ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8326 SENATE JUDICIARY

Sponsored by: Crane

CITY OF SEWARD, ALASKA
RESOLUTION NO. 93-172

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEWARD, ALASKA, URGING THE ALASKA STATE LEGISLATURE TO PLACE A CONSTITUTIONAL AMENDMENT RELATED TO THE ALASKA PERMANENT FUND ON THE BALLOT FOR THE NEXT GENERAL ELECTION

WHEREAS, at the Kenai Peninsula Borough Mayor's 1993 Economic Summit, a proposal was made for changing the State's system of finance to achieve sustained spending, which has attracted statewide interest; and

WHEREAS, the city of Seward desires an opportunity to vote on this proposition;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEWARD, ALASKA, that:

Section 1. The Alaska State Legislature is petitioned to place a constitutional amendment on the ballot for the next general election which would generally:

A. Dedicate all of the State of Alaska's future natural resource revenues to the Alaska Permanent Fund;

B. Transfer assets of various state reserve funds to the Alaska Permanent Fund; and

C. Enable a percentage of the market value of the Alaska Permanent Fund to be withdrawn and appropriated by the legislature for financing state government.

Section 2. The City Clerk is hereby authorized and directed to forward a copy of this resolution to the Kenai Peninsula Caucus, Senator Suzanne Little and Representative Gary Davis.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the city of Seward, Alaska, this 10th day of January, 1994.

Introduced by: Glick, Torgerson
Date: 11/16/93
Action: Adopted
Vote: Unanimous

KENAI PENINSULA BOROUGH
RESOLUTION 93-129

A RESOLUTION URGING THE ALASKA STATE LEGISLATURE TO PLACE A CONSTITUTIONAL AMENDMENT RELATED TO THE ALASKA PERMANENT FUND ON THE BALLOT FOR THE NEXT GENERAL ELECTION

WHEREAS, at the Kenai Peninsula Borough Mayor's 1993 Economic Summit, a proposal was made for changing the State's system of finance to achieve sustained spending, which has attracted statewide interest; and

WHEREAS, a hearing held by the Kenai Peninsula Caucus concluded that residents of the Kenai Peninsula Borough desire an opportunity to vote on this proposition;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Alaska State Legislature is petitioned to place a constitutional amendment on the ballot for the next general election which would generally:

A. Dedicate all of the State of Alaska's future natural resource revenues to the Alaska Permanent Fund;

B. Transfer assets of various state reserve funds to the Alaska Permanent Fund; and;

C. Enable a percentage of the market value of the Alaska Permanent Fund to be withdrawn and appropriated by the legislature for financing state government.

SECTION 2. That copies of this resolution be sent to Senators Suzanne Little and Judy Salo and Representatives Gail Phillips, Mike Navarre and Gary Davis.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 16th DAY OF NOVEMBER, 1993.

Betty J. Glick
Betty J. Glick, Assembly President

ATTEST:

Gaye J. Vaughan
Gaye J. Vaughan, Borough Clerk

Kenai Peninsula Borough, Alaska

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 1
To Pat Burdek	From Bev
Co.	Co.
Dept.	Phone # 2-8608
Fax #	Fax #

SUGGESTED BY: Mayor Williams

City of Kenai

RESOLUTION NO. 93-87

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, URGING THE ALASKA LEGISLATURE TO PLACE A CONSTITUTIONAL AMENDMENT RELATED TO THE ALASKA PERMANENT FUND ON THE BALLOT FOR THE NEXT GENERAL ELECTION.

WHEREAS, at the Kenai Peninsula Borough Mayor's 1993 Economic Summit, a proposal was made for changing the State's system of finance to achieve sustained spending, which has attracted statewide interest; and,

WHEREAS, hearings held by the Kenai Peninsula Borough, the City of Soldotna and the Kenai Peninsula Caucus, concluded residents desire an opportunity to vote on this proposition.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, as follows:

Section 1: The Alaska State Legislature is petitioned to place a constitutional amendment on the ballot for the next general election which would generally:

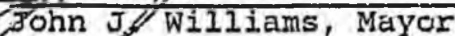
a. Dedicate all of the State of Alaska's future natural resource revenues to the Alaska Permanent Fund;

b. Transfer assets of various state reserve fund to the Alaska Permanent Fund; and,

c. Enable a percentage of the market value of the Alaska Permanent Fund to be withdrawn and appropriated by the Legislature for financing state government.

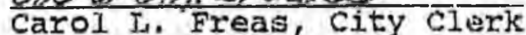
Section 2: The Kenai City Clerk is hereby authorized and directed to forward a copy of this resolution to each member of the Alaska State Legislature and Governor Walter J. Hickel.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 17th day of November, 1993.



John J. Williams, Mayor

ATTEST:



Carol L. Freas, City Clerk

FORUM

Alaska still has a shot at long-term prosperity

JAY HAMMOND

Of my years as governor, both my greatest regret and gratification relate to creation of the permanent fund.

Gratitude, that Alaskans elected to constitutionally mandate the fund. Regret, that we fell short of creating as large a fund as we should have.

Even my original "Alaska, Inc." proposal (which would have created a constitutionally mandated, dividend-dispersing fund into which would go 50 percent of all lease, bonus, royalty and severance tax dollars) would have failed to meet my often-stated objective of transforming oil wells into "money wells" pumping in perpetuity.

To fully meet that objective, we should have done precisely what Anchorage attorney Roger Cremo has been crusading for since 1970 when the state got its first oil bonanza of $900,000,000. At that time, Roger and some of then-Gov. Miller's Cabinet urged the governor to put all that $900 million into an investment account. Recognizing the legislature would never forego the opportunity to spend much, if not all, of that initial bonanza, Gov. Miller agreed to try to put half into such a fund. Regrettably, only a handful of us then in the legislature supported his efforts. Instead, the $900 million was quickly exhausted.

Belatedly recognizing the wisdom of putting all the oil money into a fund, most legislators swore that should we again receive a bonanza, we'd not use it for instant gratification. Yet when the oil pipeline gushed more billions into our laps, once more prudence was sluiced aside and I could find few who would even support the Alaska Inc. concept, though it was but half as restrictive (and prudent) as what had been proposed to Gov. Miller in 1970.

Instead of a constitutionally mandated, dividend-dispersing Alaska Inc.-type fund, the legislature chose to create a "semi-permanent" fund by simple statute. Into this fund was to go, not 50 percent of all lease, bonus, royalty and severance taxes, but only 25 percent. Severance taxes were excluded and no mention was made of a dividend.

Convinced a statutorily created fund would be invaded the first time the legislature wanted some money, I vetoed the measure and demanded the public be allowed to vote on whether the fund should be placed in our constitution.

Having worked, unsuccessfully, since the mid-'60s (when I was manager of Bristol Bay Borough) to sell the Alaska Inc. concept, it was very painful to have to veto the first piece of legislation which even came close to that idea.

Later, after the public voted the fund into our constitution, I again proposed a dividend program. Legislative reluctance to even bring the dividend bill out of committee was finally overcome by assurances that should they fail to at least bring the bill up for a vote, they'd be called back into special session the day after adjournment and all who attempted to bury the bill in committee should expect to see their "goodies" excised from the budget.

When some offended legislators charged me with issuing unseemly threats which bordered on "blackmail," I happily acknowledged that was precisely what I was doing, though I preferred the term "graymail."

After all, I assured them, no one would be punished for voting against the dividend bill, only for failing to bring it to the floor for a vote. Apparently, suspicion that I'd not keep that promise persuaded them to not only disgorge the bill from committee, but pass it almost unanimously. Any resentment I might have had relating to their apparent lack of confidence in my integrity cooled in the breeze created by those subsequently rushing to come aboard as alleged "prime sponsors" of the dividend program.

But all that is history and what satisfaction as may be derived from creation of the permanent fund pales by contrast to what we could have had were we to have put all natural resource revenues into a fund from the beginning.

Only about 11 percent of our oil wealth (and none from fish, timber, or minerals) flows into our $12 billion permanent fund. Had we placed all of our resource wealth into such a fund since 1970; earned income on par with the existing permanent fund; retained fund earnings and withdrawn but 7 percent of the fund's value each year, that fund would now contain over $62 billion, according to Mr. Cremo's projections.

It would be pumping over $4 billion annually into state coffers ... more than enough to fund current government state spending and pay a dividend. Most importantly, it would be producing a steadily increasing and reasonably predictable revenue stream, thereby avoiding anticipated, traumatic revenue shortfalls and increased taxes.

At the governor's recent economic summit, Mr. Cremo gave a most convincing account of how we could still do what we should have done years ago. At least he convinced me and many of the too few who got to hear him.

I urge the governor to diligently explore his proposal. If he is as persuaded as I that such a plan may be our best hope for the future economic health and stability of Alaska, I hope he will, in turn, persuade the legislature to at least bring it up for a vote ... even if a little "graymail" is required to do so.

Should he succeed, I predict that some years hence, rather than being condemned for failure to set us on course, the governor may well be canonized.

☐ Jay Hammond was governor of Alaska from 1974-1982.

FORUM / LETTERS

We can indeed stabilize Alaska economy, starting in '94

By ROGER CREMO

We Alaskans can count many blessings, but the most important one is that our state government's revenues are enormous. In the last dozen years they have amounted to more than $40 billion, plus billions in federal grants. They fund state services and public works, and they subsidize local government. They make an income tax unnecessary and provide us with half a billion dollars in cash every Christmas. Yet the situation is intolerable.

There is an economic problem that overshadows all else. The economy is unstable. It can thrive for several years, but inevitably it fails, with disastrous consequences. People leave in droves, thousands who remain are without jobs, property values plunge, and homes and businesses are lost to foreclosure and bankruptcy. Even the banks go broke.

The reason for this condition of boom or bust is that the state's revenues fluctuate. When they're high, as they were from 1980 to 1985, public spending creates a demand for goods and services that makes the economy expand. When the revenues decline, the state has to cut its spending, as it did in 1986 and probably will have to do again soon. Then the economy contracts.

The revenues fluctuate because they come mainly from the sale and taxation of natural resources. They rise and fall with production and world price.

We need sustained state spending. But the revenues are unpre-

dictable, at least in the long term, so we don't even know what amount of spending is sustainable. If we are ever to achieve stability, however, we must determine that amount. And it has to be the highest amount that is sustainable, because the economy depends heavily on state spending. After all, wealth in Alaska is in the natural resources and the state owns them.

In order to determine how much of the natural resource revenues can safely be spent each year and to prevent the legislature from spending more than that, the state's financial system must be redesigned. But not by the legislature. Only the people have the power to change the system, and that's done by amendment to the constitution. If it were otherwise, the legislature could define its own authority.

A proposed new system attacks the problem by putting all natural resource revenues where they can't be appropriated — in the Alaska Permanent Fund. There they would be invested and the income reinvested.

But the legislature must have money for the operation of the state government and for purposes that it deems appropriate, such as aid to cities and "dividends." So money in some amount would have to be transferred from the permanent fund to the general fund. The amount, of course, should be the highest sustainable amount.

The unpredictability of natural resource revenues makes it impossible to determine a sustainable level of spending. The shift to investment securities makes it possible.

A couple of assumptions must be made. One has to do with the return on investment of the permanent fund, and the other, the rate of inflation. An average rate of total return of 10 percent a year, which is lower than the corporation has achieved thus far, should be attainable with good management. And an average inflation rate of 4 percent a year, which is higher than the historical average, can be used.

With the fund increasing 10 percent in value annually from investment and decreasing 4 percent from inflation, it follows that an amount equal to 6 percent of its value could be withdrawn from the fund every year. The only other factor affecting the size of the fund would be the deposit of natural resource revenues. Regardless of how much it varied from year to year, that deposit would cause the withdrawal amount to increase continually.

The proposed system does work. Had it been adopted in 1970, the year after the state leased the North Slope for $900 million in bonuses, state spending would have continued to rise when the oil price dropped to $10 a barrel in 1986. The support that state spending provides for the economy would have continued, averting the economic disaster we experienced. And today we would be enjoying substantial increases in state spending rather than the anticipated decline.

Had the proposed system been adopted in 1970, state spending would have continued to rise when the oil price dropped to $10 a barrel in 1986. The support that state spending provides for the economy would have continued, averting the economic disaster we experienced. And today we would be enjoying substantial increases in state spending rather than the anticipated decline.

Conversion to the new system requires that at the outset the permanent fund be built up by adding available reserves. Then, during a transitional period of 10 years, the withdrawal percentage factor must be higher than the permanent factor of 6 percent. For that reason substantial oil revenues are needed during the transitional period, but not more than what has been forecasted by the Department of Revenue. Although, ironically, we must rely on that forecast, natural resource revenues are somewhat predictable for the short term.

Since we have chosen not to have a constitutional convention for at least a decade, the only available method for restricting the authority of the legislature is to ask the legislature's permission. If granted (in the form of a resolution passed by a two-thirds majority of the house and the senate), the people would vote on the proposed constitutional amendment. All of that could happen in 1994.

□ Roger Cremo is an Anchorage lawyer.

JAN. 16, 1994

Cremo plan can save the dividend fund

A strange thing happened as I was filling out my permanent fund dividend application. An old Rolling Stones tune came on the radio, the one that goes, "This could be the last time. This could be the last time. May be the last time, I don't know ... Oh, no ... OH NO!"

This eerie occurrence prompted a reflection on the future of the dividend. Will it soon be under attack? How long can it last?

In fact, it is under assault as you read these words. Gov. Hickel's suggestion, in his state of the budget speech, that dividends be capped is but the opening salvo in the siege. The future of PFDs is bleak, unless something is done — quickly. More on that later.

There are a lot of powerful people who don't like the dividend program for a variety of reasons.

Calvinist conservatives think it's morally wrong for the government to distribute money to people who have done nothing to earn it. Better to spend the money on roads, bridges, dams, ports and airfields, in the hope of attracting private investment to projects that would not otherwise be feasible.

Some liberals object to the fact that it's not needs based. The needy get dividends, and that's OK. But well off Alaskans also get checks they could easily do without, and that's not fair.

The socialist left doesn't even want the poor to get a dividend. It's so often spent inappropriately. It would be far better for the government to keep the money, and distribute benefits instead of cash.

FRITZ PETTYJOHN

> *Over the past dozen years they've received $4.5 billion that would have otherwise been gone with the wind. They'll almost surely prevail again — this year. But soon — very soon — the pressure on the dividend will be overwhelming.*

Our congressional delegation — Ted Stevens in particular — has complained that the dividend program makes it more difficult for them to obtain special goodies for Alaska. Sen. Stevens delights in bringing home not just slabs of bacon, but entire pork bellies — occasionally even the whole hog! He resents anything that interferes with his handiwork.

Certain state legislators, especially grizzled veterans who have brought home millions of dollars of pork over the years, have never liked the dividend program. They can't take personal credit for the dividends their constituents receive. And getting such credit is the only reason some of them are tolerated by their voters.

Other legislators know they're incapable of serious spending cuts. They also know they can't tax their way out of the mess they're in, and that tapping reserve accounts is only a stopgap. They need money, and they'll go after the dividend after a simple process of eliminating the alternatives.

The people have prevailed, and kept their dividend, despite all this opposition in the past. Over the past dozen years they've received $4.5 billion that would have otherwise been gone with the wind. They'll almost surely prevail again — this year. But soon — very soon — the pressure on the dividend will be overwhelming.

Under the current system, the legislature simply can't cut spending and raise taxes enough to cover the ever widening fiscal gap. PFDs will have to go.

Unless.

Unless the current system is changed. If the constitutional amendment devised by Anchorage attorney Roger Cremo is adopted, there's a chance the people can save their dividend.

The annual revenue stream created by this amendment (along with tax hikes or spending cuts totaling $60 per year, per capita) is enough to finance a stable operating budget, a small capital budget, and a dividend program at the current level.

Under this proposal there's no guarantee the legislature would fully fund dividends.

There's no such guarantee today. A future legislature could, just as the current legislature could, abolish PFDs and increase state spending by $500 million.

But under the Cremo plan, they wouldn't be forced to do it. They'd have a way to keep the dividends, if they wanted to.

Voters could extract blood oaths from legislative candidates not only to keep the permanent fund dividend program intact, but to take its financing up as their first order of business.

Each session, early funding of PFDs — long before squabbles over the relative size of operating and capital budgets and before fights over the mix of spending cuts and tax increases — would be the legislators' chance to honor their commitment to the people.

Dividends can be saved, and with them the permanent fund itself. The proprietary interest Alaskans have in the fund is fueled by dividends. Take them away and the fund won't be far behind.

❑ Fritz Pettyjohn is a lawyer from Anchorage who has served in both houses of the Alaska Legislature.

THE ANCHORAGE TIMES, P.O. Box 100040, Anchorage, AK 99510 Telephone (907) — Fradley 20?-8791 — Jenkins

1/2/94

Legislators have dim hope of overcoming Fiscalgap

Sometimes, before things can get any better, they first have to get a lot worse.

How poorly must Alaska's political system perform before fundamental change is possible? Very possibly, the answer to that question may come in the 1994 legislative session.

The problem facing state government is quite simple, really. This year, and in future years, there's a fiscal gap of about $1 billion. In other words, the state of Alaska is now spending about $1 billion more per year than it's taking in.

As they prepare to grapple with this dilemma, our solons operate under some severe handicaps. A partial list includes:

1. A governor who seems to believe all that's required is the power of positive thinking. According to Walter Hickel, Alaskans must, above all, "think rich." I am not making this up.

To those who don't share

FRITZ PETTYJOHN

the governor's galactic vision, a big part of the answer to Fiscalgap is cutting spending. Meaningful cuts can't really be accomplished by the legislature alone, however. It's the nature of the beast. When the legislature is faced with an administration hostile to significant reductions in the cost of operating state government, it's virtually impossible for it to make the cuts.

Even if the governor did decide to exercise the leadership Alaska's constitution vests in him, he'd have a tough task. Neither a Republican nor a Democrat, Hickel has no built-in base of support in the legislature. In the past, he's pursued a curious policy of cultivating his enemies and taking his friends for granted. This record will work against him. And, with his re-election something of a long shot, he has some of the problems of a lame duck leader.

2. Fear and loathing between House and Senate. House Speaker Ramona Barnes and Senate President Rick Halford have trouble being in the same room together, much less communicating. Under normal circumstances this would be a problem. This year it could be a calamity. Faced with an indifferent and rudderless administration, close cooperation between House and Senate will be required. Good luck.

3. A Senate majority with problems. The Jacko problem. An 11-member organization — no votes to spare, every member with a veto. A united, bitter fractious minority. Senators who are mightily embarrassed by last year's spending spree, and determined to somehow rehabilitate their reputation as fiscal conservatives. Jockeying in preparation for the fight for leadership posts in the next organization.

4. A House majority with incipient problems. With two-thirds of them freshmen, last year's majority pretty much did what Speaker Barnes told them to do. As these new lawmakers look ahead to their first campaign for re-election, they'll be much less likely to march in lock step.

5. The sanctity of the permanent fund. It's extraordinarily difficult to imagine a way out of Fiscalgap that doesn't involve using the money in the permanent fund's earnings reserve account. In the past, this has been taboo — big time. By spending what the people perceive as permanent fund money, legislators will expose themselves to the wrath of the voters. This issue alone could cost them a whole lot of elections. And they know it.

6. A whole bunch of legislators promised the voters they'd never support new or higher taxes unless major reductions in the operating budget were made first. With such reductions highly unlikely, raising taxes to deal with the Fiscalgap will prove extremely difficult.

In light of all of the above, 1994 promises to be the session from hell. As it winds down, legislators will know their constituents will be saying of them, "What's wrong with those people?"

But because things will likely be so bad, there is a chance for change. The constitutional amendment proposed by Anchorage attorney Roger Cremo is by far the most comprehensive, practical and politically feasible way to handle Fiscalgap. Legislators may come to believe the voters will forgive them their sins if they pass it. It's the last best hope for the '94 session.

There is a fly in the ointment, however. If one legislator, or group of legislators, seeks to take personal credit for the Cremo amendment, the effort could be doomed by political jealousy. Here's hoping the legislators who believe in this solution are able to resist the temptation to use it for self-aggrandizement.

☐ Fritz Pettyjohn, an Anchorage lawyer, served in both the state Senate and the state House of Representatives.

Herewith a way to slay the fiscal dragon

11/21/93

According to UAA's Scott "Jeremiah" Goldsmith's letter to the editor, Roger Cremo is a charlatan — a Rumpelstiltskin claiming to weave gold from straw.

For years Professor Goldsmith has paced the halls of his ivory tower, wearing a hair shirt, forehead smeared with ash, direly warning all that judgment day was nigh, that Alaskans must renounce their profligate ways. "Repent!" he's cried, "Or dread Fiscalgap will devour us all!"

Alas, few have paid heed to his prophecy, and the fearsome dragon does, in fact, now stalk the land.

While most politicians ignored the Professor of the Fevered Brow, Anchorage attorney Cremo committed a far more grievous sin. Working independently, far from the sacred halls of Academe, he's devised a way to slay beast Fiscalgap.

Here's how, in a nutshell. From now on, have *all* the state's resource revenues deposited into the permanent fund. Additionally, put all the money in all reserve accounts in the fund.

In year one of the plan, withdraw 20 percent of the fund. To this $2.8 billion add the $300 million from conventional state revenues, and the legislature has enough for running state government at current levels, a small capital budget, and dividends. Over 10

FRITZ PETTYJOHN

years, gradually reduce the annual withdrawal out of the permanent fund from 20 percent to 6 percent. At the same time, increase revenues from conventional sources by 12 percent a year ($36 million in year one).

Over the 10-year phase-in period, the funds available to the legislature decline from $3.1 billion to $2.9 billion. This assumes each year, for a decade, they cut state spending by $20 million, in nominal terms. At the same time, they'd have to eat the inflation factor, estimated at 4 percent a year. Any given legislature would always be free, of course, to cut spending more or less, increase revenues from conventional sources more or less, or some combination thereof. During the same 10-year period, the value of the permanent fund grows to $35 billion.

Aside from taming Fiscalgap, this plan has a number of attractive features. It captures all future windfalls, and thus dampens Alaska's tendency to boom-and-bust economic cycles. Long-term planning becomes feasible. Budgeting would be based on hard numbers, as opposed to the whimsical guess work of today. Massive, sudden cuts in government services are avoided.

Contrary to the howls of Goldsmith, this is not magic. It is a practical and realistic way to handle Fiscalgap, while also making the permanent fund truly permanent.

Goldsmith proposes, instead, that a succession of governors and legislatures voluntarily cooperate to gradually reduce spending and increase revenues. Based on past performance, this expectation is self-delusion.

Mr. Cremo has been trying to interest Alaska politicians in his constitutional amendment for a number of years, without much success. Next year may be different. Fiscalgap finally has them cornered.

In the past, when threatened by this dragon, our legislators have behaved like certain native peoples of remote New Guinea. Instead of an airplane, they erected a crude replica of an oil derrick. To the sound of sacred drums they ran round and round this totem, chanting "O-pec! O-pec!"

Remarkably, this technique has occasionally proved effective, coinciding with spikes in world oil prices. But while you can run, you can't hide, from Fiscalgap.

When the 18th Alaska Legislature approaches adjournment next May, the carnage may resemble the final scene of a Shakespearean tragedy. Solons will know the public's reaction to this spectacle of political bloodletting, and will be looking for a way to make amends. After all, most of them will be campaigning for re-election next summer.

What better way to expiate their offenses than by allowing the people to vote on a constitutional amendment that saves the permanent fund and puts Alaska on the road to fiscal probity? It would be a bipartisan act of statesmanship that occurs no more than once in a generation. And it might get a lot of them re-elected. Gov. Hickel is reportedly opposed to this idea (it's not "thinking rich"), but governors have no formal role to play in the passage of constitutional amendments.

You may say I'm a dreamer. But I'm not the only one.

☐ Fritz Pettyjohn, an Anchorage lawyer, served in both the state Senate and the state House of Representatives.

11/7/92 ADN
Roger [illegible]

Change fund, slay 700-pound deficit gorilla

FRITZ PETTYJOHN

If the 1995 Alaska Legislature stops inflation-proofing the (permanent) fund and spends the money instead, it could continue the dividend program and also avoid big spending cuts.

For years the gorilla sat quietly in the corner, his big brown eyes calmly surveying the frolic of Alaska politics raging on about him. He made no move. He knew his day would come.

The few who've tried to call him into attention were derided as party poopers. "We'll ignore him, and maybe he'll just go away!" the tipsy revelers assured one another.

But he hasn't gone away. Munching ceaselessly on bananas (which in this conceit represent the fall of oil production on the North Slope) he's gotten bigger and bigger. Now, at 700 pounds, this huge, hairy beast can be ignored no more. Sadly, the party's just about over.

Each pound of the great ape represents a million dollars of state spending in excess of revenue. The governor's preparing the next operating budget at the current level, or about $2.4 billion. An additional $100 million is needed for a minimal capital budget and a supplemental budget. State revenue is projected at around $1.8 billion. The difference, or deficit, of $700 million is the gorilla that before long will put an end to the festivities.

Unless, of course, Dame Fortune intervenes. There could be a $700 million windfall in the form of tax and royalty settlements with the oil companies. Or civil war in Russia could push oil prices up to $25 a barrel. Such things have happened before, and could happen again. But we'd be fools to bet on it.

Don't count on big cuts in the operating budget, either. And don't expect an income tax. Both require 21 votes in the House and 11 in the Senate. The votes aren't there.

What we can expect is a huge draw on reserve accounts — including the permanent fund's reserves. There's enough in them to get through one more year — but only one — of spending as usual.

So it is that the governor, and legislature, elected a year from now will be faced with a fiscal dilemma of enormous proportions. The gorilla could be swollen to 900 pounds by then, given further declines in North Slope production.

With no reserves to fall back on, where will they come up with $900 million? A state income tax would only bring in $350 million or so. Where can they get the rest?

Answer: the permanent fund.

The fund earns close to a billion dollars a year. Under current law, about half those earnings are plowed back into the fund, as inflation-proofing. The other half goes out as dividends. If the 1995 Alaska Legislature stops inflation-proofing the fund and spends the money instead, it could continue the dividend program and also avoid big spending cuts.

The permanent fund would still continue to grow, in nominal terms. As long as oil is being produced, the constitutional amendment that created the fund will require mandatory contributions to it. But in real, inflation-adjusted dollars, the value of the fund will soon begin to fall. The North Slope bonanza that created the fund also caused huge state spending — spending that could eventually devour it.

A few years after 1995 the legislature will need even more permanent-fund money, so they'll put a cap on the amount of the dividend. And a few years after that they'll eliminate it.

This scenario could be avoided by adopting a version of a constitutional amendment devised by Anchorage attorney Roger Cremo. Under his plan, all resource revenues and reserve accounts are deposited into the permanent fund. Then, in the first year, a big chunk — as much as 20 percent — of the fund would be withdrawn and available for dividends and the state budget. Throughout the decade, and forevermore, all resource revenues would continue to be deposited into the permanent fund.

Busts, and booms, in state spending would be eliminated. Each legislature would know how much would be available to spend. And the permanent fund would be secure — and permanent.

There's only one way our legislature will allow the people to vote on such an amendment next year — as an act of atonement for their inability to come to terms with the financial realities facing the state of Alaska.

Don't hold your breath.

□ **Fritz Pettyjohn, an Anchorage lawyer, served in the state Senate and state House of Representatives.**

Peninsula Clarion
Jan 12, '94

1/12/1994

Time to give new budget plan a try

Alaskans who think talk of the state budget crisis is just another "wolf" cry may soon be in for a rude awakening.

Kenai Peninsula Borough Schools Superintendent Robert Holmes perfectly summarized the situation now facing not only the school district, but the borough and municipalities when he said: "We just flat out have fewer dollars to deal with."

What that means, on the borough level, is a hike in property taxes is possible. For peninsula schools, it likely means not filling some new teaching positions, as well as cutting funds for equipment, textbooks, library aides, food service and field trips. Soldotna is discussing a sales tax hike from 3 to 3.5 percent to make up a predicted budget shortfall.

For everyone, fewer state dollars means changes are inevitable.

The state's current budget situation points out how the sytem is flawed. How can you have a stable state economy when the price of oil, the primary factor in figuring the budget, fluctuates as much as it does? The answer is you can't.

A new way of figuring the budget, however, could eliminate the roller coaster budget rides the state now experiences. When there's lots of money around, the state tends to spend as much as is possible. When there's not, everyone scrambles to cut what can be cut and make ends meet. At best, it's not an efficient way to finance the state's business.

Under a plan getting lawmakers' attention all the state's resource revenues would go into the Permanent Fund and the Legislature would receive a set percentage of the fund's annual earnings to pay for the cost of operating government.

Proponents say the proposal — known as the "Cremo Plan," after the Anchorage attorney who devised it — would give legislators a more reliable and predictable amount of money to spend.

It's a sound idea; one that deserves more than discussion. The current system of financing state government isn't working, and the Legislature desperately needs to try something else.

Otherwise, Alaskans can expect more of the same: spend-spend-spend in the fat years and cut-cut-cut in the lean. And, if the experts' crystal ball is correct, there are a lot more lean years ahead as oil production declines.

If the Cremo Plan can stop the roller coaster budgets of the past and present, it's time to hop on for the ride.

App

Clintor

By TERENCE HUNT
AP White House Cor

WASHINGTON
old movie where
down on the railr
train was coming
second she was sa
first year as presic
like that.

Both stories hav
ents: lots of action
downs, near-dea
happy ending.

The jury's still
ending, but Clinto
rocky months fill
sies, criticism an
and emerged with a
He's also wiser to
ington.

"My biggest su
was that you can
you want to about
can talk to all the p
you've operated in
you cannot possibl
for it," the preside
can't do it."

"I was amazed
intense the decisio
ment was, even
imagined," the pre
was surprised that
ident carry so much

At the one-year
an impressive leg
bitterly fought issu
deficit reduction
American Free Tra
GATT world trade
seven-year battle, t
control law.

The margins o
slim at times that
cials spoke facetio
landslides."

A round of yea
that the legislativ
offset personal in
continue to plague

Clinton signed
allowing workers
childbirth, adopti
loved ones. The
makes it easier fo
ister to vote. A n
will allow some st

Resolution seeks change in state spending

by Hal Spence
Staff Writer

A proposal for an amendment to the Alaska Constitution that would completely overhaul the way the state spends money is gaining support among municipal governments on the Kenai Peninsula.

Its chief proponent, Anchorage attorney Roger Cremo, was in Homer on Monday to pitch the idea to the Homer City Council, which later voted to support a resolution asking the Alaska Legislature to put the amendment on the ballot. Last week, the Kenai Peninsula Borough and the city of Kenai each adopted similar resolutions.

The proposal is as simple as it is far-reaching, Cremo said. Based on the premise that the state's economy will continue to depend on revenue generated by the exploitation of natural resources and that that revenue stream tends to fluctuate, Cremo proposes to place all resource revenue into the Alaska Permanent Fund, rather than into the state's General Fund as is done currently.

A fixed percentage of the Permanent Fund would be withdrawn each year to cover state spending needs. Cremo said such a system would provide continually increasing revenue levels and an economy which would not fluctuate.

"The problem is our economy is utterly unstable and it always has been," Cremo said.

The existing state spending system, he said, leads to a boom and bust economy — a high demand for services when revenues are plentiful, followed by crunch-time when the money flow slows down. To achieve a stable economy, the state must find a way to spend at sustainable levels. That can be done, Cremo said, by not spending resource revenues directly, but rather by first converting them into revenues that don't fluctuate.

Putting all resource revenue into a giant Permanent Fund bank account which is then invested — as the Permanent Fund is now — would create a stable state spending source.

"Logically, the first thing to do is to take the money away from the Legislature" and "put them on an allowance," he said.

The amount Cremo proposes be withdrawn from the fund each year would be tied to the average rate of return on investments over the previous three years, adjusted for the current rate of inflation. He suggested that percentage could be around 6 percent per year after a 10-year transition period that would initially require a much higher withdrawal level, and a good measure of belt-tightening by the Legislature.

Assuming voters pass the amendment, the 1996 Legislature would need 20 percent of the Permanent Fund to pay for government services That percentage would decrease each year until 2005 when it would bottom out at 6 percent.

During the transition, state spending would fall slowly from an initial high of around $3.1 billion in 1996 to a low of $1.9 billion in 2006. Thereafter, the actual dollar amount the 6 percent would represent would rise by about $200 million per year as the Permanent Fund itself grew.

Cremo said meeting the 2005 deadline would require state lawmakers to cut state spending to meet the coming fiscal gap, something they face even under the present system.

There is likely to be a lot of resistance to such a radical change, Cremo said. For one thing, state lawmakers have been reluctant in the past to put amendments on the ballot. Another fear is that the new system would eliminate the popular annual dividends the Permanent Fund now provides Alaska residents.

Cremo said the new system would continue to set aside $500 million a year for dividends, roughly what covered the dividend payments this year.

The proposed amendment to Article XV of the constitution would set aside revenues from the sale of natural resources and from taxes on resources produced or on reserve, on property used in exploration, production or transportation of resources, and on income from production or transportation of resources. These moneys would constitute the Alaska Permanent Fund and would be invested for long-term capital appreciation, he said.

The amendment also would require that the assets of the Budget Reserve Fund, itself created by a constitutional amendment in 1990, and the Permanent Fund Earnings Reserve Account be added to the Permanent Fund.

A public corporation would be created to manage the fund. It would be governed by a seven-member board of directors comprised of Alaska residents appointed by the governor with the consent of the Legislature. Four would serve for six years, three for four years.

Resolution gets council nod

Homer City Council members voted unanimously Monday night to ask the state Legislature to let voters decide the fate of the "Cremo Amendment," even though some said they're skeptical it would work and others said they'd personally vote against it.

Roger Cremo, the Anchorage banking attorney who has written the amendment presented it to the council Monday night. It would place all revenue generated from resource exploitation into the Permanent Fund, rather than into the state's General Fund, and use a percentage of the interest income to pay for state government. The idea is to create a stable source and rate of funding.

Councilman Mike McHone said he'd like to put the idea to the voters and get people thinking about other creative solutions to the state's money dilemmas. "I like the sound of it. It's a good shaker-upper," he said.

Councilman Dennis Leach said while he hasn't decided whether or not he's personally for it, he thinks it would spell the end to the Permanent Fund dividend program. Cremo said it wouldn't affect the program.

Jack Cushing, another councilman, predicted that the premise of touching the state's much-loved Permanent Fund would turn people against the Cremo amendment. He said the 90 percent of state natural resource revenues that aren't going into the present Permanent Fund now should go into a second "permanent fund" for state operating costs.

Budget postponed

Anchorage Daily News
Letters to the Editor
July 29, 1993

Proposal may be a winner

In a recent Compass piece attorney Roger Cremo advanced an imaginative proposal to revamp Alaska's economic system. It is hoped his plan will be reprinted in other state newspapers and given publicity on local TV and radio talk shows as well. Perhaps the Daily News will consider reprinting the essay on the editorial page. Thorough statewide examination and discussion is needed before the legislature reconvenes. Mr. Cremo may have a winner!

— *Mary E. Schenker*

■ **MORE LETTERS** Readers write. **B-8**

ADN 12/18/93

Roger Cremo is the answer

It's a sad state of affairs when our legislature can't read the laws it writes and unconstitutionally spends $924 million. But it adds insult to injury for Sen. (Rick) Halford, et al. to spend additional money filing a frivolous lawsuit with no intent to stop the spending. Any first-year law student knows what an injunction is and how to use it. It would be very appropriate and perfectly within the jurisdiction of the court to issue an injunction ordering the state not to spend this money until the constitutional budget reserve was made whole. Yet no injunction was sought. Why?

Being of sinister mind, I believe there's a concerted effort afoot to spend all reserves so the governor can get his way and cap the dividend at $750 and then tax us on it.

The upcoming legislative session could prove to be the most devastating in our history if we let it. These same people are going back into seclusion in Juneau with a lame-duck attitude because of their $924 million faux pas last session, and we could see a repeat of this budget or worse, the price of oil notwithstanding.

It's time to impose fiscal responsibility upon government. Roger Cremo's Money Reservoir Plan takes the guesswork out of budgeting and stabilizes the entire process. We need a resolution passed to put this on the 1994 ballot.

Invest the time to call or write our legislators or spend time filling out another tax form every year. The choice is ours.

— Melvin L. Schaub
Sterling

Anchorage Daily News
Letters to the Editor
December 29, 1993

Cremo plan forces tax issue

Matthew Scully says that the revenue system Roger Cremo proposes is lacking something — that it doesn't give people an incentive to keep the bureaucrats from spending too much.

Although he deserves credit for being concerned about spending, Mr. Scully should learn more about the proposed system. Actually, it does what he wants it to do and more. It takes the existing reserves, and all of the oil revenues from now on, completely out of the control of the legislature. The money goes into the permanent fund. And the income that the fund generates from investments remains in the fund.

Of course, money has to be taken out of the fund each year to run the government, pay dividends, etc., but the amount is limited to a fixed percentage of the fund's value. And we — not the legislature — establish the percentage. About the only other money that the legislature could spend is what it can get by taxing us — exactly the problem that Mr. Scully wants the legislature to be faced with.

Since the 1970s the legislature has been spending at an unsustainable level. The new system will bring spending down to a sustainable level.

— Leslie MacLellan

SJR
39

KIDS &

"Too Many Kids Are Getting A Real Bang Out of Life," announces a full-page ad in *The New York Times*—"Help Save The Next Generation."

The ad, purchased by Handgun Control, Inc., reflects the theme of the organization's latest push for the Brady bill. In a February press conference, Sarah Brady, Handgun Control's chairwoman, noted that nearly 4,000 Americans under the age of 20 had been murdered in 1991. (That number, actually closer to 3,700, covers a lot of ground. It's based on arrests, so it includes 18-year-old armed robbers shot by their victims. It also includes 19-year-old crack dealers shot by competitors.)

Brady did not suggest how many lives the Brady bill might save. Nor did she cite studies showing how similar laws, enacted by more than 20 states, have reduced crime. That's because there are no such studies. All the scholarly research has found that laws like the Brady bill have no statistically significant impact on crime.

But the whole idea of asking people to "do it for our kids" is to avoid such analysis. Gun control advocates are hammering at the issue of children and guns as never before, in the hope that it will be easier to enact gun controls aimed at adults in an atmosphere of panic about children.

America does have a serious problem with children and guns, but it's a problem quite different from the one described by America's gun prohibitionists and their Washington allies. Indeed, it's a problem that has been aggravated by anti-gun laws.

Consider how the repressive gun laws of cities such as Chicago, Washington, D.C., and New York drive responsible gun use underground. While a man who operates a bodega on the Lower East Side of New York City may keep an illegal pistol hidden under the counter in case of a robbery, he is not likely to take the gun to a target range for practice.

Even if the storekeeper managed to get a gun license, he could not take his teenage son to a target range to teach him responsible firearm use. Just to hold the gun in his hand under immediate adult supervision at a licensed range, the teenager would have to obtain his own permit.

An airgun, which uses compressed air or carbon dioxide to propell a pellet, is safe enough to fire inside an apartment, yet New York City makes it illegal for supervised minors to touch one. The city thus closes off one more avenue for children to be taught proper firearm use and safety.

In this light, repressive gun laws are not merely ineffective. They actually foster misuse of firearms, including gun violence. By making firearm ownership illegal, or possible only for wealthy people with the clout to move through numerous bureaucratic obstacles, anti-gun laws render legitimate gun owners invisible. Children are left with criminals and violent television characters as their only models of gun use.

The experience with gun accidents shows the importance of teaching our children about proper firearm use.

> **Rather than addressing real social problems that contribute to gun violence among children, opponents of gun ownership promote irrelevant "solutions" with distortions and fabrications.**

BY DAVID B

Gun control advocates have sought to create the impression that firearm accidents involving children are a large and growing problem. Paradoxically, this impression has been reinforced by the very fact that such accidents are rare. Almost every time a child dies in a gun accident, the event is covered by the state's wire services, and sometimes by the national news. Many people mistakenly conclude that children die frequently in gun accidents and that sharp restrictions on gun ownership are necessary to address the problem. But gun accidents involving both children and adults have actually fallen dramatically in the last two decades, almost entirely because of private safety efforts.

In 1988, 277 children under the age of 15 were killed by accidental firearm discharges, according to the National Safety Council. That number represents a 48% drop from 1974, even as the number of guns per capita increased. From 1968 to 1988, the annual rate of fatal gun accidents fell from 1.2 per 100,000 Americans to 0.6. Thanks to private educational efforts, including programs sponsored by the NRA, the Boy Scouts, 4-H and other groups, the firearm accident rate has been cut in half.

Despite this impressive private-sector achievement, Sen. Howard Metzenbaum (D-Ohio) thinks that the government could do better. He proposes giving the Consumer Product Safety Commission authority over firearms, ostensibly to reduce accidents.

ARTICLE

GUNS

This move could be an indirect way to achieve gun controls far more sweeping and restrictive than Congress is likely to pass. With jurisdiction over firearms, the CPSC could, by unilateral administrative action, ban the future production and sale of all firearms and ammunition. Congress has forbidden the CPSC to regulate guns precisely because of such fears.

Short of banning firearms, the CPSC might require features intended to prevent accidents, such as child-proof grips or indicators that show when a gun is loaded. But such technological fixes, favorites of the gun control lobby, do not address the main cause of firearm accid_nts.

A 1991 study by the General Accounting Office found that 84% of gun accidents involve deviations from basic safety rules. For example, accidents occur when people carelessly wave a gun around, thinking it's unloaded, or put their fingers on the trigger prematurely. Safety education is therefore the best way to continue reducing gun accidents. Unfortunately, children whose parents have no interest in firearms are unlikely to hear gun lessons. Firearm safety programs ought to be expanded to reach more children.

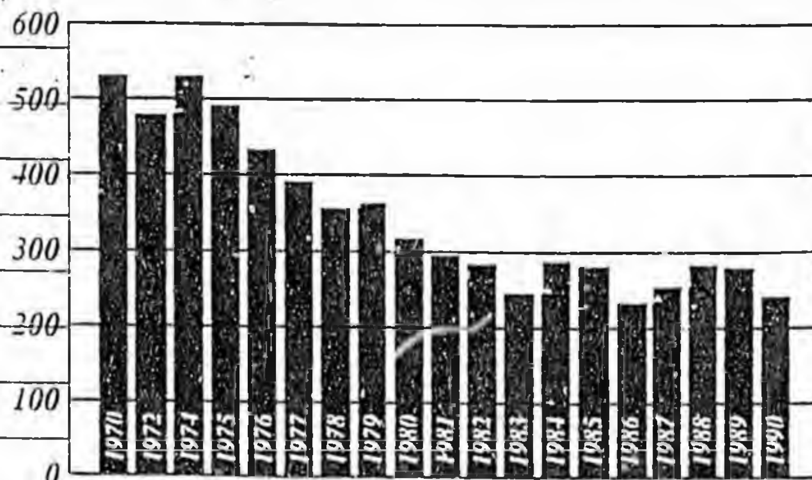
One successful effort to teach children about gun safety is the NRA's "Eddie Eagle" Elementary Gun Safety Education Program. The Eddie Eagle program offers curricula for children from kindergarten through sixth grade, using an animated video, cartoon workbooks, and play safety activities. The cartoon hero Eddie Eagle offers a simple safety lesson: "If you see a gun: Stop! Don't Touch. Leave the Area. Tell an Adult."

While schools and other social institutions have an im-

- Before completing sixth grade, the average American child watches 8,000 homicides and 100,000 acts of violence on television.—American Psychological Ass'n
- Two surveys of young American male violent felons found that 22% to 34% had imitated crime techniques they had watched on television programs.— M.S. Heller & S. Polsky, *Studies in Violence and Television*, p. 3059.
- Japan outlaws handguns and rifles and makes shotguns extremely difficult to obtain. Yet teenage suicide is 30% more frequent in Japan than in America.—L. Craig Parker, *The Japanese Police System Today: An American Perspective*, p. 149.
- While teenage suicide has remained stable in the U.S. in the last 15 years, teenage suicide has risen sharply in Europe, where gun control is much stricter. "Teenage deaths Increasing Across Europe,"—*CJ International*, (Nov.-Dec. 1991), p. 4.
- In recent decades the American firearms supply has risen . . . but as the number of guns has risen, the number of childhood gun accidents has fallen sharply, declining by nearly 50% in the last two decades.—(see below)

Decline In Accidental Childhood Gun Deaths

The number of gun accidents involving children has fallen by over 50%, even as the number of guns has increased substantially. The anti-gunners seek to confuse the issues of accidental shootings with the deliberate violence among young people, ignoring the successful role by NRA and others in addressing the gun safety issue.



portant role to play in gun safety, the primary responsibility rests with parents. A child who can, under parental supervision, invite a classmate to shoot a .22 rifle at a target range will be less intrigued by the possibility of surreptitiously playing with a pistol found in a closet.

In contrast to gun accidents, gun suicides do account for the deaths of many young people—more than 2,000 in 1990. From the mid-1950s to the late '70s, teenage suicide rose sharply, and most of the increase was due to gun suicides. But since then, the teenage suicide rate has remained stable, and so has the percentage of suicides involving guns. Teenagers are still less likely to commit suicide than any older age group.

Although the teenage suicide rate has been about the same since the late '70s, gun control advocates insist that immediate action is necessary to address this "crisis" as well. They often cite false statistics to justify their sense of urgency. In 1989, for example, the American Academy of Pediatrics told a congressional committee that "every three hours, a teenager commits suicide with a handgun." But this figure is valid only if one counts *all* suicides as handgun suicides, or if one calls every person under 25 a teenager.

In addition to exaggerating the extent of the problem, gun control supporters simply assume that fewer firearms would mean fewer suicides. One might speculate that the presence of a gun can turn a teenager's fleeting impulse into an irrevocable decision. If guns were less readily available, perhaps suicide would decline. This theory is intuitively plausible, but it is not consistent with the evidence.

In his 1991 book *Point Blank*, Florida State University criminologist Gary Kleck analyzes suicide rates and gun laws in every American city with a population over 100,000. He takes into account all the factors that might affect suicide, such as race (whites are more likely to commit suicide), religion (Catholics are less likely), economic circumstances and 19 gun control laws, ranging from waiting periods to handgun bans.

Kleck finds no evidence that any of the gun control laws had a statistically significant effect on suicide rates. While some gun control laws did affect the rate of gun suicide, the total suicide rate remained the same. People who had decided to kill themselves simply substituted other, equally lethal methods.

Data from other countries appear to support Kleck's conclusion that gun control is not an effective way to reduce suicide. While teenage suicide has remained stable in the United States in the last 15 years, it has risen sharply in Europe, where gun control is much stricter.

In Great Britain, where gun laws are very strict and the gun ownership rate is less than one-tenth that in the U. S., adolescent suicide has risen by more than 25% in just five years. Similarly, in Japan handguns and rifles are illegal and shotguns very difficult to obtain. Yet teenage suicide is 30% more frequent in Japan than in the U.S.

Given the lack of evidence that gun control reduces suicide, anti-gun activists have resorted to "factoids" such as this one, reported by syndicated columnist Richard Reeves last September: "Teen-agers in homes with guns are 75 times more likely to kill themselves than teen-agers living in homes without guns." The story behind this claim illustrates how myths that support gun control are generated.

A 1991 article in the *Journal of the American Medical Association* discussed a study of several dozen homes in western Pennsylvania where a teenager had committed or attempted suicide or where a non-suicidal teenager who had been admitted to a psychiatric hospital lived. A home with a teenager who had committed suicide was twice as likely as the other homes to contain a gun.

In an editorial accompanying the article, three employees of the federal Centers for Disease Control incorrectly wrote: "The odds that potential suicidal adolescents will kill themselves go up 75-fold when a gun is kept in the home."

JAMA later published a retraction, noting that the 75-fold figure was incorrect: the increase was in fact twofold (and the number was merely a correlation, not proof of cause).

In his column, Reeves took the factoid one step further, telling his readers that it applied to all teenagers, even though all of the subjects in the study had serious psychological problems.

DID YOU KNOW THAT:

Myth "One child under 14 is accidentally shot to death every day in the USA." (Center to Prevent Handgun Violence)

Truth True, if the year in question is 1979, when there were 364 such deaths. In 1990, the most recent year for which data are available, the number was 236, according to the National Center for Health Statistics. The number of fatal gun accidents among children has fallen by 56% since 1970, even as the gun supply has grown significantly.

Myth "In the past decade, more than 138,000 Americans were shot just by children under the age of 6." (*Hartford Courant*)

Truth No source is ever cited for this "factoid" because there is none. No government or academic agency even collects data to provide an estimate for the true figure.

Myth 135,000 children carry guns to school each day. (U.S. Sens. Biden and Chafee)

Truth The 135,000 figure, also sometimes given as 186,000, is often attributed to the Department of Justice (DOJ), but no specific DOJ study is identified. The number is a huge distortion from the plausible 16,000 to 17,000 nationally extrapolated from criminologist Gary Kleck's data.

Myth "Firearms are responsible for the deaths of 45,000 infants, children and adolescents per year." (American Academy of Pediatrics)

Truth Even if all persons 15-95 are considered "adolescents," this one can't be true. The 45,000 figure exceeds the total deaths in all ages from all causes related to firearms.

Myth "One million U.S. inhabitants die prematurely each year as the result of intentional homicide or suicide." (former Surgeon General C. Everett Koop)

Truth According to the National Center for Health Statistics, in 1988 there were about 30,000 suicides (by all methods) and about 22,000 homicides (by all methods, including legal self defense). Thus, the "one million" claim is off by about 1800%.

Myth "Guns are the leading cause of death among older teenagers—white and black—in America." (Newsweek)

Truth True for black males, but not for females or for males of other races.

Youngsters who learn about firearms in a constructive and responsible environment are less likely to have accidents, yet firearms education has a low priority with groups that claim to be concerned with firearms accidents.

Factoids also play an important role in the debate about guns in school. Sen. John Chafee (R-Rhode Island) and Sen. Joseph Biden (D-Delaware) claim that "135,000 children carry a gun to school every day." Sen. Christopher Dodd (D-Connecticut) ups the figure to 186,000. The National Education Association puts the number at 100,000.

The only comprehensive data on this question come from a 1990 survey by the Centers for Disease Control that asked students if they carried weapons onto school grounds. Students who answered yes included all those who occasionally carried guns anywhere, such as in cars when driving at night in dangerous neighborhoods.

Interpreting the data realistically, Kleck, the FSU criminologist, estimates that one in every 800 high school students, which works out to 16,000 to 17,000 students nationally, carries a gun to school on a given day. Accordingly, guns play a relatively small role in the overall problem of violence in school.

Rather than address the real problem of discipline and security in many public schools, gun control advocates have argued for "gun-free school zones," which make possession of weapons within 1,000 ft. of school property a felony. Since the 1,000-ft. school zone encompasses over half the territory in most cities and towns, the school zone laws are frequently a backhanded way to outlaw the possession of firearms by adults on public property.

These laws can add to the regulatory obstacles that discourage people from using guns for protection. The crime of carrying without a permit is a misdemeanor in many jurisdictions, but gun-free school zones can turn it into a serious felony.

Even when narrowly drafted, school-zone laws are misguided. A comparison of the number of students carrying guns in school to the number of gun crimes committed in school indicates that the vast majority of students who carry firearms do so for noncriminal purposes.

Most students who carry guns are trying to protect themselves on the way to and from school, as they pass through neighborhoods ruled by gangs, or in school itself. To focus on "guns in school" is to miss the larger picture of the violent conditions that make unarmed teenagers feel vulnerable.

While the claims of gun control advocates about a rising tide of gun accidents and gun suicides are false, there is no doubt that violent crime among teenagers is soaring. From 1985 to 1991, arrests of adults for murder declined, but arrests for murder of 17-year-old males rose by 121%, of 16-year-olds by 158%, of 15-year-olds by 217%, and of boys 12 and under by 100%.

Those figures conceal an even more serious problem. The murder arrest rate of whites between the ages of 10 and 17 was the same in 1989 as in 1980 (it dipped in the middle of the decade and then rose to its former level). Meanwhile, the black rate has skyrocketed.

Most of these homicides are carried out with handguns. Yet, if there is a relationship between gun density and homicide in the U.S., it is an inverse one. The regions with the most guns are the regions with the lowest homicide rates. And while whites have a higher rate of gun ownership than blacks, they have a much lower homicide rate.

continued on pg. 74

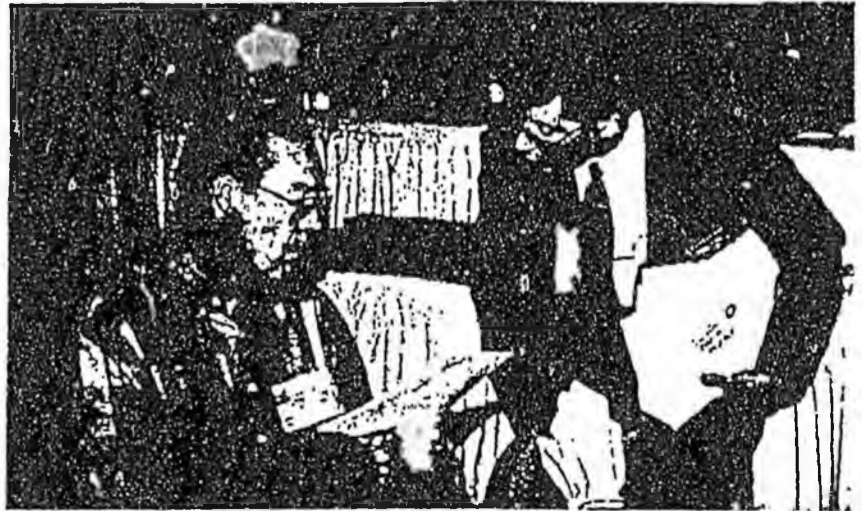
SUSAN R. Lamson, director of NRA-ILA's Federal Affairs Division, recently told the U.S. Senate Subcommittee on Juvenile Justice: "It appears that society's failure to deal with crime in a meaningful way, embodied in our 'catch and release' criminal justice system, begins with and has its most deleterious effects on our youth.

NRA is working with Congress to solve the problems of violent crime committed by juveniles, at the same time making sure that the rights of the millions of law-abiding young people are protected."

Southern States PBA Crime Control

Landmark Law Enforcement Survey Shows Rank

Southern States PBA President Jack Roberts answers reporters' questions about the survey at July 9 press conference at Southern States PBA headquarters in Atlanta, Georgia.



LEAA Operations Director Ted Gogol explains significance of Southern States PBA gun control survey to a state legislator during the Southern Legislative Conference luncheon titled, "Gun Control: Southern Style" held in Mobile Alabama on July 11. Before HCI's Sarah Brady spoke at the luncheon, LEAA made sure every legislator and guest in attendance received a copy of the survey. In addition, LEAA officials explained why rank-and-file officers do not support gun control, and answered questions from legislators and the media.

LEAA Member Todd Pipkin (far left), a law enforcement officer with the Alabama Department of Conservation, discusses the Southern States PBA gun control survey with LEAA Executive Director Jim Fotis (center) and Spectrum Resources, Inc. President Scott Maddox prior to LEAA press conference on July 11 in Mobile, Alabama during the Southern Legislative Conference.

LEAA Executive Director Jim Fotis explains why law enforcement does not support restrictive gun control laws to CBS affiliate News Center Five reporter Kristen McFann at LEAA press conference in Mobile, Alabama on July 11 during Southern Legislative Conference.

and Gun Control Survey Results

-and-File Officers DO NOT Support Gun Control

In a comprehensive effort to find out how its nearly 11,000 law enforcement members really feel about gun and crime control, Southern States Police Benevolent Association became the nation's first major law enforcement group to conduct a professional, scientific survey of its membership.

Southern States PBA has traditionally maintained a neutral position on gun control, but decided to poll its membership to resolve the controversy over claims by pressure groups on both sides of the issue as to the position of law enforcement.

"We simply had enough of every special interest group, including a number of national police organizations, claiming they spoke for rank-and-file officers on the subject of gun control," said Southern States PBA President Jack Roberts. "The only way to know how law enforcement feels about gun control is to ask them. And that's exactly what we did. What our members told us may be quite an eye-opener for some people, but it won't be to anyone who is in touch with street cops."

To ensure that the survey would accurately reflect its members views, a professional research firm, Spectrum Resources, Inc., of Tallahassee, Florida, was employed. "Our survey methodology was configured to preserve the objectivity of the Southern States PBA and to elicit accurate sentiments of the officers polled," Scott Maddox, president of the firm, said.

The results found that law enforcement officers resoundingly reject gun control laws as effective measures in deterring violent crime, and strongly support the right of citizens to own firearms.

Editor's Note: The survey was conducted in June of 1993. Out of 10,614 surveys mailed, 3,824 total responses were received, which is a response rate of 36%. Copies of the entire analysis of the survey (nearly 100 pages) including charts, graphs, cross tabulations, etc., are available from either LEAA or Southern States PBA. To obtain a copy, write to either organization and enclose a note requesting the survey with your name and address and include a $5.00 check to cover printing and postage. LEAA's address is on the table of contents page.

1) In general, what do you think is the most pressing cause of violent crime in the United States today?

No. of Resp.	Percentage	
3641	95.2%	TOTALS
1637	45.0	Drugs
386	10.6	Family Values/ Decline Of Family
151	4.1	Courts, Inadequate Sentencing
370	10.2	Early Release/ Lack Of Punishment
39	1.1	Alcohol
62	1.7	Punishment Does Not Fit The Crime
139	3.8	Breakdown Of Criminal Justice System
35	1.0	Lack Of Education/ Ignorance
38	1.0	Federal Judges/ Politicians
51	1.4	Television
72	2.0	Crack Cocaine
80	2.2	Lack Of Religion/ Attention To God
28	0.8	Money
31	0.9	Youthful Offenders
21	0.6	Racial/Ethnic Problems
40	1.1	Guns/Firearms
117	3.2	No Fear Of Being Caught Or Punished
156	4.3	Unemployment/ U.S.. Economy
54	1.5	Liberalism/ Criminal Rights Favored
134	3.7	Other

2a) How effective has the U.S. Congress been in dealing with violent crime? Has Congress been very effective, somewhat effective, only minimally effective, or not effective at all in dealing with violent crime?

3812	99.7%	Totals
3	0.1	Very Effective
246	5.6	Somewhat Effective
1796	47.1	Only Minimally Effective
1751	45.9	Not Effective At All
48	1.3	Not Sure

2b) Please indicate which of the following options would be least effective in reducing violent crime? (pick only one option)

3798	99.3%	Totals
435	11.5	Stop Early Release
230	6.1	The Death Penalty
188	4.9	More Police On The Streets
226	6.0	Tougher Judges And Sentences
2481	65.3	Stricter Gun Control Laws
238	6.3	Not Sure

3a) There should be an immediate criminal background check on handgun purchases right at the gun shop.

3818	99.8%	Totals
1813	47.5	Strongly Agree
1330	34.8	Agree
448	11.7	Disagree
141	3.7	Strongly Disagree
86	2.3	Not Sure

continued on page 32

Southern States PBA Crime Control and Gun Control Survey Results

Continued from Page 31

3b) Other than for police and military, all guns should be outlawed.

3820	99.9%	Totals
69	1.8	Strongly Agree
64	1.7	Agree
1069	28.0	Disagree
2591	67.8	Strongly Disagree
27	0.7	Not Sure

3c) The entire criminal justice system needs major reform.

3821	99.9%	Totals
2283	59.7	Strongly Agree
1138	29.8	Agree
313	8.2	Disagree
25	0.7	Strongly Disagree
62	1.6	Not Sure

3d) The U.S. Constitution guarantees every law-abiding citizen the right to own a gun.

3820	99.9%	Totals
2249	58.9	Strongly Agree
1190	31.2	Agree
222	5.8	Disagree
94	2.5	Strongly Disagree
65	1.7	Not Sure

3e) People should have the right to own a gun for self-protection.

3819	99.9%	Totals
2540	66.5	Strongly Agree
1140	29.9	Agree
91	2.4	Disagree
19	0.5	Strongly Disagree
29	0.8	Not Sure

3f) A waiting period to purchase handguns will only affect law-abiding citizens — criminals will still be able to obtain handguns illegally whenever they want.

3798	99.3%	Totals
2201	59.5	Strongly Agree
1024	27.0	Agree
382	10.1	Disagree
92	2.4	Strongly Disagree
39	1.0	Not Sure

3g) The Federal government should take legal action to curb the amount of violence on television.

3818	99.8%	Totals
962	25.2	Strongly Agree
1468	38.4	Agree
939	24.6	Disagree
224	5.9	Strongly Disagree
225	5.9	Not Sure

3h) A Federal law should be passed allowing qualified law enforcement officers to carry a concealed firearm anywhere in the United States.

3814	99.7%	Totals
2852	74.8	Strongly Agree
742	19.5	Agree
129	3.4	Disagree
27	0.7	Strongly Disagree
64	1.7	Not Sure

3i) Based on my own experience, if the laws on handgun ownership were stricter than they are now, the overall number of violent crimes would be reduced.

3817	99.8%	Totals
284	7.4	Strongly Agree
653	17.1	Agree
1380	36.2	Disagree
1324	34.7	Strongly Disagree
176	4.6	Not Sure

3j) A gun is not an assault weapon if it fires only one bullet each time the trigger is pulled.

3807	99.6%	Totals
893	23.5	Strongly Agree
981	25.8	Agree
1039	27.3	Disagree
734	19.3	Strongly Disagree
160	4.2	Not Sure

4) All things considered, which of the following two options would you prefer — a bill requiring a five-day waiting period on the purchase of handguns, or a bill requiring an immediate criminal background check at the time of the sale?

3811	99.7%	Totals
881	23.1	Waiting Period
2430	63.8	Instant Check
213	5.6	Neither
80	2.1	No Opinion/ Not Sure
207	5.4	Both

5) Aside from your department-issued sidearm, do you have guns of any kind in your home?

3805	99.5%	Totals
3247	85.3	Yes
329	8.6	Refuse To Answer
229	6.0	No

6) How many years have you served in law enforcement?

3818	99.8%	Totals
248	0.5	0-2 Years
811	21.2	2-5 Years
1015	26.6	5-10 Years
1744	45.7	10 Years or more

7) Are you a sworn or non-sworn employee?

3806	99.5%	Totals
3687	96.9	Sworn
119	3.1	Non-Sworn

8) In general, do you serve in a rural or in an urban area?

3804	99.5%	Totals
1237	32.5	Rural
2440	64.1	Urban
127	3.3	Mixed Urban/Rural

continued from page 29

1,000,000 times a year according to a report from Morgan O. Reynolds, University of Texas, "Crime in Texas". Violent crime strikes a Texan every 22 seconds. Are our 45,000 Texas peace officers going to stop that? Not hardly. How many Texans are you willing to allow to be victimized to prevent CCW?

Texas CCW will prohibit those with class B arrests and include Disorderly Conduct and Public Lewdness as disqualifiers. It will be valid for only two years as opposed to four and will require 15 hours of training. The background check will be conducted by DPS who will require $130.00 non-refundable fee, who will then contact the local agency for input. Applicants must be registered voters, which by itself eliminates a lot of folks.

Do Police Officers really understand this bill? Most of them who disagree believe it is a blanket carry bill, but when it is explained to them, they tend to change positions. More Police Officers than you think support this bill. Texas Municipal Police Officers Association and Texas State Troopers Association have publicly supported it. *Police Magazine* polled its readers and as reported in their January 1993 issue, more than 85% support concealed carry.

This is why LEAA and I support CCW. You know, when I think of CCW, I stop to think about those law-abiding citizens who will back me up when the stuff gets deep. My Department just recently awarded seven civilians for coming to the aid of a police officer. There are many citizens who will help out a cop in a jam, more than we think. Some of them may be Rambo or John Wayne, but did you know that in Florida after they enacted their CCW that they have had 16 total arrests for weapons violations over a three year period-- and one of those was for a lady who carried her pistol into a library!

The supposition has not happened. The media hype has not occurred. CCW will probably not increase the number of weapons already on the street that much. Those who are predisposed to carry are already carrying. Those who aren't, won't. Besides, we should be treating everyone we deal with as if they were armed. In every contact we make there is a gun involved, our own.

Also in considering this issue you might ask yourself these three questions that I now ask other officers who respond negatively to CCW.

1. Does your wife carry?
2. Will you carry when you retire?
3. Do you know someone, who is not a police officer that is carrying a handgun, that you as a police officer have done nothing about?

If you answer any of these questions with a yes, then you should support CCW!

If you have any questions or co[mments] please feel free to contact me [at] home by phone or mail. I am usua[lly] available during the evenings. Also [let] me solicit an invitation to address y[our] area POA, FOP lodge or similar orga[ni]zation. I think I could find my way [to] Ector County, Midland-Odessa.

Sincerely,
John Chapman

...Professional
...Responsible
...Confident
...Prepared
All The Time.

You're off duty but the job is never done.

When you left the station, you didn't leave the job behind. You are a professional, confident and ready to carry out your responsibilities whenever it is demanded of you—on duty or off. As a professional, you demand the best of your equipment. You have to be confident in its ability to perform anytime it's needed. That's why it is important to make the right choice in the handgun you carry off duty or as a backup. Smith & Wesson's full line of pistols and small frame revolvers [give] law enforcement professionals the confidence needed to meet their responsibilities at any time.

See your Smith & Wesson authorized dealer or call us today at 1-800-331-0852, ext. 3953.

Confidence...Smith & Wesson.

Smith & Wesson
Springfield
QUALITY FIREARMS 1852

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 13, 1983
Redated 7/1/83 for printing purposes

The Honorable Pat Rodey
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

The Honorable Charlie Bussell
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Handgun Ban
Our file No.: 366-444-83

Dear Senator Rodey and Representative Bussell:

You have asked this office whether a landlord, through a leasehold agreement, may prohibit a tenant from possessing handguns. We conclude that in certain circumstances a landlord may restrict or prohibit the use and/or possession of handguns on property which is leased to another individual.

Our initial inquiry regarding this matter commenced with a review of relevant Alaskan Constitutional provisions. The Alaska Constitution directly addresses a citizens ability to bear arms at Article I, Section 19 which states:

> A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

The language embodied in Alaska's Constitution pertaining to arms is virtually identical, save for two changes in punctuation, to language found in Article II of the United States Constitution. Article II of the United States Constitution was proposed by the Congress on September 25, 1789 and became the law of the United States on December 15, 1791. During the one hundred and ninety two years since adoption of the Second Amendment to the United States Constitution and the twenty-four years since the Alaska Constitution has been in effect, numerous court cases have interpreted the constitutional language which establishes the right to bear arms.

Redacted 7/1/83 for printing purposes

We note the period since the adoption of the Second Amendment has witnessed an ever increasing issuance of opinions from the judiciary of the various states and the federal courts which place limits on an individual's ability to bear arms. Some commentators have theorized that the legislative and judicial limitations increased significantly with the availability of inexpensive surplus weapons following the American Civil War. 1/ According to this theory, the increase in restrictive gun control measures and corresponding judicial interpretations was associated with increasing acquisition of firearms by recently emancipated Black Americans and immigrants coupled with the increased availability of firearms in the post Civil War industrial America. The right of 'bearing arms' is not a right granted by the Constitution nor is it in any manner dependant upon that instrument for its existence. U.S. v. Cruikshank, 92 U.S. 553 (D.C.La. 1875).

While offering no judgment on the propriety or effectiveness of the restrictive legislative and judicial measures, we observe that the current state of the law pertaining to the constitutional language holds that:

> [The] purpose of this amendment, guaranteeing that the right of the people to keep and bear arms, was to preserve the effectiveness and assure the continuation of the state militia. U.S. v. Oakes, 564 F.2d, cert. denied 98 S.Ct. 1493 (C.A. Kan. 1977).

* The modern judicial view has increasingly found that the guaranteed right to keep and bear arms is not an individually protected right, but rather a collective right which allows the people of the various states to serve in a militia./ The contemporary judicial view in the great majority of states interprets the constitutional language as posing no limitations on the legislature's power to regulate the ownership or control of firearms. Whatever the scope of any common-law or constitutional right to bear arms, it is not absolute and does not guarantee to individuals the right to carry weapons abroad at all times and in all circumstances. Application of Atkinson, 291 N.W.2d 396 (Minn. 1980). By analogy then, a landlord, too, could restrict

---

1/ Kates, Don B. Restricting Handguns. North River Press, pages 7-30 (1979)

the possession of handguns on property he or she owns and leases. If the State can restrict arms without running afoul of constitutional provisions, an individual almost certainly has similar abilities.

It is conceivable that a landlord's ban on handgun ownership could be challenged under constitutional doctrines which afford a right of privacy. The United States Constitution, while not containing an express provision guaranteeing privacy has been interpreted to afford an individual certain protections, Cf. Griswold v. Connecticut, 381 U.S. 479 (1965). "The Constitution extends special safeguards to the privacy of the home, including activities which might be prohibited in other contexts." Cf. U.S. v. Orito, 413 U.S. 137, 142 (1973).

While it is unlikely that a court would find that an individuals right to possess arms (for example a gun collection) is protected by the privacy shield of the U.S. Constitution, the argument could be maintained. We are unaware of this argument being successfully asserted in any anglo-american jurisdiction.

A more likely source of protection under the right to privacy doctrine may be afforded by the Alaska Constitution at Article I, Section 22 which states that:

> The right of the people to privacy shall not be infringed. The legislature shall implement this section.

The Alaska Supreme Court has explicitly stated that the right of privacy guaranteed to Alaskans is broader in scope than that guaranteed by the federal constitution. Woods & Rohde, Inc., v. State, 565 P.2d 138 (1977). Even so, the meaning of privacy of necessity must vary depending on the factual context and the often compelling interests of society and the individual. State v. Glass, 583 P.2d 879 (1978). The test for what interests are protected under Alaska's constitutional right to privacy are, first, whether a person has exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as "reasonable". Hilbers v. Municipality of Anchorage, 611 P.2d 31 (1980).

The question of handgun ownership in Alaska and whether such ownership is "reasonable" in the context of a landlord tenant relationship is open ended. Probably the "expectation" and reasonableness of gun ownership in Alaska is different than the reasonableness of gun ownership in many other jurisdictions where actual firearm ownership and use is reduced. In any event,

absent specific language under the Alaska Uniform Residential Landlord and Tenant Act, AS 34.03.010 et seq., or other relevant Alaska law, prohibiting inclusion of provisions in a leasehold agreement, we believe a landlord can properly restrict the terms of the tenancy. 2/ In all probability, under existing Alaska law, a landlord can restrict possession of handguns for tenants in a manner not unlike a landlord's ability to prohibit tenants from possessing dogs, operating businesses in a residential leasehold or operating obnoxious stereo equipment.

While a landlord will probably be able to impose a restriction prohibiting future tenants from possessing handguns, an across-the-board ban applicable to tenants with existing leasehold agreements may be invalid. Under classic contract principles, neither party to an agreement may superimpose an additional term on a valid contract without the consent of each party to the contract. Consequently, a landlord may not prohibit handgun possession among tenants during the pendency of an existing lease. Conversely, where a landlord and tenant agree to a lease agreement which contains a restriction banning handguns, remedial legislative action interpreting Alaska's right to privacy law to permit such possession probably would not invalidate existing prohibitions.

Finally, concern was expressed regarding the state's liability with respect to landlord/tenant agreements which prohibit handgun ownership in buildings located on property owned by the State. This last point is conceivably problematic if the land on which the Panoramic View Apartments are located is conveyed to the state as a result of the current Alaska Railroad transfer negotiations. Attached is a copy of a memorandum by Assistant Attorney General Jack McGee which deals with this subject.

2/ In passing, we note that a landlord concerned with unjustified gun play need not necessarily prohibit gun ownership. Other remedies exist for controlling individual tenants with a propensity to abuse gun ownership. Cf. Osness v. Dimond Estates, Inc., 615 P.2d 605 (1980), where the landlord obtained a Forcible Entry and Detainer (F.E.D.) thereby removing a tenant that proved incapable of properly handling firearms.

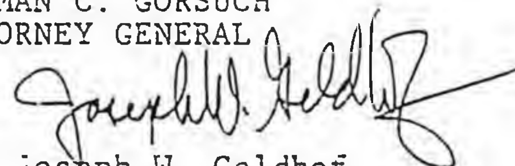
Redated 7/1/83 for printing purposes

Hon. Pat Rodey, Senator
Hon. Charlie Bussell, Representative
Our File No.: 366-444-83

We trust this response answers your inquiry. If you have any additional questions, please let me know.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL



By:
Joseph W. Geldhof
Assistant Attorney General

JWG:vrb

cc: Norman C. Gorsuch
Attorney General

Ronald W. Lorensen
Deputy Attorney General

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SJR 39

Revision Date:
Title: Proposing an amendment to the Constitution of the State of Alaska relating to the individual right to keep and bear arms
Sponsor: Senate State Affairs
Requestor:

Dept. Affected: Office of the Governor
BRU: Division of Elections
Component: General and Primary Elections
COMPONENT SERIAL NO. 22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	C
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0

CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	2.2*	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary) *This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS15.58, and programming for DataVote counting of votes cast on the measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be 53.4.

Prepared by: Joseph L. Swanson, Director
Division: Division of Elections
Phone: 465-4611
Date: 1/14/94

Approved by Commissioner: Lt. GOvernor John B. Coghill
Date: 1/14/94
Agency: Office of th

PREPARER TO PR ... 'S LEGISLATIVE OFFICE
For furth ... FISCAL NOTE ... ive Office

(Rev 10/93) 94fisno.xls/DBR

Alaska State Legislature

Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT
SJR 39

SJR 39: "Proposing an amendment to the Constitution of the State of Alaska relating to the individual right to keep and bear arms."

Article I of Alaska's Constitution declares the rights of Alaskans and each of the 23 sections is important in order to preserve our rights and civil liberties. The right to decide whether or not to own a firearm lies with each individual and most Alaskans believe this right to be protected in our State Constitution.

Article I, Section 19 of Alaska's Constitution reads: "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

Although this language is common and currently does guarantee the individual the right to keep and bear arms, many have challenged it and will continue to do so. The language is ambiguous enough, that several attempts have been made in past Legislatures to clarify the right of the *individual* citizen to own a firearm, whether it be for hunting, recreation, liberty, or for defense of self, home, family or state.

There is no existing Alaska Supreme Court interpretation of this language as either assurance or prohibition of this right. There have, however, been numerous attempts to place restrictions on law-abiding citizens who own firearms, and the potential for unreasonable firearms restrictions is becoming more likely.

Thus, the Senate Committee on State Affairs, supported by eleven Senators, has introduced Senate Joint Resolution 39, which would place the issue of the right of the individual to keep and bear arms before the voters in the 1994 general election. This resolution would place the issue before the voters, so Alaskans can decide the issue.

The passage of this amendment will not abrogate the laws of the state restricting access of firearms by felons, juveniles, or the mentally incompetent. Although citizens have the constitutional right to free speech, they do not have the right to cry "fire" in a crowded theatre; they do not have the right to joke about hijacking an aircraft within earshot of airline security. When formulating public policy, it is necessary to balance the rights of the individual with the authority given to the state by its citizenry to protect the public. I believe this amendment will better ensure this balance in the future.

It is imperative that the state retain its authority to protect the safety of its citizens. It is neither my intent, nor my desire to interfere with the state's ability to reasonably protect the public from the misuse or inappropriate use of firearms. But, the individual right of Alaskans to own firearms for legal purposes should not be left open to potential unreasonable government intrusion, the potential erosion of that constitutional right, nor to uncertain court interpretation.

The Municipality of Anchorage recently passed a resolution endorsing the individual right to keep and bear arms constitutional amendment and resolutions are currently pending in Fairbanks and several other boroughs and cities throughout Alaska.

TO: PORTIA BABCOCK
FROM: JANE WINEINGER, NRA ALASKA GRASSROOTS
RE: STATE'S CONSTITUTIONAL PROVISIONS (CURRENT 1993)

ALASKA - "A WELL REGULATED MILITIA, BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS SHALL NOT BE INFRINGED."

ALABAMA - "THAT EVERY CITIZEN HAS A RIGHT TO BEAR ARMS IN DEFENSE OF HIMSELF AND THE STATE."

ARIZONA - "THE RIGHT OF THE INDIVIDUAL CITIZEN TO BEAR ARMS IN DEFENSE OF HIMSELF OR THE STATE SHALL NOT BE IMPAIRED, BUT NOTHING IN THIS SECTION SHALL BE CONSTRUED AS AUTHORIZING INDIVIDUALS OR CORPORATIONS TO ORGANIZE, MAINTAIN, OR EMPLOY AN ARMED BODY OF MEN."

ARKANSAS - "THE CITIZENS OF THIS STATE SHALL HAVE THE RIGHT TO KEEP AND BEAR ARMS FOR THEIR COMMON DEFENSE."

CALIFORNIA - NONE

COLORADO - "THE RIGHT OF NO PERSON TO KEEP AND BEAR ARMS IN DEFENSE OF HIS HOME, PERSON AND PROPERTY, OR IN AID OF THE CIVIL POWER WHEN THERETO LEGALLY SUMMONED, SHALL BE CALLED IN QUESTION; BUT NOTHING HEREIN CONTAINED SHALL BE CONSTRUED TO JUSTIFY THE PRACTICE OF CARRYING CONCEALED WEAPONS."

CONNECTICUT - "EVERY CITIZEN HAS A RIGHT TO BEAR ARMS IN DEFENSE OF HIMSELF AND THE STATE."

DELAWARE - "A PERSON HAS THE RIGHT TO KEEP AND BEAR ARMS FOR THE DEFENSE OF SELF, FAMILY, HOME AND STATE, AND FOR HUNTING AND RECREATIONAL USE."

FLORIDA - "(a) THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS IN DEFENSE OF THEMSELVES AND OF THE LAWFUL AUTHORITY OF THE STATE SHALL NOT BE INFRINGED, EXCEPT THAT THE MANNER OF BEARING ARMS MAY BE REGULATED BY LAW. (b) THERE SHALL BE A MANDATORY PERIOD OF THREE DAYS, EXCLUDING WEEKENDS AND LEGAL HOLIDAYS, BETWEEN THE PURCHASE AND DELIVERY AT RETAIL OF ANY HANDGUN. FOR THE PURPOSES OF THIS SECTION, "PURCHASE" MEANS THE TRANSFER OF MONEY OR OTHER VALUABLE CONSIDERATION TO THE RETAILER, AND "HANDGUN" MEANS A FIREARM CAPABLE OF BEING CARRIED AND USED BY ONE HAND, SUCH AS A PISTOL OR REVOLVER. HOLDERS OF A CONCEALED WEAPON PERMIT AS PRESCRIBED IN FLORIDA LAW SHALL NOT BE SUBJECT TO THE PROVISIONS OF THIS PARAGRAPH. (c) THE LEGISLATURE SHALL ENACT LEGISLATION IMPLEMENTING SUBSECTION (b) OF THIS SECTION, EFFECTIVE NO LATER THAN DECEMBER 31, 1991, WHICH SHALL PROVIDE THAT ANYONE VIOLATING THE PROVISIONS OF SUBSECTION (b) SHALL BE GUILTY OF A FELONY. (d) THIS RESTRICTION SHALL NOT APPLY TO A TRADE IN OF ANOTHER HANDGUN." THE LEGISLATURE OF THE STATE OF FLORIDA, IN A DECLARATION OF POLICY INCORPORATED IN ITS "WEAPONS AND FIREARMS" STATUTE, RECOGNIZES THE LAWFUL OWNERSHIP, POSSESSION AND USE OF FIREARMS FOR THE DEFENSE OF "LIFE, HOME AND PROPERTY" AND FOR USE IN TARGET PRACTICE, HUNTING AND "OTHER LAWFUL PURPOSES."

GEORGIA - "THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS SHALL NOT BE INFRINGED, BUT THE GENERAL ASSEMBLY SHALL HAVE POWER TO PRESCRIBE THE MANNER IN WHICH ARMS MAY BE BORNE."

HAWAII - "A WELL REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS SHALL NOT BE INFRINGED."

IDAHO - "THE PEOPLE HAVE THE RIGHT TO KEEP AND BEAR ARMS, WHICH RIGHT SHALL NOT BE ABRIDGED; BUT THIS PROVISION SHALL NOT PREVENT THE PASSAGE OF LAWS TO GOVERN THE CARRYING OF WEAPONS CONCEALED ON THE PERSON, NOR PREVENT PASSAGE OF LEGISLATION PROVIDING MINIMUM SENTENCES FOR CRIMES COMMITTED WHILE IN POSSESSION OF A FIREARM, NOR PREVENT PASSAGE OF LEGISLATION PROVIDING PENALTIES FOR THE POSSESSION OF FIREARMS BY A CONVICTED FELON, NOR PREVENT THE PASSAGE OF LEGISLATION PUNISHING THE USE OF A FIREARM. NO LAW SHALL IMPOSE LICENSURE, REGISTRATION OR SPECIAL TAXATION ON THE OWNERSHIP OR POSSESSION OF FIREARMS OR AMMUNITION. NOR SHALL ANY LAW PERMIT THE CONFISCATION OF FIREARMS, EXCEPT THOSE ACTUALLY USED IN THE COMMISSION OF A FELONY."

ILLINOIS - "SUBJECT ONLY TO THE POLICE POWER, THE RIGHT OF THE INDIVIDUAL CITIZEN TO KEEP AND BEAR ARMS SHALL NOT BE INFRINGED."

INDIANA - "THE PEOPLE SHALL HAVE A RIGHT TO BEAR ARMS, FOR THE DEFENSE OF THEMSELVES AND THE STATE".

IOWA - NONE

KANSAS - "THE PEOPLE HAVE THE RIGHT TO BEAR ARMS FOR THEIR DEFENSE AND SECURITY; BUT STANDING ARMIES, IN TIME OF PEACE, ARE DANGEROUS TO LIBERTY, AND SHALL NOT BE TOLERATED, AND THE MILITARY SHALL BE IN STRICT SUBORDINATION TO THE CIVIL POWER."

KENTUCKY - "ALL MEN ARE BY NATURE, FREE AND EQUAL, AND HAVE CERTAIN INHERENT AND INALIENABLE RIGHTS, AMONG WHICH MAY BE RECKONED; THE RIGHT TO BEAR ARMS IN DEFENSE OF THEMSELVES AND OF THE STATE, SUBJECT TO THE POWER OF THE GENERAL ASSEMBLY TO ENACT LAWS TO PREVENT PERSONS FROM CARRYING CONCEALED WEAPONS."

LOUISIANA - "THE RIGHT OF EACH CITIZEN TO KEEP AND BEAR ARMS SHALL NOT BE ABRIDGED, BUT THIS PROVISION SHALL NOT PREVENT THE PASSAGE OF LAWS TO PROHIBIT THE CARRYING OF WEAPONS CONCEALED ON THE PERSON."

MAINE - "EVERY CITIZEN HAS A RIGHT TO KEEP AND BEAR ARMS AND THIS RIGHT SHALL NEVER BE QUESTIONED."

MARYLAND - NONE

MASSACHUSETTS - "THE PEOPLE HAVE A RIGHT TO KEEP AND BEAR ARMS FOR THE COMMON DEFENSE. AND AS, IN TIME OF PEACE, ARMIES ARE DANGEROUS TO LIBERTY, THEY OUGHT NOT TO BE MAINTAINED WITHOUT THE CONSENT OF THE LEGISLATURE; AND THE MILITARY POWER SHALL ALWAYS BE HELD IN AN EXACT SUBORDINATION TO THE CIVIL AUTHORITY, AND BE GOVERNED BY IT."

MICHIGAN - "EVERY PERSON HAS A RIGHT TO KEEP AND BEAR ARMS FOR THE DEFENSE OF HIMSELF AND THE STATE."

MINNESOTA - NONE

MISSOURI - "THAT THE RIGHT OF EVERY CITIZEN TO KEEP AND BEAR ARMS IN DEFENSE OF HIS HOME, PERSON AND PROPERTY, OR WHEN LAWFULLY SUMMONED IN AID OF THE CIVIL POWER, SHALL NOT BE QUESTIONED; BUT THIS SHALL NOT JUSTIFY THE WEARING OF CONCEALED WEAPONS."

MISSISSIPPI - "THE RIGHT OF EVERY CITIZEN TO KEEP AND BEAR ARMS IN DEFENSE OF HIS HOME, PERSON, OR PROPERTY, OR IN AID OF THE CIVIL POWER WHEN THERETO LEGALLY SUMMONED, SHALL NOT BE CALLED IN QUESTION, BUT THE LEGISLATURE MAY REGULATE OR FORBID CARRYING CONCEALED WEAPONS."

MONTANA - "THE RIGHT OF ANY PERSON TO KEEP OR BEAR ARMS IN DEFENSE OF HIS OWN HOME, PERSON, AND PROPERTY, OR IN AID OF THE CIVIL POWER WHEN THERETO LEGALLY SUMMONED, SHALL NOT BE CALLED IN QUESTION, BUT NOTHING HEREIN CONTAINED SHALL BE HELD TO PERMIT THE CARRYING OF CONCEALED WEAPONS."

NEBRASKA - "ALL PERSONS...HAVE CERTAIN...RIGHTS; AMONG THESE ARE...THE RIGHT TO KEEP AND BEAR ARMS FOR SECURITY OR DEFENSE OF SELF, FAMILY, HOME, AND OTHERS, AND FOR LAWFUL COMMON DEFENSE, HUNTING, RECREATIONAL USE, AND ALL OTHER LAWFUL PURPOSES, AND SUCH RIGHTS SHALL NOT BE DENIED OR INFRINGED BY THE STATE OR ANY SUBDIVISION THEREOF."

NEVADA - "EVERY CITIZEN HAS THE RIGHT TO KEEP AND BEAR ARMS FOR SECURITY AND DEFENSE, FOR LAWFUL HUNTING AND RECREATIONAL USE AND FOR OTHER LAWFUL PURPOSES."

NEW HAMPSHIRE - "ALL PERSONS HAVE THE RIGHT TO KEEP AND BEAR ARMS IN DEFENSE OF THEMSELVES, THEIR FAMILIES, THEIR PROPERTY, AND THE STATE."

NEW JERSEY - NONE

NEW MEXICO - "NO LAW SHALL ABRIDGE THE RIGHT OF THE CITIZEN TO KEEP AND BEAR ARMS FOR SECURITY AND DEFENSE, FOR LAWFUL HUNTING AND RECREATIONAL USE AND FOR OTHER LAWFUL PURPOSES, BUT NOTHING HEREIN SHALL BE HELD TO PERMIT THE CARRYING OF CONCEALED WEAPONS. NO MUNICIPALITY OR COUNTY SHALL REGULATE, IN ANY WAY, AN INCIDENT OF THE RIGHT TO KEEP AND BEAR ARMS."

NEW YORK - NONE

NORTH CAROLINA - "A WELL REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS SHALL NOT BE INFRINGED; AND, AS STANDING ARMIES IN TIME OF PEACE ARE DANGEROUS TO LIBERTY, THEY SHALL NOT BE MAINTAINED, AND THE MILITARY SHOULD BE KEPT UNDER STRICT SUBORDINATION TO, AND GOVERNED BY, THE CIVIL POWER. NOTHING HEREIN SHALL JUSTIFY THE PRACTICE OF CARRYING CONCEALED WEAPONS, OR PREVENT THE GENERAL ASSEMBLY FROM ENACTING PENAL STATUTES AGAINST THAT PRACTICE."

NORTH DAKOTA - "ALL INDIVIDUALS ...HAVE CERTAIN INALIENABLE RIGHTS, AMONG WHICH ARE...TO KEEP AND BEAR ARMS FOR THE DEFENSE OF THEIR PERSON, FAMILY, PROPERTY, AND THE STATE, AND FOR LAWFUL HUNTING, RECREATIONAL, AND OTHER LAWFUL PURPOSES, WHICH SHALL NOT BE INFRINGED."

OHIO - "THE PEOPLE HAVE THE RIGHT TO BEAR ARMS FOR THEIR DEFENSE AND SECURITY; BUT STANDING ARMIES, IN TIME OF PEACE, ARE DANGEROUS TO LIBERTY, AND SHALL NOT BE KEPT UP; AND THE MILITARY SHALL BE IN STRICT SUBORDINATION TO THE CIVIL POWER."

OKLAHOMA - "THE RIGHT OF A CITIZEN TO KEEP AND BEAR ARMS IN DEFENSE OF HIS HOME, PERSON, OR PROPERTY, OR IN AID OF THE CIVIL POWER, WHEN THEREUNTO LEGALLY SUMMONED, SHALL NEVER BE PROHIBITED, BUT NOTHING HEREIN CONTAINED SHALL PREVENT THE LEGISLATURE FROM REGULATING THE CARRYING OF WEAPONS."

OREGON - "THE PEOPLE SHALL HAVE THE RIGHT TO KEEP AND BEAR ARMS FOR THE DEFENSE OF THEMSELVES AND THE STATE, BUT THE MILITARY SHALL BE KEPT IN STRICT SUBORDINATION TO THE CIVIL POWER."

PENNSYLVANIA - "THE RIGHT OF THE CITIZENS TO BEAR ARMS IN DEFENSE OF THEMSELVES AND THE STATE SHALL NOT BE QUESTIONED."

RHODE ISLAND - "THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS SHALL NOT BE INFRINGED."

SOUTH CAROLINA - "A WELL REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS SHALL NOT BE INFRINGED."

SOUTH DAKOTA - "THE RIGHT OF THE CITIZENS TO BEAR ARMS IN DEFENSE OF THEMSELVES AND THE STATE SHALL NOT BE DENIED."

TENNESSEE - "THAT THE CITIZENS OF THIS STATE HAVE A RIGHT TO KEEP AND TO BEAR ARMS FOR THEIR COMMON DEFENSE; BUT THE LEGISLATURE SHALL HAVE POWER, BY LAW, TO REGULATE THE WEARING OF ARMS WITH A VIEW TO PREVENT CRIME."

TEXAS - "EVERY CITIZEN SHALL HAVE THE RIGHT TO KEEP AND BEAR ARMS IN THE LAWFUL DEFENSE OF HIMSELF OR THE STATE; BUT THE LEGISLATURE SHALL HAVE POWER, BY LAW, TO REGULATE THE WEARING OF ARMS, WITH A VIEW TO PREVENT CRIME."

UTAH - "THE INDIVIDUAL RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS FOR SECURITY AND DEFENSE OF SELF, FAMILY, OTHERS, PROPERTY, OR THE STATE AS WELL AS FOR OTHER LAWFUL PURPOSES SHALL NOT BE INFRINGED; BUT NOTHING HEREIN SHALL PREVENT THE LEGISLATURE FROM DEFINING THE LAWFUL USE OF ARMS."

VERMONT - "THAT THE PEOPLE HAVE A RIGHT TO BEAR ARMS FOR THE DEFENSE OF THEMSELVES AND THE STATE- AS STANDING ARMIES IN TIME OF PEACE ARE DANGEROUS TO LIBERTY, THEY OUGHT NOT TO BE KEPT UP; AND THAT THE MILITARY SHOULD BE KEPT UNDER STRICT SUBORDINATION TO AND GOVERNED BY THE CIVIL POWER."

VIRGINIA - "THAT A WELL REGULATED MILITIA, COMPOSED OF THE BODY OF THE PEOPLE, TRAINED TO ARMS, IS THE PROPER, NATURAL, AND SAFE DEFENSE OF A FREE STATE, THEREFORE, THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS SHALL NOT BE INFRINGED; THAT STANDING ARMIES, IN TIME OF PEACE, SHOULD BE AVOIDED AS DANGEROUS TO LIBERTY; AND THAT IN ALL CASES THE MILITARY SHOULD BE UNDER STRICT SUBORDINATION TO, AND GOVERNED BY, THE CIVIL POWER."

WASHINGTON - ""THE RIGHT OF THE INDIVIDUAL CITIZEN TO BEAR ARMS IN DEFENSE OF HIMSELF OR THE STATE SHALL NOT BE IMPAIRED, BUT NOTHING IN THIS SECTION SHALL BE CONSTRUED AS AUTHORIZING INDIVIDUALS OR CORPORATIONS TO ORGANIZE, MAINTAIN, OR EMPLOY AN ARMED BODY OF MEN."

WEST VIRGINIA - "A PERSON HAS THE RIGHT TO KEEP AND BEAR ARMS FOR THE DEFENSE OF SELF, FAMILY, HOME, AND STATE, AND FOR LAWFUL HUNTING AND RECREATIONAL USE."

WISCONSIN - NONE

WYOMING - "THE RIGHT OF THE CITIZENS TO BEAR ARMS IN DEFENSE OF THEMSELVES AND THE STATE SHALL NOT BE DENIED."

ce of The Times

Daily News guys just don't get it on guns

by PAUL JENKINS

The guys over at the Daily News just don't get it when it comes to guns and the pesky notion of individual freedom. And that's understandable.

They adhere to an ancient and repeatedly discredited dogma that attributes evil to inanimate objects and demands subjugation of individual rights to the whims of liberals because, well, the rest of us are dummies who don't know what's good for us.

And, because in their view the road to utopian socialism — and believe it, that's where they want to go — sometimes is rocky, they are not above stretching the truth to make another mile or two.

The latest evidence is in an embarrassing editorial this week ripping Assemblyman Dick Traini. The News asserts Traini is getting schizo because he wants the Assembly to endorse a state constitutional amendment dealing with the right to keep and bear arms.

They claim his effort on behalf of the amendment somehow is at odds with his drive to keep kids from carrying guns without their parents' written permission. They claim that the proposed amendment would be bad, bad, bad; that it would "overturn a host of reasonable gun controls, such as bans on concealed weapons, convicted felons carrying guns, and possessing guns on school property."

Jenkins

That is a lie. That is not a misunderstanding of facts known far and wide. That is not a misrepresentation. That is a lie.

Article 1, Section 19 of the Alaska Constitution — entitled "Right to Bear Arms" — reads: "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

Nifty but nebulous, and just a bit ambiguous.

Sen. Loren Leman and many others in the Legislature worry that the section does not address specific individual rights, and, because the Daily News and other gun-haters are always looking for a way to disarm the rest of us, the senators thought they might try to clarify the constitution to ensure the individual right to keep and bear arms. They came up with Senate Joint Resolution 34.

It would allow voters next year to amend the state constitution to include the sentence: "The individual right to keep and bear arms shall not be denied or infringed by the State or a political subdivision of the State." It also would amend the section's title to read: "Right to Keep and Bear Arms."

From that, the Daily News somehow surmises the end of the world is just around the corner: that all gun laws will go out the window.

How can that be?

We have the freedom of speech, but we cannot yell "Fire" in a crowded theater. We have the freedom of the press, but cannot libel with impunity. We have the freedom of religion, but we cannot engage in human sacrifice. We have the right of assembly, as long as we remain peaceful and first get a permit. We have all kinds of seemingly absolute rights that are tempered by lesser law.

Courts across the nation, from the lowest to the highest, repeatedly have ruled that local political jurisdictions have the right to regulate firearms. Surely, the Daily News is aware of some of the decisions.

The constitutional amendment proposed by Leman and others does nothing to abrogate the notion that, yes, cities or the state can regulate guns.

But what it does do is make it more difficult for a government entity in Alaska to one day say: Everybody must turn in their guns because the Daily News ... notion of an individual's rights to firearms.

It does not dismantle laws keeping guns out of schools. It does not dismantle laws aimed at keeping guns out of the hands of felons. It does not give each of us the absolute right to carry a concealed weapon anywhere we choose.

But the Daily News guys know all this already. They are not telling you what really sticks in their craw. In the Daily News' view, the absolute worst thing this amendment would do is specifically protect individuals from their government. That's it.

They don't want you to have guns — or ammunition, for that matter. They want to disarm you and make you believe that will make you safe. They desperately want the government to do their dirty work for them. They think this amendment may slow that process. They think anybody who supports it is part of what they see as the problem.

Presto — Dick Traini is a schizoid idiot, the Daily News says.

Hardly. He's right as rain on this issue.

The only schizoid idiots in this whole sorry mess are Daily News writers and editors who fear individual rights and work to ensure ours are buried by the government.

I wonder what they think is going to happen to their First Amendment rights when they've succeeded in denying the rest of us our Second Amendment rights.

Like I said, they just don't get it.

Paul Jenkins is an editor of The Anchorage Times.

K 99510 — Telephone (907) — Fradley 26 ... FAX (907) ...

TAKING A STAND

Gun control can creep up on all Alaskans if they're not vigilant

It doesn't matter if you are male, female, white, black or Native — civil rights are important to all Alaskans. Because of this, I would encourage you to defend of our most cherished and fundamental rights; the right to keep and bear arms.

This right could be jeopardized by the vague wording in the Alaska State Constitution. It states:

"A well-regulated militia being necessary to the security of a free state, the right of the people to bear arms shall not be infringed."

This article only says the people can bear arms, but makes no provision for keeping them. Because this language is so poorly written, the courts could interpret it to mean the people only have the right to bear arms while serving in the military reserve or national guard.

The Alaska attorney general's office confirmed our worst fears in a letter to Sen. Pat Rodey dated April 13, 1983. According to Assistant Attorney General Joseph Geldhof, "the modern judicial view has increasingly found that the guaranteed right to keep and bear arms is not an individually protected right, but rather a collective right which allows the people of the various states to serve in a militia."

Gary Hammond

Because of this legal opinion, Sen. Rodey has tried to restore your rights for nine years. His resolution would clarify and reaffirm our commitment to the individual's right to keep and bear arms. It states:

"The individual right to keep and bear arms shall not be denied or infringed by the state or a political subdivision of the state."

The Senate was committed to restoring this right, so it passed the resolution without change. Since then, the anti-gun politicians serving on the House State Affairs Committee have rewritten the measure. The new version states:

"A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be denied. The individual right to keep and bear arms shall not be *unreasonably* infringed by the state or a political subdivision of a state."

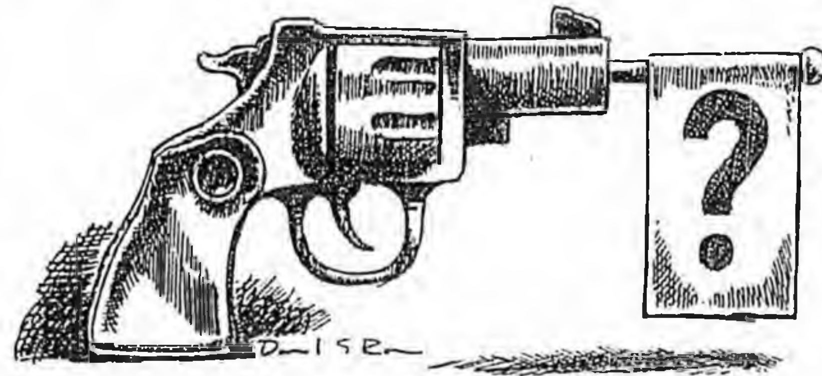
The word "unreasonably" is like a rubber band: It can be stretched to encompass any meaning the bureaucrats want. Because of this, your rights are in jeopardy. Those responsible for this new language are: Chairman Kubina, (D) District 6; Rep. Choquette, (R) District 6 8-B; Rep. Gruenberg, (D) District 11-B.

The only representative to stand up for your rights was Rep. Bruckman, (D) District 8-A.

The next obstacle in this fight is Rep. Dave Donley and his House Judiciary Committee. By inaction, Rep. Donley, (D) District 11-A, could let this resolution die in committee.

It is unfortunate these elected politicians do not believe in the individual right to keep and bear arms.

According to a recent article in the Fairbanks Daily News-Miner, the Hickel administration is also after your guns. Apparently, the appointed lawyers at the attorney general's office have been leading the fight. They claim the individual right to keep and bear arms would invalidate existing laws that prohibit criminals from owning guns.



Let's look at the evidence.

The state of Rhode Island has the most explicit constitutional provision regarding this right. It simply states: "the right of the people to keep and bear arms shall not be infringed."

During my recent conversation with Rhode Island Assistant Attorney General Mike Stone, I asked this question: "Has the Rhode Island Constitution guaranteeing the right to keep and bear arms invalidated existing gun laws or allowed criminals the legal right to own a gun in Rhode Island?"

He replied with a resounding "no." Chapter 1147 of the Rhode Island Statutes explicitly "prohibits mental incompetents, drunkards, aliens and people who have been convicted of a violent crime from possessing a firearm."

Here's the point. The Rhode Island Legislature has enacted many laws that prohibit criminals and other undesirable persons from possessing firearms. In fact, Rhode Island has some of the most restrictive gun laws in the country.

Attorney Stone also said the right to keep and bear arms provision in the U.S. Constitution did not invalidate federal firearms laws.

The Gun Control Act of 1968 explicitly prohibits "felons, fugitives from justice, people addicted to controlled substances, the mentally defective," and others from possessing firearms.

Despite overwhelming evidence against their argument, the lawyers at the Alaska attorney general's office continue their assault on your rights.

Let me conclude by saying this. Senate Joint Resolution 1, as introduced by Sen. Rodey, would preserve your right to keep and bear arms, but the anti-gun politicians have compromised the measure by inserting bad language.

We cannot afford to take this right for granted any longer.

Instead, let us re-affirm out commitment to civil rights by sending a message to Rep. Donley and the House Judiciary Committee. Tell them time is running out and you want action.

Vote for SJR1 as submitted by Sen. Rodey.

Gary Hammond is an accounting student at University of Alaska Fairbanks and president of the UAF Politics Club. Opinions expressed in Taking a Stand do not necessarily reflect the editorial position of The Anchorage Times.

Gun-control provides primer on political philosophy

How can one best illustrate, to an inquiring youth, the differences between conservatives and liberals? Abstract principles — bloodless ephemeral — don't make a strong impression. It's best, perhaps, to use a single issue as an example — political philosophy by metaphor, so to speak.

As Congress and the Clintons prepare their next assault on the American people's right to keep and bear arms, let's try gun control as our primer.

Liberals are statists — collectivists who believe government control is the solution to society's ills. Are people shooting each other? The liberal's answer is for government to take all the guns away. Conservatives are individualists; they resent and resist the collective (the state) curtailing their liberty. Take guns away from violent criminals — not from me, they say.

Liberals are elitists; they don't trust common folk

FRITZ PETTYJOHN

with the power that comes with control of a deadly weapon. Conservatives are populists who have faith in average Americans and their ability to handle firearms.

Liberals are utopians; if properly managed and controlled, society, and mankind, can approach perfection. Thus, if you make a law against guns and hire a lot of police, people won't shoot each other any more! Conservatives are realists; they know there will always be criminals (who are by definition scofflaws) who will manage to arm themselves. Disarming the law abiding will only embolden the lawless.

Liberals are fantasists; they are infatuated with gestures. No one seriously believes enactment of the Brady Bill, with its five-day waiting period, will have any real impact on violent crime in America. But, to liberals, it was important to do something, if for no other reason than to make oneself feel good and demonstrate that one really really cares. Conservatives believe in substance, not symbolism. To them, dealing with crime means putting criminals behind bars and keeping them there.

Liberals are inclined to a certain daintiness, or a kind of fecklessness when confronted with the brutality of thugs. The constabulary, don't you know, is employed to deal with such things. It is not a citizen's place to have to dirty one's linen in taking on criminals oneself. Conservatives believe in self-reliance. If confronted by an assailant, they prefer a .357 to 911.

Liberals are trendy, and naturally attracted to fads. Gun ownership is so passe. Gun control is so modern. Conservatives are traditionalists. Two hundred and 18 years ago the Shot Heard Round the World — precipitating the War of Independence — was fired because the Brits tried to confiscate a colonial armory. If keeping and bearing arms was good enough for our Founding Fathers, it's good enough for us.

To liberals, the foundation of American liberty — the Constitution of the United States — doesn't necessarily mean what it actually says. They argue that as our society evolves, the Constitution likewise changes with the times. Judges and lawyers, trained at elite law schools, determine the pace and direction of the evolution of interpretation. Conservatives honor the Constitution, and every word of it, above all documents, save one. The framers knew precisely what they were doing when they wrote it, and it literally means what it says. The recognition, in the Second Amendment, that the people's right to bear arms themselves shall not be infringed upon is, and always shall be, the highest law of the land.

Liberals today are the establishment in this country, the powers that be, the elites who control most major American institutions. In the universities, the major newspapers and magazines, the television networks, the film and recording industries, the Congress, government bureaucracies, the law schools, the main-line churches, charitable foundations, in publishing and advertising — in all these and many more positions of influence, liberals dominate American society. They like their power, and despise any threat to it, however remote. A well-armed citizenry contains the possibility of posing such a threat.

Conservatives are, at least potentially, revolutionaries. They take to heart the admonishments of the grandest document of them all — the Declaration of Independence. Thomas Jefferson's charge to the generations who succeeded him — that it is not only their right, but their duty, to throw off despotism — is taken quite seriously by American conservatives. If and when that time ever comes, they want to be armed.

☐ Fritz Pettyjohn, an Anchorage lawyer, served in both the Alaska state Senate and the Alaska House of Representatives.

Difference of opinion

In the slick insert from Arctic Power that appeared in the Fairbanks News-Miner last week, former Kaktovik Mayor Herman Aishanna is quoted as saying, "The people of Kaktovik ... are insulted when people try to tell us this (the coastal plain of the Arctic Refuge) should be a wilderness area, as if we don't exist and have no rights to live, hunt and work here."

Mr. Aishanna should know better, and I suspect maybe he does.

The difference between those who want to great biological importance. Not unreasonably, the Arctic Slope Regional and Kaktovik Inupiaq corporations wish to pursue what they see as further economic development in their region. We understand that, but we also see that oil development on state lands has already brought the North Slope a strong economic base, including the highest per capita income in the United States, and a very large trust fund. In that context, our contention that the highest value of this one piece of Alaska's coastline lies in its wilderness and habitats, and that it deserves protection as an intact, unique

each one alive, and yet we send our young who have never committed a crime to a foreign country to be killed and to kill other young people who have never committed a crime either. This can't be true, can it?

I wish Howard Weaver would donate his brain to science ... soon.

— *John J. Cowdery*

Wake up before it's too late

I find it hard to believe how much space you allotted to tell us the tobacco executives believe that their product is not harmful on Dec. 7. And on the front page even! How

in a talk show. Yes, a lot is said at a PTA meeting, however, I disagree with "no point and you come to your own conclusion." Our children's education is reliant on a system that has become political, which makes it ever more important for parents, teachers, principals and those concerned about the education of our children to attend these meetings and become involved.

Without Central Council PTA meetings, and those involved in them, we would not have positive programs for our children such as POPS (parents on playground), Child Watch, and an Earthquake Disaster

SJR

47

8-LS1199\E
Dierdorff
3/17/94

CS FOR SENATE JOINT RESOLUTION NO. 47( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS HALFORD, Phillips, Sharp, Taylor, Leman, Frank

A RESOLUTION

1 **Proposing an amendment to the Constitution of the State of Alaska changing the**
2 **membership of the judicial council.**

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

4 * **Section 1.** Article IV, sec. 8, Constitution of the State of Alaska, is amended to read:
5 SECTION 8. JUDICIAL COUNCIL. The judicial council shall consist of **nine**
6 [SEVEN] members. Three attorney members shall be appointed for six-year terms by
7 the governing body of the organized state bar. **Five** [THREE] non-attorney members
8 shall be appointed for six-year terms by the governor subject to confirmation by a
9 majority of the members of the legislature in joint session. Vacancies shall be filled
10 for the unexpired term in like manner. Appointments shall be made with due
11 consideration to area representation and without regard to political affiliation. The
12 chief justice of the supreme court shall be ex-officio the **ninth** [SEVENTH] member
13 and **chair** [CHAIRMAN] of the judicial council. No member of the judicial council,
14 except the chief justice, may hold any other office or position of profit under the
15 United States or the State. The judicial council shall act by concurrence of **five**
16 [FOUR] or more members and according to rules which it adopts.

1 * Sec. 2. The amendment proposed by this resolution shall be placed before the voters of
2 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
3 State of Alaska, and the election laws of the state.

While in Session:
State Capitol
Juneau, AK 99801-1182
907-465-4958

While in Interim:
P.O. Box 670190
Chugiak, AK 99567
907-694-4958

ALASKA STATE LEGISLATURE

Senator Rick Halford

President of the Senate

MEMORANDUM

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Senator Rick Halford

DATE: March 16, 1994

SUBJECT: Sponsor Statement -- SJR 47

==

Senate Joint Resolution would amend Article IV, Section 8, of the Alaska Constitution to change the composition of the Judicial Council from three lawyers and three Alaska Citizen's to three lawyers and five Alaska citizens.

Currently, the Council is largely controlled by members of the legal community. During the judicial appointment process, the Governor has only the option of choosing from a list provided to him by the existing Judicial Council. Any tie resulting from a Council vote is determined by another attorney, the Chief Justice.

As is increasingly evident in the Alaskan voices which have been raised in letters to the editor and other forums, the unhealthy situation in which Alaska's lawyers get to select the very judges who decide their cases is simply inappropriate. The potential for conflict of interest is enormous. The concerns of Alaska's ordinary citizens are well-founded, and that is why this model is not used for the selection of judges in any other state.

There is clear and convincing evidence that there is a need to strike a balance between the legal community and the people of Alaska. This legislation provides that necessary balance.

I urge the committee to give SJR 47 its full and favorable consideration.

SJR

49

Network for Environmental Policy Awareness

Regional Coordinators:

Mayor Tom Fink
Box 196650
Anchorage AK 99519
907/343-4278/Fax 343-4110

Mayor Greg Lashutka
90 W. Broad Street
Columbus, OH 43215
(614) 645-6171/Fax 645-7051

Mayor Bill Westbrook
Box 1687
Jackson, WY 83001
(307) 733-3932/Fax739-0919

DATE: January 25, 1994 **PLEASE ACT BY JANUARY 31**

TO: Mayors/Managers, NEPA

FROM: Regional Coordinators

SUBJECT: "JOHNSTON AMENDMENT"

Congress reconvenes today, and within the next week or two there may be critical action in the House of Representatives on the "Johnston Amendment" to the EPA Cabinet bill. You will recall that the "Johnston Amendment," which was added to the Senate version of the Cabinet bill by a vote of 95-3 and is now ready to be proposed in the House of Representatives, would require EPA to explain whether the expected benefits of a regulation justify its costs.

In the House, it is possible there will never be any debate or vote on the merits of a "Johnston Amendment" because the Rules Committee has ruled that the amendment is not germane. When the Cabinet bill is brought to the floor of the House, as soon as next week, there will be an opportunity to vote to overturn that ruling, and then vote on the amendment itself.

Therefore, your help is needed immediately. If the amendment is not added to the House bill, the amendment in the Senate is sure to be watered down in conference. Please tell your U.S. Representative you oppose the rule that would avoid consideration of the merits of the amendment, and that you favor the amendment. Following are some points you might want to make:

- There should be a vote on the amendment itself; it is too important to be dismissed on a technicality.
- The amendment is commonsense, and it is clearly consistent with the President's recent Executive Order No. 12866 setting forth the Administration's regulatory philosophy.
- American cities and counties cannot continue to spend more on environmental regulations without having EPA explain whether the benefits will justify the costs. They also need to know whether a regulation is supported by sound scientific analysis, and how the risk it addresses compares with other risks.
- If EPA is to be given greater stature, it should have greater accountability.

This imminent Congressional action is the most important on the unfunded mandates issue since Senate approval of the Johnston Amendment last May. Every bit of help will count. Opponents of the Johnston amendment in the House delayed action because the vote projections have been so uncertain. A vote could occur any day now, so the sooner you act the better. In addition to faxing or calling your representative, enlist other mayors and county commissioners to do the same; also, urge your national associations to lobby. Do send copies of materials to 907-343-4110.

National Advisory Committee:

Paula Easley, Director, Govt. Affairs, Municipality of Anchorage (Chair)
Steve Parks, Chairman, Nationwide Public Projects Coalition
Henry Lamb, Exec. Vice President, Environmental Conservation Organization
Rhonda McAtee, Director, Pennsylvania Landowners Association

March 2, 1994

TO: Rep. Gail Phillips

FROM: Paula Easley, Director, Government Affairs
Municipality of Anchorage

RE: Resolution Opposing Unfunded Federal Mandates

Gail, you may know I'm one of the ringleaders nationally who has campaigned to stop Congress's practice of adopting costly environmental measures and then telling states and cities to implement and pay for them.

The movement has been successful thanks to the efforts of many, but we recognized the need to turn up the heat. Reauthorization of the Clean Water Act and Endangered Species Act, wetlands, Superfund and initiatives on indoor air quality, chlorine, radon, etc., all involve billions of dollars that Congress wants communities to finance. At the same time they're giving more powers to the federal agencies and making it more difficult for local economies to thrive by taking land and resources out of production and killing business with yet more costly regulations.

To broaden support for stopping unfunded mandates, the Environmental Conservation Organization is coordinating a grassroots campaign to obtain resolutions to that effect from all 50 state legislatures in the next six weeks. Becky Gay suggested a resolution signed by you, Ramona Barnes, Rick Halford and Robin Taylor might be quickly obtained if you, in fact, support the issue and if you think a joint resolution is too cumbersome for the short timeframe. That's what some of the legislatures not in session are doing.

Coordinated by

eco
environmental
conservation
organization

P.O. Box 191, Hollow Rock, TN 38342 • 901-986-0099 *(voice)* • 901-986-2299 *(fax)*

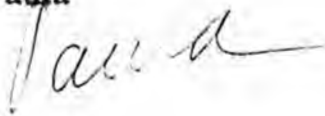
On April 15, Senator Dirk Kempthorne (if he ever runs for President, I want to be his campaign manager!) and several other sponsors of legislation dealing with environmental mandates will hold a press conference in Washington. Simultaneous press conferences are to be held across the country. This will build on the successful "National Unfunded Mandates Day" media effort last fall by the national municipal associations. We'd like the House and Senate leadership to participate in the Alaska press conference and will work with you on scheduling and arrangements.

Enclosed are sample resolutions and backup material. We are also obtaining resolutions from community and private organizations that will be widely distributed in Congress.

From the enclosed quotes you'll see the impact of our battle to get just one little rule changed in the House. I had no idea the outcome of that vote would be so significant!

Please phone or fax me at the above numbers if there are things I can do to help this along. Many thanks.

Paula



A Resolution Calling Attention to the Effect of
UNFUNDED MANDATES
On Local Government and Urging
Congress to Reduce These Burdens on Local Citizens

WHEREAS, unfunded mandates on state and local governments have increased significantly in recent years; and

WHEREAS, federal mandates require cities and towns to perform duties without consideration of local circumstances, costs, or capacity, and subject municipalities to civil or criminal penalties for noncompliance; and

WHEREAS, federal mandates require compliance regardless of other pressing local needs and priorities affecting the health, welfare, and safety of municipal citizens; and

WHEREAS, excessive federal burdens on local governments force some combination of higher local taxes and fees and/or reduced local services on citizens and local taxpayers; and

WHEREAS, federal mandates are too often inflexible, one-size-fits-all requirements that impose unrealistic time frames and specify procedures or facilities where less costly alternatives might be just as effective; and

WHEREAS, existing mandates impose harsh pressures on local budgets and the federal government has imposed a freeze upon funding to help compensate for any new mandates; and

WHEREAS, the cumulative impacts of these legislative and regulatory actions directly affect the citizens of our cities and towns; and

WHEREAS, the International City Managers Association, the National Association of Counties, the National League of Cities, the U. S. Conference of Mayors, and other state and local government representatives, began a national public education campaign to help citizens understand and then reduce the burden and inflexibility of unfunded mandates, by dedicating October 27, 1993 as National Unfunded Mandates Day,

NOW, THEREFORE, the assembly here gathered resolves:

Section 1. that the ____ endorses the efforts of national, state, and local organizations to fully inform citizens about the impact of federal mandates on our government and the pocketbooks of our citizens;

Section 2. that we shall double our efforts to inform and work with members of our Congressional delegation to educate them about the impact of federal mandates and actions necessary to reduce their burden on our citizens;

Section 3. that we shall urge our citizens to support Congressional action that will bring about an end to federal unfunded mandates.

ADOPTED this _____ day of ______________, 1994

____________________ ____________________

BACKGROUND
MATERIALS

CLERK'S OFFICE
APPROVED
Date: 10-26-93

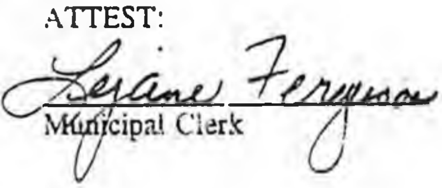
Submitted by: Chairman of the Assembly at the Request of the Mayor
Prepared by: Office of the Mayor
For reading: October 26, 1993

ANCHORAGE, ALASKA
AR NO. 93-320

1 A RESOLUTION CALLING ATTENTION TO THE EFFECT OF UNFUNDED MANDATES ON
2 LOCAL GOVERNMENT AND URGING CONGRESS TO REDUCE THESE BURDENS ON LOCAL
3 CITIZENS
4
5
6 WHEREAS, unfunded mandates on state and local governments have increased significantly in
7 recent years; and
8
9 WHEREAS, federal mandates require cities and towns to perform duties without consideration
10 of local circumstances, costs, or capacity, and subject municipalities to civil or criminal penalties for
11 noncompliance; and
12
13 WHEREAS, federal mandates require compliance regardless of other pressing local needs and
14 priorities affecting the health, welfare, and safety of municipal citizens; and
15
16 WHEREAS, excessive federal burdens on local governments force some combination of higher
17 local taxes and fees and/or reduced local services on citizens and local taxpayers; and
18
19 WHEREAS, federal mandates are too often inflexible, one-size-fits-all requirements that impose
20 unrealistic time frames and specify procedures or facilities where less costly alternatives might be just
21 as effective; and
22
23 WHEREAS, existing mandates impose harsh pressures on local budgets and the federal
24 government has imposed a freeze upon funding to help compensate for any new mandates; and
25
26 WHEREAS, the cumulative impact of these legislative and regulatory actions directly affect the
27 citizens of our cities and towns; and
28
29 WHEREAS, the International City Managers Association, the National Association of Counties,
30 of National League of Cities, and the U.S. Conference of Mayors, in conjunction with other state and
31 local government representatives, has begun a national public education campaign to help citizens
32 understand and then reduce the burden and inflexibility of unfunded mandates, beginning with a National
33 Unfunded Mandates Day on October 27, 1993.
34
35 NOW, THEREFORE, the Anchorage Assembly resolves:
36
37 Section 1. that the Municipalit y of Anchorage endorses the efforts of National, County and
38 Municipal organizations to fully inform our citizens about the impact of federal mandates on our
39 government and the pocketbooks of our citizens.
40
41
42

1 Section 2. that the Municipality of Anchorage resolves to redouble our efforts to inform and
2 work with members of our Congressional delegation to educate them about the impact of federal mandates
3 and actions necessary to reduce their burden on our citizens.
4
5 Section 3. that the Municipality of Anchorage will join with hundreds of cities nationwide
6 in recognizing October 27, 1993 as Unfunded Mandates Day.
7
8 PASSED AND APPROVED by the Assembly this 26th day of October, 1993.
9
10
11
12

13 Tom Fink Mark Begich
14 Mayor Chairman
15
16
17
18
19 ATTEST:
20



21
22 Municipal Clerk

Controversial Issues Will Be Raised During Markup

SENATORS DRAFTING CWA PROPERTY RIGHTS, WETLANDS AMENDMENTS

Several senators are drafting private property rights and wetlands amendments to the Senate clean water bill, to be offered during the Senate Environment & Public Works Committee markup of the legislation on Feb. 23. Given the controversy over such issues, the amendments could significantly bog down or even derail the legislation.

Sen. Dirk Kempthorne (R-ID) is crafting amendments to S. 1114 focusing on concerns that the bill substantially erodes state discretion in administering the CWA, despite the bill's promotion as one that significantly enhances state flexibility. Kempthorne is also developing amendments to protect the rights of private landowners who have argued that federal environmental laws are encroaching on their constitutional rights. Sen. Lauch Faircloth (R-NC) is developing amendments that would roll back existing wetlands regulations, which critics have charged are cumbersome and overly protective.

At a Feb. 2 clean water, fisheries and wildlife subcommittee hearing on the bill, Kempthorne expressed concerns that S. 1114 ignores the potential for infringement of private property rights under Title VII wetlands provisions, as well as under watershed planning and nonpoint source control programs in Title III, and is expected to offer amendments on the private property rights issue. There should be "compensation and assurances" that what landowners are being asked to do is based on sound science and will have minimum impact "compared to the benefits," Kempthorne stressed.

Faircloth testified that wetlands provisions are of most concern to him, stressing that they need to be "more simple to comply with." The Senator will likely offer an amendment lowering "outrageously high" fines that the current bill would allow EPA to impose on violators. EPA should offer mitigation banking credits to landowners for created wetlands, Faircloth said, pointing out that "if we are going to inventory wetlands losses, we need to inventory gains" as well.

EPA has too much power dictating to states the elements of their antidegradation policies and designated uses, Kempthorne said, calling the agency's method a "one-size fits all" approach. "EPA is required to publish state guidelines for naming Outstanding National Resource Waters, for setting up comprehensive statewide water monitoring programs, and for reviewing and revising water quality standards," Kempthorne said at the hearing. "If that's not enough, the bill then sets arbitrary deadlines for all this to be done — to EPA's satisfaction, I might add."

Kempthorne is also expected to introduce an amendment that would attempt to improve the scientific basis for EPA rulemaking, and that would more strongly connect pollution reduction efforts to human health risk and cost-benefit analysis. The current bill seems to reflect the attitude that "if it is human-induced, then it must be bad," the senator said at the hearing.

S. 1114 would establish federal authorities and regulations that force the federal government into direct conflict with the states' traditional right to allocate and control the use of waters within their jurisdiction, Kempthorne complained. "It does this with little thought for the long-term consequences, and with little respect for the system of property rights and water rights," Kempthorne said, adding that these rights underpin the livelihood of the West. States are in the best position to decide water allocations and uses -- the consequences of which Kempthorne contends cannot be understood by EPA "thousands of miles away in Washington."

Kempthorne will also likely introduce an amendment that will move the CWA farther away from habitat and species protection, possibly eliminating wildlife criteria, biological monitoring, and the emphasis on sediment quality, congressional sources say. The more variables included in the meaning of water quality, "the more complex the decisions and tradeoffs become," he said. Kempthorne is also expected to propose changes to the bill that would alter current enforcement provisions. "The bill, in practical effect, makes punishment and revenue collection the enforcement goal, rather than compliance," Kempthorne said.

Congressional sources say Faircloth amendments will include proposals that would weaken EPA authority to mandate changes in industrial processes. "We are sending bureaucracy up the pipe and into the plant," he said at the subcommittee hearing, emphasizing that the economic cost of mandates is not adequately considered. Faircloth will also include amendments promoting more reliance on publicly owned treatment works -- rather than requiring facilities to treat waste on site -- and striking out S. 1114's phaseout of many persistent toxics, congressional sources speculate.

at chlorine in a comprehensive manner."

Environmentalists, who have made a chlorine ban a top priority, would have preferred the bill by Rep. Bill Richardson (D-NM), H.R. 2898, which calls for a chlorine ban within five years, says one environmentalist. However, because the administration proposal is highly specific, targeting certain industries for assessment and setting a timetable, environmentalists generally had a favorable reaction to the plan, this source says. The National Wildlife Federation and Clean Water Network, representing 450 environmental groups, applauded the chlorine proposal.

Red Cavaney, president of the American Forest & Paper Association, which would be significantly affected by a chlorine strategy, in a statement said that the proposed study "may provide an alternative way to deal with this complex problem" and called for the study to clarify outstanding scientific issues regarding chlorine.

Policy

Issue Likely To Be Key In CWA, SDWA

EPA CABINET BILL VOTE BOOSTS CONTROVERSIAL RISK ANALYSIS PROPOSALS

Controversial proposals that would require EPA to conduct risk analysis for its rules received a significant boost with the recent House vote on an EPA-elevation bill, a vote that likely signals risk analysis will be a central issue in clean water and safe drinking water debates, according to congressional, state, and other sources.

The House on Feb. 2 voted 227-191 to allow risk analysis-related amendments to be proposed for H.R. 3425, the Department of Environment Act, stunning House leadership and environmentalists who felt certain they could sustain the rule excluding such amendments. The defeated rule would have barred an amendment sponsored by Reps. John Mica (R-FL) and Karen Thurman (D-FL) that seeks to require risk and cost-benefit analysis for agency rules. The rule was voted down despite intense lobbying by the White House, environmentalists, and opponents of risk analysis amendments.

You did it!

"They gave it their best shot, but we got grassroots lobbying by state and local officials" and defeated the rule "by a landslide," says a congressional source, who comments that members of Congress showed an unprecedented interest in risk assessment questions. "This will have a big impact on the Clean Water Act and Safe Drinking Water Act" because "the risk assessment hand has been strengthened," this source adds.

A state source says that the EPA Cabinet bill vote "reflects a coming into awareness that the [risk analysis] perspective is legitimate" and not merely a disguised attempt to undercut EPA or roll back regulations across-the-board. Over the past 20 years, there were "tremendous targets of opportunity" to control sewage and industrial effluent discharges with a certainty that large risk reductions were being achieved, this source says. But now those "big, uncontrolled sources" are no longer available, so risk and cost-benefit analysis is needed to make regulatory decisions that truly achieve benefits for expenditures, this source adds. With the House vote on H.R. 3425, members of Congress "were saying we want to discuss [risk] and to vote" on the issue. A House proposal for reforming the SDWA would make risk and cost-benefit analysis an integral part of the agency's standard-setting procedures, this source notes.

"We're trying to figure out where to go from here," says a disappointed environmentalist, who adds that the House leadership "would never have brought this up if they'd expected the vote" to come out as it did. "A number of offices that said they'd support the rule didn't," resulting in a vote that shocked House leaders and environmentalists alike, this source says. Though surprised by the vote, environmentalists "have known this was a big problem all along," and regard the three themes of risk analysis, unfunded mandates, and property takings as "the last piece of the Reagan legacy" pushing "to get big government out of our lives" and roll back regulations, this source explains.

House members supporting risk analysis amendments are meeting with House majority leader Richard Gephardt (D-MO) to discuss possible compromise positions, says a congressional staffer. This source stresses that proponents of risk analysis are not saying that EPA must base its rules on the most cost-effective decision. Rather, the goal is to "just get the information out" on what risk-reduction benefits would be achieved by various expenditures on controls, this source says. Risk assessment is about setting priorities, this source says.

Before assuming responsibility, states would need to have a cleanup program in place that is substantially consistent with the Federal program.

Finally, the administration's proposal would provide for greater public and community accountability "by making the program more responsive to poor and minority communities that have frequently borne the brunt of chemical disposal." Greater community involvement would be accomplished by the establishment of community working groups that would be an important voice in determining the cleanup goals and future uses of the sites.

Chances of Enactment

Details of the administration's Superfund reform had been leaked to the press, including EPA WATCH, over the past couple of months. As such, the final version of the plan contained few surprises. Congressman Al Swift (Democrat of Washington) and Senator Frank Lautenberg (Democrat of New Jersey) are expected to sponsor the administration's bill in Congress. But until final language has been written into a bill, most parties directly affected by the plan are reacting cautiously. This includes Congressman Swift, who has said that the proposal is a "good starting point" for a Superfund bill.

The business community, which has paid dearly under the present Superfund law, is generally pleased with the plan. On the other hand, environmentalists are not happy with the proposal's remedy selection reform and consider the plan too "pro-business" for their liking.

Insurers, also among the big losers under current law, applaud the administration's efforts to relieve the insurance industry from much of the grief it has endured under Superfund's liability system. Though they describe the plan as a "step in the right direction," they still worry that the EIRF will not be large enough to cover Superfund liability settlements.

Finally, as noted in EPA WATCH (January 15, 1994), the crowded Congressional calendar may not allow for consideration of such an ambitious program this year. Senator Max Baucus, Democrat of Montana and chairman of the powerful Senate Environment and Public Works Committee, has joined House Minority Whip Newt Gingrich in casting doubt on whether the entire program can be enacted in what remains of the 103rd Congress. "We don't have a lot of time this year," he told the *Washington Post*. ◆

RISK ASSESSMENT CONCERNS STALL EPA CABINET BILL IN HOUSE

In a stunning setback to EPA, the House on February 2 voted by a margin of 227 to 191 not to consider a bill to elevate the agency to cabinet-level status.

An administration-backed attempt to bring the bill, H.R. 3425, up for consideration on the House floor collapsed when 60 Democrats joined all but five Republicans in blocking a vote on the measure that would create the Department of Environmental Protection (DEP).

The vote to shelve consideration of H.R. 3425 is seen by Congressional observers as a reflection of widespread discontent among lawmakers with the House Democratic leadership's efforts to keep the bill free of amendments which would drastically alter the way EPA implements environmental regulations. Not even intense lobbying by Vice President Al Gore and EPA Administrator Carol Browner to bring H.R. 3425 to a vote succeeded in stemming the tide.

At the center of the controversy stands an amendment sponsored by Representatives John Mica (Republican of Florida) and Karen Thurman (Democrat of Florida) which would require EPA to conduct risk assessments and cost-benefit analyses before issuing environmental regulations. Their proposal closely parallels an amendment sponsored by Senator J. Bennett Johnston (Democrat of Louisiana) which was attached to the Senate version of the EPA-cabinet-elevation bill approved by the upper chamber last May. The Johnston amendment passed the Senate by an overwhelming 95-to-3 margin (See EPA WATCH, May 30, 1993 and November 30, 1993).

The House Rules Committee, supported by the White House, issued a rule prohibiting debate on the Mica amendment, arguing that it was not "germane" to legislation establishing the Department of Environmental Protection. But Congressman Mica, backed by Senator Johnston, refused to withdraw his amendment, setting the stage for the February 2 confrontation from which proponent of risk assessment reform emerged victorious.

Hoping to persuade his colleague: to reject the Mica amendment, Congressman John Conyers (Democrat of Michigan, chairman o the House Government Operations Committee, and the sponsor of H.R 3425) argued that, "The purpose of this bill is not to change environmental policy." In response, Mr. Mica asked: "Why doesn't the administration want to debate this issue? I thought they wanted to reinvent government, not stick with the status quo."

Risk Assessment and Unfunded Mandates

"When are we going to realize th

we have limited resources that must be deployed rationally? This amendment will enable EPA to focus regulations on real health threats," the Florida Republican said. "What is the cost and what is the risk and what are the benefits to the public?"

Tying risk assessment reform to the issue of unfunded Federal environmental mandates, Mr. Mica pointed out that state and local governments spend about $30 to $40 billion a year trying to comply with EPA's rules and regulations. "The Federal government cannot continue to impose these costs on state and local governments without a careful evaluation of the costs and benefits of these regulations," he added.

A key element in Mr. Mica's success was the backing he received from a host of bipartisan organizations with considerable influence on Capitol Hill. Backers of the Mica amendment included the National League of Cities, National Governors' Association, National Association of Counties, National Conference of State Legislatures, National Federation of Independent Businesses, the National Farm Bureau Federation, and National Association of Manufacturers.

Congressional sources on both sides of the issue credit the National Governors' Association's (NGA) strong statement (see below) in support of risk assessment and cost-benefit analysis, coupled with its ringing condemnation of unfunded mandates, with providing the margin of victory to Mr. Mica's forces. "The NGA's statement was issued on February 1, and the House voted on February 2. That tells you something," a Congressional staffer told EPA WATCH.

Back to the Rules Committee

The EPA cabinet-elevation bill now returns to the House Rules Committee where its future is uncertain. Sources on the committee say it is unclear when H.R. 3425 will be brought back to the House floor for action. EPA and the White House remain opposed to inclusion of the Johnston/Mica amendments in the bill but appear to be outnumbered in the House. Fresh from their unexpected victory, Mr. Mica and his supporters do not plan to back down.

Further complicating the matter is the frequently-cited statement by Representative Henry Waxman (Democrat of California and chairman Energy and Commerce Committee's subcommittee on health and the environment) that he would rather see no EPA cabinet-elevation bill than one with risk assessment and cost-benefit language. "It's a real mess now," commented one Congressional staffer sympathetic with the administration's position. "There is talk of reviving a 'clean bill' (with no amendments), but that won't pass in the current atmosphere. We don't know where to turn right now."

There are reports circulating on Capitol Hill that EPA might be willing to swallow a compromise risk assessment/cost-benefits amendment as a price for cabinet-level status. Proponents of risk assessment reform fear that the compromise amendment, if it is introduced, would contain most of the language of the Johnston and Mica amendments but with little of their substance. "We want real reform, not a substitute for reform," said a key Congressional staffer who supports the Johnston/Mica approach.

Sources at EPA were also stunned by the vote. High-level EPA officials had been assured by the White House and the House leadership that the Mica amendment would be defeated. "Morale here has really taken a hit," an agency source told EPA WATCH. "For five years, Congress has been unable to get a cabinet status bill passed, and now this happens." Another source commented that "unfunded mandates, the spotted owl, wetlands, and Superfund have all come home to roost. It was pay-back time"

"Deep Well of Discontent"

The latter observation is shared by several Congressional sources. "On paper," one source said, "there is widespread support in Congress for EPA cabinet status; few openly oppose it. But, in reality, EPA is not very popular here, and a lot of members used the Mica amendment as an excuse to show their displeasure. They are really feeling the heat on unfunded mandates and other environmental regulations. Mica and Johnston have tapped into a deep well of discontent."

In this connection, it is significant that the House Rules Committee did accept as germane to H.R. 3425 an amendment put forward by Congressman Tom DeLay (Republican of Texas). Submitted in response to revelations of contract mismanagement at EPA, the DeLay amendment would authorize the new department's Inspector General to enter into an interdepartmental investigatory task force with the Department of Justice to identify waste, fraud, and criminal misconduc within the DEP.

Among the other amendments tha could eventually be tacked on to H.I 3425 are the following:

-- Rep. William Clinger (Republica of Pennsylvania) would require the assistant secretary for intergovernmental affairs to develop strategy to reduce unfunded Federa environmental mandates imposed or state and local governments;

-- Rep. Craig Thomas (Republican Wyoming) would establish an ombudsman at the DEP to assist small businesses to comply with environmental regulations; and

-- Rep. Deborah Price (Republican of Ohio) would require the secretar of the DEP to assess on an annual basis the performance of the new department's regional offices.

With the defeat of the House rul limiting amendments, additional amendments are expected in the da ahead, including an amendment dealing with protection of private property rights. ♦

CONRAD BILL FOCUSES ON INTERSTATE TRANSPORT OF SOLID WASTE

Saying his legislation is "the toughest bill on interstate waste that has ever been introduced in the U.S. Senate," Senator Kent Conrad (Democrat of North Dakota) has introduced a measure that would allow a state to regulate the disposal of municipal solid waste generated outside its borders.

Angered that "the garbage merchants of America . . . are searching for new targets of opportunity," Senator Conrad told his colleagues on January 28 that "states ought to have the ability to make a decision on what comes into their states." He cited large, sparsely populated states such as Montana, Nebraska, South Dakota, and his native North Dakota, as the preferred dumping sites for the 15 to 18 million tons of municipal waste transported across state lines each year.

"Currently," he pointed out, "whenever a state takes action, lawsuits are brought, and the argument is made that under the commerce clause of the Constitution, a state cannot do anything to inhibit what moves in interstate commerce. They cannot do anything unless Congress takes action."

Key Provisions

This is just what his bill, S. 1808, is designed to do. It would amend the Solid Waste Disposal Act (SWDA) so that, "Each state is authorized to enact and enforce a state law that regulates the treatment, incineration, and disposal of municipal solid waste generated in another state."

Second, his legislation would provide that the entire affected local community be allowed to make a decision "on what comes into that town or that city." S. 1808 would authorize the Governor of each state to determine what the affected community is and, once that determination is made, it would be up to the affected community to decide whether to accept the out-of-state waste.

Third, the Conrad bill would provide for full disclosure before any permit is granted for the transport of interstate waste. Among the items to be disclosed are the following:

-- What are the economic implications?

-- What are the environmental effects?

-- What are the long-term plans of the company that is pursuing a waste permit?

-- What is the financial strength of the company? and

-- What is the ability of that company to assure that the proper environmental and health standards are pursued?

"We have seen examples around the country where a local entity would get a permit for a landfill and then a large out-of-state interest would come in and buy that local entity, greatly expand the permit, and there was little that could be done at the local level," the North Dakota Democrat said. "That should not be the case. The local community ought to know what is the future plan before any permit is granted."

Full Disclosure of Violations

Finally, S. 1808 would provide for full disclosure on the part of the company seeking a permit with regard to the firm's background. This would include submitting a detailed history of violations of the terms of permits granted to them at other locations.

Senator Conrad added that he has already talked to Senator Dan Coats (Republican of Indiana) who has sponsored similar legislation in the past aimed at getting more local control over interstate transport of municipal solid waste. It is Mr. Conrad's hope that Senator Coats will agree to co-sponsor S. 1808. As EPA WATCH goes to press, Senator Coats has not yet responded to the Conrad bill. ♦

PRIVATE PROPERTY ADVOCATES PLAN MAJOR CONGRESSIONAL PUSH

Buoyed by a series of largely unexpected legislative victories late last year, private property rights advocates in Congress are preparing to make their growing influence felt on every piece of environmental legislation that comes before Congress in 1994.

"When you lose your job because of an owl or you lose your shrimp boat because of a turtle, the cost of environmental protection hits home," Congressman Billy Tauzin (Democrat of Louisiana) recently told the *St. Louis Post-Dispatch*. "Things are coming to a head now because there are train wrecks across the country between environmental protection and property rights."

Mr. Tauzin plans to introduce a "land owners' rights" bill in February aimed at protecting people from losing control over their property as a

result of environmental regulations. His measure will be but the first in what promises to be a string of bills and amendments designed to anchor protection of private property rights into every conceivable piece of environmental legislation.

Among the most appealing targets of opportunity are the Clean Water Act (CWA), which includes wetlands regulation, the Endangered Species Act (ESA), and the EPA cabinet-elevation bill. Just how potent the property rights advocates have become was demonstrated last October when the House, by a margin of 309 to 115, attached a strong property-rights protection amendment to legislation creating the National Biological Survey (NBS). The amendment, sponsored by Congressman Charles Taylor (Republican of North Carolina), requires written permission from the property owner before surveying for the NBS can begin (See EPA WATCH, November 30, 1993).

Some Congressional property rights supporters believe EPA is so eager for passage of a cabinet-level elevation bill and for reauthorization of the Clean Water Act that the agency might be willing to go along with the inclusion of landowner protection language if that what it takes to get both bills passed.

Efforts to attach private property protection amendments to environmental legislation pose a dilemma for the White House. Though private property advocates believe they have few supporters in the Clinton administration, there are plenty of signs the White House is becoming aware of how politically explosive the issue has become. In announcing its proposals for reform of the nation's wetlands regulations last August, the administration was careful to include language dealing with landowners' concerns. While the administration's position fell far short of private property groups' demands, the mere mention of the issue in an official White House document was seen as significant by some of the movement's leaders.

Controversy Surrounding BLM'S Baca

An even more telling indication of the administration's unease in this area surfaced in late January when the *Washington Post* reported that efforts were underway to replace a key Department of Interior official. Jim Baca, appointed by President Clinton as head of the Bureau of Land Management (BLM) and an ardent proponent of more stringent environmental controls on Federal land, was reportedly offered a new job as deputy assistant secretary of interior. According to the *Post*, Mr. Baca was to be "kicked upstairs," because his aggressive approach to revamping Federal grazing and mining policies had angered some western Democratic governors. The BLM manages approximately 270 million acres of land in the West.

For their part, the western governors -- notably, Cecil Andrus (Idaho), Roy Romer (Colorado), and Mike Sullivan (Wyoming) -- were reacting to angry constituents who fear the loss of their livelihoods as a result of land use policies pushed by Mr. Baca. However, efforts to remove Mr. Baca stalled when he refused to accept the new position, forcing the administration either to fire him or to back down.

The administration, led by Interior Secretary Bruce Babbitt, chose the former, forcing Mr. Baca to resign on February 3. Environmental groups, spearheaded by the Sierra Club, the National Resources Defense Council, the Wilderness Society, and the National Wildlife Federation, lost no time in denouncing Mr. Baca's ouster, accusing the White House of not being sincere about its commitment to the environment. Hoping to smooth over the environmentalists' ruffled feathers, Secretary Babbitt said that, "The reform agenda of this department remains absolutely unchanged." He further stated that Mr. Baca's dismissal had more to do with "differences in style" than with disagreements over policy.

But this was immediately denied by Mr. Baca who told the *Washington Post* that Secretary Babbitt's claim was "kind of bogus." "Frankly, this came about because those western elected officials were worried about fund-raising from those traditional extractive industries."

Western governors, who pressured Secretary Babbitt to remove Mr. Baca, still fear unpleasant political repercussions from the Department of Interior's emerging stance on the use of Federal land. The matter is particularly sensitive in light of the fact than Mr. Clinton, breaking what had been a Democratic electorial drought throughout much of the West for almost a generation, carried Colorado, Nevada, Montana, and New Mexico in his successful bid for the White House in 1992.

Meanwhile, the political controversy swirling around the Department of Interior is not likely to go away. The White House is expected to announce its new policy on Federal grazing regulation within two months. Most observers believe the administration will water down its original plans to promulgate more stringent environmental regulations on millions of acres of range land in the West. This is certain to trigger an angry response among environmentalists who will, once again, say they have been betrayed by the administration. Ranchers and others who use the Federal lands to make their living will just as vociferously claim the administration new grazing regulations will put substantial numbers of them out of business. ♦

EPA WATCH

EPA WATCH is a twice-monthly publication of The DeWeese Company, Inc.

Subscriptions to EPA WATCH are $135.00 per year.

EPA WATCH
14140-L Parke Long Court
Chantilly, Virginia 22021
(703) 968-9768 - Office
(703) 968-9771 - FAX

Thomas A. DeWeese, Publisher
Janice H. Brown, Managing Editor
Dr. Bonner R. Cohen, Editor

ISSN #1065 920X
© 1994 EPA WATCH
All rights reserved.

The group also says requirements in the bill that instruct EPA to develop water quality criteria that "the administrator determines would result in the greatest benefit to human health and the environment" would create a standard that "is ambiguous and goes well beyond the normal EPA standard of protecting human health and the environment. NAM also says that a provision in the bill requiring EPA to develop eight sediment quality criteria in a four-year period is "incompatible with the development of sound science," saying sediment quality criteria should be developed by state water quality officials.

NAM takes issue as well with the bill's permit fee provisions, suggesting fees should be capped; argues that the bill's increased emphasis on citizen suits would lead to escalating litigation costs with little environmental benefit; and maintains that the bill's provisions restricting the "domestic sewage exclusion" under the Resource Conservation & Recovery Act would force industry to spend millions to build redundant treatment facilities.

Senate sources say NAM's objections represent a formidable list of concerns that will likely form the basis of several amendments that will be offered at the Feb. 23 markup. "NAM is very powerful in the Senate," one Senate source says, adding "they are not the type to compromise early, so we should all expect a fight on these issues."

INDUSTRY CALLS HOUSE CABINET VOTE BOOST TO CWA WETLANDS AGENDA

Industry groups seeking to curb federal wetlands regulations say the recent resounding defeat of a House rule that would have barred private property rights amendments to an EPA Cabinet elevation bill will likely force wetlands reform opponents into a more conciliatory stance.

These sources say concerns over property rights played a key role in the rule's defeat, demonstrating that widespread concern about the issue in the House can produce floor votes if members developing Clean Water Act reauthorization proposals fail to address property rights concerns in the federal wetlands program.

The House on Feb. 2 defeated a House Rules Committee rule restricting amendments to the EPA cabinet elevation bill by a 227-191 margin (Inside EPA, Feb. 4, p14). The rule would have barred amendments addressing EPA management issues and environmental policy matters, including an amendment on private property rights protection developed by Rep. Billy Tauzin (D-LA). Tauzin's amendment would have required the director of an Office of Environmental Justice proposed in the bill to develop plans to protect the constitutional rights of private property owners and to provide compensation for landowners when a decision pursuant to the federal wetlands program results in a substantial devaluation of property. The Clean Water Act section 404 wetlands program has prompted the a mass of private property "takings" claims in various courts, and has generated significant support for wetlands reform efforts supported by Tauzin and many other House members.

Backers of Tauzin's amendment say their House opponents now are aware that property rights have strong support on the House floor, a development certain to strengthen Tauzin's bargaining position as wetlands proposals are debated in House subcommittees as part of Clean Water Act reauthorization. The vote could have an impact on Senate efforts as well, these sources say, pointing out that a solid group of senators continues to seek serious wetlands reforms and will use the concern over property rights to bolster their bargaining position. Senate sources would not comment.

"The momentum continues to shift in our direction," one supporter of wetlands reform says, noting that both the Senate Environment & Public Works Committee bill -- S. 1304 -- and the Clinton administration's wetlands plan "clearly move in our direction." The vote "demonstrates that we cannot be brushed aside and that [either] substantial reforms to the wetlands program must take place" or property rights "will kill Clean Water Act reauthorization."

Despite the confidence expressed by property rights advocates, House Public Works & Transportation Committee Chairman Norman Mineta (D-CA) in a Feb. 7 speech before the Assn. of State & Interstate Pollution Control Administrators continued his unwavering opposition to compensating landowners for federal wetlands protection decisions. "There are improvements we can make in the administration of the wetlands protection program, but the idea that government cannot act to restrict activities on private property which harm the public interest without paying off the landowners is not one of the changes we will be making," Mineta said (*see related story*).

SUBSCRIPTIONS:
703-416-8500 or
Toll-free 800-424-9068

NEWS OFFICE
703-416-8536

FAX: 703-416-8543

To order environmental documents, call (703) 416-8507

Chief Editor: Jane Moody Rachal
Managing Editor: Paul Singer
Associate Editors: James R.L. Jones, Don K. Bilson
Contributing Editor: Julie Edelson
Production Manager: Jessica Megee; Production Assistant: Justin Goudreau

Inside EPA is published every Friday by Inside Washington Publishers, P.O. Box 7167, Ben Franklin Station, Washington, D.C. 20044. Subscription rates: $830/yr in U.S. and Canada; $865/yr elsewhere (air mail).

Contents of Inside EPA are protected by U.S. copyright laws. Reproduction, photocopying, storage or transmission by magnetic or electronic means is strictly prohibited by law without express permission of Inside Washington Publishers. Inside EPA and Inside DEP are trademarks of Inside Washington Publishers.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

Jerry Duncan
Signature of Camera Operator

10/1/97
Date

02-519 (REV 8/78)

HB

2

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 4
Juneau, Alaska 99801-21

M E M O R A N D U M February 8, 1993

SUBJECT: Drug and alcohol testing for school bus drivers (HB 2)

TO: Representative Gail Phillips

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have asked whether there are legal questions raised in HB 2, requiring drug and alcohol testing for school bus drivers.

In my opinion, implementation of this program could be subject to legal challenge as a government-required search for which the school district had not established probable cause that a violation of law had occurred or as an invasion of the bus driver's privacy.

Many courts have required individualized suspicion before a urinalysis is conducted. However, some courts have been willing to allow random drug searches without probable cause where the employee's expectation of privacy is lessened because of the type of employment and where the public interest was sufficiently great. In Internat'l Broth. of Teamsters v. Department of Transportation, 932 F.2d 1292 (9th Cir. 1991), the court examined a drug testing program that required commercial motor vehicle operators to submit to a pre-employment, post-accident, and biennial drug testing program for drivers operating certain interstate motor vehicles. The court considered the seriousness of harm if those vehicles were operated while the driver was impaired by drugs, the extent of government regulation already present in the industry, and the extent of government monitoring of the drivers health and qualifications, which includes a required urinalysis already. The court concluded that the additional intrusion of the drug testing procedure was constitutionally tolerable.

In Amalgamated Transit Union, 1277 v. Sunline Transit Agency, 663 F.Supp 1560 (C.D. Cal. 1987), the plaintiff union asked the District Court to issue a preliminary injunction against the defendant's proposed alcohol and drug testing program which included random drug testing. The court awarded the preliminary injunction noting that the evidence did not disclose a single documented case of alcohol or drug abuse, nor were there allegations of accidents caused by alcohol or drug abuse. The court

Leg. Legal opinion regarding
Constitutionality

ruled that drug testing that was not based on a reasonable suspicion that the employee was under the influence of alcohol or drugs was an unreasonable search.

Implementation of the drug testing program could also be challenged as an invasion of privacy. However, Luedtke v. Nabors Alaska Drilling, Inc., 768 P.2d 1123 (Alaska 1989), the Alaska supreme court considered a private company's implementation of a drug testing program and found that the invasion of the employee's privacy was outweighed by the safety considerations inherent in the work performed. The court did not rely on the constitutional right to privacy,[1/] holding that it applies only to government action and not to private action. The court did analyze the constitutional right when considering the public policy against invasion of privacy. The court found that urine testing was a minimal invasion of privacy, that the employer already required urine testing as part of the annual physical examination requirement, and that the seriousness of harm that could result from an accident on an oil drill rig was sufficient to outweigh the employee's privacy interest. Since legislation necessarily involves government action, a bus driver could clearly claim that his or her constitutional right to privacy had been invaded. The analysis in Luedtke suggests how the state might answer that challenge.

Under the Teamsters and Luedtke analyses, in determining whether the testing program proposed by HB 2 could survive a constitutional challenge either as an unconstitutional search or as an invasion of privacy, a court would weigh how extensively school bus drivers are regulated now, including the intrusiveness of the current regulation on their expectation of privacy, the history of drug or alcohol abuse by and accidents involving school bus drivers, and the seriousness of harm that could result if a school bus were involved in a motor vehicle accident. Whether the law would survive the legal challenge depends on the persuasiveness of the facts presented. The requirement in HB 2 for random drug testing would require particularly strong evidence to uphold.

Please let me know if I can be of further assistance.

TC:pl
93-070.plm

[1/] Art. 1, sec. 22, Constitution of the State of Alaska, states

> The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

Alaska State Legislature

House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

HOUSE JUDICIARY COMMITTEE
LETTER OF INTENT FOR H. B. 2

It is the intent of the House Judiciary Committee in passing HB 2, that the random testing for drugs and alcohol called for in the bill be done in a non-predictable manner. That is, merely because a person is tested today does not mean they may not be tested again tomorrow. The legislature does not want to create a situation where someone subject to this act feels that, once tested, they will not be tested again until the next annual cycle.

In addition, the Committee has special concerns that the regulations promulgated to implement H. B. 2 should provide for careful attention to the handling of samples and other testing procedures to preclude the possibility of someone becoming falsely incriminated in the use of drugs or alcohol.

'/ Jarton: Mike

SE''ATE COMMITTEE REPOF

DATE: 4/13/93

FURTHER: JUDICIARY
FINANCE

DATE TURNED INTO OFFICE: 3/16/94

HES Committee considered CS FOR HOUSE BILL NO. 2(RLS)

"An Act requiring drug and alcohol tests for school bus drivers."

and recommends:

[ ] replace with ________ CS ____________________(______)
or [ ] adopt previous_____ CS ____________________(______)
[ ] attaches amendment(s)

[ ] same title
[ ] new title
[ ] technical title change (HB only)

[ ] adopts ________________________Letter of Intent

[ ] further referral to the ________________________

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal
Education	12/17/93		84.0

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

[ ] Appropriation No Fiscal Note

DO PASS:

Mike Miller
Loren E. Leman
Bert Sharp
[illegible signature]

OTHER RECOMMENDATIONS:

Jay Kerttula [illegible]? Duncan — No Rec
Judy Salo No Rec

Senate HESS
Committee Report

Steve Frank Do Pass
Chair: Signature and Rec

POSITION PAPER: DEPARTMENT OF EDUCATION

Division ___Administrative Services___ Bill Number ___CSHB 2 (RLS)___

Bill Title ___Drug and Alcohol Tests for School Bus Drivers___

Sponsor ___Representative Gail Phillips___

Position Statement: Explain briefly what the bill does, its impacts and Department's position, i.e., a) support, b) do not support, c) neutral or d) oppose.

The Department of Education supports the concept of drug and alcohol tests for school bus drivers. At a minimum we believe that all drivers should be tested prior to employment, and be subject to random testing. Random tests would be conducted in a nonpredictable manner throughout the school year, and the number of tests administered each year would approximate 50% of the total number of persons employed as school bus drivers. Additional testing would be done after an accident and when reasonable cause exists.

This frequency is consistent with mandatory testing requirements in the states of Delaware and Arizona, and comparable to federal requirements for drivers of school buses in interstate commerce. Drivers of school buses within Alaska are not currently affected by federal drug testing requirements.

APPROVED:

Director ___[signature]___ Division ___Administrative Svcs.___

Signature ___________ Date ___________

Commissioner/Deputy ___________

Signature ___[signature]___ Date ___4/16/93___

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

my bill file

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

130 Seward Street, Suite 400
Juneau, Alaska 99801-2105

MEMORANDUM March 15, 1994

SUBJECT: Drug and alcohol tests for school bus drivers (CSHB 2 (Rls))

TO: Representative Gail Phillips

FROM: Teresa B. Cramer
Legislative Counsel

You have asked whether CSHB 2 (Rules) applies to all individuals who provide transportation for students, including volunteers who drive their own cars, or whether it should be read as applying to a more limited group of drivers.

The answer is not entirely clear. Section 14.09.025(a) enacted by the bill states

> A school district or regional educational attendance area that provides for the transportation of pupils shall require that the drivers of motor vehicles used to transport pupils submit to testing for the use of drugs and alcohol. The testing program must include random testing. A driver who tests positive for the improper use of drugs or alcohol may be disciplined, including termination from employment.

On its face, the requirement to submit to testing applies to "drivers of motor vehicles used to transport pupils." This would include volunteers as well as paid drivers. However, I believe that the better interpretation is to read that requirement in context. The new statutory section enacted by this bill follows AS 14.09.010, which permits the Department of Education to "provide for the transportation of pupils." That phrase is repeated in the bill and it is that kind of transportation -- that is, transportation operated or paid for by school districts that meets the department's requirements under AS 14.09.010 -- that the drug and alcohol testing requirement should be applied to. This interpretation is supported by the statement in subsection (a) set out above that a driver who tests positive may be disciplined or terminated from employment.

The Department of Education is directed, in subsection (b) of Sec. 14.09.025 of the bill, to adopt regulations to implement the section. Ambiguities about the application of the bill to various kinds of drivers could be cleared up through regulation. However, the better course is to clarify the statute. If you would like an amendment prepared, please let me know.

TC:pl:mi
94-203.plm

Applicability Analysis

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

M E M O R A N D U M — April 13, 1993

SUBJECT: Sectional Summary of CSHB 2 (RULES)(Drug and alcohol tests for school bus drivers)

TO: Representative Gail Phillips

FROM: Teresa B. Cramer TBC
Legislative Counsel

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

Section 1 states the legislative findings and purpose.

Sec. 2 requires school districts and regional educational attendance areas to require school bus drivers to submit to testing for the use of drugs and alcohol. The testing program must include random testing. A driver who tests positive for the improper use of drugs or alcohol may be disciplined, including termination from employment.

Subsection (b) requires the department to adopt regulations, including procedures for hearings. Subsection (c) defines "improper use of drugs or alcohol."

TC:mi
93-069.mai

Alaska State Legislature

House of Representatives

Official Business

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

House Majority Leader

SPONSOR'S STATEMENT - CSHB2(RLS)
DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS
APRIL 27 - SENATE JUDICIARY COMMITTEE

Current Alaska law makes no provision for the routine testing of school bus drivers for improper drug and alcohol use. This bill will provide for such testing.

The need for this measure arose from incidents that occurred in my district on the Kenai Peninsula. I feel we must do all that we can to protect Alaska's children while they are traveling to and from school. Other states are already doing this. The committee is in possession of background material that shows similar laws are already in place or proposed in Arizona, Maryland, Louisiana, Illinois and Missouri. Within Alaska, the North Slope borough has such a policy for all employees.

The federal government is in the process of adopting regulations that will mandate testing for those who are required to have commercial drivers licenses for the operation of intra-state school buses. HB2 is needed at this time because the effective date, and degree of state implementation of the federal regulations is uncertain. The federal regulations may also not apply to school buses with a capacity less than 15 passengers, which do not require a commercial license for operation.

There is a memo from Leg Legal dated February 8, 1993, addressing the constitutional question of privacy rights as it relates to random testing. A review of the decision in International Brotherhood of Teamsters vs. DOT reveals that public interest must be greater than the expectation of individual privacy in sustaining random testing statutes. It is my view that providing safety for our school children meets that requirement, and represents the highest public interest.

Language in Section 1 stresses this compelling interest. The House Judiciary Committee added a Letter of Intent relating to the non-predictable nature of the random testing, and the care to be taken in safeguarding the rights of the innocent.

The Department of Education has submitted an $84,000 fiscal note for the operation of this program. This includes pre-employment testing and random testing which would cover all school bus drivers in a two-year cycle. That is, the number of random tests conducted each year would be equivalent to half the number of drivers. The specifics of the testing program would be worked out by the administering agency in the course of developing appropriate regulations.

In your folder is a letter of support from the Alaska Truckers Association and a positive position paper from the Department of Education. The bill passed out of the House on a 30-0 vote. I ask for your favorable consideration of HB2.

4

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 2 (RLS)

Revision Date: December 17, 1993
Title: Drug and Alcohol Testing for School Bus Drivers

Sponsor: Representative Gail Phillips
Requestor:

Department Affected: Education
BRU: Executive Administration
Component: Administrative Services

COMPONENT SERIAL NO. 157

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL	3.0	3.0	3.0	3.0	3.0	3.0
CONTRACTUAL	79.0	79.0	79.0	79.0	79.0	79.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	84.0	84.0	84.0	84.0	84.0	84.0
CAPITAL						
REVENUE FUND SOURCE:	GF	GF	GF	GF	GF	GF

FUNDING: (Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts						
1003 GF Match						
1004 GF	84.0	84.0	84.0	84.0	84.0	84.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	84.0	84.0	84.0	84.0	84.0	84.0

POSITIONS:

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

Estimate of current year (FY94) impact: $

ANALYSIS: (Attach a separate page if necessary.)

This is an update to the fiscal note prepared 4/14/93.

Prepared by: Karen J. Rehfeld
Division: Administrative Services
Phone: 465-8650
Date: December 17, 1993

Approved by Commissioner: Jerry Covey
Agency: Education
Date: December 17, 1993

PREPARER TO PROVIDE ALL DISTRI[illegible] [illegible]GISLATIVE OFFICE
For further distribution i[illegible]

FISCAL NOTE

Rev 11/93

ALASKA DEPARTMENT OF EDUCATION
CSHB 2 (RLS)
Drug/Alcohol Testing of School Bus Drivers
Revised Fiscal Note - 12/17/93
$84,000 Annual Cost

ASSUMPTIONS:

1. Each driver would receive an alcohol/drug test prior to his/her employment as a school bus driver.

2. Random testing would be conducted throughout the year. The number of random tests administered each year would approximate 50% of the total number of persons employed as school bus drivers.

3. Post-accident and reasonable cause testing could also be conducted.

4. The drug/alcohol test would be a urine test.

5. The estimated cost for one test is $80 to cover taking of sample, shipping to lab, analysis, record keeping, and follow-up if results come back positive.

CALCULATION OF $84,000 ANNUAL COST:

Pre-Hire Tests: Estimated number of pre-hires based on number of original school bus driver permits issued annually by Department of Public Safety, Division of Motor Vehicles		480
Random Tests: Estimated number of individuals employed as school bus drivers on any day of the school year: 840 drivers x 50% = 420 random tests	+	420
Estimated total number of annual alcohol/drug tests to be conducted:		900
x estimated cost for test	x	$80
Estimated annual cost for tests		$72,000
Estimated annual cost to administer the program: (Hearing Officer $5,000; travel $3,000; supplies $2,000; printing, telephone, etc. $2,000)		12,000
TOTAL ESTIMATED ANNUAL COST TO STATE		$84,000

FEB - 5 1993

M E M O R A N D U M

State of Alaska
Department of Education

To: John Peterson
Aide
Rep. Gail Phillips

Date: February 10, 1993

Phone: 465-2800

Thru: Mike Maher
Deputy Commissioner

File:

From: Romayne Kareen
Pupil Transportation
Coordinator

Subject: Drug\Alcohol
Testing for
School Bus Drivers

Below is the information you requested from the Department of Education regarding drug and alcohol testing for school bus drivers.

What is the present role of the Federal government in drug\alcohol testing of school bus drivers?

The Federal government currently requires drug testing of school bus drivers who are involved in interstate transportation. School bus drivers who do not cross state lines are not required to be tested. Therefore, school bus drivers who transport students to and from school, solely within Alaska, are not subject to the testing requirements.

What is being proposed at the Federal level for drug\alcohol testing of school bus drivers?

The Federal government has issued a Notice of Proposed Rulemaking requiring that all operators of commercial motor vehicles subject to Commercial Driver's License requirements be tested for controlled substances and alcohol. In Alaska, drivers of school buses with more than 15 passenger capacity, including the driver, are required to possess a Commercial Driver's License. These drivers would therefore be subject to the proposed drug\alcohol testing requirement. Comments on the proposed rulemaking are due by April 14, 1993. Depending upon comments received, it may be some time before the rules are finalized and become effective - possible 1994 or even 1995.

In Alaska, drivers of school buses with a capacity of 15 passengers or less, including the driver, are not required to possess a Commercial Driver's License. These drivers would not be subject to the proposed drug\alcohol testing.

D.O.E. Statement on Federal
regulations and changes
proposed

OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT OF 1991

PROPOSED CHANGES TO EXISTING DOT DRUG TESTING REGULATIONS

- Add 200,000 transit workers to coverage
- Add 3 million intrastate commercial drivers license operators to coverage (including school bus, state and municipal truck drivers, and community activity bus drivers)
- Mandate split specimen collection procedures for FAA, FRA, FHWA, and FTA mandated testing
- Mandate return-to-duty/follow-up testing and evaluation by a substance abuse professional for employees who test positive and are returned to safety-sensitive duties
- Discontinue periodic drug tests (at time of physical examinations) for truck/bus drivers

PROPOSED ALCOHOL TESTING REGULATIONS

- Add alcohol testing to FAA, FRA, FHWA, RSPA regulations for safety-sensitive employees.
- Add alcohol testing for 200,000 transit workers (FTA)
- Mandate alcohol breath tests (.04 BAC cut-off): pre-employment, random, reasonable suspicion, post-accident, and return-to-duty/follow-up
- Mandate actions for lower BAC (.02-.039)
  FHWA - driver out-of-service for 24 hours
  FRA - RR workers out of service for 8 hours
  FAA, RSPA, FTA workers out of safety jobs for 8 hours or until BAC is < .02.
- Breath tests must be conducted by trained operator on evidential breath testing device (EBT) certified by NHTSA.
- Establish pre-duty abstinence requirements
  FAA - 8 hours for flight crew, 4 hours all others
  FHWA, RSPA, FTA, FRA - 4 hours.
- Mandate return-to-duty/follow-up testing and evaluation by substance abuse professional for employees who test positive and are returned to safety sensitive duties.
- Prohibit on-duty consumption of alcohol

NORTH SLOPE BOROUGH
ORDINANCE SERIAL NO. 91-07

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF A DRUG TESTING PROGRAM FOR NORTH SLOPE BOROUGH EMPLOYEES

WHEREAS, the North Slope Borough has a compelling interest in assuring the safety and security of all Borough employees and all citizens of the Borough as they go about their daily business, and

WHEREAS, the North Slope Borough, as the largest employer in the Borough and as a matter of public policy, has a critical interest in securing a safe workplace, and

WHEREAS, citizens and communities throughout the North Slope Borough have indicated that substance abuse in the workplace is a continuing and growing concern, and

WHEREAS, numerous Borough employees are currently subject to Federal regulations governing drug use in the workplace which require drug testing of said employees, and

WHEREAS, the Drug and Alcohol Policy of the North Slope Borough was adopted to address the problem of drug and alcohol abuse by Borough employees, and

WHEREAS, the ultimate concern of the Borough is the protection of workplace and public safety, it is in the best interest of the Borough and the citizens of the North Slope Borough to extend drug testing to all Borough employees to ensure the safety of all.

NOW THEREFORE, BE IT ENACTED:

SECTION 1. Classification. This ordinance is of a general and permanent nature and shall become part of the Borough code.

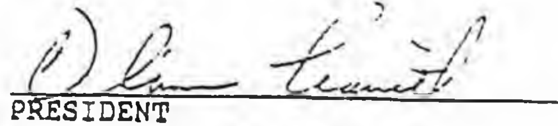
SECTION 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

SECTION 3. Effectiveness. This ordinance shall become effective upon adoption.

SECTION 4. Adoption of Section. Title 2, Chapter 20, Section 440 is hereby adopted as annexed hereto as part of Title 2 of the Code of Ordinances of the North Slope Borough.

INTRODUCED: August 13, 1991

ADOPTED: Sept. 10, 1991



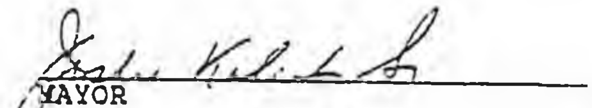
PRESIDENT

Date: 9-26-91

ATTEST:

BOROUGH CLERK

Date: 9-26-91



MAYOR

Date: 9-26-91