

**ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672**

**8317 SENATE JUDICIARY**

**SB**

**2022**



Fiscal Analysis/DOC

SB 292

February 14, 1994

Page 2 of 2

The bill would modify language in the Interstate Corrections Compact, making the standard for determining the impact of an out-of-state transfer consistent with AS 33.30.061, i.e., that the transfer will not substantially impair the prisoner's rehabilitation. This could lessen the chances of successful inmate litigation protesting out-of-state placement.

By facilitating out-of-state transfer of prisoners, the bill provides a greater opportunity for the department to avoid increasing operating and capital expenditures for new prison beds in Alaska. Although there is a nationwide shortage of prison space, any prison space available outside Alaska is likely to cost less than building, operating, maintaining, and repairing prison space in Alaska.

According to The Corrections Yearbook (1993), Alaska's daily operating cost per bed in 1992 (\$100.76) was double the national average (\$50.22). Construction costs were almost twice as high as in other states.

# FISCAL NOTE

BILL NO: SB 292

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety

Title: Interstate transfer of prisoners BRU: Alaska State Troopers

Component: Detachments

Sponsor: Senator Frank

Requestor: Senator Frank

COMPONENT SERIAL NO. 799

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

OPERATING	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	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING: (Thousands of Dollars)**

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

Estimate of current year (FY 94) impact: \$ \_\_\_\_\_

**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 if necessary.)

As currently written, the Department of Public Safety does not anticipate any fiscal impact.

Prepared By: Lee Ann Lucas Phone: 465-4322

Division: Commissioner's Office Date: 02/28/94

Approved by Commissioner:  Date: 02/28/94

Agency: Richard V. Burton, Dept. of Public Safety

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s Legislative Office

STEVE FRANK

# Alaska State Legislature

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## Senate

### MEMORANDUM

**TO:** Senator Robin Taylor, Chairman  
Senate Judiciary Committee

**FROM:** Senator Steve Frank, Co-Chairman  
Senate Finance Committee

**RE:** SB 292 Sponsor Statement

**DATE:** 13 March, 1994

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In the past the Department of Corrections has considered transferring inmates outside Alaska due to severe overcrowding pressures in its institutions. Alaska Statutes, however, currently provide two contrary standards for determining whether or not a resident inmate may be transferred outside of the State. SB 292 would amend the relevant statute to bring these two standards into conformity.

AS 33.30.061(b) allows the State to transfer inmates outside so long as their treatment will not be negatively impacted; "[the] commissioner may designate an out-of-state facility under this section only if the commissioner determines that rehabilitation or treatment of the prisoner will not be substantially impaired." AS 33.36.010, however, provides that the State may not transfer inmates outside if their treatment will be more effective within Alaska; "[it] is the policy of the State of Alaska not to transfer a resident inmate outside of the state under [the Interstate Corrections Compact] if that inmate's continued confinement in Alaska will better facilitate rehabilitation or treatment." This Bill amends AS 33.36.010, deleting the latter standard and establishing the former standard from AS 33.30.061(b) as the sole test that must be met.

These two conflicting standards have constituted an effective legal hurdle to attempts by the Department of Corrections to transfer inmates outside of Alaska. Given the fact that current population levels in Alaska's correctional institutions exceed court-established maximums, this policy tool should be available for consideration by the commissioner of corrections. I urge your support for SB 292 and thank you for your consideration.

SPONSOR STATEMENT

DOC INMATE POPULATION COMPARISON '93 TO '94 SNAPSHOT

LOCATION	MARCH 16, 1993	MARCH 16, 1994	Difference
State Correctional Facility	2647	2717	-70
Out-of-State	63	53	-10
CRC	272	389	+117
Treatment Beds	0	51	+51
Pt. MacKenzie	0	30	-30
Out-of-CRC	0	8	-8
	2,982	3,248	+266

Cost per day per bed = \$113 per state correctional bed  
 = \$ 57 per CRC bed, statewide  
 = \$ 98 average (weighted average of all beds)

Construction per bed = \$ 50,000 per minimum security bed  
 = \$ 90,000 per medium security bed  
 = \$160,000 per maximum security bed  
 = \$100,000 average

Instate Inmate Count -- Alaska Department of Corrections -- March 1994																		
	104	405	200	233	53	170	79	66	172	176	108	446	210	113	92	Emergency Capacity	2665	
	102	397	189	225	47	164	76	52	155	176	104	466	204	112	38	Maximum Capacity	2577	
Day	AMCC	CIPT	FCC	HMCC	KCC	LCCC	MSPT	MCCU	PCC/MED	PCC/MIN	SIXTH	SCCC	YWCC	WWPT	YKCC	Emerg. Cap.	Totals	%
1	99	397	213	233	55	196	89	60	238	172	132	439	150	111	116	2665	2710	102%
2	97	401	219	235	60	196	95	61	236	172	119	439	149	110	116	2665	2705	102%
3	99	397	220	236	61	195	91	61	229	176	114	439	150	108	119	2665	2697	101%
4	98	391	216	238	63	197	89	61	235	173	125	439	150	111	119	2665	2705	102%
5	99	402	215	238	65	198	92	60	232	176	137	439	150	108	113	2665	2729	102%
6	100	403	214	240	66	197	98	60	239	176	124	439	147	109	110	2665	2730	102%
7	99	405	212	236	64	198	99	50	238	176	124	439	150	99	99	2665	2698	101%
8	100	407	216	236	65	197	98	59	237	173	131	439	148	107	103	2665	2706	102%
9	99	405	216	235	69	198	92	58	245	174	128	439	147	111	102	2665	2707	102%
10	102	397	198	237	69	154	96	62	239	176	136	440	154	113	102	2665	2715	102%
11	102	404	211	237	57	195	92	62	243	176	127	440	158	105	103	2665	2707	102%
12	101	398	202	233	60	193	94	60	242	180	135	442	164	113	104	2665	2721	102%
13	100	394	208	229	61	196	92	66	241	182	121	441	165	112	105	2665	2713	102%
14	100	414	207	227	60	195	86	68	238	182	121	441	164	107	100	2665	2720	102%
15	100	401	228	225	62	193	84	68	230	182	128	441	165	116	106	2665	2725	102%
16	100	413	226	224	62	192	82	65	220	180	121	441	165	115	111	2665	2717	102%
17	99	405	225	224	60	193	86	65	222	179	127	441	165	111	103	2665	2709	102%
18																2665	0	0%
19																2665	0	0%
20																2665	0	0%
21																2665	0	0%
22																2665	0	0%
23																2665	0	0%
24																2665	0	0%
25																2665	0	0%
26																2665	0	0%
27																2665	0	0%
28																2665	0	0%
29																2665	0	0%
30																2665	0	0%
31																2665	0	0%
Avg	99.65	402.4	212.7	233.1	62.41	195.5	92.35	62.12	235.118	176.76	126.5	439.9	155.4	110.4	108.5	2665	2713	102%
10 day	0	4	7	0	31	401	76	0	520	5	76	0	0	0	35			
30/90	0	26	89	43	72	90	79	2	90	15	82	0	0	48	20			

Post-it brand fax transmittal memo 7671 # of pages 3

To: *Glenn Sabanher* From: *Tom Martin*

Co. *Class of women*

Dept: *Juneau Prob.* Phone #

Fax #

\* NOTE - Emergency and maximum capacities include 105 beds which are not operational, due to funding.

Community Residential Centers - Inmate Beds March 17, 1994								
	Cardova	Parkview	Glenwood	N.S.	Tundra	Glacier		
<b>Total Contract Beds</b>								
	120	80	75	80	24	30	Total	409
<b>Institutional Beds</b>								
# Assigned Beds	120	80	50	65	17	23	Total	355
# Beds Filled								
Furlough	81	78	41	45	21	23	Total	252
Confined Misd.	28	1	17	19	0	1	Total	66
Restitution	0	1	34	5	0	0	Total	40
Total Filled Beds	109	80	55	69	21	24	Total	358
<b>Field Beds</b>								
# Assigned Beds	0	0	25	15	7	7	Total	54
# Beds Filled								
Probation	2	0	12	3	2	5	Total	24
Parole	2	0	6	5	0	1	Total	14
Unsentenced	0	0	0	0	0	0	Total	0
Total Filled Beds	4	0	18	8	2	6	Total	38
<b>TOTAL CRC BEDS</b>								
Total Filled Beds	113	80	73	77	23	30	Total	396
<b>TOTAL INSTITUTIONAL, OUT OF STATE AND CRC COUNT</b>								
INSTITUTIONAL			2709					
OUT OF STATE			53					
CRC			396					
TREATMENT BEDS			52					
PROJECT HOPE			30					
OUT OF CRC			8					
<b>TOTAL</b>			<b>3248</b>					

Community Residential Program - Treatment Beds March 17, 1994										
	G.H.S.	Citroac	AN.A.R.C	Akaela	Ketch	RCADA	PATC	NLRC	HOPE H.	
<b>Total Contract Beds</b>										
	3	20	2	3	2	2	2	2	1	Total 37
<b>Institutional Beds</b>										
# Assigned Beds	0	12	1	3	2	1	1	1	0	Total 21
<b># Beds Filled</b>										
Furlough	0	11	2	3	2	4	4	1	1	Total 28
Confined Misc.	0	0	0	0	0	0	0	0	0	Total 0
Restitution	0	0	0	0	0	0	0	0	0	Total 0
Total Filled Beds	0	11	2	3	2	4	4	1	1	Total 28
<b>Field Beds</b>										
# Assigned Beds	3	8	1	0	0	1	1	1	1	Total 16
<b># Beds Filled</b>										
Probation	3	9	0	0	0	6	3	1	1	Total 23
Parole	0	0	0	0	0	1	0	0	0	Total 1
Unsentenced	0	0	0	0	0	0	0	0	0	Total 0
Total Filled Beds	3	9	0	0	0	7	3	1	1	Total 24
<b>TOTAL TREATMENT BEDS</b>										
Total Filled Beds	3	20	2	3	2	11	7	2	2	Total 52

**SB**

**295**

FISCAL NOTE

No. 1

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL 1

Bill Version: SB 295

(S) Publish Date: 3-10-94

Revision Date: \_\_\_\_\_  
Title: Grants/Loans for Storage Tank Owners

Department Affected: Environmental Conservation  
BRU: Spill Prevention and Response

Sponsor: Senate Labor and Commerce Committee  
Requestor: Senate Resources Committee

Component: Underground Storage Tank

COMPONENT SERIAL NO. 1207

Expenditures/Revenues:

(Thousands of Dollars)

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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FUND SOURCE

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

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

POSITIONS:

FULL-TIME	0.0					
PART-TIME	0.0					
TEMPORARY	0.0					

ANALYSIS: (Attach a separate page if necessary.)

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

Phone: 465-5010  
Date: 2/25/94

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

Date: 2/25/94

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## SENATE BILL NO. 295

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 2/11/94  
Referred: RES, JUD, FIN

## A BILL

## FOR AN ACT ENTITLED

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

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

4 \* Section 1. AS 46.03.360(f) is amended to read:

5 (f) If the department determines that an owner or operator is not eligible for  
6 assistance under AS 46.03.410 - 46.03.430 or that a cost is not eligible under  
7 AS 46.03.415 - 46.30.430 and the affected owner or operator disputes that  
8 determination, or if an owner or operator disputes the ranking assigned to a request for  
9 assistance under AS 46.03.420, the owner or operator may apply to the board for  
10 resolution of the dispute. The board may issue a decision in a dispute brought to it  
11 under this subsection. The decision is binding on the owner, operator, and department.

12 \* Sec. 2. EXTENDED APPLICATION PERIOD FOR FINANCIAL ASSISTANCE  
13 RELATING TO UNDERGROUND STORAGE TANK SYSTEMS. (a) Notwithstanding  
14 AS 46.03.420, the owner or operator of an underground petroleum storage tank system, other

1 than the state or federal government, may apply for grants and loans under AS 46.03.420 if

2 (1) before July 1, 1994, the owner or operator applied under AS 46.03.430 for  
3 a grant for upgrading or closure of an underground petroleum storage tank;

4 (2) while the person's grant application under AS 46.03.430 was pending or  
5 while closure or upgrading was taking place under an approved grant, contamination from the  
6 tank was discovered that the department determines was not reasonably obvious before  
7 December 22, 1993; and

8 (3) the owner or operator reported the contamination to the department in  
9 compliance with state and federal law before July 1, 1996; for purposes of this section, the  
10 time deadline of AS 46.03.420(c)(1)(A) does not apply.

11 (b) Except as provided in (a) of this section, an applicant who applies under this  
12 section for assistance under AS 46.03.420 must comply with all of the requirements of  
13 AS 46.03.420, including the requirement to demonstrate that the release occurred before  
14 December 22, 1993.

15 (c) A determination by the Department of Environmental Conservation relating to an  
16 application authorized under this section is subject to the same dispute resolution procedures  
17 under AS 46.03.360(f) that other applications for assistance under AS 46.03.410 - 46.03.430  
18 are subject to.

19 \* Sec. 3. This Act takes effect July 1, 1994.

*see HB 513  
or amendments*

# The Storage Tank Assistance Fund

## Questions and Answers

*Headlines are commonplace throughout the state concerning tank owner problems and pollution resulting from leaking underground storage tanks. Many tank owners are reducing their liability and cutting back on services while others have simply gone out of business altogether.*

*The Storage Tank Assistance Program was established to protect Alaska's drinking water supplies and to help Alaska's regulated tank owners and operators meet EPA's tough new environmental laws and regulations pertaining to underground petroleum storage tanks.*

*The goals of the program were simple.*

- \* cleanup existing leaks.
- \* prevent future leaks.
- \* help Alaska's tank owners and operators through educational, technical and financial assistance.



### WHAT IS A REGULATED TANK?

- \* Regulated tanks are predominantly motor fuel tanks
- \* In general, gasoline, diesel and waste oil tanks greater than 110 gallons are regulated although there are exemptions
- \* Heating oil tanks are NOT regulated.
- \* Residential motor fuel tanks less than 1100 gallons for farm or residential use are NOT regulated.
- \* Several other types of tanks are not regulated depending upon their use.

### WHO REGULATES UNDERGROUND STORAGE TANKS?

- \* EPA regulates tanks under 40 CFR 280 and 281
- \* State of Alaska regulates tanks under 18 AAC 78 and 18 AAC 75
- \* Local governments may regulate tanks under the Uniform Fire Code and the National Fire Protection Association.

### WHO IS ELIGIBLE FOR FINANCIAL ASSISTANCE?

- \* Any commercial or private owner or operator of tanks regulated by the Underground Storage Tank Regulations, 18 AAC 78, is eligible for financial assistance. Essentially, if a tank owner pays into the program, through a registration fee, then the tank is eligible for assistance.
- \* Village, City, Borough or municipally owned tanks are eligible.
- \* State and Federal owned tanks are NOT eligible.

### WHAT KIND OF TANKS ARE ELIGIBLE?

- \* Industrial, Contracting, Auto Dealerships, Car Rental Agencies, Trucking and Transportation firms comprise 26% of the eligible tanks
- \* Nearly 20% of the eligible tanks are used for aircraft refueling, both commercial and private.
- \* Utilities, Fire Stations, Police and Ambulance services total another 19% of the eligible tanks.
- \* Less than 30% of the eligible tanks are fuel retailers such as gas and service stations.

## WHAT KIND OF ASSISTANCE IS AVAILABLE?

- \* Technical assistance is available through the Department of Environmental Conservation. Staff provide guidance documents and technical assistance in the proper handling of stored products, system upgrading or closing and cleanup of contamination resulting from leaking tanks.
- \* Educational Assistance is provided by both the Department of Environmental Conservation and the Board of Storage Tank Assistance. Workshops are conducted annually and staff are provided to assist nationally recognized training courses for presentation in Alaska. A quarterly newsletter "Alaska Underground", is published by the Department to provide timely information on technical and regulatory aspects of tank ownership and maintenance, installation and closure as well as the latest developments in cleanup and remediation techniques. The newsletter also provides information to contractors and consultants actually conducting tank work.
- \* Financial Assistance is provided in the form of grants and loans to offset the high cost of upgrading to EPA standards, proper closure and release investigation, corrective action and cleanup.

## WHAT TYPE OF FINANCIAL ASSISTANCE DOES THE PROGRAM PROVIDE?

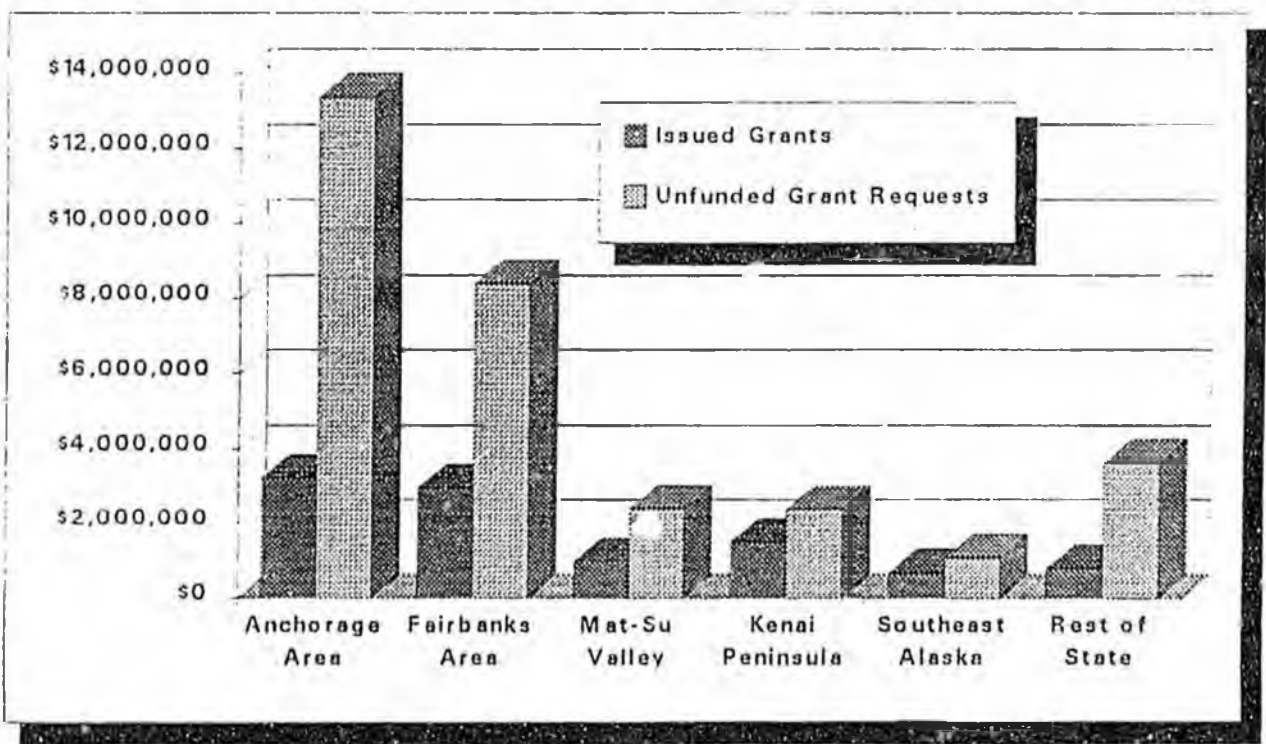
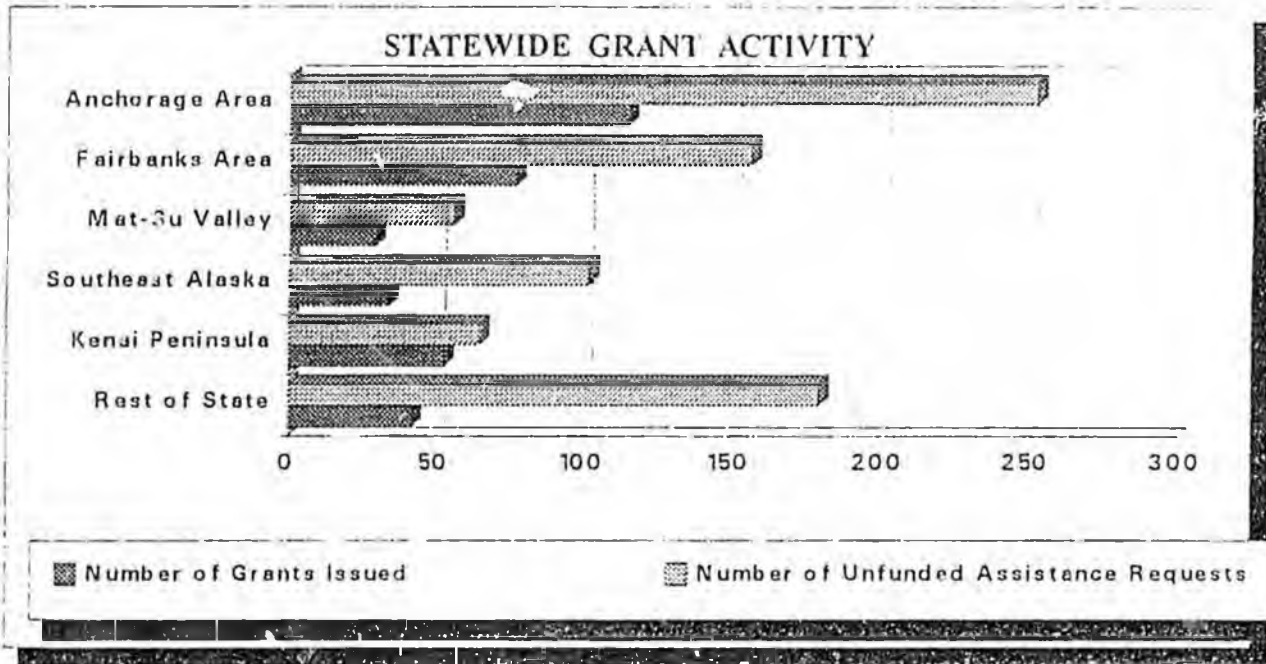
- \* The Storage Tank Assistance fund provides grants for upgrading or closing at 60% of the eligible costs up to a maximum combined grant of \$60,000 per facility.
- \* Grants for cleanup of petroleum contamination are provided to a maximum of \$1 million per occurrence. The owner is responsible for 10% of the cost up to a maximum of \$25,000.
- \* Loans are available for the 10% not covered by the cleanup grant up to a maximum of \$25,000. Owners receiving loans must pay back the loan to the state over five years.

## DOES THE PROGRAM ENCOURAGE PRIVATE PARTICIPATION?

- \* Most upgrades involve multiple tanks and usually range from \$120,000 to well over \$200,000. Typically a grant from the Storage Tank Assistance Fund actually covers only 30% to 40% of the owners cost. The owner must pay the majority of costs involved.
- \* The balance of the upgrading cost is provided by banks in the form of direct loans to the tank owner or operator. Many banks require that an owner or operator be eligible to receive funds from the Storage Tank Assistance Fund and that a letter be provided from the Department stating that the owner will be receiving financial assistance. The banks are then assured that the work will be conducted according to standard practice and in compliance with applicable laws and regulations.
- \* The tank owner or operator actually receives the funds and is directly responsible for supervising the funded activity and insuring the work is conducted in accordance with applicable laws and regulations. The Department of Environmental Conservation only provides guidance and oversight to insure all work is completed properly and consistent with customary practice and costs.
- \* Private sector firms that are approved by the Department or certified by the State conduct work for the owners and operators. The owner or operator contracts directly with the contractors and consultants.

## ARE THE GRANT REQUESTS JUST FROM INTERIOR ALASKA?

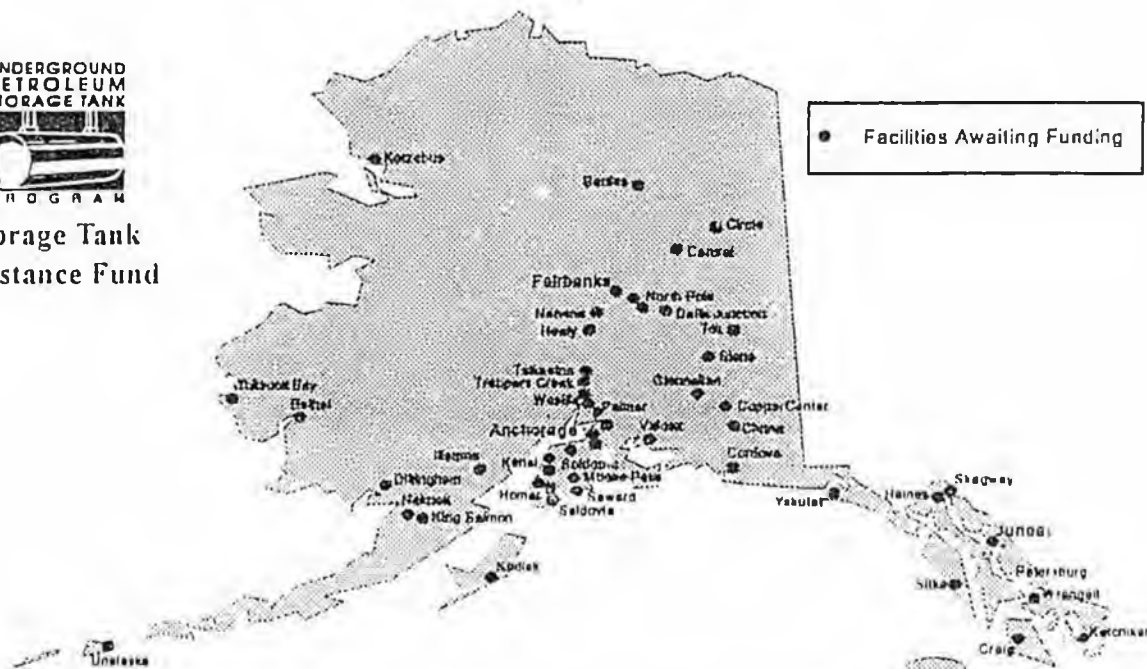
\* The problems associated with underground petroleum storage tanks are statewide. Currently, the program has received 368 applications for assistance from the Anchorage area, of which 115 have already been funded. In the Fairbanks area, 234 requests have been received and 77 grants have already been issued. The Kenai Peninsula has made 118 requests, of which 53 have been funded. Southeast Alaska has submitted 136 grant applications while only 34 have been funded to date. The DEC has received 85 assistance requests from the Mat-Su Valley area and 29 applicants have received grants. The rest of the State has accounted for 222 requests and 42 of those requests have been funded.



# Statewide Distribution of UST Closure, Upgrade and Cleanup Assistance Requests



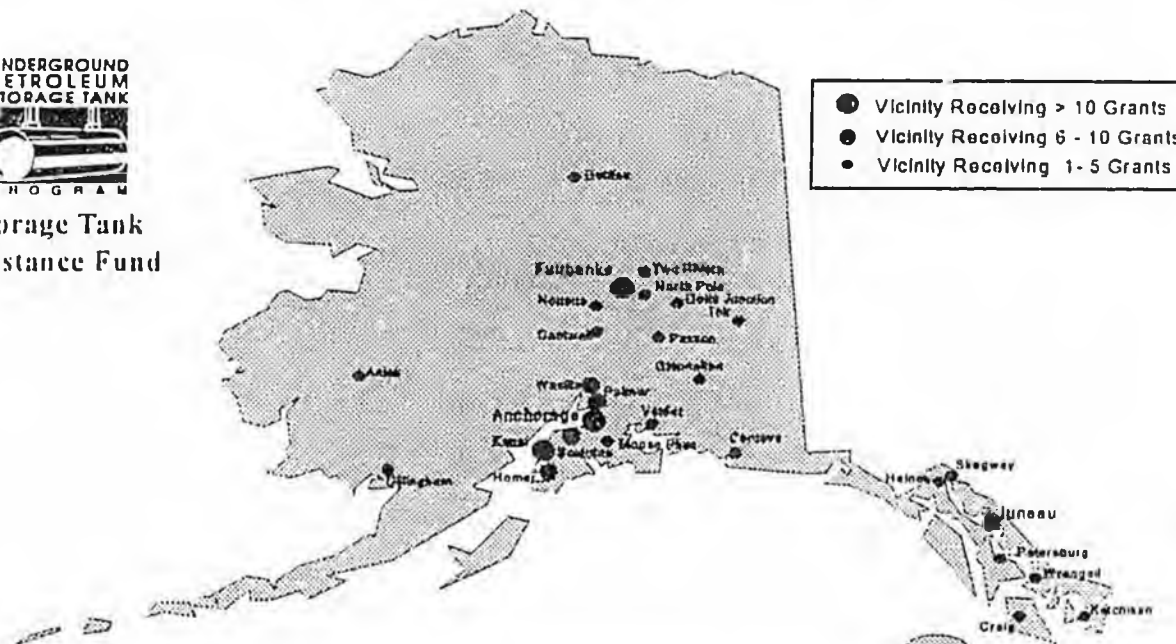
Storage Tank Assistance Fund



# Statewide Distribution of UST Closure, Upgrade and Cleanup Grants



Storage Tank Assistance Fund



## DON'T LARGE FIRMS GET MOST OF THE FUNDS THAT ARE AVAILABLE?

\* Although all regulated tank owners and operators are eligible, all applicants are priority ranked for funding according to regulations and criteria established by the Board of Storage Tank Assistance. The ranking system emphasizes public health threat foremost followed by numerous other considerations such as size of business, i.e. number of tanks owned, whether the company is too small to be self-insurable, nearest alternative fuel source and whether the facility is in a rural location. Several other criteria are used to rank applications with an emphasis on small rural tank owners that pose an imminent public health threat and have acted in good faith to undertake as much of the work as possible on their own. This usually means that unless an imminent public health threat exists, larger companies tend to rank lower on priority ranking lists.

\* All regulated tanks must pay a registration fee, except state and federal tanks, and are therefore eligible for assistance. Although large companies do not normally rank very high on the annual priority ranking lists, it should be noted that larger companies do tend to pay their share of the cost of the program. Registration fees of up to \$500 per tank per year are paid by several large firms with dozens of tanks. Many of these firms consistently rank very low for funding but continue to pay large annual registration fees. Several large firms pay registration fees in excess of \$10,000 annually. When a large company does receive funds, it may have already paid or will eventually pay the State more than it will receive.

## WHY CAN'T OWNERS AND OPERATORS JUST GET A BANK LOAN?

\* Banks do provide loans for certain activities such as closure or upgrading of a facility. The cost of an upgrade ranges from \$120,000 to \$200,000 or more to meet the federal standards. Banks will provide loans to cover that portion of the upgrade that is not covered by a grant from the Storage Tank Assistance Fund. Without assistance from the state, many small tank owners would not have sufficient resources to undertake an upgrade even with bank financing.

\* Banks do not generally provide loans for cleanup purposes. The total cost of a cleanup is not known until the actual cleanup is complete and extremely difficult to estimate. Most Alaska tank owner's principal asset is the actual property that requires cleanup. A parcel of land that is contaminated essentially has no value until clean and actually represent a significant liability. Since collateral is required for nearly all loans, tank owners with contaminated sites normally cannot provide sufficient collateral to back a loan large enough to undertake the cleanup. The average cost of cleanup in Alaska is presently \$140,000 per site although some cleanups are currently approaching \$500,000. These very high cleanup costs are virtually impossible to cover for the average Alaska tank owner.

\* Joint and several liability laws also provide a detriment to bank financing for cleanup activities. Banks that foreclose on property that is contaminated become liable for completion of the cleanup. Many times the cost of the cleanup will be 3 or 4 times the clean site value of the property. Banks also will not provide a loan to a tank owner if the business itself must be shutdown to conduct the cleanup. If a business has no income, it cannot repay a loan. Many businesses have been closed for a year or more while cleanup activities are completed. In numerous cases, the loss of revenues have caused bankruptcy and foreclosure, a fact that banks understand all too well.

## WHY DO TANK OWNERS HAVE TO UPGRADE THEIR TANKS?

\* In 1984, federal law (Subtitle I of the Resource Conservation and Recovery Act) mandated that owners of certain kinds of underground storage tanks (UST) containing petroleum products and other regulated substances meet standards which would prevent leaks and assure adequate cleanup where leaks occurred. That law was followed by federal UST regulations in December of 1988.

\* Over 4,400 underground storage tanks have been identified in the State of Alaska. Other tanks probably exist which have not been reported. Most of these tanks are not protected from leaks and spills. These tanks may be unknowingly damaging the State's drinking water supplies. Since groundwater provides drinking supplies for nearly 70% of the population in Alaska, any contamination that reaches groundwater could cause a serious public health threat. Additionally, the vapors from leaks may seep into basements of homes and buildings and cause other safety and health hazards.

## WHY DO WE HAVE ALL THIS CONTAMINATION FROM TANKS?

\* Piping leaks, overfills and spillage during deliveries are common problems.

\* A leaking tank can be nearly impossible to detect without special equipment. A considerable number of leaks occur due to failed fittings between the tank and piping, spillage during filling or overfilling, or corrosion.

\* Corrosion holes in steel tanks cannot be seen until the tank or piping has been removed or exposed. A corrosion hole that causes a tenth of a gallon per hour leak would release over 800 gallons of fuel per year into the lands of the state. The leak could go unnoticed for years, slowly percolating through the soil and possibly into the water table. This leaking fuel can eventually migrate toward a private or municipal drinking water well.

## AREN'T THESE PROBLEMS THE TANK OWNERS FAULT?

\* Although the leak originates from an owner's facility, the leak is very rarely caused by negligence on the owner's part. The facility was usually installed and operated to a standard of practice that was considered sound and conscientious at the time of installation. Many times the facility owner or operator is treated as a criminal, when in fact the leak or spill might have been caused by natural processes such as corrosion over time or by an accident caused by a passerby. Just a simple case of pouring old fuel or waste oil on the ground or repeated overfilling of vehicle gas tanks by customers can add up to a serious contamination problem for a facility owner.

\* It is worth noting that petroleum contamination was not considered a serious health hazard until just a few years ago, long after these facilities had been installed. The State of Alaska only recently halted routine oiling of roads, now considered dangerous to public health and critical habitats. The underground storage tank rules imposed by EPA are "after the fact" environmental regulations that have caused a notable and detrimental economic impact to small businesses.

## AREN'T THESE PROBLEMS JUST THE "COST OF DOING BUSINESS"?

\* The requirements to clean up contamination from leaking tanks are new "after the fact" regulations from EPA that did not exist when these businesses started nor during most of their existence. Many businesses acquired facilities with old contamination that are now faced with the formidable task of "making right what wasn't a problem before". The cost to clean these contaminated sites has skyrocketed beyond the reach of an average business in Alaska. The cost can easily reach several hundred thousand dollars per site. Investigating the extent of contamination, soil and water sampling, excavation, contaminated soil disposal, total tank and piping system replacement, interim business shutdown, loss of revenues and threats of penalties regarding contamination that occurs through natural corrosion, customer negligence and accidents was not a consideration when these businesses began.

## WHY DID THE STATE GET INVOLVED?

\* During the years 1986 through 1990, increased federal regulations and aggressive EPA enforcement action forced numerous Alaska tank owners out of business. Many of these tank owners could not afford the high cost of cleanup of contamination from their leaking tanks. If an owner cannot pay the cost of cleanup, the State actually undertakes the task using Response Funds. The 1990 Legislature determined that the State should have an assistance-based tank program to keep these affected businesses "in business" as productive members of the Alaska economic community.

\* Many of the facilities affected by the EPA requirements are in outlying areas of the State, on the Alaska Highway, remote lodges, rural community airstrips and fishing villages. Although protecting drinking water supplies in urban areas such as Anchorage and Fairbanks is critical, maintaining essential fuel services for the State is undeniably an important consideration for stable economic growth, tourism and access.

\* After December 31, 1993, most tank owners will be required to demonstrate \$1 million of financial responsibility per occurrence and \$2 million aggregate. Failure to comply may result in \$10,000 daily fines from EPA. Alaskan tank owners can meet the financial responsibility requirement by purchasing pollution liability insurance. Pollution liability insurance is available but very expensive for most small tank owners. The problem still involves the question of eligibility for insurance. Is a facility actually insurable? Many insurance plans call for a clean site to be demonstrated. However, most of these facilities have had numerous incidents of overfilling and spillage during fuel deliveries or in some cases, actual leaks. The Storage Tank Assistance Fund helps owners help themselves by assisting owners of contaminated sites to undertake proper cleanup and become insurable. Insurance policies can then be purchased from the private sector thereby allowing a tank owner to meet the federal financial responsibility requirement.

\* Developing an assistance-based program was considered to be the best way to promote strong pollution prevention practices to avoid future contamination of drinking water supplies. By providing assistance to tank owners to cleanup contamination and to promote the upgrade of their facilities to federal standards, the regulated community was more willing to step forward and report old spills or leaks without the fear of fines and penalties from the EPA. Although the "big stick" approach from EPA got attention, the State's "white hat" approach got results.

\* Alaska was not the only state that recognized the problem tank owners were facing with the new federal requirements. Currently, forty-five states have a financial assistance program for underground storage tanks. Seventeen of those states have recently expanded their programs to include aboveground tanks as well.

## AREN'T MOST OF THE LEAKING TANKS OWNED BY BIG COMPANIES?

\* Just because a facility is named "Alaska Chevron" does not mean its owned by Chevron. The name signifies just the brand of product sold in most cases. Most businesses covered by the EPA's underground storage tank regulations are small, "Mom-and-Pop" businesses who cannot afford to meet the financial responsibility requirements, pay the fines or clean up contaminated sites. DEC estimates that of the over 4,000 tanks that are in the ground in Alaska, there are over 3,000 presently in use of which nearly 2,000 are privately owned. It is estimated that over two-thirds of the privately owned tanks in Alaska are owned by small, independent companies.

## IS THERE MUCH DEMAND FOR FINANCIAL ASSISTANCE?

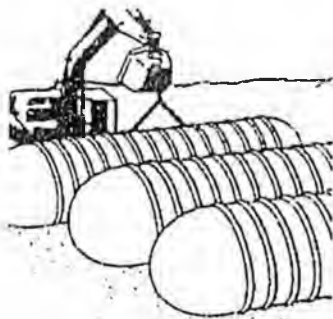
\* Presently, there are 813 unfunded requests for financial assistance for testing, closure, upgrade or cleanup activities in the State of Alaska. The unfunded requests total in excess of \$31 million. Not counted in the total are another 158 requests for reimbursement of work completed between December 22, 1988 and September 5, 1990 that totals \$3.4 million. These requests are eligible for reimbursement after all other requests have been funded.

\* Over \$10.6 million has been expended or encumbered to date on previous requests. Another \$4.5 million is obligated for projects that will begin work in the spring of 1994. It is estimated that an additional 400 applications will be received during fiscal year 94.

## HOW MUCH MONEY HAS THE PROGRAM RECEIVED SO FAR?

\* The Storage Tank Assistance Fund had received an initial capitalization of \$6 million in fiscal year 1991. In fiscal year 1992, no new monies were appropriated to the Fund. For fiscal year 1993, the Alaska Legislature appropriated \$5 million to the Storage Tank Assistance Fund. The Alaska Legislature has appropriated \$4.5 million to the UST Financial Assistance Program for fiscal year 1994 which began July 1, 1993.

\* Funds appropriated by the Alaska State Legislature to the Storage Tank Assistance Fund are allocated annually by the Board of Storage Tank Assistance to different financial assistance programs, the tank cleanup program, the tank upgrading and tank closure program. The Board of Storage Tank Assistance makes the annual allocations after taking into consideration the amount of money in the Fund, the money required to meet the needs for each program, as supported by approved applications and the requirement that the greatest priority be given to funding UST's that present the greatest threat or potential threat to human health.



## WHAT AGENCY ADMINISTERS THE STORAGE TANK ASSISTANCE FUND?

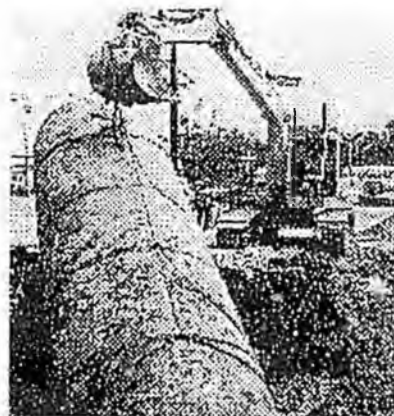
\* The Department of Environmental Conservation administers the Storage Tank Assistance Fund. The Department is responsible for advertising the application periods, receiving the applications, processing the requests, administering the grants and auditing project costs. The Division of Investments in the Department of Commerce and Economic Development works in partnership with the DEC to provide cleanup loans for eligible UST owners and operators.

\* The Department of Environmental Conservation has a staff of two Environmental Specialists in Anchorage to process the actual grant applications. A Grants Administrator, Environmental Technician and a Clerk Typist provide additional support for the program. A Project Manager supervises the activities and provides application and project guidance to UST owners and operators, contractors and consultants.

\* The 1990 Legislature established the seven-member Board of Storage Tank Assistance with two government members and five public members. Members are appointed by the Governor and serve without compensation other than per diem and expenses when traveling. They have an Executive Director, who is their sole employee. The first duty of the Board was to write regulations relating to financial assistance for UST owners and operators. The Board also jointly developed regulations with DEC pertaining to cleanup standards and allowable technologies to be used in the cleanup of contamination resulting from leaking tanks.

\* The Board is an Appeal Board to mediate disputes between the Department of Environmental Conservation and regulated underground petroleum storage tank owners and operators. In regard to disputes arising over priority rankings and eligible costs, the Board's decisions are binding upon the department and the owner or operator. For corrective action plan disputes, or denials for payment under the retroactive reimbursement program (sec. 7, ch.96, SLA 1990), the board may only issue recommendations.

\* Although the Board developed the financial assistance regulations, the Department of Environmental Conservation actually implements those regulations by physically processing each applicant's request for financial assistance. This enables the Board to remain objective and unbiased when a dispute arises. The Board is then tasked with resolving the matter in a prompt and conscientious manner.



*For Further Information Contact the Board of Storage Tank Assistance at (907)465-5219 or the Department of Environmental Conservation, UST Program, at (907) 465-5200. The UST Financial Assistance Office Can Be Contacted at (907) 273-4342.*



# THE STORAGE TANK ASSISTANCE PROGRAM

## The Storage Tank Assistance Fund -- What is it all about?

- AN ENVIRONMENTAL CLEANUP PROGRAM RESTORING ALASKA'S DRINKING WATER SUPPLIES.

- Providing grants and loans to Alaskan businesses to offset the high cost of environmental cleanups to keep Alaskan businesses in business.

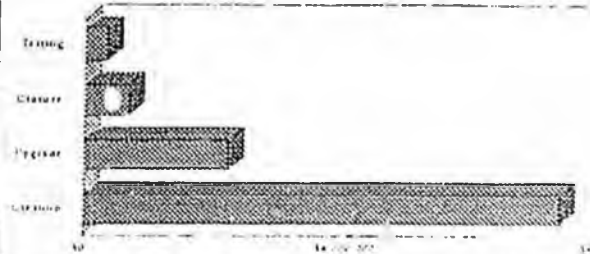
- A POLLUTION PREVENTION PROGRAM FOR UNDERGROUND PETROLEUM STORAGE TANKS.

- Providing incentives and grants to tank owners and operators to upgrade or close their tanks to prevent future leaks.

- AN ALASKAN BUSINESS ASSISTANCE PROGRAM.

- Providing relief to Alaskan businesses and private individuals faced with the high cost of environmental compliance.

Storage Tank Assistance Fund Expenditures Since 1991



## Since Program Inception in 1991

- Over \$10.6 Million has been expended or encumbered for financial assistance grants and loans.

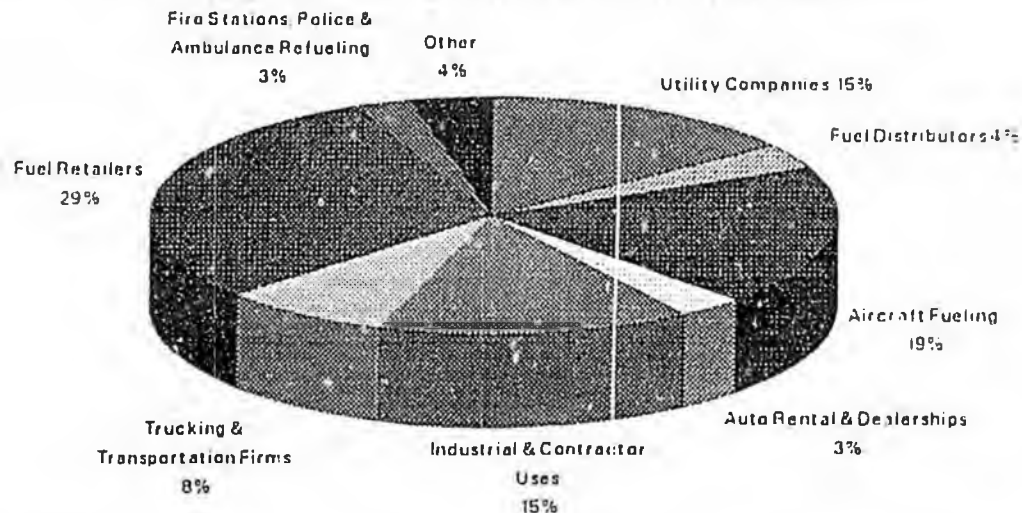
- A total of 386 financial assistance requests for tank tightness testing or site assessments have been funded.

- 75 financial assistance requests for soil or groundwater cleanup have been funded.

- 52 financial assistance requests to upgrade tanks to new EPA standards and prevent future leaks have been funded.

- 33 financial assistance requests to close out old or unused tanks have been funded.

## Tank Uses for USTs Eligible for Financial Assistance



## **The Storage Tank Assistance Fund**

*Board of Storage Tank Assistance  
410 Willoughby Ave.  
Juneau, Alaska 99801*

*Phone (907) 465-5219  
Fax (907) 465-5218*

*Department of Environmental Conservation  
UST Financial Assistance Unit  
3601 "C" Street, Suite 398  
Anchorage, Alaska 99503*

*Phone (907) 273-4342  
Fax (907) 563-6032*

**SB**

**302**

# FISCAL NOTE

No. 2

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BIL Bill Version: SB 302

(S) Publish Date: 2-11-94

Revision Date:	Dept. Affected: Revenue
Title: <u>Uniform Interstate Family Support Act (UIFSA)</u>	BRU: <u>Child Support Enforcement Division</u>
Sponsor: <u>House Rules Committee</u>	Component: <u>Child Support Enforcement Division</u>
Requestor: <u>Governor</u>	COMPONENT SERIAL NO. <u>111</u>

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	277.4	272.5	273.2	0.0	0.0	0.0
TRAVEL	1.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	7.3	7.3	9.5	0.0	0.0	0.0
SUPPLIES	28.0	28.0	32.0	0.0	0.0	0.0
EQUIPMENT	73.2	73.2	83.5	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS				0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>387.9</b>	<b>382.2</b>	<b>399.2</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>						
<b>REVENUE FUND SOURCE:</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,789.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUNDING: (Thousands of Dollars)

1002 Federal Receipts	256.0	252.3	262.8	0.0	0.0	0.0
1003 GF Match	63.3	62.3	65.0	0.0	0.0	0.0
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1016 Fed Incent	5.5	57.6	70.4	0.0	0.0	0.0
<b>TOTAL</b>	<b>327.9</b>	<b>382.2</b>	<b>398.2</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME	7	7	8	0	0	0
PART-TIME						
TEMPORARY						

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

**ANALYSIS:** (Attach a separate page if necessary.)  
UIFSA applies to those actions relating to the establishment, modification, and enforcement of support orders and the determining of parentage in situations where the parties reside in more than one state. The passage of this bill will improve service to case parties involved in interstate enforcement of child support orders. It simplifies the process and authorizes the movement to a one order system for child support obligations that is honored by all states which pass UIFSA. It will increase the caseload by making it easier for custodial parents to initiate and enforce interstate child support cases. Currently the interstate caseload is increasing at 16% per year. Many custodial parents have not sought enforcement due to the cumbersome interstate process, but with the ease of case processing with UIFSA; the already rapidly increasing caseload will accelerate. The caseload of 5,941 in 1990 has increased to 8,787 in 1993 cases. Assuming this trend continues the caseload will be approximately 14,000 in three years. This does not consider the increase resulting from this legislation. (continued)

Prepared by: <u>Mary Gay, Director</u>	Phone: <u>263-6270</u>
Division: <u>Child Support Enforcement Division</u>	Date: _____
Approved by Commissioner: <u>Darrel J. Rexwinkel</u>	Date: <u>1/31/94</u>
Agency: <u>Department of Revenue</u>	

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(Continuation of Fiscal Note)  
PERSONAL SERVICES:

The division will need an additional 22 positions over three years. The Division will need 7 additional positions in FY 95, 7 in FY 96 and 8 in FY 97. Positions required in FY 95:

One Child Support Enforcement Officer II, to manage and supervise assigned personnel in a interstate unit responsible for establishing paternity and/or support orders, and the modification and enforcement of these orders.

Two Child Support Enforcement Officer I's, work in a lead support position on an interstate unit responsible for establishing paternity and/or support orders, and the modification and enforcement of these orders.

Four Clerk IV's, work under the direction of a Child Support Enforcement Officer initiating actions on interstate support cases.

CONTRACTUAL:

Additional cost of long distance telephone service for new positions. Cost of paying for copies, photographs and other items required from other states in the processing of interstate cases where the other state's agencies charge for certain services.

SUPPLIES:

Interstate employees process approximately 4 times as much paper and mail as other CSED employees therefore they will require \$4,000 per year per employee for pens, pencils, paper, envelopes etc.

EQUIPMENT:

The following is a breakdown of equipment per new position:

Computer	\$ 5,760
Workstation furniture	\$ 3,506
Phone equip & service	\$ 1,191
Total	\$10,457

The seven additional positions would result in an additional \$1.5 million in revenue to the general fund through the collection of child support owed to the State previously given as AFDC grants to custodial parents. The additional positions would also collect \$3.7 million in child support owed directly to custodial parents. These monies would allow many custodial parents to live without the need to seek AFDC assistance.

Federal funding is provided at the rate of 66% on authorized expenditures. Federal incentives are calculated based on a cost effectiveness ratio of AFDC collections compared to expenditures.

The U.S Commission on Interstate Child Support recommends "verbatim" enactment of UIFSA under penalty of losing federal funding. Congress is currently considering several bills which make passage of this legislation mandatory.

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

E Bill Version: SB 302  
(S) Publish Date: 2-11-94

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
Title: An Act relating to the Uniform BRU: Assistance Payments  
Interstate Family Support Act Component: AFDC  
Sponsor: \_\_\_\_\_  
Requestor: Governor COMPONENT SERIAL NO. 0220

Expenditures/Revenues:		(Thousands of Dollars)					
OPERATING	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	0.0	0.0	0.0	0.0	0.0	0.0	
REVENUE FUND SOURCE	0	0	0	0	0	0	

FUNDING:		(Thousands of Dollars)					
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 Receipts	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	

POSITIONS:							
FULL-TIME	0	0	0	0	0	0	
PART-TIME	0	0	0	0	0	0	
TEMPORARY	0	0	0	0	0	0	

Estimate of current year (FY94) impact: NONE

ANALYSIS: (Attach a separate page if necessary)

This bill adopts the model Uniform Interstate Family Support Act drafted by the Uniform Law Commission. The bill is expected to make it easier for the State to establish and enforce interstate orders for the payment of child support and medical support, and to establish paternity for children whose putative fathers live outside of Alaska.

Applicants for AFDC assign to the state the right to collect child support paid on behalf of children who receive assistance. Support collected under assignment is applied toward the state and federal costs of AFDC cash assistance payments.

Prepared by: Jan L. Hansen, Director *Jan Hansen* Phone: 465-72680  
Division: Division of Public Assistance Date: 1-25-94  
Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed.S *Margaret R. Lowe* Date: 1-25-94  
Agency: Department of Health & Social Services

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ANALYSIS (cont.):

Child support collections generally affect the funding sources, not the program costs, of AFDC. The state portion of child support collections made on behalf of AFDC recipients is budgeted as General Fund Program Receipts in the AFDC component of the Assistance Payments BRU.

The Child Support Enforcement Division expects the adoption of the Governor's bill to result in an increase in the number and amount of interstate support collections made on behalf of children who receive AFDC benefits. However, because the impacts of the legislation depend in large part on the adoption of similar legislation by the other states, and only eight states have so far adopted the model bill, CSED does not project a specific dollar amount of increased collections. We do not, therefore, project a measurable impact on the AFDC budget.

# FISCAL NOTE

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

**BILL NO. SB 302**

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Uniform Interstate Family Support Act (UIFSA) BRU: Child Support Enforcement Division  
 Component: Child Support Enforcement Division  
 Sponsor: Senate Rules Committee  
 Requestor: Senate State Affairs COMPONENT SERIAL NO. 111

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	170.2	170.2	170.2	170.2	170.2	170.2
TRAVEL	0.2	0.2	0.2	0.2	0.2	0.2
CONTRACTUAL	4.2	4.2	4.2	4.2	4.2	4.2
SUPPLIES	16.0	16.0	16.0	16.0	16.0	16.0
EQUIPMENT	41.8	41.8	41.8	41.8	41.8	41.8
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>232.4</b>	<b>232.4</b>	<b>232.4</b>	<b>232.4</b>	<b>232.4</b>	<b>232.4</b>

CAPITAL						
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REVENUE FUND SOURCE:	427.8	427.8	427.8	427.8	427.3	427.8
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts	153.4	153.4	153.4	153.4	153.4	153.4
03 GF Match	37.2	37.2	37.2	37.2	37.2	37.2
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1016 Fed Incent	41.8	41.8	41.8	41.8	41.8	41.8
<b>TOTAL</b>	<b>232.4</b>	<b>232.4</b>	<b>232.4</b>	<b>232.4</b>	<b>232.4</b>	<b>232.4</b>

POSITIONS:

FULL-TIME	4	4	4	4	4	4
PART-TIME						
TEMPORARY						

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

**ANALYSIS:** (Attach a separate page if necessary.)  
 UIFSA applies to those actions relating to establishment, modification, and enforcement of support orders and the determining of parentage in situations where the parties reside in more than one state. The passage of this bill will improve service to case parties involved in interstate enforcement of child support orders by clarifying which state has jurisdiction. It authorizes the movement to a one order system for child support obligations that is honored by all states which pass UIFSA. UIFSA reduces agency response time in some areas in an effort to provide support collections sooner. It will increase the caseload since custodial parents will believe the opportunity for collection has improved. Currently the interstate caseload is increasing at 16% per year. ( continued)

Prepared by: Mary Gay, Director Phone: 263-6270  
 Division: Child Support Enforcement Division Date: \_\_\_\_\_  
 Approved by Commissioner: Darrel J. Rexwinkel Date: 3/10/94  
 Agency: Department of Revenue

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(Continuation of Fiscal Note)

PERSONAL SERVICES:

The division will need an additional 4 positions :

Four Child Support Enforcement Officer I's, working in lead support positions on an interstate unit responsible for establishing paternity and/or support orders, and the modification and enforcement of those orders.

CONTRACTUAL:

Additional cost of long distance telephone service for new positions. Cost of paying for copies, photographs and other items required from other states in the processing of interstate cases where the other state's agencies charge for certain services.

SUPPLIES:

Interstate employees process approximately 4 times as much paper and mail as other CSED employees therefore they will require \$4 000 per year per employee for pens, pencils, paper, envelopes etc.

EQUIPMENT:

The following is a breakdown of equipment per new position:

Computers & Software	\$ 5,760
Workstation furniture	\$ 3,506
Phone equip & service	\$ 1,191
Total	\$10,457

The four additional positions would result in an additional \$855,900 in revenue to the general fund through the collection of child support owed to the State previously given as AFDC grants to custodial parents. Fifty (50) percent of the revenue collected will be returned to the Federal Government leaving a net revenue to the general fund of \$427,850. The additional positions would also collect \$2.1 million in child support owed directly to custodial parents. These monies would allow many custodial parents to live without the need to seek AFDC assistance.

Federal funding is provided at the rate of 66% on authorized expenditures. Federal incentives are calculated based on a cost effectiveness ratio of AFDC collections compared to expenditures.

The U.S. Commission on Interstate Child Support recommends "verbatim" enactment of UIFSA under penalty of losing federal funding. Congress is currently considering several bills which make passage of this legislation mandatory

A SUMMARY OF THE DIFFERENCES BETWEEN  
THE REVISED UNIFORM RECIPROCAL ENFORCEMENT  
OF SUPPORT ACT

AND

THE UNIFORM INTERSTATE FAMILY SUPPORT ACT

by

Linda Ann Hammond  
Assistant Staff Director  
Child Support Project  
Center on Children and the Law  
American Bar Association

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Office of Child Support Enforcement  
National Reference Center  
Mail Stop OCSE/RC  
370 L'Enfant Promenade, SW  
Washington, DC 20447  
(202) 401-9383

For more information on ABA child support activities, please contact:  
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Center on Children and the Law  
American Bar Association  
1800 M Street, N.W.  
Washington, D.C. 20036  
(202) 331-2250

# THE UNIFORM INTERSTATE FAMILY SUPPORT ACT THE NEXT STEP IN IMPROVING INTERSTATE FAMILY SUPPORT COLLECTIONS

## INTRODUCTION

In 1950, the Uniform Reciprocal Enforcement of Support Act (URESA) was a revolutionary effort to address the problem of nonpayment of family support by interstate obligors. After more than 40 years of experience in interstate collections, numerous technological advances, and three subsequent versions of URESA, a much different interstate law has been developed for State consideration.

The new interstate law is entitled the Uniform Interstate Family Support Act (UIFSA). It is intended to replace the original and Revised Uniform Reciprocal Enforcement of Support Acts (RURESAs).

The highlights of UIFSA are described below. Following the narrative account is a chart which briefly summarizes the differences between UIFSA and RURESAs. This Reference Chart can be quickly consulted to determine the variances between UIFSA and RURESAs. The highlights and chart are intended to be an introduction or an overview, not a replacement for exhaustive legal research and analysis. If one requires more detailed information, please refer to the model uniform acts found at Unif. Reciprocal Enforcement of Support Act (1950 Act)(amended 1952, 1958), 9B U.L.A. 553 (1987); Revised Unif. Reciprocal Enforcement of Support Act (1968 Act), 9B U.L.A. 381 (1987); Unif. Interstate Family Support Act, 9 Part 1 U.L.A. 77 (Supp. 1993).

## UIFSA HIGHLIGHTS

### The One Order Theory

Only One Order in a Case at One Time. Under RURESAs, most support proceedings are *de novo* (that is, treated as new cases), resulting in more than one valid, co-existing order in a case. This has often caused confusion when calculating arrearages or determining which order to enforce. To solve this dilemma, under UIFSA there is only one support order in effect in a case at any one time. This is referred to as the one order theory or the one order - one time concept.

Rules are set forth to determine which order should prevail if several orders were rendered prior to the enactment of UIFSA. See Section 207 of UIFSA for the specifics. Rules also exist for resolving actions pending in two or more States, which basically require that one State defer to another, taking into consideration where the child has lived for the prior six months. See Section 204 for details. Last, the Act requires that States treat interstate multiple order cases (for two or more families supported by the same obligor) as they would in-state multiple order cases.

Continuing, Exclusive Jurisdiction. The method used to enforce the one order theory is to allow only one State the right to change the order at any one time. The one State with this right has "continuing, exclusive jurisdiction" over the case. The State with continuing, exclusive jurisdiction to modify the order is the State that issued the order.

Continuing, exclusive jurisdiction endures so long as one party or child resides in the State unless the individual parties agree in writing to take their case to another State.

If the parties no longer reside in the issuing State or if a written agreement exists regarding jurisdiction, the Act establishes registration procedures for modification. See the section on "Registration for Modification" below.

## One State Procedures

Under URESA, interstate cases can only be pursued when both the initiating and responding jurisdictions take some action. UIFSA includes new remedies that allow a State to handle a case locally, even if the parties live in different States. Two important "one State procedures" are long-arm jurisdiction and direct income withholding.

Long-Arm Jurisdiction. One of the most important provisions contained in UIFSA is the addition of long-arm jurisdiction. Long-arm jurisdiction authorizes a State to extend its jurisdiction over an individual who may be outside the geographical boundaries of the State. In this context, jurisdiction means the State's power to bring a person before its own tribunals and to require compliance with its tribunals' orders. UIFSA defines jurisdiction to maximize the tribunal's power over nonresidents, while remaining within the confines of the United States Constitution. *See Kulko v. Superior Court*, 436 U.S. 84 (1978) for a full explanation of this issue. UIFSA's broad definition includes long-arm jurisdiction in a paternity case based upon the individual's conduct within the State (e.g., engaging in sexual intercourse within the State).

Direct Income Withholding. For the first time, the Act authorizes that an income withholding order may be mailed directly to an obligor's employer in another State, regardless of whether the issuing State has jurisdiction over the out-of-state employer. UIFSA requires the employer to comply with the order without the necessity of a tribunal or administrative hearing, unless the employee objects. (OCSE's current regulations require IV-D interstate income withholding requests to be sent to the central registry in the responding State).

## Two-State Procedures

Registration for Enforcement. The one order theory ends responding States' *de novo* hearings on new interstate petitions. If there is an existing order, UIFSA authorizes its enforcement in any State. The enforcement process begins by registering the order in the responding State (or States) for the purpose of enforcement only. Registration for enforcement only does not permit modification of the order in the responding State.

Administrative Enforcement. The responding State may choose to use administrative proceedings to enforce a support order or an income withholding order rather than formally registering the order for enforcement, if appropriate. If the obligor contests the administrative enforcement of the order, the agency must register the order pursuant to the Act.

Registration for Modification. A State may no longer have sufficient interest in maintaining the power to modify its order, because neither the child nor the parties continue to reside there. In such a situation, the responding State may assume the power to modify if certain requirements are met:

- Neither the child nor parties reside in the issuing State;
- the petitioner is a nonresident of the responding State; and
- the respondent is subject to the personal jurisdiction of the responding State.

or

- One party is subject to the personal jurisdiction of the tribunal; and
- all parties have consented to the tribunal's jurisdiction in writing.

The State modifying the order becomes the new State of continuing, exclusive jurisdiction. Note that the responding State's ability to modify the order is limited to the child support provisions only.

## Evidentiary Improvements

UIFSA takes advantage of technology which did not exist at the time URESA was originally enacted. For instance, facsimile materials may be placed in evidence. Depositions may be videotaped and sent interstate. Testimony and depositions may take place by telephone conference calling. It is now less likely that the petitioner's presence is required in the tribunal.

There is greater access to relevant evidence without the expense of transporting documents and witnesses from one State to another.

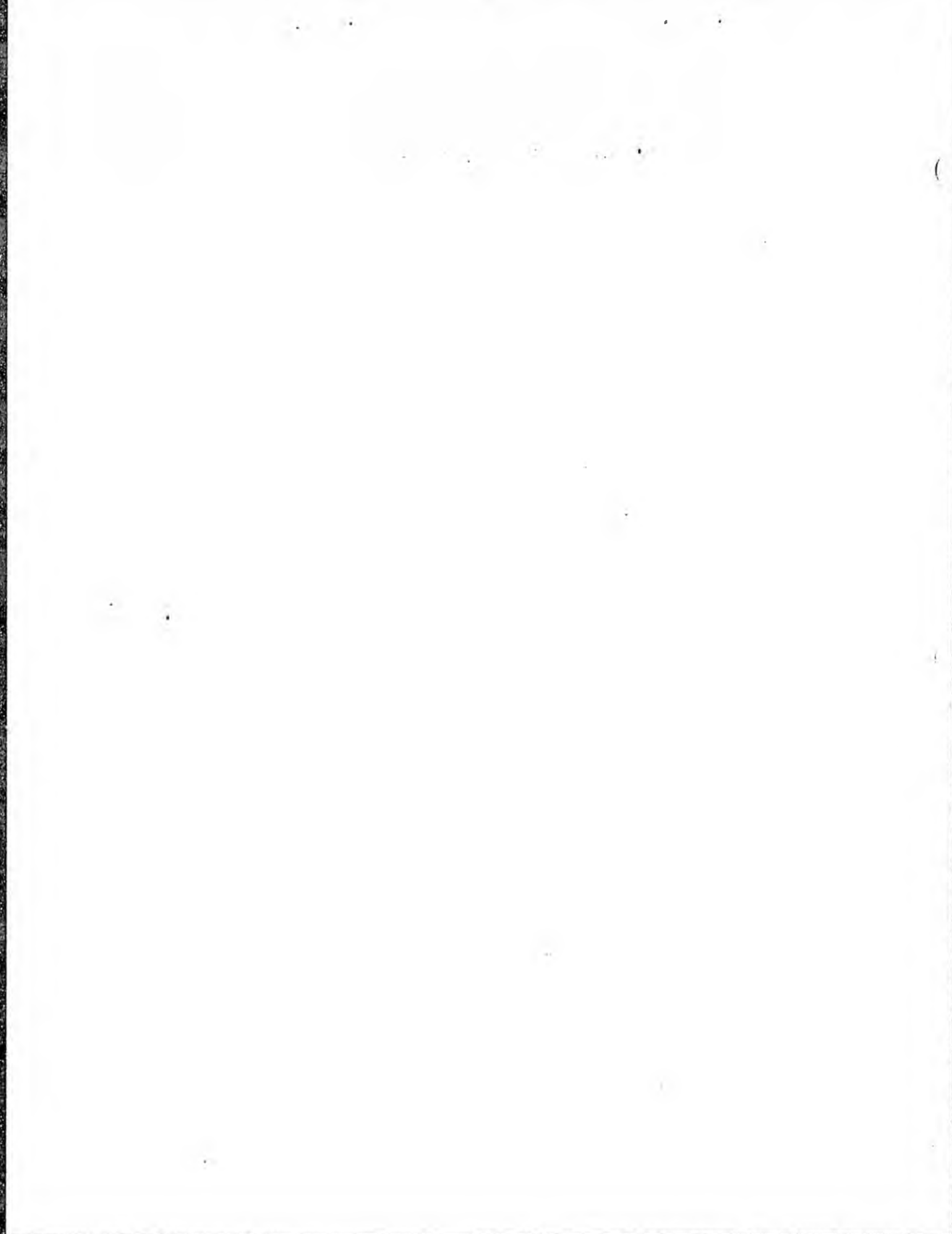
UIFSA also eases some evidentiary rules as to materials typically needed in child support cases: Certain documents given under oath by a party or witness residing in another State, copies of payment records certified as true copies by the custodian of records, parentage testing bills, and health care bills relating to the birth of the child are all admissible into evidence.

#### A User-Friendly Law

UIFSA provides a number of very practical improvements to ease interstate support collection practices. The Act recognizes administrative agencies as well as tribunals for processing cases. Initiation of a case is made ministerial rather than a matter of tribunal review, so no certification is required. A party can choose to file directly with the responding State, bypassing initiating jurisdiction procedures.

There are more benefits to the parties. Parties have greater access to information on their cases because of the timeframes established for acting on cases, and because of the many notice requirements contained in the law. For the first time, remedies are available to both parties, obligors as well as obligees. UIFSA does not address issues of attorney/client relationships with obligors and obligees, however. The Act also clearly authorizes representation by private attorneys, including recovery of attorney fees.

Finally, the Act clearly authorizes establishing paternity without seeking support.



## REFERENCE CHART

TOPIC	UIFSA	RURESA
<b>ESTABLISHMENT ISSUES</b>		
<b>Paternity</b>	Clearly authorizes establishment of parentage in an interstate proceeding, even if not coupled with proceeding to establish support.	Authorizes paternity establishment but unclear whether action must be coupled with support proceeding.
<b>Temporary Support</b>	Provides for temporary support order based on paternity acknowledgment or other clear and convincing evidence (e.g., genetic test results) that defendant is child's parent.	No analogous provision.
<b>Long-Arm Jurisdiction</b>	Provides for long-arm jurisdiction over nonresident up to limits of <i>Kulko</i> . Includes long-arm paternity action based upon obligor's conduct within the State.	No analogous provision.
<b>Type of Orders That May be Established</b>	May only be used for proceedings involving support of child or spouse (i.e., not support of a parent).	"Obligee" is anyone to whom a duty of support is owed.
<b>ENFORCEMENT ISSUES</b>		
<b>Direct Enforcement</b>	Provides for two "direct enforcement" procedures: <ol style="list-style-type: none"><li>1. Income withholding order may be mailed directly to obligor's employer in another State which triggers wage withholding unless employee objects. (Current federal regulations requires interstate income withholding request in IV-D cases to go through a responding State's central registry).</li><li>2. Direct administrative enforcement by obligor's State if same is available for intrastate cases.</li></ol>	No analogous provisions.

## Registration

Two-state enforcement activity begins with registration of support order in responding State. Full range of enforcement remedies available. However, registered order continues to be the order of the issuing State. Role of the responding State is limited to enforcing the order except in limited circumstances where the order has also been properly registered for purpose of modification.

Registration provisions may be used to domesticate foreign order; order may be subject to modification.

## MODIFICATION ISSUES

### Continuing, Exclusive Jurisdiction

Act establishes one controlling order:

1. State that issued the order has continuing, exclusive jurisdiction to modify the order.
2. Continuing, exclusive jurisdiction exists so long as one party lives in the State unless parties agree in writing for another State to exercise jurisdiction.
3. If parties no longer reside in the issuing State or if they agree in writing for another State to exercise jurisdiction, Act establishes registration procedure for modification.
4. In such situations party seeking modification must register order in State with personal jurisdiction over opposing party.
5. State modifying order becomes new State of continuing, exclusive jurisdiction.

No analogous provision.

Most proceedings are *de novo*; even if order is registered for enforcement, the registering State often asserts the right to modify registered order. More than one valid order can be in effect in more than one State.

### Spousal Support

Spousal support is modifiable only by the original issuing State.

Child and spousal support are treated identically.

## CHOICE OF LAW ISSUES

### Determination of Support Duty

Apply law of responding State. In long-arm cases, the State conducting the hearing is defined as the responding State. If parentage previously determined pursuant to law, nonparentage may not be raised as a defense.

Apply law of State where obligor present for period of time when support is sought. Law of responding State presumed to apply.

### Determination of Support Amount

Apply guidelines of the responding State.

Apply guidelines of the responding State.

### Enforcement of Support Order

Procedure and law of the responding State apply as to enforcement issues, EXCEPT:

1. Law of the issuing State governs interpretation of order being enforced.
2. If issuing and responding States have different statutes of limitations for enforcement, the longer time period applies.

Complex choice of law (i.e., apply the law of the State where the obligor was present for the period during which support is sought). Otherwise, the law of the responding State.

## EVIDENTIARY PROVISIONS

### Electronic Information Transfer

Authorizes electronic information transfer; testimony or deposition by telephone conference; and interstate discovery.

No analogous provision.

### Records

Copy of payment records from another State, copy of health care bills, and facsimile copies are admissible into evidence.

No analogous provision.

### Communications Between Tribunals

Tribunals of different States may communicate with each other to obtain information about laws of other State or orders of other tribunal.

No analogous provision.

### Assistance with Discovery

Tribunals may assist one another by compelling discovery ordered by tribunal of another State.

Judge of initiating State may assist with deposition requested by responding tribunal.

### CRIMINAL RENDITION

Under certain conditions, may demand return of obligor charged criminally in initiating State with failure to provide for support.

Same provision.

### GENERAL PROVISIONS

#### Terminology

"Tribunal" includes administrative agencies that establish, enforce, and modify support, as well as tribunals.

"Court" refers to traditional tribunals only.

#### Definition of Support

Includes health care, interest, and attorney fees.

Support not defined.

#### Initiation of a Case

Initiation of an interstate case is ministerial. No requirement of certification. Also, party in the initiating State may file an action directly in the responding State, without going through initiating State.

Initiation of an interstate case requires initiating tribunal's review and signature.

#### Safeguarding Information

Nondisclosure authorized when the health, safety, or liberty of a party or child is at risk.

No protection.

#### Case Information Access

Tribunal and agency must keep parties informed about all important case developments.

No analogous provision.

#### Visitation

Visitation issues cannot be raised in UIFSA proceedings. Not a defense to nonpayment of support.

Similar provision.

### Private Attorney Access

Explicitly authorized, including attorney fees.

Authorized, but no mention of attorney fees.

### Reciprocity

Not required: URESA, RURESА, and all substantially similar State laws are deemed equivalent to UTFSA.

Required by law.

### Availability of Remedies

UTFSA remedies available to both obligors and obligees.

URESА remedies available only to obligees.

### Costs and Fees

Both obligor and obligee may file without payment of costs and fees. Continues RURESА rule that only obligor may be assessed costs and fees.

Costs and fees assessed against obligor only. No free filing to obligor.

### Representation

Act does not create or negate any attorney/client relationship  
Look to other State law.

Prosecuting attorney upon request of tribunal or Dept. of Welfare shall represent obligee.

### Transition Where Multiple Orders Exist

Priority established:

1. Order issued by tribunal with continuing, exclusive jurisdiction as defined by Act.
2. If more than one tribunal would have continuing, exclusive jurisdiction, order issued by child's home State.
3. If more than one tribunal would have continuing, exclusive jurisdiction but no home State, the most recent order has priority.
4. If no tribunal would have continuing, exclusive jurisdiction under Act, responding State may issue new support order and becomes continuing, exclusive jurisdiction.

No analogous provision.

# CHILD SUPPORT ENFORCEMENT TRANSMITTAL

PLAINTIFF/PETITIONER

- IV-D NON AFDC
- IV-D AFDC/IV-E FOSTER CARE
- NON IV-D

DEFENDANT/RESPONDENT

INITIATING CASE/DOCKET NO

TO: RESPONDING CENTRAL REGISTRY  
COURT OR AGENCY (ADDRESS)

FIPS  
CODE

COUNTY/STATE

OTHER REFERENCE NO

FILE STAMP

FROM: INITIATING CONTACT PERSON  
AGENCY AND ADDRESS

FIPS  
CODE

RESPONDING CASE/DOCKET NO

COUNTY/STATE

OTHER REFERENCE NO

IF COLLECTION LOCATION IS NEW OR DIFFERENT LIST IN SECTION VI PAGE 2

## I. ACTION REQUESTED



Please return the Acknowledgment attached

- |   |   |
|---|---|
| <p>1. <input type="checkbox"/> LOCATION OF</p> <p style="margin-left: 20px;">A. <input type="checkbox"/> ABSENT PARENT</p> <p style="margin-left: 20px;">B. <input type="checkbox"/> EMPLOYER AND WAGES</p> <p>2. <input type="checkbox"/> ESTABLISHMENT OF PATERNITY (URESAs)</p> <p>3. <input type="checkbox"/> ESTABLISHMENT OF ORDER (URESAs) FOR</p> <p style="margin-left: 20px;">A. <input type="checkbox"/> CHILD SUPPORT</p> <p style="margin-left: 20px;">B. <input type="checkbox"/> SPOUSAL SUPPORT (NON IV-D ONLY)</p> <p style="margin-left: 20px;">C. <input type="checkbox"/> UNREIMBURSED PUBLIC ASSISTANCE (IN IV-D CASES, THE AMOUNT MUST BE REDUCED TO A CHILD SUPPORT JUDGMENT)</p> <p>4. <input type="checkbox"/> MODIFICATION OF EXISTING RESPONDING STATE ORDER (URESAs)</p> <p>5. <input type="checkbox"/> INCOME WITHHOLDING</p> <p>6. <input type="checkbox"/> COLLECTION OF ARREARS (URESAs OR UEFJA)</p> | <p style="margin-left: 20px;">C. <input type="checkbox"/> ASSETS</p> <p style="margin-left: 20px;">D. <input type="checkbox"/> OTHER INFORMATION TO ASSIST IN LOCATION</p> <p>7. <input type="checkbox"/> ENFORCEMENT OF EXISTING ORDER (URESAs)</p> <p>8. <input type="checkbox"/> REGISTRATION OF FOREIGN SUPPORT ORDER (URESAs)</p> <p>9. <input type="checkbox"/> CHANGE OF PAYEE (E.G., AFDC STATUS CHANGE)</p> <p>10. <input type="checkbox"/> REDIRECT PAYMENT (E.G., CUSTODIAN HAS MOVED)</p> <p style="margin-left: 20px;">D. <input type="checkbox"/> MEDICAL COVERAGE</p> <p style="margin-left: 20px;">E. <input type="checkbox"/> OTHER COSTS (E.G., DELIVERY OTHER MEDICAL GENETIC TESTING COSTS ATTORNEYS FEES)</p> <p>11. <input type="checkbox"/> ADMINISTRATIVE REVIEW FOR FEDERAL TAX OFFSET</p> <p>12. <input type="checkbox"/> DOCUMENTATION OF INFORMATION (FEDERAL TAX OFFSET)</p> <p style="margin-left: 20px;">A. <input type="checkbox"/> VERIFICATION OR PROVISION OF SSN</p> <p style="margin-left: 20px;">B. <input type="checkbox"/> VERIFICATION AND PROVISION OF SUPPORT ORDER AND ANY MODIFICATIONS</p> <p style="margin-left: 20px;">C. <input type="checkbox"/> VERIFICATION OF ARREARS AND PROVISION OF CALCULATIONS</p> <p>13. <input type="checkbox"/> OTHER: _____</p> |
|---|---|

## II. CASE SUMMARY (BACKGROUND OF THIS MATTER)

DATE OF SUPPORT ORDER

STATE & COUNTY ISSUING ORDER

DATE AND TYPE OF LAST COURT/ADMINISTRATIVE ACTION  
COURT CASE NO.

SUPPORT AMOUNT/FREQUENCY

DATE OF LAST PAYMENT (Month, Day, Yr)

AMOUNT OF ARREARS

PERIOD OF COMPUTATION

\$

\$

FROM TO

OTHER BRIEF SUMMARY OF REQUEST

## III. 1. ABSENT PARENT INFORMATION

FULL NAME AND ALIASES (First Name, MI, Last Name)

ADDRESS (Street, City, State, Zip)

EMPLOYER (NAME) AND ADDRESS (Street, City, State, Zip)

HOME PHONE (Include Area Code)

WORK PHONE (Include Area Code)

DATE AND PLACE OF BIRTH

SEX

SOCIAL SECURITY NO.

LAW OFFICES  
**DILLON & FINDLEY**

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April 11, 1994

Hon. Robin L. Taylor, Chair  
Senate Judiciary Committee  
Alaska State Legislature  
Room 30, State Capitol  
Juneau, Alaska 99801-1182

HAND-DELIVERED

Re: SB 302 (Uniform Interstate Family Support Act)

Dear Senator Taylor:

I just learned on Friday, the 8th, that your committee will be considering SB 302 today. Although I will not be able to attend the hearing, I again wanted to express my support of the bill, as I did in my March 22, 1994 letter to Senator Leman, chair of the Senate State Affairs Committee.

Not having heard from you since the State Affairs Committee hearing, I assume that whatever questions you said that you had at that time have been resolved. This bill, proposing the National Conference of Commissioners on Uniform State Laws' Uniform Interstate Family Support Act to replace the Uniform Reciprocal Enforcement of Support Act, cures many problems for all concerned, including the obligors.

I urge a "Do Pass" recommendation. Please let me know if you need additional information.

Yours truly,



Arthur H. Peterson  
Uniform Law Commissioner  
for Alaska

cc: Hon. Walter J. Hickel, Governor

Hon. Laraine L. Derr, Dep. Comr.  
Department of Revenue

Deborah E. Behr, Asst. Atty. Genl.  
Department of Law

WALTER J. HICKEL  
GOVERNOR



P. O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 11, 1994

The Honorable Rick Halford  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99501-1182

302

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the Uniform Interstate Family Support Act and the repeal of the Uniform Reciprocal Enforcement of Support Act.

The bill would repeal the laws currently found in AS 25.25, the Uniform Reciprocal Enforcement of Support Act (URESAs), and replace them with a new Uniform Act, the Uniform Interstate Family Support Act (UIFSA), with minor modifications. Two provisions of the bill also have the effect of amending Alaska Rule of Civil Procedure 82 and Alaska Rule of Administration 9. (See secs. 6 and 7 of the bill.) Under art. IV, sec. 15, of the Alaska Constitution, the legislature may change a court rule governing "practice and procedure." Although the bill has the effect of amending a court rule relating to filing fees that is designated as an "administrative" rule, I believe that the rule affects individuals' substantive rights regarding access to our justice system and, therefore, is one that the legislature is authorized to change. Additionally, the provision that has the effect of amending the administrative rule is an integral part of UIFSA.

The Uniform Interstate Family Support Act was drafted to update URESAs. The bill, like URESAs, applies to those actions relating to the establishment, modification, and enforcement of support orders and the determination of parentage in situations where the parties reside in more than one state.

A major feature of UIFSA is that it does not require reciprocity of laws between states in order to take action under its provisions. In order to ease the transition between URESAs and UIFSA, the bill recognizes substantially similar state laws as equivalent to

LETTER FROM THE  
GOVERNOR

The Honorable Rick Halford  
February 11, 1994  
Page 2

UIFSA for purposes of interstate actions. (See proposed AS 25.25.101(7) and (16).) The bill also contains its own long arm jurisdiction provision providing the home state of a supported family the maximum possible opportunity to secure personal jurisdiction over an absent parent.

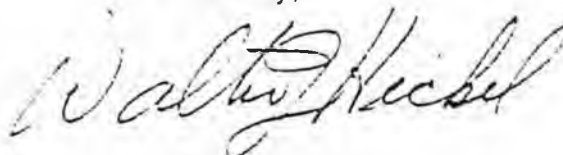
The bill promotes, to the extent possible, the premise of continuing, exclusive jurisdiction over support orders. Under the law as it exists under URESA, multiple orders for child support often result. UIFSA seeks to limit the existence of multiple support orders by limiting the circumstances under which subsequent support orders may be entered in states other than the initiating state.

The bill also recognizes the growing use of administrative procedures in addition to or in place of judicial proceedings in the establishment and enforcement of support orders. The bill does not confer new authority on Alaska's child support enforcement agency, but it does recognize the authority otherwise conferred on the agency and support enforcement agencies of other states. The bill specifically recognizes the child support enforcement agency's authority to act in interstate cases in the same manner in which it may act in intrastate actions.

UIFSA was prepared by the National Conference of Commissioners on Uniform State Laws, which has approved and recommended it for enactment in all the states. Although it was first adopted by that conference in the summer of 1992, it has already been enacted in eight states. There are indications that it will be introduced in as many as 25 states this year. It has been endorsed by the United States Commission on Interstate Child Support and the American Bar Association, and the bill has the support of Alaska's child support enforcement agency.

I urge prompt consideration and passage of this bill.

Sincerely,



Walter J. Hickel  
Governor

LAW OFFICES

# DILLON & FINDLEY

A PROFESSIONAL CORPORATION

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MAR 22 1994

March 22, 1994

Hon. Loren Leman, Chair  
Senate State Affairs Committee  
Alaska State Legislature  
Room 113, State Capitol  
Juneau, Alaska 99801-1132

HAND-DELIVERED

Re: SB 302, Uniform Interstate Family  
Support Act

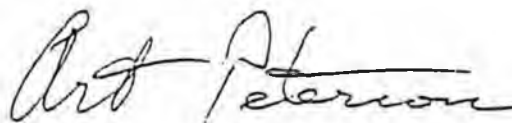
Dear Senator Leman:

Thank you for scheduling SB 302 to be heard by your committee again tomorrow. I will not be able to attend the hearing, but wanted you and your committee to know of my support for the bill.

All United States jurisdictions have enacted the Uniform Reciprocal Enforcement of Support Act (URESAs), promulgated by the National Conference of Commissioners on Uniform State Laws. To solve problems that have arisen under URESAs in the last couple of decades, and generally to update the law, the National Conference has promulgated the Uniform Interstate Family Support Act (UIFSA) to replace the URESAs. Soon, all jurisdictions will have enacted the UIFSA. Alaska should not lag behind the others.

Thank you for your consideration of the measure. I urge a "Do Pass" recommendation.

Very truly yours,



Arthur H. Peterson  
Uniform Law Commissioner  
for Alaska

LETTERS OF SUPPORT

March 23, 1994

William Grant Callow, Esq.  
425 G Street, Suite 610  
Anchorage, AK 99501

Re: Proposed Uniform Interstate Family Support Act

Dear Mr. Callow:

Thank you for giving me the opportunity to comment on UIFSA. Please feel free to pass these comments along to whomever you like.

Let me begin by saying that while I have serious problems with some of the specifics, I strongly favor the adoption of UIFSA in some form. You have no doubt noticed that the commentary to UIFSA makes a number of references to the problems of a "multi-order system." Let me give you an example of how this actually causes problems. Mom, dad, and child live in Texas in the early 1980's. Mom and dad get divorced there, and she gets the child and (because he is a high-paid oilfield worker) \$800 per month in child support. Subsequently, oil prices go down, he loses his job, and the best job he can find is in Kansas, so he moves there. Mom now files the Texas order in Kansas under URESA. Dad's Kansas attorney moves to modify the order based on his client's lower income, and succeeds; the Kansas courts reduce the order to \$200 per month. For the next six years, dad works in Kansas and faithfully pays the \$200 per month, thinking that is what he is liable for. Eventually he gets a slightly better-paying job in California, and moves there. Mom takes the original Texas order for \$800 per month and registers it in California, claiming arrearages in the amount of \$600 per month, multiplied by all those months that he paid the lower amount. The California court, whether it seems fair or not, will establish an order for those arrearages, probably in excess of \$40,000, which dad will not be able to pay, forcing him to become a "deadbeat dad" and spend the rest of his life getting garnished and attached by his ex-wife despite the fact that he thought he was paid in full. The reason this is possible is that, under URESA/RURESAs, you can modify an order in a state where it is being enforced, but the modification applies only in that state, and the order from the old state can be enforced in other states. I have personally seen this lead to a number of tragic and unfair situations.

UIFSA would change this because there would only be one valid order. In the above hypothetical, at the point at which dad's

Re: UIFSA  
March 23, 1994  
Page 2

Kansas attorney attempted to modify the Texas decree in the enforcement action in Kansas, he would be told dad needs to make a motion in Texas to change the underlying child support order. It would be slightly more difficult for dad to do this than to file it in the state in which he is now living, but at least he knows what he has to do, and doesn't spend years developing an unknown arrearage.

I am aware that if UIFSA is going to work, the versions in effect in different states should be at least substantially similar; therefore it is not my intention here to suggest rewriting UIFSA as much as I may be tempted. However, I have specific problems which, if remedied, I do not believe will do harm to the core of the act.

My first problem is found at Section 201(1). The US Supreme Court has held, unfortunately, in Burnham v. Superior Court, 495 US 604 (1990) that it is not unconstitutional to assume jurisdiction over the obligor merely through service in the state. On the other hand, it is not fair nor is it good public policy. Custody and visitation orders often require a parent to visit a child in the other parent's home state, or accompany the child on travel for visitation. At other times, long term visitation may be so miserly that the parent has no choice but to occasionally visit the child in the other parent's home state. Circumstances such as those should not cause anyone to be subjected to the jurisdiction of a state with which they otherwise have no contact. This is especially critical in terms of Alaska, since it may be an extreme burden on a parent who has no connection with Alaska other than having had to come up occasionally to accompany their child, to defend a child support modification action in this distant state. That section of the proposed act should be eliminated.

Section 305(b)(9) provides that a tribunal may issue a bench warrant for the obligor. Unfortunately, the term "tribunal" includes the administrative agency. This is unacceptable for two reasons. First, in this state only judges and officials of the court system issue bench warrants, not administrative agencies; this is a significant deprivation of liberty and has always been a prerogative of the judiciary. Second, the agency which would have the authority to issue the bench warrant would be Child Support Enforcement Division, or its parent, the Department of Revenue. However, AS 25.27 provides that CSED is to represent the interests of the child, which they have always interpreted to mean that the more money they can squeeze out of the obligor, the better. Allowing them bench warrant power amounts to giving the prosecutor the authority, without going through a judge, to haul people into jail. That section should be modified to provide that only the court may issue a bench warrant.

Re: UIFSA  
March 23, 1994  
Page 3

In Section 205(d) it is mandated that a responding tribunal of this state may not condition the payment of a support order upon compliance by a party with provisions for visitation. This is consistent with general policy, for instance, Civil Rule 90.3, which provides that the court should not condition child support upon visitation, and vice versa. However, this section goes too far. It may be the case in a custodial parent kidnapping situation (where the parent with custody of the child is hiding the child) that the judge may need to put extra pressure on that party by, for instance, suspending child support until the child is produced. Conceivably, this section could prevent that, and it ought to be eliminated. Custodial parent kidnappings are one of the most serious unrecognized (by judges and legislators) problems in the family law system today, and this just makes it worse.

Section 312 should be eliminated, or at least limited to judicial cases. We already have a law which makes it extremely difficult for the obligor to find out where the child is living. This section unnecessarily gives the Child Support Enforcement Division, which has no experience or authority whatsoever with regard to issues of health or safety, a blanket authority to simply refuse to provide information which they are legally required to provide under the current statute. Given the rabid anti-male attitudes at Alaska CSED, the likely result of this section would be that if the custodian wishes to hide the children, all she need do is tell CSED that there was violence and the obligor can forget about seeing his kids. There is no provision for a hearing on the issue, so the obligor will never get an opportunity to rebut the accusation. Oftentimes, CSED is the only avenue the obligor has to track down a spouse who has absconded with his children. There is already a substantial hurdle in place; that avenue should not be further blocked.

Section 313(b) is grossly unfair, and suggestive of an attitude which, unfortunately, is common among child support enforcers, that the obligor is automatically a bad guy. The section provides that attorneys fees and costs may be enforced against the obligor, but not against anyone else in the case. Why not? Why is it that the obligor, who has committed no crime and done nothing wrong, other than that some judge has presumably decided it would be better for his children to spend most of their time with his ex-spouse, is treated as a criminal? This section should be modified to provide that both parties may be liable for costs and fees.

Sections 606(a) and 608 are unduly harsh. They both provide, without any apparent available exceptions, that if you have failed to raise an objection within twenty days of service, you may not ever bring any such objections again. That's too much. In court actions, there are opportunities to amend one's answer to raise

Re: UIFSA  
March 23, 1994  
Page 4

defenses which were missed, allowances for late filings or responses for good cause, and provisions to set aside judgments within a reasonable time for a variety of reasons. Some flexibility ought to be allowed here. We should remember that we are dealing with potentially massive amounts of money which may or may not really be owed. To cut someone off from a significant defense because he or she was unable to respond in time to the mailing is draconian and unreasonable.

Another reason Section 606 should be softened, is that there are many Alaskans who may not be home when the service is made. I have seen frequent situations in which papers were served by some legally acceptable means (for instance, delivery to an adult of suitable age and discretion at the obligor's normal domicile) while the person was out fishing, or crabbing, or surveying, or guiding, or working at remote site, or what have you, and the person does not even see the paperwork until after the deadline for responding has passed. The courts, in these situations, have generally been willing to allow late filings; the way Sections 606 and 608 read, no such discretion would be available in the administrative cases (and arguably in the court cases as well).

I have a technical problem with Section 611, and I am not sure why this wasn't picked up by the drafters, unless of course I am misinterpreting something. Section 611(a)(1) provides that a state may take jurisdiction to modify an order from another state only if three conditions are met; they are that neither the parties nor the child still reside in the issuing state, that the person who has filed the petition is a nonresident of this state, and that the other party is subject to personal jurisdiction in this state. I am confused about the need for the second provision. In most cases, it would be perfectly reasonable, but what if both of the parents live in the same state (not the issuing state)? While it is not common for both parents, after a divorce, to move out of the state they divorced in and into the same new state, it does happen, and for a variety of reasons. Probably the most common reason is that the noncustodial parent may wish to spend more time with the children by moving into the same area. This requirement may be an attempt to avoid Burnham v. Superior Court situations, by making it impossible to drag the other parent into your jurisdiction by personal service, but in other situations it may create a procedural conundrum. A better solution would be to eliminate personal service alone as a basis for jurisdiction, and drop the second requirement under Section 611(a)(1).

There are a few minor procedural points. Under Section 601(7) I am not aware of any putative father registry in this state, so that section should probably be dropped. Under Section 316(h), it is probably the intention of the drafters that the privilege against disclosure of communications between spouses does not apply

Re: UIFSA  
March 23, 1994  
Page 5

to the extent the spouses are the parties involved in the case, but that should be more carefully spelled out. I am happy to see that, under Section 701, the agency could now make paternity determinations, but if you are going to do this, you are going to need to enact some laws over in AS 25.27 so that there is actually an administrative procedure in place for determining paternity. You would also need to harmonize the fact that the Alaska Supreme Court has held that a paternity determination is a significant matter entailing potential loss of liberty or property, and in which an indigent party is entitled to appointed counsel.

Finally, there are two things which should be done to harmonize this law with current Alaska law. First, UIFSA should be carefully gone through to determine whether further changes need to be made because of the use of "tribunal" to refer both to the agency and the court system; I have noted some of the problems but I am not sure I have caught them all. Second, our child support laws are split between AS 25.25 (URESAs) and AS 25.27 (regarding CSAs). The latter statutes should be carefully gone through to assure that they are in harmony with UIFSA, as there appear to be places in which the law under UIFSA would differ from what we presently have in AS 25.27.

Again, thank you for the opportunity to comment. Please feel free to call or write if you desire additional commentary. These comments are my own, and not made on behalf of any client or organization.

Sincerely,

Kenneth Kirk

KK/mlr

**SB**

**306**

**SENATOR JIM DUNCAN**  
*ALASKA STATE LEGISLATURE*

---

Alaska State Senate

State Capitol • Room 119 • Juneau, Alaska 99801-1182 • (907) 465-4766 • Fax 465-4748

March 7, 1994

**SPONSOR STATEMENT, SB 306**

**ANTITRUST EXEMPTION FOR COMMERCIAL FISHERMEN**

**SENATOR JIM DUNCAN**

Senate Bill 306 confers state antitrust immunity on fishermen, allowing them to negotiate raw fish prices with processors in order to improve the market price of Alaska seafood. It also permits fishermen and fish processors to agree to the minimum price for which processors will sell the processed fish.

The legislation was recommended in the 1993 Alaska attorney general's report on the Bristol Bay sockeye salmon industry. The report suggests that U.S. processors have become "price takers" when dealing with the large Japanese firms that buy Alaska salmon, leaving fishermen to bear the loss. An antitrust exemption will help level the playing field for Alaska fishermen and processors when dealing with foreign trading companies, which do not observe antitrust laws.

In recent years, salmon prices have fallen dramatically. The 1993 fishing season brought some of the lowest prices on record. Alaska cannot control the price that fishermen get on the grounds, but the state can offer more support to our fishing industry, which is Alaska's largest private employer.

Fishing affects every segment of our economy, from small coastal villages to the state's general fund. Ex-vessel value of Alaska salmon declined by 67 percent between 1988 and 1993, yet salmon fishermen caught 64 percent more fish. As raw fish prices continue to drop, fishing communities and boroughs suffer from poor local economies, as well as decreased state revenue sharing from fisheries taxes. All over Alaska, fishermen are affected by critically low prices. More than 1,200 have requested loan extensions from the state's fisheries loan program over the past three years. In addition, more than 800 Alaska resident limited entry permit holders have not been able to pay their federal taxes.

more

SPONSOR STATEMENT

SB 306, Duncan

British Columbia fishermen have consistently been getting higher salmon prices than Alaska fishermen, in part because of multi-year collective bargaining agreements with processors. Under Canadian law, processors can negotiate prices with groups of fishermen. SB 306 provides for a similar system, allowing fishermen to form associations to negotiate prices with processors. Right now, Alaska fishermen and processors cannot even publicly discuss price because of U.S. antitrust laws. A state antitrust exemption is a step toward promoting stable fish prices in Alaska.

Depressed salmon prices are the result of many factors, including normal market fluctuations, competition from farmed salmon, and a lack of markets. Expanding Alaska's markets is a state priority, but new markets alone cannot produce the equilibrium in bargaining power needed between Japanese buyers, U.S. processors and Alaska fishermen. Collective bargaining between fishermen and processors will help stabilize commercial fishing prices, bolstering local and state economies. Stable raw fish prices also will promote stable consumer prices for processed seafood products, which means greater sales of Alaska seafood.

## DIVISION OF LEGAL SERVICES

### LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

#### MEMORANDUM

March 2, 1994

**SUBJECT:** Sectional Summary of SB 306: An Act relating to an antitrust exemption for persons engaged in the fishing industry. (Work Order No. 8-LS1305\E)

**TO:** Senator Jim Duncan  
ATTN: Rosemarie Alexander

**FROM:** George Utermohle *GU*  
Legislative Counsel

You have requested a sectional summary of SB 306: An Act relating to an antitrust exemption for persons engaged in the fishing industry.

A sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill repeals and reenacts AS 45.50.572(c) in order that the antitrust exemption granted to fishermen's cooperatives (associations) under state law is similar to the exemption for fishermen's cooperatives under federal antitrust laws. In addition to retaining the current exemption allowing fishermen to collectively catch, collect, or prepare aquatic products for market, the new version of AS 45.50.572(c) extends the exemption to include processing, handling, and marketing of aquatic products. The term "association" is defined to have the same meaning as it does under the federal antitrust exemption.

Section 2 of the bill adds a new subsection to AS 45.50.572 to grant an exemption from state antitrust laws so that fishermen's cooperatives could enter into agreements with fish processors regarding prices to be paid to fishermen and the minimum price that fish processors will accept for the sale of their processed products.

GU:pl  
94-172.plm

SECTIONAL ANALYSIS

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO : SB 306

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

Department Affected: Labor

Title: Antitrust Exemption for Fishermen

BRU: Commissioner's Office

Sponsor: Senator Duncan

Component: Commissioner's Office

Requestor: Senate Resources

COMPONENT SERIAL NO. 340

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

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

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

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ None

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

Prepared by: John Abshire, Deputy Commissioner Phone: 465-2700

Division: Commissioner's Office Date: 3/24/94

Approved by Commissioner: Charles W. Mahlen

Agency: Department of Labor Date: 3/24/94

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Juneau, Alaska 99801-2105

**MEMORANDUM**

March 16, 1994

**SUBJECT:** Antitrust exemption for persons engaged in the fishing industry--  
SB 306 (Work Order No. 8-LS1305\E)

**TO:** Senator Jim Duncan  
ATTN: Rosemarie Alexander

**FROM:** George Utermohle *GU*  
Legislative Counsel

You have requested a review of the current antitrust exemption granted to fishermen's associations under AS 45.50.572(c) and of how SB 306 would change that exemption.

**I. EXISTING ANTITRUST EXEMPTION FOR FISHERMEN'S ASSOCIATIONS**

Under AS 45.50.572(c), fishermen are granted an exemption from the state antitrust laws (AS 45.50.562 - 45.50.596) to collectively engage in catching and collecting of aquatic products and in preparing those products for market. AS 45.50.572(c) states:

(c) AS 45.50.562 - 45.50.596 do not forbid persons engaged in the fishing industry as fishermen, catching or collecting aquatic products, from acting together in associations for the purpose of catching, collecting, or preparing for market their product.

In enacting AS 45.50.572(c) in 1975, the legislature intentionally declined to include marketing of aquatic products under the exemption. Thus fishermen are not authorized to collectively engage in marketing of their product. The legislature deleted marketing activities from the exemption when it amended the bill "to make it clear that [the] exemption applies only to fishermen and not to canneries or

LEGAL MEMORANDA

processors."<sup>1/</sup> Committee Report on CSSSSB 5, Alaska State Legislature, Senate Journal, March 31, 1975, pp. 585 - 588, at 587.

Aside from allowing fishermen to collectively catch or collect aquatic products and to prepare their products for market (presumably meaning that fishermen may collectively engage in processing-type activities), it is not clear what incidental activities may be included under the exemption. The exemption does not expressly allow fishermen to collectively sell their catch or their prepared product. Such collective selling would seem to be the natural result of collective fishing or processing and as such implicitly included in the exemption. The alternative result would be that after collectively catching or processing fish, each fisherman would have to segregate his/her portion of the catch or product from that of other fishermen and then individually attempt to sell his/her portion. In expressly denying fishermen the authorization to collectively engage in marketing of their catch or their fish products, the legislature created confusion as to whether fishermen could collectively sell their fish or their fish products. The verb "market" is not defined for purposes of the exemption, but is generally defined to mean "to deal in a market; to buy or sell" or "to expose for sale in a market; to traffic in; to sell in a market; by extension, to sell." Webster's New International Dictionary of the English Language, Second Edition (unabridged), G & C Merriam Co., Springfield, Massachusetts, p. 1504 (1958). Given the ordinary meaning of "market," fishermen would not be permitted to collectively sell their fish or their fish products. If this is the case, then fishermen may not collectively sell or negotiate to sell their fish or their fish products without incurring the risk that they may violate the state antitrust laws.

It is important to remember that anticompetitive activities are prohibited by both state and federal antitrust laws and that anticompetitive activities could violate both state and federal law. The state antitrust laws are modelled on the federal antitrust laws. Interpretations of the federal antitrust laws are often used to interpret analogous provisions of the state law. West v. Whitney-Fildalgo Seafoods, Inc., 628 P.2d 10, 14 (Alaska 1981); Judiciary Committee Report To Accompany CSSSSB No. 5 (Judiciary), Alaska State Legislature, Senate Journal, April 1, 1975, pp. 598 - 99.

AS 45.50.572(c) is analogous to the federal exemption for fishermen's associations under 15 U.S.C. 521 - 522 (Fisheries Cooperative Marketing Act). The legislature

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<sup>1/</sup> The changes made by the House Commerce Committee to exclude canneries and processors from the exemption did not require that marketing activities be excluded from the exemption. The committee's stated goal was effectively achieved by limiting the exemption to "persons engaged in the fishing industry as fishermen catching or collecting aquatic products." The committee did not need to exclude marketing activities from the exemption to exclude canneries and processors. So, there exists the possibility that the committee intentionally denied fishermen the ability to collectively engage in marketing activities.

intended that the state exemption for fishermen's associations be interpreted in light of the federal provisions. Judiciary Committee Report To Accompany CSSSSB No. 5 (Judiciary), Alaska State Legislature, Senate Journal, April 1, 1975, pp. 598 - 99. The federal exemption for fishermen's associations states, in part:

Persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, or as planters of aquatic products on public or private beds, may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged. . . .

15 U.S.C. 521. The exemption continues on to include a definition of "aquatic products" and limitations on the structure and activities of qualifying associations. See, footnote 3.

In relation to the federal exemption, the state exemption is both under-inclusive and over-inclusive. The federal exemption expressly covers more activities (producing, processing, handling, and marketing of aquatic products) than does the state exemption; in this sense the state exemption is underinclusive. The federal exemption is more specific as to the restrictions placed on fishermen's associations and thus permits fewer organizations of fishermen to qualify for the exemption than does the state exemption; in this sense the state exemption is overinclusive. As a consequence of these incongruities in the state and federal exemptions, it is possible for certain fishermen's organizations to engage in certain activities and receive an exemption from the federal antitrust laws yet be in violation of the state antitrust laws and vice-versa.

To the extent that a fishermen's association and its activities fall within the area of overlap in the state and federal exemptions for fishermen's associations, the association is immunized from liability under both state and federal antitrust laws.<sup>2/</sup>

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<sup>2/</sup> It is important to note that it is possible for a qualified fishermen's association to be liable for anticompetitive activities under the federal antitrust laws (and presumably under the state antitrust laws) in spite of the exemption. Anticompetitive activities outside of the scope of the exemption, such as, combining with a nonfishermen's organization to restrain trade, engaging in predatory practices designed to monopolize, using violence and coercion to fix prices, etc., would subject an otherwise qualified fishermen's association to civil and criminal liability under the antitrust laws. See, McHugh v. United States, 230 F.2d 252 (1st Cir. 1956), cert. denied 351 U.S. 966; 100 L.Ed. 1486; International Fishermen & Allied Workers v. United States, 177 F.2d (9th Cir. 1949), cert. denied 339 U.S. 947, 94 L.Ed. 1361; Hinton v. Columbia River Packers Association, 131 F.2d 38 (9th Cir. 1942). Also, if otherwise permitted activities under the exemption result in undue enhancement of the price of an aquatic product, the federal Secretary of Commerce may bring an action to stop those activities that cause the undue price increase. 15 U.S.C. 522.

In order to avoid any prospect of antitrust liability, whether state or federal, a prudent fishermen's association will comply with the strictures of both the federal and state exemptions. The prudent fishermen's association will comply with the more rigorous federal criteria controlling the structure and operations of the association while only engaging in those activities (catching, collecting, and preparing aquatic products for market) allowed under the state exemption. As a consequence, the activities of fishermen's associations are significantly constrained (relative to what is permitted under federal law) by the limited state exemption granted by AS 45.50.572(c).

## II. PROPOSED ANTITRUST EXEMPTION FOR FISHERMEN'S ASSOCIATIONS

### A. SB 306, Section 1:

Section 1 of SB 306 completely rewrites AS 45.50.572(c) so that it is virtually identical to its federal counterpart 15 U.S.C. 521. The new exemption for fishermen's associations would read:

- (c) AS 45.50.562 - 45.50.596 do not forbid persons engaged in the fishing industry as fishermen who catch, collect, or cultivate aquatic products from acting together in associations for the purpose of collectively catching, producing, preparing for market, processing, handling, and marketing their product. Associations may have marketing agencies in common and may make contracts and agreements necessary to achieve the purposes of this subsection. In this subsection, "association" means an association, corporate or otherwise, with or without capital stock, that
- (1) is operated for the mutual benefit of its members;
  - (2) does not deal in the aquatic products of nonmembers to an amount greater in value than the association handles for its members; and
  - (3) either
    - (A) does not allow a member of the association more than one vote because of the amount of stock or membership capital the member may own in the association; or
    - (B) does not pay dividends on stock or membership [capital] [sic] in excess of eight percent a year.<sup>3/</sup>

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<sup>3/</sup> Compare with 15 U.S.C. 521:

Persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, or as planters of aquatic products on public or private beds, may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged.

The proposed version of AS 45.50.572(c) does not define "aquatic products" but instead relies on the fact that the term will be construed in light of the comparable federal provision. Also, the proposed version of the exemption does not expressly mention "planters of aquatic products on public or private beds" but intends that they be subsumed in the class of fishermen cultivating aquatic products. Despite these variations from the text of 15 U.S.C. 521, section 1 of SB 306 intends to incorporate the complete substance of the federal exemption for fishermen's associations under 15 U.S.C. 521 into the state antitrust laws, so that the state law does not prohibit fishermen's associations from engaging in activities that are permitted under federal law.

**B. SB 306, Section 2:**

Section 2 of SB 306 adds a new exemption from the state antitrust laws to allow fishermen and processors to collectively agree on the price that processors will pay to fishermen for aquatic products (hereinafter, raw fish) and that processors will accept for the sale of aquatic products (hereinafter, processed fish). The goal of this exemption is to level the playing field so that fishermen are in a better position to obtain the best price for their fish by allowing the fishermen to deal with processors in order to put up a combined front against the major corporations that dominate the world markets for processed fish.

The exemption is narrowly tailored to allow fishermen and fishermen's associations to collectively agree with processors or associations of processors on the price paid to fishermen and on the price charged to purchasers of processed fish. The exemption does not authorize processors to collectively agree among themselves on the prices that they will pay for raw fish or charge for their processed fish. The

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<sup>3/</sup>(...continued)

The term "aquatic products" includes all commercial products of aquatic life in both fresh and salt water, as carried on in the several States, the District of Columbia, the several Territories of the United States, the insular possessions, or other places under the jurisdiction of the United States.

Such associations may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes; provided, however, that such associations are operated for the mutual benefit of the members thereof, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

and in any case to the following:

Third. That the association does not deal in the products of nonmembers to an amount greater in value than such as are handled by it for its members.

exemption only covers combined collective action of fishermen and a processor or an association of processors. Without this exemption, collective action by processors on prices paid for raw fish or charged for processed fish would not be allowed under the state antitrust laws.<sup>4/</sup>

The exemption granted by the proposed AS 45.50.572(j) applies only to the state antitrust laws. The activities covered by the proposed state exemption would still be subject to federal antitrust laws. Without a corresponding federal exemption, the state exemption is virtually of no effect.

The best procedure for obtaining a federal antitrust exemption for the activities protected under the proposed AS 45.50.572(j) would be for the Congress to enact a similar exemption. Such an approach may require several years before the Congress considers the issue and enacts the necessary laws.

In the absence of Congressional action to enact the exemption, it is possible for the state to create an exemption from the federal antitrust laws. Under the judicially created "state action" exemption, the anticompetitive actions of the state or anticompetitive conduct fostered by the state are exempt from the application of the federal antitrust laws. Parker v. Brown, 317 U.S. 341, 87 L.Ed. 315 (1943). Through the "state action" exemption, the state may immunize the otherwise anticompetitive actions of private parties, such as fishermen and processors, from the federal antitrust laws. In order for the "state action" exemption to apply, the state must (1) have articulated a clear and affirmative policy to allow anticompetitive conduct and (2) provide active supervision of the anticompetitive conduct by the private party. California Retail Liquor Dealers Assn. V. Midcal Aluminum, Inc., 445 U.S. 97, 105, 63 L.Ed.2d 233, 243 (1980).

The requirement for articulation of a clear and affirmative policy to allow otherwise anticompetitive conduct would be satisfied by a provision such as the proposed AS 45.50.572(j). However, SB 306 does not contain a provision that would satisfy the second requirement of the "state action" exemption: active supervision. "The requirement is designed to ensure that the state action [exemption] will shelter only the particular anticompetitive acts of private parties that, in the judgment of the State, actually further state regulatory policies. To accomplish this purpose, the active supervision requirement mandates that the State exercise ultimate control over the challenged anticompetitive conduct." Patrick v. Burget, 486 U.S. 94, 100-101, 100 L.Ed.2d 83, 92 (1988); citation omitted. The active supervision requirement is satisfied when the state has exercised sufficient independent judgment and control so that the details of the rate have been established as the product of deliberate state

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<sup>4/</sup> On the other hand, fishermen would still be allowed to collectively bargain on the price that they would receive for their fish under AS 45.50.572(c), as amended by sec. 1 of SB 306.

Senator Jim Duncan  
March 16, 1994  
Page 7

intervention, not simply by agreement among private parties. It is not enough that the state has established, staffed, and funded a regulatory program; there must be a minimum level of active supervision. Federal Trade Commission v. Ticor Title Insurance Company, 504 U.S. \_\_\_, 119 L.Ed.2d 410 (1992).

Currently, there is no state agency that exercises sufficient authority over the price paid to fishermen for raw fish or charged by processors for processed fish to satisfy the "active supervision" requirement. Such authority would have to be given to an existing agency or a new agency would have to be created. Provisions that would satisfy the "active supervision" requirement can be added to SB 306, if it is decided that the state should seek a federal antitrust exemption under the "state action" exemption, instead of waiting for the Congress to act on an exemption for collective action by fishermen and processors, in regard the prices paid for raw fish and charged for processed fish.

If I may be of further assistance, please advise.

GU:pl:mi  
94-206.plm

# MEMORANDUM

## State of Alaska Department of Law

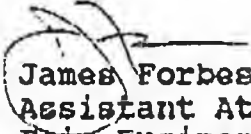
to: Hon. Jim Duncan  
Alaska Senate

DATE: February 15, 1994

FILE NO.: n/a

TEL. NO.: 269-5206

SUBJECT: SB 306: Federal antitrust  
immunity

FROM:  James Forbes  
Assistant Attorney General  
Fair Business Practices Section  
Anchorage

Rosemarie Alexander of your staff has asked for legal comment on SB 306 which seeks to confer antitrust immunity on fishers and processors of aquatic products in Alaska so they can collectively negotiate in order to improve the market price of Alaska seafood. Specifically, she has asked for comment on whether the bill confers immunity from federal antitrust law and if not, what amendments could be made to accomplish that purpose. As the bill is currently written, it confers state antitrust immunity, but not federal.

Federal antitrust immunity can, of course, be granted by the U.S. Congress. But where Congress has not granted immunity, the states have certain powers under our system of federalism to regulate commerce without application of federal antitrust law.

Under various rulings of the U.S. Supreme Court, a state legislature has the power to confer federal antitrust immunity where it intentionally determines that competition in an industry should be replaced with regulation, and where it establishes a mechanism for actively supervising the price setting activity. In the seminal case of Parker v. Brown, 317 U.S. 341 (1943), the court recognized that a California program regulating production and marketing of raisins by the state's growers immunized the raisin industry from antitrust liability. The declared purpose of the law was "to conserve the agricultural wealth of the state and to prevent economic waste in the marketing of agricultural products". The program allowed for a committee consisting of growers, packers and handlers to establish output and prices, which were then confirmed (or not) by a commission, which had the power to enforce its pricing decisions.

In the cases that have followed, the court has found that antitrust immunity exists where the legislature determines that competition in an industry is more harmful than beneficial, and where the legislature puts a mechanism in place to monitor and have final authority over the prices and production policies that are set by private industry participants. The usual arrangement features a state board or commission that has power to review and either approve pricing or production policies established by private industry participants, or reject them where the commission finds the policies suggested by those private persons are not in accord with state policy.

February 15, 1994

As a general rule, federal antitrust immunity will exist where the board or commission overseeing the industry: is staffed, funded and operational; has adequate power to monitor compliance with state regulatory policies; has the power to enforce compliance in state courts; and shows a basic level of activity aimed at insuring that the private industry entities carry out the state's policies, and not simply their own policies. See: New England Motor Rate Bureau v. FTC, 908 F. 2d 1064 (1st Cir. 1990).

In the case of carrying out the objectives of SB 306, and providing federal antitrust immunity, the legislature would have to find that competition among Alaska processors is resulting in prices that are so low they are injurious to the Alaskan economy. The legislature would have to find that regulation of prices is necessary to conserve the aquatic wealth of the state. The legislature should then establish a board or commission (or give an existing board or commission new powers) to oversee the setting of minimum prices for Alaskan aquatic products. Industry participants such as fishers and processors could be given permission (as under the current draft of the bill) to meet and agree on minimum resale prices and ex-vessel prices. The board or commission must then review these suggested prices and either approve or reject them. After approval, the board or commission must have the authority to enforce the price structures -- in court, if necessary.

If prices for Alaskan seafood were set in this fashion, the price setting activities of the industry participants would be immune from both state and federal antitrust liability.

This memorandum is intended to address legal issues only. To obtain the administration's policy perspective on SB 306, please contact the Governor's Legislative Liaison or the Commissioner of Commerce.

cc: Deborah Behr, Legislative Attorney, Department of Law  
Raga Elim, Governor's Office Legislative Liaison  
Paul Fuhs, Commissioner of Commerce

JF/

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

P.O. BOX 110800  
JUNEAU, ALASKA 99811-0800  
PHONE: (907) 465-2500  
FAX: (907) 465-5442

March 24, 1994

The Honorable Senator Jim Duncan  
State Capitol  
Juneau, Alaska 99811

Dear Senator Duncan:

I would like to take this opportunity to express my support for the timely passage of SB 306, "An Act relating to an antitrust exemption for persons engaged in the fishing industry."

This proposed legislation would provide Alaskan fishers with the ability to negotiate long term raw fish prices with the processors without incurring liability for antitrust violations. This ability for collective bargaining will provide a stability factor currently lacking in Alaskan commercial fishing prices. Currently, Alaskan fishers and processors cannot publicly discuss prices without violating U. S. antitrust laws. SB 306 provides for a state antitrust exemption.

SB 306 is of vital importance to the current economic outlook of the Alaskan fishing industry. Providing stability to commercial fishing prices will provide a mechanism for stable consumer prices for processed seafood products, thus increasing marketing potential of seafood.

SB 306 as an important step in sustaining a viable economic future for the Alaskan fishing industry.

Sincerely,



Paul Fuhs  
Commissioner

LETTERS OF SUPPORT

BILL NO: Senate Bill No. 306

DATE: March 14 1994

TITLE: Antitrust Exemption for Fishermen

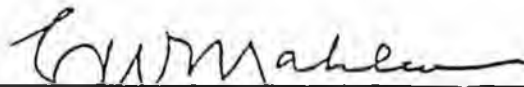
CONTACT: Arbe Williams  
465-2700

Senate Bill No. 306 would allow fishers to form associations to negotiate fish prices. AS 16.20.280 provides that the Department of Labor serve as mediator of disputes between fishers and fish processors on the price to be paid for salmon. The department's experience has revealed that the inability of fishers to form such associations, due to current anti-trust laws, to negotiate with processors was a primary factor in the dispute.

This legislation would provide a mechanism to stabilize raw fish prices, thereby protecting Alaskan fishers and processors from the debilitating and extreme fluctuations in fish prices. A stable fishing industry will have a direct and positive effect on the Alaskan economy. It is only reasonable that Alaskan fishers and processors have the legal ability to protect themselves and this important resource from price setting by outside interests..

The Department of Labor supports Senate Bill No. 306.

APPROVED:



Charles W. Mahlen, Commissioner

DATE:

3/14/94

**POSITION PAPER/Department of Labor**



Edward E. Crane  
*President*

2550 Denali Street, Suite 1201  
Anchorage, Alaska 99503  
(907) 276-2007

March 22, 1994

Via FAX 465-4748

Senator Jim Duncan  
Alaska State Senate  
State Capitol, Room 119  
Juneau, Alaska 99801-1182

Dear Senator Duncan,

I note that Senate Bill 306 is scheduled for hearing in the Senate Resources Committee on Friday, March 25. A schedule conflict precludes my attendance at that hearing. However, SB306 serves a relevant and highly significant purpose, in my view, and I respectfully offer the following comments for distribution as you may see fit.

I have been directly or indirectly involved with individual producers of food and fiber, and with both formal and informal associations of such producers, for nearly 30 years. That includes almost continuous and intense involvement with producers and marketers of agricultural commodities of all kinds from 1965 through 1981.

As contrasted with manufacturers, an individual producer of food and fiber commodities is greatly disadvantaged by his or her isolated status within what may be a huge conformation of economic forces. The producer is further made vulnerable by the limited-life nature of most commodities and by the pressure to capture whatever value may exist on a timely basis.

There has probably been no more positive statutory force affecting commodities producers than the limited antitrust exemptions in Federal, and most state, statutes. While a superficial glance may suggest they are merely the

Senator Jim Duncan  
March 22, 1994  
Page 2

extension of privilege to a few, such exemptions are in actuality the cornerstones of the stability which is critical to any food production and distribution system and which provides immeasurable benefits to each of us as consumers.

Senate Bill 306 establishes and clarifies this important exemption for harvesters, producers, and marketers of Alaska's seafood resources. While it will solve no problems by itself, its enactment will provide significant opportunities for the creation of stabilizing forces which will benefit all of Alaska as well as seafood industry participants.

Although I am unable to appear at the pending hearing, I would be most interested in knowing of future opportunities to express support for Senate Bill 306.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ed Crane".

Edward E. Crane

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# UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112  
Juneau, Alaska 99801  
907/586-2820  
Fax: 907/463-2545

March 10, 1994

The Honorable Mike Miller, Chair  
and Members of the Senate  
Resources Committee  
The Capitol Building  
Juneau, Alaska 99801

Dear Chairman Miller and Committee Members:

UFA supports SB 306 regarding Antitrust Exemption for Commercial Fishermen and we request that a hearing be scheduled in the near future.

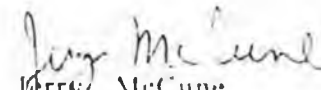
This legislation was first recommended in the 1993 Alaska Attorney General Report on the Bristol Bay salmon fishery.

Fishermen need to breathe new life in our industry. This bill is one avenue to be able to do so - it gives fishermen the ability to make collective bargaining agreements with processors.

This is only one of the first steps fishermen view as a means to stabilize salmon prices in the State of Alaska.

Again, this is a very important issue to the fishermen of Alaska and we would very much appreciate a hearing to be able to have the opportunity to discuss this important matter with you.

Sincerely,

  
Jerry McCune  
UFA President & Lobbyist

cc: Senator Jim Duncan

#### MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Longline Fisherman's Association • Alaska Trollers Association • Area K Seiners Association  
Bering Sea Fishermen's Association • Bristol Bay Driftnetters Association • Concerned Area "M" Fishermen  
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Kenai Peninsula Fishermen's Association  
North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association  
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Seafood Producers Cooperative  
Southeast Alaska Seiners Association



## Cordova District Fishermen United

P.O. Box 930  
Cordova, Alaska 99574  
(907) 424-3447 FAX (907) 424-3430

March 28, 1994

Senator Jim Duncan  
Alaska State Legislature  
State Capital  
Juneau, AK 99801-1182

Dear Senator Duncan:

On behalf of Cordova District Fishermen United (CDFU), I am pleased to write in support of Senate Bill 306—*An Act relating to an antitrust exemption for persons engaged in the fishing industry*. CDFU supports SB306 for three primary reasons:

- **SB306 serves to clarify ambiguities in existing law.**  
Under current law, it is clear that fishermen may harvest, process and handle their catch or prepared product collectively but it is unclear whether they may collectively see the fruit of their labors through to the marketplace. The current law is interpreted by some to mean that after collectively catching or processing their fish, each individual fishermen has to separate his portion of the catch or product from that of other fishermen and then attempt to sell his portion individually. CDFU supports SB306 because it expressly allows fishermen to collectively sell their catch or their prepared product.
- **SB306 removes inconsistencies between state and federal laws.**  
The federal exemption covers harvesting, processing, handling and marketing and is, thus, inconsistent with existing state law. This inconsistency creates an atmosphere wherein a group of fishermen may acquire an exemption from the state government and be in violation of federal law—and vice versa. Section 1 of SB306 rewrites existing law to make the state exemption virtually identical to its federal counterpart. CDFU believes this is an important improvement over existing state law.
- **SB306 levels the playing field for fishermen.**  
Section 2 of SB306 places fishermen in a better position to obtain the best price for their fish by allowing them to collectively agree on the price that processors will pay to fishermen for raw fish and that processors will accept for the sale of processed fish. This will have the effect of leveling the playing field so that fishermen are in a better position to obtain the best price for their fish by allowing them to deal with processors in order to put up a united front against the major corporations that dominate the world markets for processed fish.

The nearly 250 commercial fishermen who comprise CDFU stand together with United Fishermen of Alaska and other fishing groups in support of SB306. If you have any questions or require additional information, please do not hesitate to contact me at the number above. Thank you for your consideration.

Sincerely,  
CORDOVA DISTRICT FISHERMEN UNITED

Dorne Hawxhurst, Executive Director

# MEMORANDUM

State of Alaska  
Department of Law

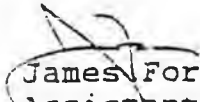
to: Charles E. Cole  
Attorney General

DATE: June 7, 1993

FILE NO.: 661-91-0465

TEL. NO.: 269-5222

SUBJECT: Bristol Bay Salmon Investigation

FROM:  James Forbes  
Assistant Attorney General  
Fair Business Practices Section  
Anchorage

This memorandum contains the report of our investigation into the Bristol Bay sockeye salmon industry. Our investigation centered on the processors in Bristol Bay, but in the course of gathering material from and about them, we also obtained some information on the business practices of the buyers of Bristol Bay salmon, who import most of the processed fish into its primary markets in Japan.

The reader should be aware that most of the conclusions we draw about the Japanese buyers is in the nature of informed conjecture, based on available information. We were not able to conduct an in-depth review of direct evidence of the business practices of the importers, such as their business records. This report should be read with that understanding. We make no claim to having conclusive evidence of price fixing, or other illegal conduct, but we do believe that the report shows how various parties had the means, opportunity, and motive to reduce Bristol Bay salmon prices in recent years.

Antitrust investigator Sue Winton and I compiled most of the information contained herein. University of Alaska Southeast economist David Reaume provided economic analysis and valuable assistance in drafting.

## INTRODUCTION

This investigation began in early 1991 in response to concerns that declining ex-vessel prices for Bristol Bay sockeye salmon were brought about by collusion. We subpoenaed documents from processors; reviewed public records, press reports and previous

BRISTOL BAY SALMON INVESTIGATION

studies; and took dozens of statements, both sworn and unsworn.<sup>1</sup> A reduction in funding for antitrust enforcement in 1992 forced the curtailment of the investigation. The intent of this report is to pass along the information we obtained, with our interpretation, for the consideration of those who make policy affecting the Bristol Bay fishery.

We limited our investigation to the Bristol Bay fishery for several reasons: the major firms involved in the other significant Alaskan commercial fisheries do business there allowing us an opportunity to examine their business practices; the fishery is small enough that a review of the necessary business records was within our ability to manage; and the fishery had experienced dramatic swings in ex-vessel prices in just a few years providing a good opportunity to explore the reasons why.

Before getting into the body of the report, a brief summary of the primary legal principles involved is in order.

### Antitrust Law

These are the federal and state laws that protect trade and commerce from unlawful restraints. This report focuses on price fixing and monopolization, two activities prohibited by antitrust laws. The basic principles of antitrust law are found in the Sherman Antitrust Act of 1890, which has been called the Magna Charta of free trade.

### Monopoly

A monopoly is usually found to exist when a firm selling a product acquires the power to increase prices or exclude competition in a specific market. While it traditionally is not found to exist unless a single firm possesses the power, some courts have found that two or more firms can jointly monopolize a line of commerce and exercise shared monopoly power. To violate the law, a monopolist must usually be shown to have deliberately acquired the power. No set market share has been established, although monopoly power is usually presumed to exist when a firm's market share exceeds 70%, and usually presumed not to exist when market share drops below 40%. Courts generally consider all relevant evidence when deciding whether monopoly power exists in a given instance, and are not bound by market share calculations. A monopolist can maintain a selling price that is above the price that would prevail if the market were competitive.

### Oligopoly

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<sup>1</sup>Documents we obtained under subpoena are subject to AS 45.50.592, which provides certain protection for trade secret information. Accordingly, to the extent that information in this report is based on subpoenaed documents, we have taken steps to insure that trade secrets of individual companies are not revealed.

An oligopoly is generally found to exist where a few firms account for most of the sales of a product. In some circumstances, the oligopolists can approximate the market power of a monopolist through coordination, either explicit or implicit. The hallmark of an oligopoly is that no firm will make a pricing decision without reference to the anticipated response of the other oligopolists. Oligopolists frequently maintain prices parallel to their competitors. The structure of an oligopolistic market makes it relatively easy for the firms involved to cooperate to keep prices at levels above where they would be in the presence of true competition. Highly concentrated industries -- usually found to exist where four firms control about 50% of the industry output -- where there is product homogeneity, similar cost structures, and high barriers to entry into the business are more prone to collusion, and are more likely to approximate the behavior of a collective monopoly. For these reasons, courts have found that, even where there is no evidence of an express agreement to fix prices, price fixing will be inferred in an oligopoly where the existence of enough "plus factors" are proved. These "plus factors" usually include: the opportunity of oligopolists to meet to agree on price strategy; most favored customer clauses; parallel pricing; price information sharing; and product uniformity.

#### Monopsony

A monopsony is the converse of a monopoly, where there are many sellers of a product, and one buyer controls so much of the acquisition side of the market that the buyer can control prices.

#### Oligopsony

The converse of an oligopoly.

#### Market power

Market power is the power of a monopolist or an oligopolist in a highly concentrated market to raise prices above competitive levels -- or the power of a monopsonist or oligopsonist to lower prices below competitive levels.

### A RECENT (AND BRIEF) HISTORY OF BRISTOL BAY

#### The 1970s and 1980s

In the early to mid-1970s the Bristol Bay sockeye salmon run was depressed. Harvest levels in 1973 and 1974 had dipped to an average of 6 million pounds, down from over 100 million pounds in 1970. Beginning in 1975, however, Bristol Bay sockeye salmon stocks began a sustained period of recovery, reaching a modern high of 215 million pounds in 1983, and falling no lower than 85 million pounds since. The relevant data are given in Table -1.

With the advent of secular recovery in the stock of Bristol Bay sockeye came structural change. Japanese trading companies began buying large quantities of frozen Bristol Bay

sockeye salmon from Bristol bay processors in 1978.<sup>2</sup> In the process they bid up the ex-vessel price (the price received by fishers) from \$0.60 per pound in 1977 to \$0.73 per pound in 1978, and then to \$1.02 per pound in 1979. In two years the price received by Bristol Bay fishers for their catch had risen 70 percent. What is more, the 70 percent price increase from 1977 to 1979 was achieved in the face of a 387 percent increase in harvest levels. Had it not been for the fact that sockeye harvests were rising sharply just when the Japanese were increasing their purchases of frozen salmon from near zero to over 30 percent of the total sockeye harvest, the increase in ex-vessel price might have been even more spectacular. The price gains could not, however, be sustained. When the second in a series of record harvests appeared in 1980, ex-vessel prices returned to their 1977 levels. The competition for fish that had bid up prices in 1978 and 1979 had been muted by continued abundance.

The Japanese presence in Bristol Bay grew throughout the decade of the 1980s. Between 1981 and 1984 nearly half the Bristol Bay sockeye catch was frozen, up from near zero in 1977. Even so, the supply available for canning was not as yet severely restricted thanks in large part to a continuation of historically high harvest levels. The rather small weight of the canned sockeye pack in 1982 (11.3 million pounds, down from 57.5 million pounds in 1981) allowed inventories which had been built up during the previous three years to be sold off and cannot be viewed as evidence that the growing Japanese demand for frozen Bristol Bay sockeye was at that time impinging upon canners' supplies of unprocessed fish.

In 1985, however, things began to change again. In response to booming consumer demand, Japanese buyers of frozen sockeye salmon increased their Bristol Bay purchases from 67 million pounds in 1984 to 91 million pounds in 1985, and their market share from 49 percent to 68 percent. Ex-vessel prices once again rose and this time canners found themselves in the position of having to pay much higher prices in order to obtain product and, (more importantly to them in the long run), in order to retain control over the core of their fleet of fishers and boats.

#### BRISTOL BAY SOCKEYE SALMON

<u>YEAR</u>	<u>(000'S) POUNDS HARVESTED</u>	<u>(000'S) POUNDS FROZEN</u>	<u>(000'S) POUNDS CANNED</u>	<u>PERCENT FROZEN</u>	<u>AVG. EX VESSEL PRICE</u>
1975	26,944	102	21,319	0.4	\$ 0.40
1976	34,278	384	28,426	2.6	0.50
1977	32,672	586	27,495	1.8	0.60
1978	58,576	6,307	37,136	10.8	0.73
1979	126,429	38,032	44,350	30.1	1.02
1980	133,541	31,856	46,379	23.9	0.57
1981	158,483	49,614	57,456	31.3	0.77

<sup>2</sup> Frozen sockeye salmon is sold almost exclusively in Japan, while canned sockeye is sold almost exclusively in other markets.

1982	96,668	57,637	11,308	59.6	0.68
1983	214,389	103,432	54,571	48.1	0.64
1984	138,159	67,355	46,787	48.8	0.66
1985	134,913	91,319	23,730	67.7	0.83
1986	95,948	75,011	11,536	78.2	1.43
1987	87,450	63,798	15,191	73.0	1.40
1988	84,678	73,476	6,677	86.8	2.10
1989	163,175	109,840	32,574	67.3	1.25
1990	198,955	129,700	30,581	65.2	1.09
1991	140,221	83,059	40,607	59.2	0.70
1992					

SOURCES: POUNDS--ADF&G Bristol Bay Management Reports  
PRICE-- ADF&G, Division of Commercial Fisheries, special  
printout

The great Bristol Bay Price War of 1985/1988 had begun. Competition among canners and Japanese buyers of frozen fish came to a head as declining harvests coupled with a booming Japanese consumer demand for salmon drove ex-vessel prices to historic highs. In 1986, 1987, and 1988 the share of the Bristol Bay harvest which was frozen (and then largely shipped to Japan) averaged 79.3 percent. Japanese demand in these years drove the price received by fishers from \$0.83 per pound in 1985 to \$1.43 per pound in 1986, \$1.40 per pound in 1987, and then to \$2.10 per pound in 1988. By 1988 Bristol Bay canned production of sockeye had fallen to 6.7 million pounds, its lowest level since 1973 and a mere 12 percent of the poundage canned just five years earlier. For all intents and purposes, the canners were being driven out of Bristol Bay by a seemingly insatiable Japanese demand for frozen salmon. Although the harvests of 1985/1988 would have glutted the market in 1977 and 1978 when the canners were virtually the whole show in Bristol Bay, they fell far short of the levels needed to satisfy the combined 1985/1988 demand for canned and frozen sockeye at constant prices.

To find at least one reason why Japanese buyers in 1986 suddenly became willing to pay substantially higher prices for sockeye salmon one need look no farther than the yen/dollar exchange rate. From 1980 through 1985 the July average yen/dollar exchange rate never once fell below 220 yen per dollar, while in July 1985 it stood at 241 yen per dollar. In late 1985, however, the yen began to appreciate sharply relative to the dollar with the result that the yen/dollar exchange rate had fallen to 159 yen per dollar by July 1986, a twelve month plunge of 34 percent. The falling exchange rate meant that despite a near doubling in 1986 of ex-vessel prices in Bristol Bay, the price in Tokyo rose only 12.5 percent.

By July 1988, the yen/dollar exchange rate had fallen to 133 yen per dollar, enough on its own to drive ex-vessel prices from \$0.83 per pound in 1985 to over \$1.50 per pound in 1988. The fact that 1988 ex-vessel prices, in fact, averaged \$2.10 per pound requires further explanation. Speculative fervor on the part of Japanese buyers may be part of the story, but other factors may also have been at work.

Once again, however, things changed. In July 1989 Japanese wholesale prices for frozen sockeye suddenly plunged over 20 percent from the June 1989 average, despite only a modest increase in the yen/dollar exchange rate. According to data provided by Clinton Atkinson a Seattle fisheries consultant who closely monitors Japanese prices, the wholesale price for frozen sockeye in Tokyo fell from a June 1989 average of 1525 yen per kilogram to a July 1989 average of 1180 yen per kilogram, a figure close to the July 1987 price of 1193 yen per kilogram, but substantially below the July 1988 price of 1500 yen per kilogram.

In the wake of the July 1989 plunge in Japanese wholesale prices a number of the buyers of frozen Bristol Bay sockeye who had speculated in 1988 on a continuation of the boom in demand were reported to have gone out of business over the next year. For the most part the buyers who left the Bristol Bay market were relatively small as compared to the buyers who remained. The list included, but was not limited to, the following: TOKAI Trading Co., HOEI Trading Co., FUJI MARINE, the JOINT STAFF CORPORATION, and SHIN NISHOKU Ltd. A second structural change of some importance was now underway -- the market was becoming increasingly concentrated as smaller Japanese buyers relinquished their positions to larger, more heavily capitalized players such as NIPPON SUISAN, NICHIRO, MITSUI, and KYOKUYO.

Post-1989 prices continued their downward trend. The July 1990 average Tokyo wholesale price for frozen sockeye came in at 1166 yen per kilogram, while the average ex-vessel price in Bristol Bay was recorded at \$1.09 per pound. However, an increase in the yen/dollar exchange rate of 12 percent between July 1989 and July 1990 all but accounts for the drop in the Bristol Bay ex-vessel price between those two dates.

#### The Crash Of 1991

Both ex-vessel and Tokyo wholesale prices crashed in 1991 despite a return of the yen/dollar exchange rate to nearly the July 1988 level (138 yen per dollar in July 1991 versus 133 yen per dollar in July 1988), a factor which on its own would tend to raise, not lower, ex-vessel prices. In June, Bristol Bay processors offered as little as \$0.50 per pound to fishers, but as the run materialized finally settled on \$0.70 per pound. The crash in Bristol Bay ex-vessel prices from the highs of 1988 (\$2.10 per pound) triggered cries of price fixing. To many observers the fact that ex-vessel prices fell by a greater percentage than did wholesale prices supported the claim that buyers (either in Japan or the United States) were conspiring to save themselves at the expense of the fishers. In opposition to these voices there were others who offered the counter claim that nothing more than "supply and demand" was at work; and that the collapse in ex-vessel prices could be attributed entirely to the workings of a competitive market.

## COLLUSION OR COMPETITION?

Before one can begin to untangle the reasons for the price crash of 1991, several points must first be understood. The first is that no amount of data on prices paid and quantities sold can tell us if the crash was engineered (the COLLUSION HYPOTHESIS) or came about as the result of competition/supply and demand (the SUPPLY/DEMAND HYPOTHESIS). If a standard of proof suitable to a criminal court of law is imposed (proof beyond a reasonable doubt), neither the COLLUSION HYPOTHESIS nor the SUPPLY/DEMAND HYPOTHESIS can be proven solely from economic data. An immediate implication of this fact is that whichever hypothesis is forced to bear the burden of proof is condemned to failure. In particular, someone who begins from the assumption that the international market for sockeye salmon is perfectly competitive (or at least workably competitive) will fail to be convinced of the contrary if he or she requires proof beyond a reasonable doubt as required in a criminal case.

The reason economic data alone cannot distinguish "beyond a reasonable doubt" between the competing hypotheses is that any pattern of prices and quantities can be explained simply by invoking enough special assumptions. One can, for example, argue that a particularly sharp drop in the price of a commodity reflects a particularly dramatic change in price expectations, or a change in tastes, or even the rise to prominence of hitherto unimportant cross price effects.<sup>3</sup> Here we focus mainly on the relative plausibility of the two hypotheses, given what we know of the events leading up to the summer of 1991. Taken together, economic data and an analysis of the incentives and prior practices of the players involved in the determination of Bristol Bay salmon prices make it very difficult for an unbiased observer to escape the conclusion that the COLLUSION HYPOTHESIS is the more plausible.

### A Statement Of The COLLUSION HYPOTHESIS

There are two levels of collusion considered here: collusion among Japanese buyers of Bristol Bay salmon designed to secure supplies at below competitive prices, and collusion among the major on-site processors in Bristol Bay designed to reduce the prices paid to Bristol Bay fishers.<sup>4</sup> It may be that collusion among

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<sup>3</sup> A "cross-price" effect is the change in the demand for one product caused by a change in the price of a substitute or complementary product. For example, if the price of Chilean coho salmon falls, the demand for Bristol Bay sockeye can be expected to fall if all other factors remain constant because people will buy more Chilean coho and less Bristol Bay sockeye.

<sup>4</sup> As we state elsewhere, and emphasize here, the majority of Bristol Bay processors are price followers who lack any semblance of the necessary market power to affect prices. This investigation found no evidence of wrongdoing on their part and they should be considered innocent bystanders. Our investigation did reveal the  
(continued...)