regulations, distribute amounts recovered through offset of the obligor's federal tax refund as past due support with first distribution to the state for unpaid support assigned to the state under AS 47.25.345.

* Sec. 4. AS 47.25.340 is amended by adding a new subsection to read:

(b) During the application process, the department shall give to the applicant written notice of the assignment of support rights that will be considered to have occurred under AS 47.25.345. The notice must

(1) be plainly written,

(2) include a statement that informs the applicant that the assignment under AS 47.25.345 includes an assignment of support rights that may have accrued during any time that the family was not receiving assistance and that, under the assignment, the state may retain support that it collects on behalf of the applicant to reimburse the state for assistance received by the applicant during previous periods of assistance, if any.

* Sec. 5. Section 2 of this Act takes effect January 1, 1995.

* Sec. 6. Except as provided in sec. 5, this Act takes effect January 1, 1992.

ALASKA EDUCATIONAL RESOURCES

EMPLOYER REPORTING PROJECT EVALUATION
(Second Year)

PREPARED FOR

CHILD SUPPORT ENFORCEMENT DIVISION
550 W. 7TH AVENUE, SUITE 310
ANCHORAGE, AK 99501-3556

2/14/94

Prepared by
Ray Fenton, Ph.D.
Donna Fenton
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AK EDUC. RESOURCES RESEARCH

EMPLOYER REPORTING PROJECT STATUS AFTER THE FIRST TWO YEARS

The Alaska Legislature amended child support laws in the 1991 Legislative Session, to allow the Child Support Enforcement Division to require selected employers, with 20 or more employees, to report all new hires and rehires to the Alaska Child Support Enforcement Division within 30 days. Alaska was subsequently awarded a three year Employer Reporting Project demonstration grant which began in October of 1991. Alaska is in the third year of this three year demonstration grant.

The first year of the project targeted reporting from employers who reported 50 or more "obligor employees" during the proceeding three years. There was a 35% increase in collections from the prior year which were attributed to the Employer Reporting Project.

The second year of the project extended the target group to seasonal employers. Seasonally employed obligors were often missed due to the delay of information reported to the Department of Labor. There was a 35% increase in the number of obligors found among the seasonal workers and a 27% increase in collections from the prior year were attributed to the Employer Reporting Project.

In the third year of the project employers will be selected by industry type.

The Employer Reporting Project clearly demonstrats that the prompt identification of newly hired or rehired employees enables Alaska Child Support Enforcement Division to initiate withholding sooner with resulting increased collections. The early reporting of information also assisted in the location of alleged fathers thereby expediting the establishment of paternity and support orders.

Contact Vickie Mitchell, Interstate Manager, at 907-269-6900 please leave a message and she will return your call..

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