ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8340 SENATE JUDICIARY

605

REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES

Alaska State Legislature

House of Representatives

DURING SESSION:
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
CAPITOL ROOM 112
OFFICE (907) 465-4843

SPONSOR STATEMENT

HB 360
"An Act relating to civil liability for guest passengers on an aircraft or watercraft; and providing for an effective date."

HB 360 will guard boat owners and pilots from liability in cases where simple negligence results in accidental injury to non-paying passengers.

Many places in Alaska are only accessible by air or water. When boat owners and private pilots are accompanied by friends or acquaintances on trips, the owner of the craft assumes much of the liability. If Alaskans want to continue to enjoy the recreational opportunities that are available the risks should be shared by all. HB 360 gives guest passengers on a boat or private aircraft a share of the risk involved in their travel. However, private pilots and boat owners who engage in behavior that is considered grossly negligent remain completely liable for accidents and injuries to guest passengers.

HB 360 will affect only those who are traveling together for their mutual benefit. It will not affect those who are traveling by common carrier and paying for their transportation.

HB 360 is important to the many private boat and plane owners of Alaska. I urge your favorable consideration of this proposed legislation.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 360

Revision Date: 3/21/94
Title: Aircraft/Watercraft guest passenger law
Sponsor: Rep. Bunde
Requestor: Rep. Bunde

Department Affected: Commerce and Economic Development
BRU: Division of Insurance
Component:
COMPONENT SERIAL NO.

Expenditures/Revenues:

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	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0

CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE

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

Estimate of current year (FY 94) cost: $ 0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Wendy Mulder, Commissioner's office
Phone: 465-2500
Division: DCED
Date:

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development
Date: 3-21-94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 360

ANALYSIS CONTINUATION:

This bill amends AS 09.65 to provide that an owner or operator of an aircraft or watercraft is not liable for civil damages of a person being transported in the owner's or operator's aircraft or watercraft if the owner or operator is not being compensated for the transportation.

This exemption from liability would not apply to a civil action for damages resulting from:

(1) gross negligence or reckless or intentional misconduct;

(2) an act or omission of an owner or operator of an aircraft who is a common carrier; or

(3) an act or omission of an owner or operator of an aircraft that occurs while demonstrating an aircraft to a prospective buyer.

Because transportation on state aircraft or watercraft is for official business only, there will not be a fiscal impact for the state, either in the form of a savings or added cost. The department does note, however, that the bill will have the effect of exempting owners and operators of sport fishing charter watercraft from civil liability for damages suffered by passengers transported free of charge. For example, gratis fishing charters are frequently offered as part of promotional programs and donated as prizes in fish derbies and charity raffles.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 360

Revision Date: 3/21/94
Title: Aircraft/Watercraft guest passenger law
Sponsor: Rep. Bunde
Requestor: Rep. Bunde

Department Affected: Commerce and Economic Development
BRU: Division of Insurance
Component:
COMPONENT SERIAL NO.

Expenditures/Revenues:

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	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0

CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE

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

Estimate of current year (FY 94) cost: $ 0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Wendy Mulder, Commissioner's office
Division: DCED
Phone: 465-2500
Date:

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development
Date: 3-21-94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

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Jyenkly

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 360

Revision Date: March 23, 1994
Title: "...relating to civil liability for guest passengers on an aircraft or watercraft..."
Sponsor: Representative Bunde
Requestor: House Labor and Commerce

Department Affected: Department of Law
BRU: Legal Services
Component: Operations

COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

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

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

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

Richard L. Pegues

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

Phone: 465-3672
Date: March 23, 1994

Richard L. Pegues/FOR

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Date: March 23, 1994

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Rev 11/93

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 360

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(b) The felonious conduct was a substantial factor contributing to the injury or death.

(2) To establish the defense described in this section, the defendant must prove beyond a reasonable doubt the fact that the person damaged was engaged in conduct that would constitute aggravated murder, murder or a Class A or a Class B felony.

(3) Nothing in this section affects any right of action under 42 U.S.C. §1983. [1987 c.774 §10]

30.090 Appointment of administrator of estate of wrongdoer. If no probate of the estate of the wrongdoer has been instituted within 60 days from the death of the wrongdoer, the court, upon motion of the injured person, or of the personal representatives of one meeting death, as stated in ORS 30.080, shall appoint an administrator of the estate of the wrongdoer.

30.100 Substitution of personal representative as party defendant. In the event of the death of a wrongdoer, as designated in ORS 30.080, while an action is pending, the court, upon motion of the plaintiff, shall cause to be substituted as defendant the personal representative of the wrongdoer, and the action shall continue against such personal representative.

ACTIONS BY GUEST PASSENGERS

30.110 [Repealed by 1961 c.578 §1 (30.115 enacted in lieu of 30.110 and 30.120)]

30.115 Aircraft and watercraft guest passengers; definitions. No person transported by the owner or operator of an aircraft or a watercraft as a guest without payment for such transportation, shall have a cause of action for damages against the owner or operator for injury, death or loss, in case of accident, unless the accident was intentional on the part of the owner or operator or caused by the gross negligence or intoxication of the owner or operator. As used in this section:

(1) "Payment" means a substantial benefit in a material or business sense conferred upon the owner or operator of the conveyance and which is a substantial motivating factor for the transportation, and it does not include a mere gratuity or social amenity.

(2) "Gross negligence" refers to negligence which is materially greater than the mere absence of reasonable care under the circumstances, and which is characterized by conscious indifference to or reckless disregard of the rights of others. [1961 c.578 §2 (30.115 enacted in lieu of 30.110 and 30.120); 1979 c.866 §7]

30.120 [Repealed by 1961 c.578 §1 (30.115 enacted in lieu of 30.110 and 30.120)]

30.130 Public carriers by aircraft and prospective aircraft purchasers. ORS 30.115 shall not relieve a public carrier by aircraft, or any owner or operator of aircraft while the same is being demonstrated to a prospective purchaser, of responsibility for any injuries sustained by a passenger.

ACTIONS ON CERTAIN CONSTRUCTION AGREEMENTS

30.140 Effect of indemnification provision in construction agreement. (1) Any provision in a construction agreement which requires a person to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused or contributed to by the negligence of the indemnitee in the design or by the sole negligence of the indemnitee in the inspection of the work that is the subject of the construction agreement is enforceable only if the indemnitee secures or maintains insurance covering such risks for the protection of the indemnitor. In no event shall the indemnification obligation under such provisions be greater than the limits of the insurance secured by the indemnitee.

(2) Notwithstanding subsection (1) of this section, any provision in a construction agreement which requires a person or that person's surety or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused by the sole negligence of the indemnitee is void.

(3) As used in this section, "construction agreement" means any written agreement for the construction, alteration, repair, improvement or maintenance of any building, highway, road excavation or other structure, project, development or improvement attached to real estate including moving, demolition or tunneling in connection therewith. No provision of this section shall be construed to apply to a "railroad" as defined in ORS 763.010. [1973 c.570 §§1, 2; 1987 c.774 §25]

ACTIONS FOR DEFAMATION

30.150 Liability of radio or television station personnel for defamation. (1) The owner, licensee or operator of a radio or television broadcasting station, and the agents or employees of the owner, licensee or operator, shall not be liable for any damages for any defamatory statement published or uttered in a radio or television broadcast, by one other than the owner, licensee or operator, or agent or employee thereof, unless it is alleged and proved by the complaining party that the owner, licensee, operator, agent or employee failed to exercise due care

OREGON STATUTE

Via Facsimile: 465-3871

LYNDEN INCORPORATED

March 21, 1994

1030 W. Third Ave., Suite 150
Anchorage, Alaska 99501 1981
(907) 279 7501
Fax. (907) 279-8090

Representative Con Bunde
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801

Re: House Bill No. 360; "An Act relating to civil liability for guest passengers on an aircraft or watercraft; and providing for an effective date."

Dear Representative Bunde,

I would like to express my support of HB 360; whereby an owner or operator of an aircraft or boat is not liable for the civil damages of a person being transported in the owner's or operator's aircraft or boat, if the owner or operator is not being compensated for the transportation.

It is extremely unfortunate that many people are deprived of the enjoyment of access to much of Alaska because of the liability concerns in being a passenger in a private aircraft. Hopefully, this bill will make it possible for people like myself who own an aircraft and boat, to be able to provide access to much of Alaska that is only accessible by aircraft and boat, without the burden and current liabilities.

Very truly yours,

LYNDEN INCORPORATED

Jim Jansen

Jim Jansen
President

JJ:am

cc: Rep. Bill Hudson, Chairman/Labor & Commerce

ALASKA AIRMEN'S ASSN., INC.

SERVING GENERAL AVIATION 40 YEARS (1951-1991)

U of A Aviation Complex
1515 East 15th Avenue Anchorage, Alaska 99501-4814
(907) 272-1251 — 24 Hour Phone/Fax

January 20, 1994

The Honorable Con Bunde
Capitol Room 112
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Bunde;

I have discussed House Bill No. 360 with the Board of Directors and wish to advise you that this organization is in complete support of the Bill. If we can provide further assistance in getting this Bill into law, please advise me or any member of the Board.

We would like to further state that we appreciate you interest and action on the behalf of the aviation community.

THANKS!

Sincerely,

Mike Pannone

Mike Pannone, President

3.14 GROSS NEGLIGENCE DEFINED

I will now define gross negligence for you. A person was grossly negligent if: (1) that person's act or failure to act created an unreasonable risk of harm to another; and (2) if either that person had knowledge of facts that would disclose to a reasonable person that the act or failure to act involved a high degree of probability that the harm would occur, or the person knew that the act or failure to act involved a high degree of probability that the harm would occur.

Use Note

This instruction must be used with instruction 3.13.

Comment

Gross negligence is a concept little used in modern common law. Although many jurisdictions impose a gross negligence standard in bailment cases, for example, the Alaska Supreme Court has adopted the ordinary negligence standard. See Industries Inc. v. Foss Launch & Tug Co., 560 P.2d 393 (Alaska 1977).

The definition used in this instruction was derived from Leavitt v. Gillespie, 443 P.2d 61, 65 (Alaska 1968). See also Instruction 3.03C.

3.03A NEGLIGENCE DEFINED

I will now define negligence for you. Negligence is the failure to use reasonable care. Reasonable care is that amount of care that a reasonably prudent person would use under similar circumstances. Negligence may consist of doing something which a reasonably prudent person would not do, or it may consist of failing to do something which a reasonably prudent person would do. A reasonably prudent person is not the exceptionally cautious or skillful individual, but a person of reasonable and ordinary carefulness.

In this case, you must decide whether (plaintiff), (name), (defendant), (name), (both plaintiff and defendant) used reasonable care under the circumstances.

Use Note

Except as indicated in this use note, this instruction is to be given in all cases where the negligence of a party is an issue.

The Supreme Court has approved use of a sudden emergency instruction in cases where the trial court finds one or more of the parties faced such an emergency. Wilson v. Sibert, 535 P.2d 1034, 1037 (Alaska 1975); Beaumaster v. Crandall, 576 P.2d 988 (Alaska 1978). See Instruction 3.05.

The Supreme Court has approved use of a negligence *per se* instruction in cases where the trial court finds it appropriate. Ferrell v. Baxter, 484 P.2d 250 (Alaska 1971). See Instruction 3.04.

The Alaska Supreme Court has not decided the extent to which, if at all, this instruction is appropriate in cases involving a minor's negligence. See comments and use notes to Instruction 3.03B.

HB

362

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 362

?94 LEGISLATIVE SESSION

Revision Date:

Dept. Affected: Revenue

Title: An Act establishing the crime of aiding the nonpayment of child support .

BRU: Child Support Enforcement Division

Component: Child Support Enforcement Division

Sponsor: Representative Martin

Requestor: (H)HES

COMPONENT SERIAL NO. 111

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0					
REVENUE FUND SOURCE:	0.0					

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
?3 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

Estimate of current year (FY94) impact: $ 0.0

ANALYSIS: (Attach a separate page if necessary.)
NONE

Prepared by: Mary Gay, Director Mary Gay

Phone: 263-6270

Division: Child Support Enforcement Division

Date: 1·20·94

Approved by Commissioner: Darrel J. Rexwinkel

Date: 1/21/94

?cy: Department of Revenue

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For further d' ... slative Office

(Rev 11/93) 94fiscal.mn/lal

FISCAL NOTE

SPONSOR SUMMARY

HB 362

HB 362 is an anti-obstructionist bill with the intent of helping a child-support obligor from evading his obligation through the deferment of his salary or through compensation via another channel.

This law makes it a crime for any person who intentionally withholds information, fails to disclose financial information, or aids the obligor in any away to evade his/her responsibility for paying child support.

An example of how this happens: Joe owes $500 a month in child support and doesn't feel that amount is fair, so he looks for ways not to have to pay it. He enlists the help of an employer, friend, or relative and they work out an agreement whereby Joe will work for wages under the table. Joe gets paid in cash or in a barter arrangement, so there is no way to trace an income and the employer, friend or relative is uncooperative if the Child Support Enforcement Agency (CSED) is trying to garnish the wages of Joe.

In this case, the bill would make it a crime for the employer, friend or relative to aid Joe in avoiding his responsibility. Because they knowingly and **intentionally** help Joe bypass this responsibility, the State would like to go after these people, and could do so with this bill. The more money owed, then the more severe the penalty.

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 — January 14, 1994

SUBJECT: Sectional Summary of HB 362, a Bill Establishing the Crime of Aiding the Nonpayment of Child Support (Work Order No. 8-LS1459\E)

TO: Representative Terry Martin
ATTN: Nancy

FROM: Terri Lauterbach
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 should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1.
Establishes a new crime for persons who, by withholding information about a child support obligor, or by entering into business transactions with a child support obligor, intentionally assist the obligor in avoiding the payment of child support.

TML:gc
94-033.glc

TOP 100 NON-PAYERS OF CHILD SUPPORT

State of Alaska/Department of Revenue
Child Support Enforcement Division
Top 100 Non-Payors of Child Support in the State of Alaska
(Defined as obligators owing the most back child support)

CITY/STATE/ZIP		ARREARS	CITY/STATE/ZIP		ARREARS
HAINES	AK99827	191,039.46	SCAMMON BAY	AK99662	134,287.74
FAIRBANKS	AK99701	167,868.61	MINTO	AK99758	235,663.61
OUZINKI	AK99644	137,250.57	ANCHORAGE	AK99504	161,696.71
EMMONAK	AK99581	151,157.31	ALAKANUK	AK99554	171,549.40
ST. GEORGE IS.	AK99660	207,324.82	COPPER CENTER	AK99573	144,215.14
KETCHIKAN	AK99901	191,384.92	FAIRBANKS	AK99706	152,963.62
ANCHORAGE	AK995109999	133,991.56	KING COVE	AK99612	153,719.23
ELIM	AK99739	144,438.29	METLAKATLA	AK99926	131,6[illegible].31
FAIRBANKS	AK[illegible]10	134,161.93	FAIRBANKS	AK99708	146,504.09
JUNEAU	AK99801	196,828.70	ANCHORAGE	AK99503	172,321.13
ANCHORAGE	AK99508	141,695.77	SAND POINT	AK996610117	138,811.77
FAIRBANKS	AK99707	142,937.81	ANCHORAGE	AK99504	138,526.52
HYDABURG	AK99922	131,727.41	KOYUK	AK99753	147,038.60
ATMAUTLUAK	AK99559	151,334.19	JUNEAU	AK99801	168,468.37
DILLINGHAM	AK99576	133,299.72	TOK	AK99780	143,624.48
FAIRBANKS	AK997014151	145,688.74	ANCHORAGE	AK99509	165,142.78
ANCHORAGE	AK99508	154,888.84	CHIGNIK LAKE	AK99548	142,850.10
NOME,	AK99742	140,821.91	TUNTUTULIAK	AK99680	185,466.44
ALAKANUK	AK99554	311,343.40	BETHEL	AK99559	214,834.16
WILLOW	AK99688	149,954.66	FAIRBANKS	AK99701	142,102.69
ANCHORAGE	AK99508	135,019.67	ANCHORAGE	AK99501	180,779.65
COPPER CENTER	AK99573	193,260.43	KOTZEBUE	AK99752	135,755.83
NOME	AK99762	245,450.31	WASILLA	AK996876451	187,535.11
PALMER	AK996450919	164,738.99	ANCHORAGE	AK99507	144,975.06
ANCHORAGE	AK99503	143,646.63	ANCHORAGE	AK99508	153,680.33
EMMONAK	AK99581	155,664.85	RED DEVIL	AK99656	172,099.35
CHUGIAK	AK99567	138,230.09	ANCHORAGE	AK99517	153,501.12
ANCHORAGE	AK99508	196,311.01	ANCHORAGE	AK99514	151,898.97
FAIRBANKS	AK99701	157,012.07	METLAKATLA	AK99926	173,7[illegible]3.06
ANCHORAGE	AK99503	157,695.67	BETHEL	AK995592163	140,925.39
BETHEL	AK99559	157,589.43	ANCHORAGE	AK995085901	187,995.09
ANCHORAGE	AK99508	158,119.41	BIG LAKE	AK99652	135,387.69
GAMBELL	AK99742	234,673.63	ANCHORAGE	AK99501	149,110.46
HEALY	AK99743	204,400.54	JUNEAU	AK99801	181,726.38
EGEGIK	AK99579	163,595.50	KENAI	AK99611	134,597.17
SEWARD	AK99664	145,913.44	SOLDOTNA	AK996693018	191,415.92
ANCHORAGE	AK99508	214,624.84	FAIRBANKS	AK99701	189,727.61
BIG LAKE	AK99652	147,101.88	EAGLE RIVER	AK99577	162,202.62
ANCHORAGE	AK995104675	139,084.97	DILLINGHAM	AK99576	136,689.52
ANCHORAGE	AK99508	132,134.91	FAIRBANKS	AK99701	132,581.72
ANCHORAGE	AK99503	144,787.34	NAPASKIAK	AK99559	172,292.38
TELLER	AK99778	179,123.32	BARROW	AK997231205	146,124.64
MINTO	AK99758	161,526.84	UNALAKLEET	AK99684	143,514.11
ANCHORAGE	AK995161212	180,228.93	ANCHORAGE	AK995083183	135,953.80
UNALAKLEET	AK99684	161,831.00	BETHEL	AK99559	136,405.28
CHEVAK	AK99563	142,805.52	FAIRBANKS	AK99709	147,518.95
ANCHORAGE	AK99507	140,026.42	SELDOVIA	AK99663	172,993.07
KIANA	AK99749	143,576.47	BETHEL	AK99559	167,524.11
JUNEAU	AK99801	143,386.80	MTN VILLAGE	AK99632	204,211.00
			KETCHIKAN	AK99901	144,435.53
			ST PAUL IS	AK996600103	219,489.16

Total owed
on Top 100 Cases
$16,[illegible],134

Re: HB362 - Child Support Obstructionist Bill

Attached is a letter referencing a current child support situation in which the mother (Debbie) isn't paying her support payments and her new husband (Mark) is helping her avoid this responsiblity..

The ex-husband (John) has custody of the three girls. Per the letter to John, "working for an employer would not be wise" because of the threat of garnishment of wages, so instead, Debbie is freelancing as an independent contractor. **Mark (the author of this letter) is the "obstructionist". He is helping Debbie evade her responsibilities from paying the child support.** Our bill, HB362 is aimed this type of obligatory evasion.

It appears as if both parties are suffering from this divorce, which thereby creates further unresolved issues. However, Debbie is legally obligated to pay child support for her three girls. By passing HB362, Mark could face legal consequences for his actions.

2 of 7

PO Box 4114
San Diego, CA 92164

March 17, 1994

John Van Santford
1025 Lathrop Street
Fairbanks, AK 99701

Dear John:

I am writing this letter to hopefully clear up some issues that have arisen between Debbie and yourself. The two of you do not appear to be communicating well at the present time. Hopefully this letter will help fill in some gaps made by your mutual inability to clear up issues that have prevailed for many months.

Forfeiture of Parental Rights

Several months ago you sent Debbie legal documents that in effect had her signing away her legal interest in her own children. We believe this was the most destructive and abusive action a parent could take towards undermining a child's right to establish a relationship with the non-custodial parent (please see attached "Rights for Children of Divorce"). Debbie just wants to re-iterate that she will not now nor in the future sign away her legal right to have an interest in raising her children. She cares very deeply for them and will do everything in her power to help them grow up to be emotionally healthy and happy adults.

Just to set the record straight about my situation with own children . . . I didn't just sign my parental rights away by agreeing to an adoption. I was asked by my children's stepfather if I would mind if they took on his name. I am still very much a part of my children's lives. I just cannot fill the role of parent. I would rather be a friend to my children and not have to be the disciplinarian. My ex and her husband did not do this to intentionally cut me out of the kids' lives. Unfortunately in your case, you have admitted that this IS your intent. You want Debbie to bow out of their lives permanently.

We have asked ourselves many times why would a parent want to do such a thing? Could it be that there is some kind of abuse going on in the home? As far as we know, if this is true, the children themselves can take their own legal action against you when they reach the age of 18.

Child Support

This issue has seemed to be a perpetual reason on your part to create a barrier that makes it impossible to see over and move on to other issues. Every time the both of you talk on the phone, this issue is put as a first priority by yourself instead of the children's welfare.

After hearing about your lifestyle from yourself and people who have visited you over the months, we believe that you are not in any kind of dire straits with your financial situation. We believe that paying the additional $250 or so that Debbie has been ordered to pay directly to you would not be in the best interest of the children. There are several reasons why we believe this. One being that you seem to be able to afford many amenities such as a new full sized truck. According to Debbie's TRW report, you are paying almost $500 per month to keep it in your driveway. You also say that you are sending the children to a private school. We consider these expenses extravagant; too extravagant for someone who is committed to providing for his children.

We both agree that the arrears owed should be caught up and I have come up with a plan to do just that. We have talked to our CPA and have been advised that the most advantageous use of the money would be to set up a custodial account in each child's name as a fund for their college tuition. The money will earn between 15% and 20% and will be available to them when they reach the age of 18. We have already initiated this plan and Debbie deposits $250 into this fund monthly. We will gladly send you a quarterly statement as soon as it's available as proof that this money is being put aside for the children.

If you don't like this arrangement, I say, do something about it instead of throwing threats at Debbie. Hire yourself a California lawyer and we'll battle it out here in family court.

Threats and Garnishments

Oftentimes on the phone you have made threats of garnishing wages. Some greedy lawyer has given you the impression that you get what you want when you file these papers. Not so, especially here in California. When I left Washington I was ordered to pay a little over $650 per month. When my case finally came to court here a year after the papers were filed in Washington, I was only ordered to pay $350 per month.

By the way, after all the threats you've made over the months we decided that working for an "employer" would not be wise. Debbie now works a private contractor. We have worked together as a team to secure a few clients Debbie does medical transcription for at home that pays for her basic living expenses. Debbie loves the flexible hours and not having to go into the office. It's like a dream come true!

So you see, an attempt at garnishing wages would be a waste of good money that could be used for the benefit of the children. My ex-wife spent hundreds, maybe thousands of dollars to trying to get money from me and she may have if I would have found a civil service job here, but I didn't. Her lawyer promised her everything and ended up getting nothing. Of course the lawyer was happy because she got what she wanted.

Visitation

Of all the issues to be discussed this is the most important one in our opinion. For months now, we believe that you have been purposely and intentionally interfering with Debbie's visitation with her children. This must stop! I personally will do anything in my power to turn this situation around whether it be through legal or political means.

Having a relationship with your parent is a very basic right for a child that we don't believe <u>anyone</u> should interfere with. No court in this country would deny that. Unfortunately in your case, the children have gotten stuck in the middle between your own personal hatred and insecurity over me being married to Debbie and her emotional pain over not having equal access to her children.

 VIA CERTIFIED MAIL, ARTICLE # P141-269-782

Visitation over the phone is a very important for Debbie because of the great distance involved. She must use this as a vital way of communicating and being a part of her children's lives.

Here are a list of circumstances surrounding phone visitation that we believe have been created on your part:

1) You have established a separate phone line for your normal calls so that anyone you don't want talking directly to the children, especially Debbie and her parents, will be discouraged of doing so.

   Here's how you appear to play the phone game: Debbie calls. You tell her that the children are not home and that she should call back in an hour knowing full well you have no intention of answering the phone. Oftentimes you simply unplug the phone so that it never answers.

2) You have not provided an open pathway for the children to keep in contact with Debbie even though we have provided you with a toll free number they can use to call Debbie day or night. Nor do you encourage them to call their mother when they feel the need. On the contrary, you discourage them and say hurtful things like "Your mother doesn't love you anymore, that's why she left."

3) On the rare occasion Debbie is permitted to talk with the children, you stand over them and monitor everything they say. You do not let them have their privacy when interacting with their mother. You are so afraid that they might tell her something that you don't want her to hear that you have gone so far as to mislead school administrators into thinking that you have some legal document like a restraining order in place to bar Debbie from speaking to her children out of your home where you can't have control over their words.

4) Often times during phone conversations you will jerk the phone away from the children and start personal attacks on Debbie. How is this beneficial for the children? If you continue this, I feel they will form a deep resentment for you and will eventually want to get as far away from you as possible.

Last summer, June of 1993, you refused to grant the children visitation during the agreed time. You deliberately put the children in a school for the summer, so you say, so that you could use that as a valid reason for denying them visitation. Our guess is that the children were never <u>really</u> in school or were only in school for part of the summer.

As far as summer visitations go, all Debbie asks is that you put one or more of the children on a plane in Fairbanks. We checked with Alaska Air about the youngest child flying alone. We were told that it was fine but we'd have to pay extra. All the children should be able to travel alone whenever they choose as long as it doesn't interfere with their regular school year. The "regular school year" does not include special schools you choose to put them in for the summer. If you attempt this tactic again, we will consider it a intentional obstruction of the children's visitation rights.

This coming summer, Debbie is demanding that Diana visit her for at least one month starting shortly after summer school break begins. She is also demanding that her parents in Bremerton have time with her. Debbie is not requiring you help her with the cost of travel as agreed to previously. If this visitation works out then she will request that the other two children come to see her at another time during the summer.

Debbie will send you Diana's itinerary a few months before her flight, then send her round trip ticket on Alaska Airlines a week or so before her flight date via Federal Express. Because of the distance involved, it makes it almost impossible for Debbie to personally supervise and escort Diana on her flight. That is why we will be going to great lengths to make sure that Diana is personally escorted by the flight attendants before and during the flight. I have had my children travel alone on Alaska Air and it has been a very present experience for them. I'm sure it will be the same for Diana.

Bill of Rights for Children of Divorce

Even though you will not find them in any law book, we believe that all children of divorced parents have rights. We have requested help to deal with Debbie's visitation problems from a group that calls itself "Mothers Without Custody" (MWOC). They have come up with a list of rights for children of divorced parents that we are in total agreement with. Please, John, read this list over and honestly ask yourself if you have supported these rights in your dealings with Debbie and your children.

If you ask us what our intentions will be when seeking legal action and eventually making changes in your current visitation agreement, here is what we will strive to make happen for the children:

1) The Right to know that the parent's decision to divorce is solely their decision, and that the child need not feel any responsibility for this decision.

2) The Right to have a relaxed, secure relationship with both parents without feeling a need to manipulate one parent against the other.

3) The Right to have the issue of custody truly and honestly decided without sexual prejudice or bias (permitting a continued parent-child relationship through joint custody, equal to that prior to divorce) with the best interest of the child and BOTH parents as the only consideration.

4) The Right to continuing care, guidance and support from both parents, and the freedom to receive and express love for both without guilt.

5) The Right to honest answers to questions about the changing family relationships and living conditions.

6) The Right to be free from physical and mental abuse and pressure from both parents and from judicial abuse by the State.

7) The Right to know that expression of love from one parent in no way will detract from the love for the other parent, and the Right to express love and affection for each parent without having to suppress that love because of fear of disapproval by the other parent.

8) The Right to a secure relationship during scheduled times with the non-custodial parent, and to know in advance when these specified times are to be canceled by either parent for any reason.

9) The Right to know, and be able to visit grandparents, aunts, uncles, cousins and other relatives on both sides of the family so that a heritage may be conveyed.

10) The Right to be free from any new social class forced upon the child by the State Courts which order and decree single parent custody, denying one parent an equal legal and personal relationship with the child and producing a family model which has not been proven to be either psychologically healthier or constitutionally sound.

11) The Right to privacy and protection, justice and fairness in both the custodial and non-custodial homes.

12) The Right to know and appreciate what is good in each parent without one parent degrading the other.

13) The Right to request an increase in the time specified for interaction with the non-custodial parent.

14) The Right to express a preference to live with either of the parents most of the time.

15) The Right to mature to adulthood, secure in the love and respect of both parents and with confidence in the ability to establish love and nurture a stable family.

Old Debt

In the last couple of months we have been made aware of a debt that was made when you were married to Debbie. We were contacted by a collection agency in Tacoma, Washington that called itself "Equifax Collection Services".

I talked to a woman called named "Karen Hirst". She also told us that you had already started making payments on the debt. I told her, as I will tell you, under no circumstances will we deal with a collection agency. I have done my homework on this subject and have familiarized myself with their tactics. I have already exercised my legal right as a consumer by sending them a legal notice, and have stopped them from ever calling us again, as I have done with many other agencies. If you want to learn how to do this yourself, purchase a book called "Stop It" by Bud Hibbs, published by Equitable Media Services, Fort Worth, Texas. If you like I will gladly send you a prepared legal document customized to this particular account so that you can sign it and send it certified mail.

I have advised Debbie not to claim any responsibility for this debt until you get the collection agency out of the picture by sending the legal notice I talked about above. After that, we can negotiate down the added fees that were added after the debt went into collection with Kitsap Federal Credit Union. Keep in mind that when a debt goes into collection, the original creditor has written it off as a "bad debt" and then simply lists it on their profit and loss statement. Most creditors hope to get only half the original amount of the debt because of the tremendous mark-up by the collection agency when they "buy" the bad debt from the creditor. All of this is explained in the book I mentioned.

The next step in this matter is yours. If you just want to continue paying what you have and take the responsibility for the debt, that's up to you. I'm offering you a way to re-negotiate the added fees and not have any negative items put on your credit report.

Speaking of credit reports, I don't see why Debbie should have records of your auto loans listed on her credit report, do you? You have the truck and whatever other possessions you bought with the money. Could you please contact Ford Motor Credit and ask them to remove your loan information from Debbie's TRW credit listing? We don't need to know about your personal finances.

We have taken the time and energy to write this letter in the interest of making this whole divorce process less painful on the children. Now it's your turn. If we don't see a response in 30 days from the date of this letter, we will assume that your response to all our requests is no and that you agree with everything we allegated in this letter.

Yours truly,

Mark J Taylor

Mark J. Taylor

VIA CERTIFIED MAIL, ARTICLE # P141-269-782

Representative Con Bunde
State Capitol
Juneau, AK 99801-1182

March 31, 1994

Dear Representative Bunde,

RE: HOUSE BILL 422

There are many State Statutes, Regulations and Court Rules that protect the rights of the NON custodial parents rights to visitation. On the other hand nothing that protects the custodial parents in this area. We are expected to send our children; (In my case three little girls ages 7, 9, and 11 to the San Diego area of which I have only a BLIND PO BOX NUMBER) for NON custodial visitation and Pray we get them back. Much less than, in time to take care of Dental work, Eye exams, New glasses, shopping for school clothes, etc.

THIS FEAR OF THE NON CUSTODIAL PARENTS FAILURE TO RETURN THE CHILDREN TO THE CUSTODIAL PARENT IS THE WORST KIND OF NIGHTMARE.

When the NON custodial parent openly and blatantly fails to comply with the Court Order to pay child support, this fear becomes very real.

Yes there are regulations and statues in place to collect child support; such as, attempts to garnish wages, seizure of property, notifying the credit bureau with negative report, threats of arrest, etc. Even though they have evaded the system for years, the courts will side with the NON custodial parent is in contempt of a court order issued by the same Judge that is hearing the case against the custodial parent for withholding visitation.

This condition must be corrected. TO PROTECT ALASKA'S MOST PRECIOUS RESOURCES, "OUR CHILDREN", MUST BE A PRIORITY.

I respectfully request that you amend your HOUSE BILL 422 to include the following provision's.

1. VISITATION OF NON CUSTODIAL PARENT WHO RESIDES OUTSIDE THE STATE OF ALASKA.

   a. Visitation rights are here by suspended until all back child support is paid up to date.
   b. Supervised visitation will be allowed in the local area of children's residence at the NON custodial parents expense if they do not comply with Par: a.
   c. If there is sufficient reason to believe that the NON custodial parent might abduct the children: towit past record of failure or evasion of child support payments to date, they be required to post a PERFORMANCE BOND of no less than FIFTY THOUSAND DOLLARS ($50000.00). To be paid to the custodial parent within 72 hours of the failure to return the children at the agreed time (time notification to be in written form). Bond funds to be used for the recovery of the abducted children and remaining balance to be placed in a account for child support or college.
   d. All court cost are the responsibility of the NON custodial parent pertaining to the above Par: a, b, c.

Sincerely,

John B. Van Santford

John B. Van Santford
1025 Lathrop Street
Fairbanks, AK 99701
PH. 907-451-6502
FX. 907-452-7749

cc Governor Hickel
LT Governor Coghill
Sen. Steve Frank
Bert Sharp
Mike MIller
Spe. Ramona Barnes

cc Rep. Jeannette James
Brian Porter
Jerry Sanders
Joe Sitton
Gene Therriault
Al Vezey

118 Holdinghausen Dr.
Crystal City, MO 63019
February 17, 1994

Representative Terry Martin
House of Representative
State Capitol
Juneau, AK 99801-1182

Dear Representative Martin,

For the last six years I have not received child support in any regular fashion from my ex-husband for the support of my four children. Most money has come from the seizure of dividend checks. He is presently $28,729.54 behind in back child support.

While we were married my ex-husband supported the family by working as a contractor. Primarily the income came from the sell of custom built homes, rental property, and the sell of undeveloped lots. He would also do jobs requiring heavy equipment. After the divorce he filed for bankruptcy and the business ended. Through various means he has been supporting his life style. He talked at different times of a home he was building in the Delta Junction area. He has a vehicle, a boat, and a snowmobile. He took a business trip to Seattle one year for training in insulation spraying. One summer he could afford a trip to Missouri, but left town the same day he went to court for harassment and nonpayment of child support. There is presently a warrant for his arrest for failure to appear at the next scheduled court date.

The divorce awarded assets to both of us. The monthly payments on the sell of undeveloped lots was part of the assets he received. One person who was making payments paid off the debt with a boat. The others, I am presuming, made the payments. These would be cashed rather than deposited. After having an account seized no other accounts in his name have been located in the state that I have been made aware of.

Evasion of payments for child support through parents claiming no or little income when in fact there is appears to be a common practice. My ex-husband has stated numerous times that he is untraceable by any government agency and will not pay child support. Thus far he has succeeded through the aid of others who are willing to assist him.

One tactic used by my ex-husband has been to transfer real estate property to a family member's name. This was done prior to his filing for bankruptcy so he could retain the lake front property. Another tactic was putting vehicles he owned in someone else's name. Another way of trying to be untraceable was by not obtaining a current driver's license.

I am also aware of him approaching others to assist him in his deception by asking to operate a business under their contractor's license. More specifically, he approached Weidner Construction, out of Delta Junction, asking to operate under their contractor's license. For whatever reasons Weidner Construction declined.

He has also purchased equipment from U.C.S.C. in Fairbanks to run a business. He paid four thousand dollars in cash for this equipment. The business that he had in mind was apparently to do insulation work while traveling the rivers to Nome where he could make money that would be untraceable.

Through the process of bartering he has been able to perform jobs and be paid in cash or receive ivory that he can sell later for untraceable cash. He has talked of other jobs that he has done to make money. One being cutting trees in the Delta Junction area, another working on a fishing boat, I believe near Nome, and trapping.

Family member have played a large role in my ex-husband's evasion of responsibility to his children through knowingly assisting him as mentioned already. The other is people willing to pay in cash or trade for services he performed.

The past six years after my divorce have been very difficult. At one point I was working three jobs along with attending college to obtain a bachelor's de[illegible]ee. [illegible] also sold everything I could live without to pay for [illegible]ional costs and to support the children. I applied for [illegible] loans, was awarded grants and received scholarships to be able to afford the costs.

During this time my children have gone without basic human needs to the point that some might call it neglect. Dental care was postponed till I could afford it. Eye glasses were not purchased as needed. Food was bought as the money was available. Of course there is aid to dependent children and medical assistance available through the government, but I chose to do it myself. If put into thesame situation today - recently divorce, no job skills, and four children - I'm not for certain which route I'd take.

I am presently working full-time as a special education teacher, am attending graduate school, with a caseload of nine hours per semester, and teach summer school while raising four children ages nine to fifteen. It has been very stressful and quite frankly I'm exhausted.

These experiences while being exhausting in themselves have also been exasperating especially given that numerous contacts have been made in the past six years to the Child Support Enforcement Agency urging them to please help me in obtaining this support. Only recently has any real action bugun on this case. At this time information is being compiled to take to the attorney general to see if charges will be filed.

The laws as they are presently written are not a great enough deterrent for nonpaying parents and those who conspire to assist them in this criminal act of nonsupport. Parents who do not support their children by evading this responsibility are committing a heinous crime. Persons who enable this behavior by aiding the nonsupport paying parent are also guilty of a heinous crime against children. Until the laws are changed and aiders are forced to accept the consequences of their actions the cycle will not change.

I actively support the passage of House Bill 362. This letter may be forwarded to other individuals concerned with the passage of House Bill 362.

Sincerely,

Beth Bach

Mary "Beth" Bach

8-LS1459\R
Lauterbach
4/27/94

SENATE CS FOR CS FOR HOUSE BILL NO. 362(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MARTIN, B.Davis

A BILL

FOR AN ACT ENTITLED

"An Act relating to the statute of limitations for actions brought upon a child support judgment; and establishing the crime of aiding the nonpayment of child support."

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

* **Section 1.** AS 09.10.040 is amended to read:

Sec. 09.10.040. ACTION UPON JUDGMENT OR SEALED INSTRUMENT IN 10 YEARS. **<u>Except as provided in (b) of this section, a</u>** [NO] person may **<u>not</u>** bring an action upon a judgment or decree of a court of the United States, or of a state or territory within the United States, and **<u>an</u>** [NO] action may **<u>not</u>** be brought upon a sealed instrument, unless **<u>the action is</u>** commenced within 10 years.

* **Sec. 2.** AS 09.10.040 is amended by adding a new subsection to read:

(b) An action may be brought to establish a judgment for child support payments that are 30 or more days past due under a support order, as defined in

AS 25.27.900, if the action is commenced by the date on which the youngest child covered by the support order becomes 21 years of age. An action after the establishment of the judgment is governed by (a) of this section.

* **Sec. 3.** AS 11.51 is amended by adding a new section to read:

Sec. 11.51.122. AIDING THE NONPAYMENT OF CHILD SUPPORT. (a) A person commits the crime of aiding the nonpayment of child support if the person

(1) knows that an obligor has a duty under an administrative or judicial order for payment of child support; and

(2) intentionally

(A) withholds information about the residence or employment of the obligor when that information is requested by a child support enforcement agency; or

(B) participates in a commercial, business, or employment arrangement with the obligor, knowing at the time that the arrangement is made that it will allow the obligor to avoid paying all or some of the support when it is due or to avoid having a lien placed on assets for the payment of delinquent support; receipt of a substantial asset for less than fair market value from an obligor after the obligor's support order has been established constitutes a rebuttable presumption that the person receiving the asset knew that the transfer would allow the obligor to avoid paying all or some of the support or to avoid having a lien placed on the asset.

(b) In a prosecution under (a)(2)(B) of this section, it is not a defense that the

(1) defendant did not intend to assist the obligor in the nonpayment of child support; or

(2) obligor did not intend to avoid paying child support.

(c) This section does not prohibit an arrangement entered into with an attorney for the purpose of paying the attorney who represents the child support obligor in proceedings to contest or modify a child support order.

(d) Aiding the nonpayment of child support is a class A misdemeanor.

HB
367

ALASKA STATE LEGISLATURE

Delta Junction Office:
P.O. Box 1189
Delta Junction, AK 99737-1189
907-895-4236

While in Juneau:
State Capitol, Room 110
Juneau, AK 99801
907-465-4859

THE SEAL OF THE STATE OF ALASKA

Representative Harley Olberg

INDEX FOR HB 367

(1) Sponsor Statement

(2) CS FOR HB 367 and HB 367

(3) Sectional Summary, Fiscal Note, AND Position Paper

(4) Title 23, U. S. Code Highways

(5) Defining Zoned/Unzoned Commercial or Industrial areas

(6) Alaska Statutes

(7) Federal Register

(8) Alaska Highway Maps

Residence: P.O. Box 1068 • Delta Junction, AK 99737 • 907-895-4305

ALASKA STATE LEGISLATURE

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Representative Harley Olberg

SPONSOR STATEMENT FOR CSHB 367 (JUD) am

House Bill 367 would allow certain restricted exceptions to the State's limitations on outdoor advertising, thereby addressing the need for improved directional signage to accommodate the State's traveling public.

These changes would facilitate efforts by roadside businesses to direct motorist to available services and products. In response to suggestions made by members of committees of both bodies last session, I would like you to consider CSHB 367(JUD) am, today.

CS for HB 367 allows one new exception to the State limitation on outdoor advertising signs, display and devices; directional signs could be placed in zoned/unzoned commercial or industrial areas along a State highway, subject to stringent restrictions. The draft bill would also codify two existing DOT/PF programs in statute: the airspace leasing program and TODS (Tourist Oriented Directional Signing) program.

CS HB 367(jud) am would help many small business owners while not negatively impacting the scenery visible from Alaska's highways. I strongly encourage you support for this bill.

Residence: P.O. Box 1068 • Delta Junction, AK 99737 • 907-895-4305

ALASKA STATE LEGISLATURE

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Representative Harley Olberg

Sectional Summary of CSHB 367 (JUD) am

In conformity with federal law as found in 23 U.S.C. 131, Section 1 of the Bill amends AS 19.25.105 (a) to allow one additional exception to the State prohibition on outdoor advertising with 660 feet of a highway right-of-way. This exception would allow directional signage to be placed in zoned/unzoned industrial or commercial areas along a State highway if it meets the following criteria:

* It must be for an individual business entity that is of significant interest to the traveling public as evidenced by documentation that at least 75 percent of the entity's gross business receipts are from motorists residing more than 20 miles from the business;

* Each business is limited to four or fewer off-premises signs;
* Each sign must be located on private property;
* Each sign must provide directional information;
* Each sign must indicate the specific business entity:
* Each sign must be located within 50 miles of the physical location of the business entity; and
* Each sign must not exceed 8 feet by 12 feet in size. (1)pg 2

Section 2 of the Bill amends AS 19.25.105(d) to allow additional exceptions to the State prohibition on outdoor advertising WITHIN THE RIGHT-WAY of a State highway. Both of these new exceptions codify existing DOT/PF programs. The language added in Paragraph (2) establishes a statutory basis for the department's airspace leasing program. The language added in paragraph (3) establishes a statutory basis for the federally designed TODS (Tourist Oriented Directional Signing) Program.

Residence: P.O. Box 1068 • Delta Junction, AK 99737 • 907-895-4305

SECTIONAL SUMMARY OF CSHB 367 (JUD) am

Section 3 of the Bill amends AS 19.25.130 Penalty For Violation. Changes penalty from a Misdemeanor to violation and raises minimum fine to $250 with maximum of $2,500.

SECTION 4 of the Bill allows a municipality to enact ordinances that regulate advertising in a way that is more restrictive that the provisions of AS 19.25.080-19.25.180.

SECTION 5 of the Bill amends AS 19.45.002 to exempt unlawful advertising from the penalty provisions pertaining to AS 19.05-19.25.

SECTION 6 of the Bill annuls 17AAC 20.010 to allow for the operation of both the airspace leasing program and the TODS program.

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(1) By way of comparison, the maximum size allowed under the Federal-State Outdoor Advertising Agreement is a total area of 650 square feet with a maximum height of 20 feet and maximum length of 50 feet.

LIMITATIONS ON OUTDOOR ADVERTISING: ALLOWABLE SIGNS

CURRENT LAW	HOUSE BILL 367 SENATE BILL 157	CS FOR HOUSE BILL 367 CS FOR SENATE BILL 157
Within highway right-of-way: 1. Bus bench/shelter advertising. 2. Official TODS signs. 3. Airspace lease program signs.	Within highway right-of-way: 1. Bus bench/shelter advertising 2. Official TODS signs. 3. Airspace lease program signs.	Within highway right-of-way: 1. Bus bench/shelter advertising 2. Official TODS signs. 3. Airspace lease program signs.
Within 660' of edge of right-of-way and visible from highway: 1. Directional & other official signs. 2. On-premise signs advertising sale or lease of premises, or activities conducted on premises. 3. Landmark signs. 4. Signs pertaining to schools. 5. Bus bench/shelter advertising.	Within 660' of edge of right-of-way and visible from highway: 1. Directional & other official signs. 2. On-premise signs advertising sale or lease of premises, or activities conducted on premises. 3. Landmark signs. 4. Signs pertaining to schools. 5. Bus bench/shelter advertising. *6. Signs advertising free coffee. *7. Signs in zoned/unzoned commercial or industrial areas; no restrictions.	Within 660' of edge of right-of-way and visible from highway: 1. Directional & other official signs. 2. On-premise signs advertising sale or lease of premises, or activities conducted on premises. 3. Landmark signs. 4. Signs pertaining to schools 5. Bus bench/shelter advertising. *6. Signs in zoned/unzoned commercial or industrial areas with restrictions for the purpose of directional signage.
Beyond 660' from edge of right-of-way and visible from highway: 1. Directional & other official signs. 2. On-premise signs advertising sale or lease of premises, or activities conducted on premises. 3. Landmark signs. 4. Signs pertaining to schools. 5. Bus bench/shelter advertising.	Beyond 660' from edge of right-of-way and visible from highway: 1. Directional & other official signs. 2. On-premise signs advertising sale or lease of premises, or activities conducted on premises. 3. Landmark signs. 4. Signs pertaining to schools 5. Bus bench/shelter advertising. *6. Signs advertising free coffee. *7. Signs in zoned/unzoned commercial or industrial areas; no restrictions. *8. Signs in urbanized areas.	Beyond 660' from edge of right-of-way and visible from highway: 1. Directional & other official signs. 2. 'On-premise signs advertising sale or lease of premises, or activities conducted on premises. 3. Landmark signs. 4. Signs pertaining to schools. 5. Bus bench/shelter advertising. *6. Signs in zoned/unzoned commercial or industrial areas with restrictions for the purpose of directional signage.

ALASKA STATE LEGISLATURE

Delta Junction Office
P.O. Box 1189
Delta Junction, AK 99737-1189
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While in Juneau
State Capitol, Room 110
Juneau, AK 99801
907-465-4859

Representative Harley Olberg

Sectional Summary of CSHB 367 (TRA)

In conformity with federal law as found in 23 U.S.C. 131, Section 1 of the Bill amends AS 19.25.105 (a) to allow one additional exception to the State prohibition on outdoor advertising with 660 feet of a highway right-of-way. This exception would allow directional signage to be placed in zoned/unzoned industrial or commercial areas along a State highway if it meets the following criteria:

* It must be for an individual business entity that is of significant interest to the traveling public as evidenced by documentation that at least 75 percent of the entity's gross business receipts are from motorists residing more than 20 miles from the business;

* Each business is limited to four or fewer off-premises signs;
* Each sign must be located on private property;
* Each sign must provide directional information;
* Each sign must indicate the specific business entity:
* Each sign must be located within 50 miles of the physical location of the business entity; and
* Each sign must not exceed 8 feet by 12 feet in size. (1)pg 2

Section 2 of the Bill amends AS 19.25.105(d) to allow additional exceptions to the State prohibition on outdoor advertising WITHIN THE RIGHT-WAY of a State highway. Both of these new exceptions codify existing DOT/PF programs. The language added in Paragraph (2) establishes a statutory basis for the department's airspace leasing program. The language added in paragraph (3) establishes a statutory basis for the federally designed TODS (Tourist Oriented Directional Signing) Program.

Residence: P.O. Box 1068 • Delta Junction, AK 99737 • 907-895-4305

SECTIONAL SUMMARY OF CSHB 367 (TRA)

Section 3 of the Bill amends AS 19.25.130 Penalty For Violation. Changes penalty from a Misdemeanor to violation and raises minium fine to $250 with maxium of $2,500.

SECTION 4 of the Bill repeals and reenacts AS 19.25.180 to provide for the right of a municipality to enact more restrictive ordinance to control outdoor advertising, notwithstanding AS 19.25.091-19.25.180, except that a municipality may not further restrict directional signage allowed in zoned/ unzoned commercial or industrial areas.

SECTION 5 of the Bill amends AS 19.45.002 to exempt unlawful advertising from the penalty provisions pertaining to AS 19.05-19.25.

SECTION 6 of the Bill annuls 17AAC 20.010 to allow for the operation of both the airspace leasing program and the TODS program.

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(1) By way of comparison, the maximum size allowed under the Federal-State Outdoor Advertising Agreement is a total area of 650 square feet with a maximum height of 20 feet and maximum length of 50 feet.

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL No.: HB 367

FISCAL NOTE

Revision Date:

Title: Prohibited Highway Advertising

Department Affected: DOT&PF

BRU:

Sponsor: Olberg

Requestor:

Component:

Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0

REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

POSITIONS

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

Estimate of current year (FY94) impact: $0

ANALYSIS: (Attach a separate page if necessary)

Neutral; the predicted added costs in enforcement will be offset by reductions of current enforcement efforts.

Prepared by: Jeffrey C. Ottesen — Phone: 465-6954

Division: Engineering & Operations Standards — Date: March 2, 1994

Approved by Commissioner: for B.A. Campbell — Phone: 465-3901

Agency: Department of Transportation and Public Facilities — Date: March 2, 1994

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Department of Transportation
and Public Facilities

POSITION PAPER

BILL NO: HB 367 APPROVED: ____________

TITLE: Prohibited Highway Advertising DATE: March 2, 1994

This bill modifies the general prohibitions on outdoor advertising, to a standard comparable to federal law. Alaska's current wholesale prohibition on off-premises, outdoor advertising would change in two ways:

- Off-premise advertising signs would be permitted in commercial and industrial areas, subject to tight restrictions on size, number and purpose.
- TODS signs and the right-of-way leasing for on-premise signs, two existing programs, would be given statutory authority.

A sectional summary of the bill:

- Section 1. Establishes a new exception to the general prohibition on outdoor advertising. Directional signs for highway businesses meeting numeric, size, content, location and eligibility requirements are authorized.
- Section 2. Provides statutory foundation for two existing sign programs (e.g., TODS and airspace leasing).
- Section 3. Repeals and reenacts the section pertaining to a municipality's right to enact more restrictive control of outdoor advertising. The directional signs authorized in Section 1 would not be subject to municipal restrictions.
- Section 4. Fixes a general penalty clause to exclude it's applicability to outdoor advertising matters, so that there is no conflict with penalty clause in AS 19.25.130.
- Section 5. Annuls regulation so that there is no conflict with the two existing signage programs which take place in state rights-of-way.

The department supports the proposed legislation as it would reduce to pressure to place illegal advertising related to businesses who serve highway travelers. Patrolling and regulating these type of sign installations, which are now illegal, routinely taxes limited department resources.

For Further Information contact J.K. Ginger Johnson at 465-3904.

BILL NO: HB 367

TITLE: Prohibited Highway Avertising

DATE: March 2, 1994

At the same time, the bill is far from a wholesale approval of billboards. The relaxation of current law, in order to permit highway-related businesses to place off-premises advertising is the most significant change. In order to qualify, such signs must conform to a number of requirements:

- Located in zoned or unzoned commercial and industrial areas. Unzoned areas will be based on an agreement with the U.S. Department of Transportation.
- Documention that business is of significant interest to the traveling public (as evidenced by 75% of the business receipts being from motorist's who reside greater than 20 miles from the place of business).
- Consist of four or fewer off-premises signs
- Located on private property
- Provide directional information
- Indicate specific business entity
- Located within 50 miles of business entity
- Size not to exceed 8 feet by 12 feet.

We do however, have one suggested modification to the language in Section 2. Permitting signs within leased right-of-way can only fulfill federal requirements if the land being leased comprises a portion of the business premises. Accordingly, the new paragraph, 19.25.105 (d) (2) should be modified to state:

> *"signs, displays, and devices located on right-of-way property leased from the state that advertise activities conducted on or abutting to the leased property may be erected and maintained; "*

FEDERAL HIGHWAY ADMINISTRATION
400 SEVENTH ST., SW
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WASHINGTON, D.C. 20590

TITLE 23 -- UNITED STATES CODE

HIGHWAYS

Originally Compiled from GPO tapes by HNG-12 in Nov. 1987
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Please notify HCC-10 (202)366-1388, Sherie Abbasi
if errors are encountered in text

[text in WordPerfect 5.1]
[electronic file available on FEBBS for FHWA Staff]

UPDATED: 5/10/91: Pub. L. 101-427 (10/15/90).
Secs. 333 and 336 of Pub. L. 101-516 (11/5/90).
1/8/92: Pub. L. 102-143 (10/28/91), Sec. 333.
Pub. L. 102-240 (ISTEA of 1991, 12/18/91).

147. Priority primary routes.
148. Development of a national scenic and recreational highway.
149. Congestion mitigation and air quality improvement program.
150. Allocation of urban system funds.
151. National Bridge Inspection program.
152. Hazard elimination program.
153. Use of safety belts and motorcycle helmets.
154. National maximum speed limit.
155. Access highways to public recreation areas on certain lakes.
156. Income from airspace rights-of-way.
157. Minimum allocation.
158. Minimum drinking age.
159. Revocation or suspension of drivers' licenses of individuals convicted of drug offenses.
160. Reimbursement for segments of the Interstate System constructed without Federal assistance.

Sec. 101. Definitions and declaration of policy

(a) As used in this title, unless the context requires otherwise-

The term "apportionment" in accordance with section 104 of this title includes unexpended apportionments made under prior acts.

The term "construction" means the supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the National Oceanic and Atmospheric Administration in the Department of Commerce) resurfacing, restoration, and rehabilitation, acquisition of rights-of-way, relocation assistance, elimination of hazards of railway grade crossings, elimination of roadside obstacles, acquisition of replacement housing sites, acquisition and rehabilitation, relocation, and construction of replacement housing, and improvements which directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas. The term also includes capital improvements which directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses and also includes costs incurred by the State in performing Federal-aid project related audits which directly benefit the Federal-aid highway program.

The term "county" includes corresponding units of government under any other name in States which do not have county organizations, and likewise in those States in which the county government does not have jurisdiction over highways it may be construed to mean any local government unit vested with jurisdiction over local highways.

The term "Federal lands highways" means forest highways, public and subsection (b) of this section, may be paid from sums apportioned in accordance with section 104 of this title.

(b) The Secretary may classify the various types of projects involved in the elimination of hazards of railway-highway crossings, and may set for each such classification a percentage of the costs of construction which shall be deemed to represent the net benefit to the railroad or railroads for the purpose of determining the railroad's share of the cost of construction. The percentage so determined shall in no case exceed 10 per centum. The Secretary shall determine the appropriate classification of each project.

(c) Any railroad involved in a project for the elimination of hazards of railway-highway crossings paid for in whole or in part from sums made available for expenditure under this title, or prior Acts, shall be liable to the United States for the net benefit to the railroad determined under the classification of such project made pursuant to subsection (b) of this section. Such liability to the United States may be discharged by direct payment to the State highway department of the State in which the project is located, in which case such payment shall be credited to the cost of the project. Such payment may consist in whole or in part of materials and labor furnished by the railroad in connection with the construction of such project. If any such railroad fails to discharge such liability within a six-month period after completion of the project, it shall be liable to the United States for its share of the cost, and the Secretary shall request the Attorney General to institute proceedings against such railroad for the recovery of the amount for which it is liable under this subsection. The Attorney General is authorized to bring such proceedings on behalf of the United States, in the appropriate district court of the United States, and the United States shall be entitled in such proceedings to recover such sums as it is considered and adjudged by the court that such railroad is liable for in the premises. Any amounts recovered by the United States under this subsection shall be credited to miscellaneous receipts.

(d) Survey and Schedule of Projects.- Each State shall conduct and systematically maintain a survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices, and establish and implement a schedule of projects for this purpose. At a minimum, such a schedule shall provide signs for all railroad-highway crossings.

(e) Special Rules.-

(1) Funds for Protective Devices.- At least 1/2 of the funds authorized and expended under this section shall be available for the installation of protective devices at railway-highway crossings.

(2) Set Aside for Public Information Programs.- $250,000 of the amounts available for expenditure under this section in each fiscal year shall be expended for a public information program-

(A) which the Secretary determines will be effective in educating the public as to the hazards posed at railway-highway crossings and the importance of heeding warning signals at such crossings; and

(B) which the Secretary determines will provide information necessary to diminish railway-highway crossing accidents.

(3) Procedures.- Sums authorized to be appropriated by this subsection shall be available for obligation in the same manner as funds apportioned under section 104(b)(1) of this title.

(f) Twenty-five percent of the funds authorized to be appropriated to carry out this section shall be apportioned to the States in the same manner as sums authorized to be appropriated under section 104(b)(2) of this title, 25 percent of such funds shall be apportioned to the States in the same manner as sums authorized to be appropriated under section 104(b)(6) of this title, and 50 percent of such funds shall be apportioned to the States in the ratio that total railway-highway crossings in each State bears to the total of such crossings in all States. The Federal share payable on account of any project financed with funds authorized to be appropriated to carry out this section shall be 90 percent of the cost thereof.

(g) Annual Report.- Each State shall report to the Secretary of Transportation not later than December 30 of each year on the progress being made to implement the railway-highway crossings program authorized by this section and the effectiveness of such improvements. Each State report shall contain an assessment of the costs of the various treatments employed and subsequent accident experience at improved locations. The Secretary of Transportation shall submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the house of Representatives not later than April 1 of each year, on the progress being made by the State in implementing projects to improve railway-highway crossings. The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, nature of treatment, and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (d), and include recommendation for future implementation of the railroad highway crossings program.

(h) Use of Funds for Matching.- Funds authorized to be appropriated to carry out this section may be used to provide a local government with funds to be used on a matching basis when State funds are available which may only be spent when local government produces matching funds for the improvement of railway-highway crossings.

Sec. 131. Control of outdoor advertising

(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, and Federal-aid highway funds apportioned on or after January 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than six hundred and sixty feet off the nearest edge of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that such signs, displays, or devices after January 1, 1968, if located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, (3) signs, displays, and devices, including those which may be changed at reasonable intervals by electronic process or by remote control, advertising activities conducted on the property on which they are located, (4) signs lawfully in existence on October 22, 1965, determined by the State subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, or historic or artistic significance the preservation of which would be consistent with the purposes of this section, and (5) signs, displays, and devices advertising the distribution by nonprofit organizations of free coffee to individuals traveling on the Interstate System or the primary system. For the purposes of this subsection, the term "free coffee" shall include coffee for which a donation may be made, but is not required.

(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. The Secretary may also, in consultation with the States, provide within the rights-of-way of the primary system for areas in which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

(g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law and not permitted under subsection (c) of this section, whether or not removed pursuant to or because of this section. The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

(i) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit information directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas and other travel information systems within the rights-of-way for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable. The Federal share of the cost of establishing such an information center or travel information system shall be that which is provided in section 120 for a highway project on that Federal-aid system to be served by such center or system.

(j) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement: Provided, That permission by a State to erect and maintain information displays which may be changed at reasonable intervals by electronic process or remote control and which provide public service information or advertise activities conducted on the property on which they are located shall not be considered a breach of such agreement or the control required thereunder. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

(k) Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

(l) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the state may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has been entered on such appeal. Summons may be served at any place in the United states. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, not to exceed $20,000,000 for the fiscal year ending June 30, 1967, not to exceed $2,000,000 for the fiscal year ending June 30, 1970, not to exceed $27,000,000 for the fiscal year ending June 30, 1971, not to exceed $20,500,000 for the fiscal year ending June 30, 1972, not to exceed $50,000,000 for the fiscal year ending June 30, 1973. The provisions of this chapter relating to the obligation, period of availability and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967. Subject to approval by the Secretary in accordance with the program of projects approval process of section 105, a State may use any funds apportioned to it under section 104 of this title for removal of any sign, display, or device lawfully erected which does not conform to this section.

(n) No sign, display, or device shall be required to be removed under this section if the Federal share of the just compensation to be paid upon removal of such sign, display, or device is not available to make such payment.

(o) The Secretary may approve the request of a State to permit retention in specific areas defined by such State of directional signs, displays, and devices lawfully erected under State law in force at the time of their erection which do not conform to the requirements of subsection (c), where such signs, displays, and devices are in existence on the date of enactment of this subsection and where the State demonstrates that such signs, displays, and devices (1) provide directional information about goods and services in the interest of the traveling public, and (2) are such that removal would work a substantial economic hardship in such defined area.

(p) In the case of any sign, display, or device required to be removed under this section prior to the date of enactment of the Federal-Aid Highway Act of 1974, which sign, display, or device was after its removal lawfully relocated and which as a result of the amendments made to this section by such Act is required to be removed, the United States shall pay 100 per centum of the just compensation for such removal (including all relocation costs).

(q)(1) During the implementation of State laws enacted to comply with this section, the Secretary shall encourage and assist the States to develop sign controls and programs which will assure that necessary directional information about facilities providing goods and services in the interest of the traveling public will continue to be available to motorists. To this end the Secretary shall restudy and revise as appropriate existing standards for directional signs authorized under subsections 131(c)(1) and 131(f) to develop signs which are functional and aesthetically compatible with their surroundings. He shall employ the resources of other Federal departments and agencies, including the National Endowment for the Arts, and employ maximum participation of private industry in the development of standards and systems of signs developed for those purposes.

(2) Among other things the Secretary shall encourage States to adopt programs to assure that removal of signs providing necessary directional information, which also were providing directional information on June 1, 1972, about facilities in the interest of the traveling public, be deferred until all other nonconforming signs are removed.

(r) REMOVAL OF ILLEGAL SIGNS.--

(1) BY OWNERS.--Any sign, display, or device along the Interstate System or the Federal-aid primary system which was not lawfully erected, shall be removed by the owner of such sign, display, or device not later than the 90th day following the effective date of this subsection.

(2) BY STATES.--If any owner does not remove a sign, display, or device in accordance with paragraph (1), the State within the borders of which the sign, display, or device is located shall remove the sign, display, or device. The owner of the removed sign, display, or device shall be liable to the State for the costs

of such removal. Effective control under this section includes compliance with the first sentence of this paragraph.

(s) SCENIC BYWAY PROHIBITION.--If a State has a scenic byway program, the State may not allow the erection along any highway on the Interstate System or Federal-aid primary system which before, on, or after the effective date of this subsection, is designated as a scenic byway under such program of any sign, display, or device which is not in conformance with subsection (c) of this section. Control of any sign, display, or device on such a highway shall be in accordance with this section.

(t) PRIMARY SYSTEM DEFINED.--For purposes of this section, the terms "primary system" and "Federal-aid primary system" mean the Federal-aid primary system in existence on June 1, 1991, and any highway which is not on such system but which is on the National Highway System.

Sec. 132. Payments on Federal-aid projects undertaken by a Federal agency

Where a proposed Federal-aid project is to be undertaken by a Federal agency pursuant to an agreement between a State and such Federal agency and the State makes a deposit with or payment to such Federal agency as may be required in fulfillment of the State's obligation under such agreement for the work undertaken or to be undertaken by such Federal agency, the Secretary, upon execution of a project agreement with such State for the proposed Federal-aid project, may reimburse the State out of the appropriate appropriations the estimated Federal share under the provisions of this title of the State's obligation so deposited or paid by such State. Upon completion of such project and its acceptance by the Secretary, an adjustment shall be made in such Federal share payable on account of such project based on the final cost thereof. Any sums reimbursed to the State under this section which may be in excess of the Federal pro rata share under the provisions of this title of the State's share of the cost as set forth in the approved final voucher submitted by the State shall be recovered and credited to the same class of funds from which the Federal payment under this section was made.

Sec. 133. Surface transportation program

(a) ESTABLISHMENT.--The Secretary shall establish a surface transportation program in accordance with this section.

(b) ELIGIBLE PROJECTS.--A State may obligate funds apportioned to it under section 104(b)(3) for the surface transportation program only for the following:

(1) Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements for highways (including Interstate highways) and bridges (including bridges on public roads of all functional classifications), including any such construction

Engineering and Operations Standards
Alaska Department of Transportation
and Public Facilities

Addressed to:

Nancy Hemenway
Rep. Menard's Office
465-2864

From:

Jeffery C. Ottesen, Chief, ROW & Environment
Voice (907) 465-6954
FAX (907) 465-2460
Headquarters
3132 Channel Drive
Juneau, AK 99801-7898

Total number of pages (including this sheet): 2

If there are problems with transmission, please call Nancy Black at (907) 465-2951

Comments: I reviewed the 1968 agreement with FHWA on sign size, spacing, etc. It is amendable, but it's quite a structured process, so relaxing it would not be a pro forma exercise. However, we can go stricter without getting into an amendment if so authorized by the Legislature (see p. 7 of agreement).

In unzoned commercial/industrial activity, a single business enterprize creates an area eligible for off-premises outdoor advertising. The area for signing is 500 feet from either side of the business activity measured from the area occupied by the business (e.g. building, parking lot, storage areas), not the property lines. It does not include land on opposite side of highway unless there is a commercial/industrial business there too.

Size--maximum area for one sign is 650 square feet with maximum height of 20 feet and maximum length of 50 feet. Signs may be two-faced in a back-to-back or V-arrangement.

On controlled access highways minimum sign spacing is 500 feet: and none within 2,000 feet of interchange or intersection.

On two lane highways outside towns and cities, minimum spacing is 300 feet. In cities and towns minimum spacing is 100 feet. On-premise signs do not count toward these spacing requirements.

Given that the state must enforce these provisions or lose federal-aid, I'm beginning to realize we need to enact regulations which could require a review of the placement of signs, or at least formally adopt the size, spacing standards so that the public is aware of them. Otherwise we'll have signs erected contrary to these federal rules and be forced to have them removed--the process coming full circle to the same problem we have now.

2950

FORM FHWA 121 (Rev. 5-73)

UNITED STATES GOVERNMENT

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

Memorandum

DATE: APR 3 1980

In reply refer to: HRW-14

SUBJECT: Outdoor Advertising Program - Process For Amendment of State/Federal Agreements

FROM: Chief, Real Property Acquisition Division
Washington, D.C.

TO: Regional Federal Highway Administrators
Regions 1-10

There have been several recent requests to amend the State/Federal Agreements for the outdoor advertising program. We believe that it is imperative that justification for such changes must be evaluated and every opportunity should be provided to allow the public to be aware of such changes and be afforded appropriate opportunity to comment.

A standardized policy for processing agreement modifications is attached (see Attachment). The methodology should be followed to ensure a fair and objective evaluation of all proposed agreement changes. If a State proposes an amendment to the negotiated agreements, your review should ensure that the methodology was followed as a means of expediting a recommended revision to the agreement.

G. B. Saunders

Attachment

impact, are included in the submission.

3. Upon receipt, the FHWA will publish the proposed agreement amendment, proposed impact, and State justification in the Federal Register for comment.

4. Comments received will be evaluated along with the State's proposal and background submitted.

5. The decision on the proposal will be announced by the FHWA to the State and through the Federal Register simultaneously. If approved, the executed agreement will be forwarded to the State.

WHEREAS, Title 19 of the Alaska State Statutes authorizes the Commissioner of Highways to perform and do such other and further acts not specifically provided in Title 19 of the Alaska Statutes as may be necessary to comply with the Federal-aid Highway Acts and the rules and regulations promulgated thereunder; and

WHEREAS, Section 131(b) of Title 23, United States Code provides that Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the primary system of outdoor advertising signs, displays and devices which are within six hundred and sixty feet of the nearest edge of the right of way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such state under Section 104 of Title 23, United States Code until such time as such State shall provide for such effective control; and

WHEREAS, the State of Alaska desires to implement and carry out the provisions of Section 131 of Title 23, United States Code, and the National policy in order to remain eligible to receive the full amount of all Federal-aid highway funds to be apportioned to such state on or after January 1, 1968, under Section 104 of Title 23, United States Code;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. Definitions

A. The term "Act" means Section 131 of Title 23, United States Code (1965) commonly referred to as Title I of the Highway Beautification Act of 1965.

B. Commercial or industrial activities for purposes of unzoned industrial and commercial areas mean those activities generally recognized as commercial or industrial by zoning authorities in this State, except that none of the following activities shall be considered commercial or industrial:

E. Federal-aid primary highway means any highway within that portion of the State Highway System as designated, or as many hereafter be so designated by the State, which has been approved by the Secretary of Transportation pursuant to subsection (b) of Section 103 of Title 23, United States Code.

F. Traveled way means the portion of a roadway for the movement of vehicles exclusive of shoulders.

G. Main-traveled way means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

H. Sign means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any highway.

I. Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

J. Safety rest area means an area or site established and maintained within or adjacent to the highway right of way by or under public supervision or control for the convenience of the travelling public.

K. Information center means an area or site established and maintained at a safety rest area for the purpose of informing the public of places of interest within the State and providing such other information as the State may consider desirable.

II. Scope of Agreement

This agreement shall apply to the following area:

2. Controlled Access Highways on the Federal-aid Primary System
   a. No two structures shall be spaced less than 500 feet apart.
   b. No structure may be located within 2000 feet of an interchange, or intersection at grade, safety rest area or information center (measured along the freeway from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way.)

3. Non-Controlled Access Federal-aid Primary Highways
   a. Outside of Villages and Cities - no two structures shall be spaced less than 300 feet apart.
   b. Within Villages and Cities - no two structures shall be spaced less than 100 feet apart.

4. Explanatory Notes
   a. Official and "on premise" signs, as defined in Section 131(c) of Title 23, United States Code, shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.
   b. The minimum distance between signs shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway.

LIGHTING

Signs may be illuminated, subject to the following restrictions:

1. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

2. Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the Federal-aid primary highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

3. No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

4. All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the State.

3. The State and local political subdivisions shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes and the action of the State and local political subdivisions in this regard will be accepted for the purposes of this agreement.

Intermodal Surface Transportation Efficiency Act of 1991 Amendments to 23 U.S.C. 131, Control of Outdoor Advertising

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: On December 18, 1991, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat. 1914, was signed into law. Section 1046 of the ISTEA amended 23 U.S.C. 131 which deals with outdoor advertising control. This notice describes the impact of section 1046 on how States can provide for effective control of outdoor advertising in accord with regulations previously issued by the Federal Highway Administration (FHWA) in 23 CFR 750.705. This document is being issued to advise States that the ISTEA may require them to consider changes in their laws and administrative practices in order to remain eligible for full Federal-aid funding. The ISTEA itself provides no lead time for the States to come into compliance with these new provisions. A discussion of initiatives that will be considered in evaluating how "effective control" is maintained under the new requirements is a part of this notice.

Under section 1046, 23 U.S.C. 131 will continue to apply to the Interstate System and the Federal-aid primary system as they existed on June 1, 1991, and, when designated, all portions of the approved National Highway System. The three major amendments made to 23 U.S.C. 131 by section 1046 of ISTEA are: (1) An amendment prohibiting the erection of most new signs adjacent to an Interstate or Federal-aid primary designated a Scenic Byway under a State Program; (2) a specific requirement that illegal signs be removed; and (3) a provision authorizing for the first time the use of Federal-aid highway funding to purchase signs that do not conform to outdoor advertising controls.

DATES: The ISTEA was signed into law on December 18, 1991, with the provision of new sections 131(s) and 131(r)(1) of title 23, U.S.C., effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Marlin E. Meese, Chief, Special Programs and Evaluation Branch, Office of Right-of-Way, HRW-12, (202) 366-2017; or Mr. Robert Black, Attorney, Office of Chief Counsel, HCC-31, (202) 366-1359, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Section 131 is the implementing authority within title 23, U.S.C., for the Highway Beautification Act of 1965, as amended. The basic principles of outdoor advertising control are in section 131. The original Act provided specific controls on the erection and maintenance of outdoor advertising signs and devices along the Interstate and Federal-aid primary highway systems. The Interstate and primary highway systems comprise only 306,000 miles of the 3.9 million miles of public roads and streets in the United States. Therefore, the outdoor advertising controls apply to less than 8 percent of the total national public road mileage. Statutory controls in section 131(c) limit signs which a State can permit to directional and official signs, sale or lease signs, on-premise signs, landmark signs, and free coffee signs. In addition, under section 131(d), States can permit signs in zoned or unzoned commercial or industrial areas adjacent to the controlled systems. Section 131(d) provides for an agreement between each State and the Secretary of Transportation regarding size, lighting, and spacing standards of signs in commercial and industrial areas.

Scenic Byway Prohibition

The ISTEA in section 1046(c) amended title 23, U.S.C., by adding section 131(s). The new section limits the erection of new advertising displays to those permitted under section 131(c) along road segments that are designated Scenic Byways which are on the Interstate System, the Federal-aid primary system (as it existed on June 1, 1991), or on the National Highway System, when designated. These routes, collectively, are referred to as the controlled systems for Highway Beautification Act purposes. Thus new signs which would have been permitted in commercial and industrial areas under section 131(d) are no longer permitted on scenic byway portions of the controlled system.

Based on the 1990 Scenic Byways Study (U.S. DOT/FHWA Publication No. PD-91-010, January 1991), all but 15 States have some form of scenic byways program. About 35,000 miles of roads had been designated as scenic as of December 1990, when the study was conducted. The study projected that only about 50,000 total miles would be designated. Of the total projected mileage, about 50 percent is located on the Interstate and Federal-aid primary systems. Almost all of the mileage already designated as scenic along a controlled highway system is on two lane roadways. Most scenic byways are two lane roadways in rural areas where commercial and industrial areas are fewer in number. Thus, while the scope of this new control is limited to only about 25,000 miles, it complements the actions already taken by the States in determining that these routes have particular scenic importance.

Removal of Illegal Signs

The ISTEA in section 1046(b) also added section 131(r) to title 23, U.S.C. This new section requires all owners of illegal signs to remove their illegal signs within 90 days. The section further states that in the event owners do not remove their illegal signs, the State, to exercise effective control, shall remove the signs. The section provides that States recover removal costs of unremoved illegal signs from the sign owner. This cost recovery provision is not part of "effective control" for purposes of the sanction provisions of the Highway Beautification Act (23 U.S.C. 131(b)).

The FHWA recognizes that most States have already caused the removal of a substantial number of the illegal signs within their boundaries. Some States, however, have significant numbers of illegal signs remaining. Based on State reports, a total of about 22,000 remaining illegal signs have been identified. The law gave sign owners only 90 days from the effective date of ISTEA on December 18, 1991, to remove their illegal signs. The short period given to the owners is an indication of the emphasis to be applied to remove illegal signs. In consideration of the period granted to the owners, and the specific mandate to the States to conclude removals when the sign owner has not performed, the FHWA has set a goal of an additional 90 days through June 18, 1992, for the States to act on the removal of illegal signs as required by 23 U.S.C. 131(r)(2). The FHWA recognizes that State law or procedural impediments may have to be overcome before a State can fully comply with this objective. However, considering the short time frame stated in the legislation for the removal of illegal signs by the sign owners, and the specific tie of this action to effective control requirements, States must take immediate steps after March 18, 1992, to demonstrate reasonable progress in meeting the effective control responsibilities required by this amendment. Good faith efforts by a State, including efforts to seek legislative authority, to comply with the provisions quickly will be considered by the FHWA in deciding how to deal with a failure to achieve effective control. Cumbersome administrative or procedural requirements that do not provide for prompt removal of illegal signs are not consistent with the intent of this section.

Funding for Removal of Nonconforming Signs

A new funding source for outdoor advertising control was provided in section 1046(a) of the ISTEA. By amending 23 U.S.C. 131(m), highway trust funds apportioned under 23 U.S.C. 104 are now available for the removal of nonconforming signs (i.e., lawfully erected signs which do not conform to the control requirements of section 131 or stricter State laws). In addition, in section 1007 of the ISTEA, control and removal of outdoor advertising is identified as one of several eligible "transportation enhancement activities" under the new Surface Transportation Program (STP). This major new program requires that at least 10 percent of apportioned funds for the program must be directed toward "transportation enhancement activities."

Initially, Federal funds for the control of outdoor advertising came from the General Fund. Now, funds made available from the Highway Trust Fund for highway projects may be used for outdoor advertising control. This will have a profound impact on the ability and responsibility of States to remove outdoor advertising signs. Under section 131(n), the States are not required to remove nonconforming signs unless Federal funds are available to participate in the acquisition costs associated with their removal. In the years immediately following the passage of the Highway Beautification Act, considerable sums were made available to inventory and remove nonconforming signs. However, funding was never sufficient to complete the acquisition process and no General Funds have been appropriated since 1983.

With this amendment made by the ISTEA, the States should have sufficient funds to remove nonconforming signs much more expeditiously. The change in the funding provided by the ISTEA, making available significant funds for the Federal share of just compensation payments and other control costs, will enable States to complete the removal of nonconforming signs in order to maintain effective control under Section 131(b). The timely removal of nonconforming outdoor advertising signs has always been part of "effective control." Failure to exercise effective control subjects a State to a 10 percent reduction of its Federal-aid highway apportionment, pursuant to 23 U.S.C. 131(b).

The FHWA estimates that about 92,000 nonconforming signs remain to be acquired. Most of these signs have been in place for over 20 years. Removal has been delayed, but now with increased Federal funding available to complete acquisition activities and ensure effective control, the law requires expedient removal.

The ISTEA authorizes $121 billion over the next six years for highway programs, including the STP which is a block grant program designed to fund a wide range of transportation related projects. For Fiscal Year (FY) 1992 alone, over $11 billion in Federal-aid under 23 U.S.C. 104 is being distributed to the States for highway construction and maintenance, and other transportation activities, including removal of outdoor advertising signs. The estimated total Federal share of the cost to acquire the remaining nonconforming signs is $428 million. This amount represents just 4 percent of the total eligible Federal-aid funds available to the States in FY 1992. Thus, the FHWA considered requiring States to remove all nonconforming signs along controlled highways in the first year ISTEA funding is available.

However, the FHWA recognizes that while the ISTEA represents a dramatic increase in Federal-aid funding, the non-Federal share must come from State or local sources. Moreover, the impact on individual States in providing for immediate removal would vary. For example, a State with an inventory of just a few hundred nonconforming signs would have a more manageable acquisition task than a State with over 2,000 such signs.

In addition, the FHWA recognizes that other problems might hamper the immediate removal of all remaining nonconforming signs. First, many States have been inactive regarding a sign acquisition program, and might need to update their administrative tools and sign acquisition procedures. Second, we do not believe that the Congress intended that the removal of signs take precedence over all other title 23 projects and programs.

For these reasons, we believe the ISTEA requires States to begin immediate removal of nonconforming signs, and to make reasonable progress in completing their removal program expeditiously. The FHWA, however, has set a two year goal for complete removal of remaining nonconforming signs. The FHWA believes that 2 years provides States with adequate time to remove all nonconforming signs without unduly constricting Federally-funded highway construction and other projects. States should be prepared to justify any reason for concluding that this period would impose an undue hardship on their priorities and programs.

During the next two years period, more than $24 billion Federal-aid dollars can be expected to be made available to the States for 23 U.S.C. 104 programs and projects. Considering the number of nonconforming signs remaining in the various States, most States could conclude their removal program using less than 2 percent of their 23 U.S.C. 104 funds within the two year period. Therefore, full acquisition and removal of the remaining nonconforming signs over the next two years would seem to be an achievable goal. By meeting this goal States will have removed all nonconforming signs on controlled Federal-aid highways by December 18, 1993.

The elements of removal programs will necessarily vary from State to State, and States should confer with the FHWA as to how best structure a removal program. In implementing removal programs, the States will have to review their existing priorities and formulate programs and processes that will maintain effective control. The States may wish to involve interested parties and affected entities such as other state and local agencies, sign owners, environmental groups and the business community, and establish priorities for sign removal.

This notice provides States and other interested parties a discussion of FHWA's goals and objectives to assure effective control is maintained to achieve the full implementation of the objectives expressed in the 1965

Highway Beautification Act, as amended, and to prevent interruption of Federal-aid funding. Each State should advise the FHWA by June 18, 1992, of its process, program, and timetable to ensure effective control is achieved and maintained. The FHWA intends to monitor and evaluate each State's progress in providing for the prompt removal of illegal and nonconforming signs on controlled systems.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: March 2, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-5287 Filed 3-5-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF VETERANS AFFAIRS

Cooperative Studies Evaluation Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 (Federal Advisory Committee Act) as amended by section 5(c) of Public Law 94-409 that a meeting of the Cooperative Studies Evaluation Committee will be held at the Ramada Renaissance Hotel, 999 9th Street NW., Washington, DC, on April 28, 1992. The session is scheduled to begin at 7:30 a.m. and end at 6 p.m. The meeting will be for the purpose of reviewing the progress of one on-going cooperative study in immunization in the prevention of infection, and three new clinical trials, one in the treatment of alcoholic cirrhosis, one in diabetes mellitus, and one in unstable angina.

The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on the relevance and feasibility of studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room, from 7:30 a.m. to 8 a.m., to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping Huang, Coordinator, Cooperative Studies Evaluation Committee, Department of Veterans Affairs, Washington, DC, (202-535-7154), prior to April 14, 1992.

The meeting will be closed from 8 a.m. to 6 p.m., for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Public Law 92-463, as amended by section 5(c) of Public Law 94-409, and 5 U.S.C. 552b(c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: February 28, 1992.

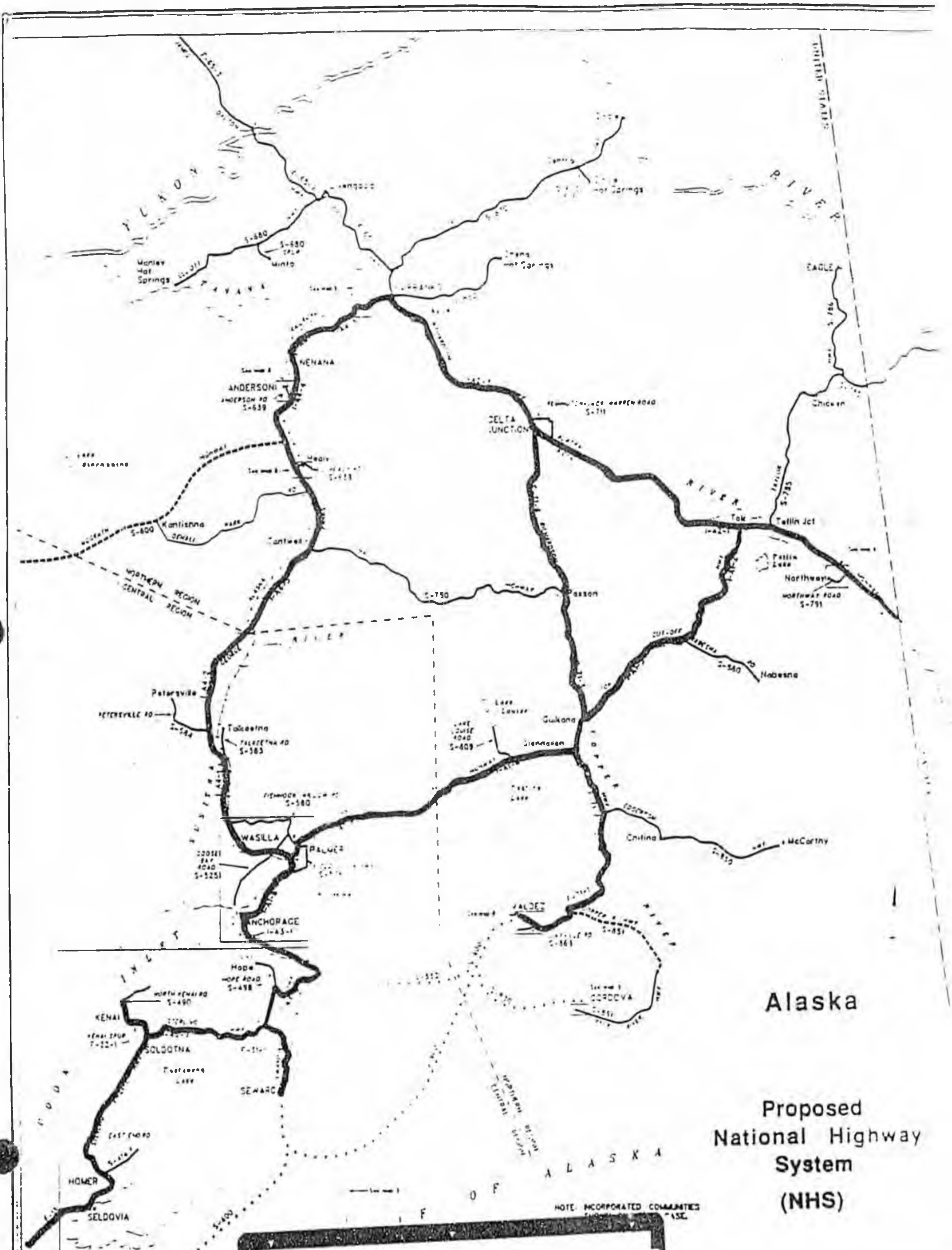
By Direction of the Secretary.

Diane H. Landis,

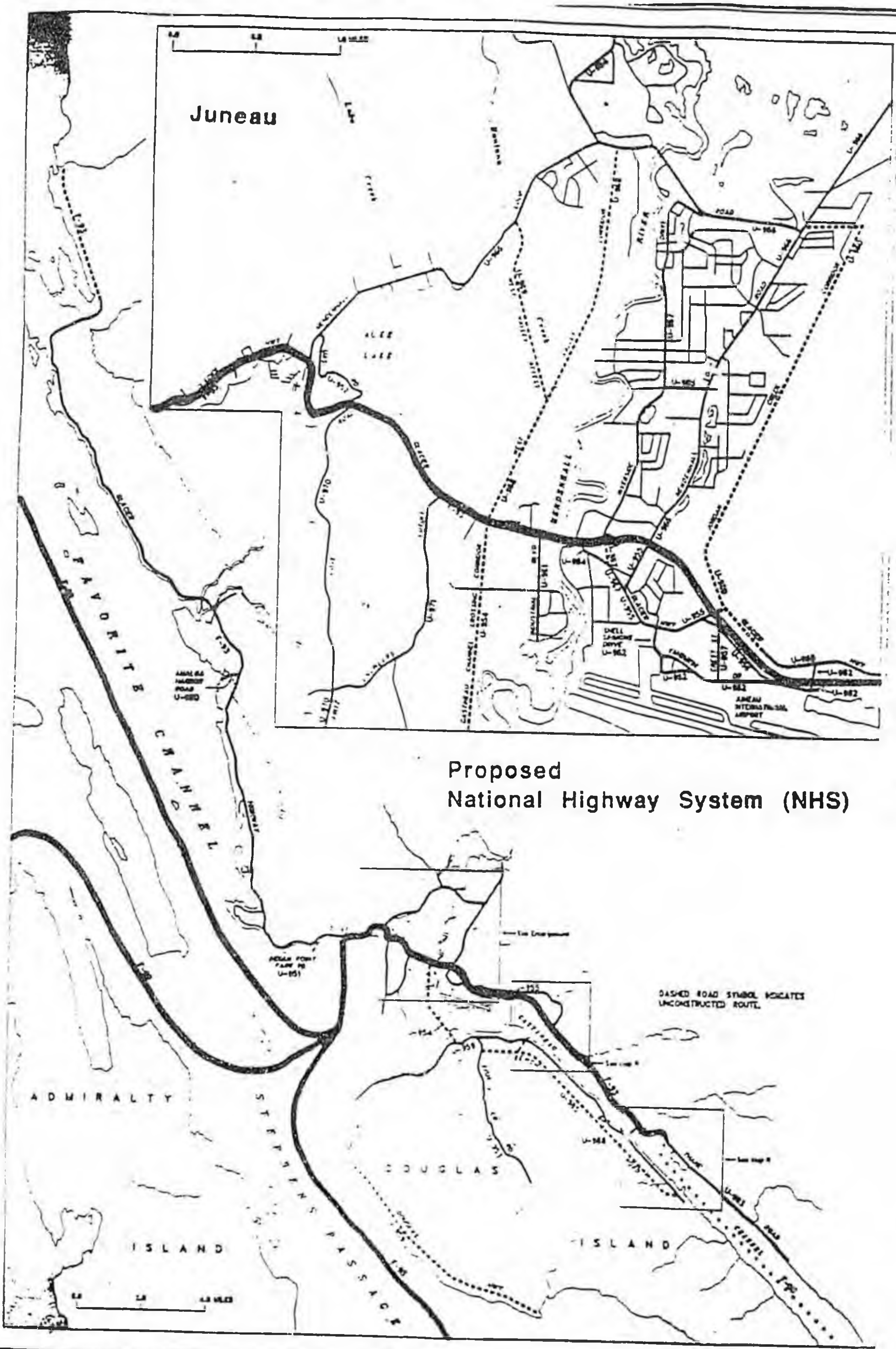
Committee Management Officer.

[FR Doc. 92-5217 Filed 3-5-92; 8:45 am]

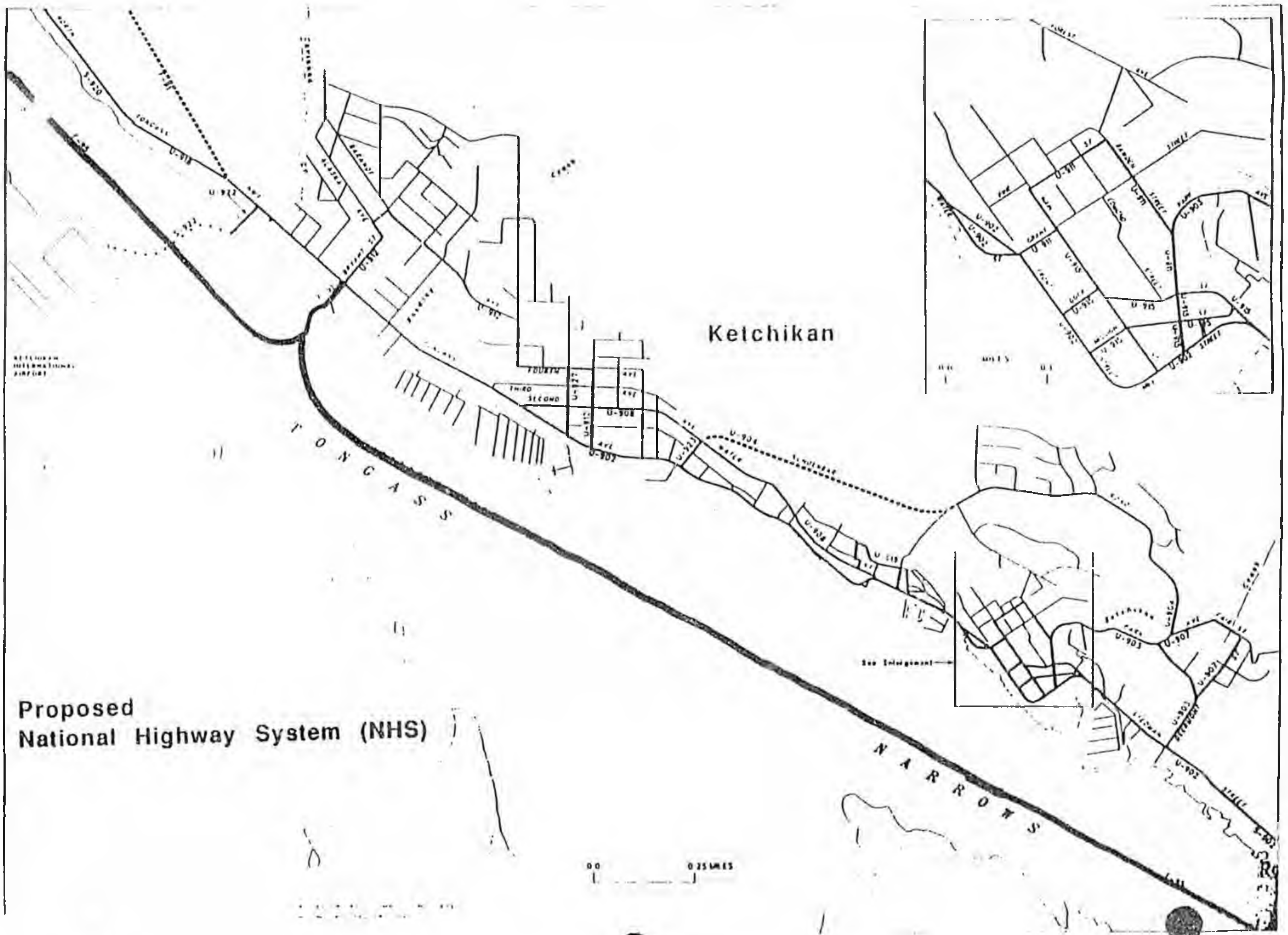
BILLING CODE 8320-01-M



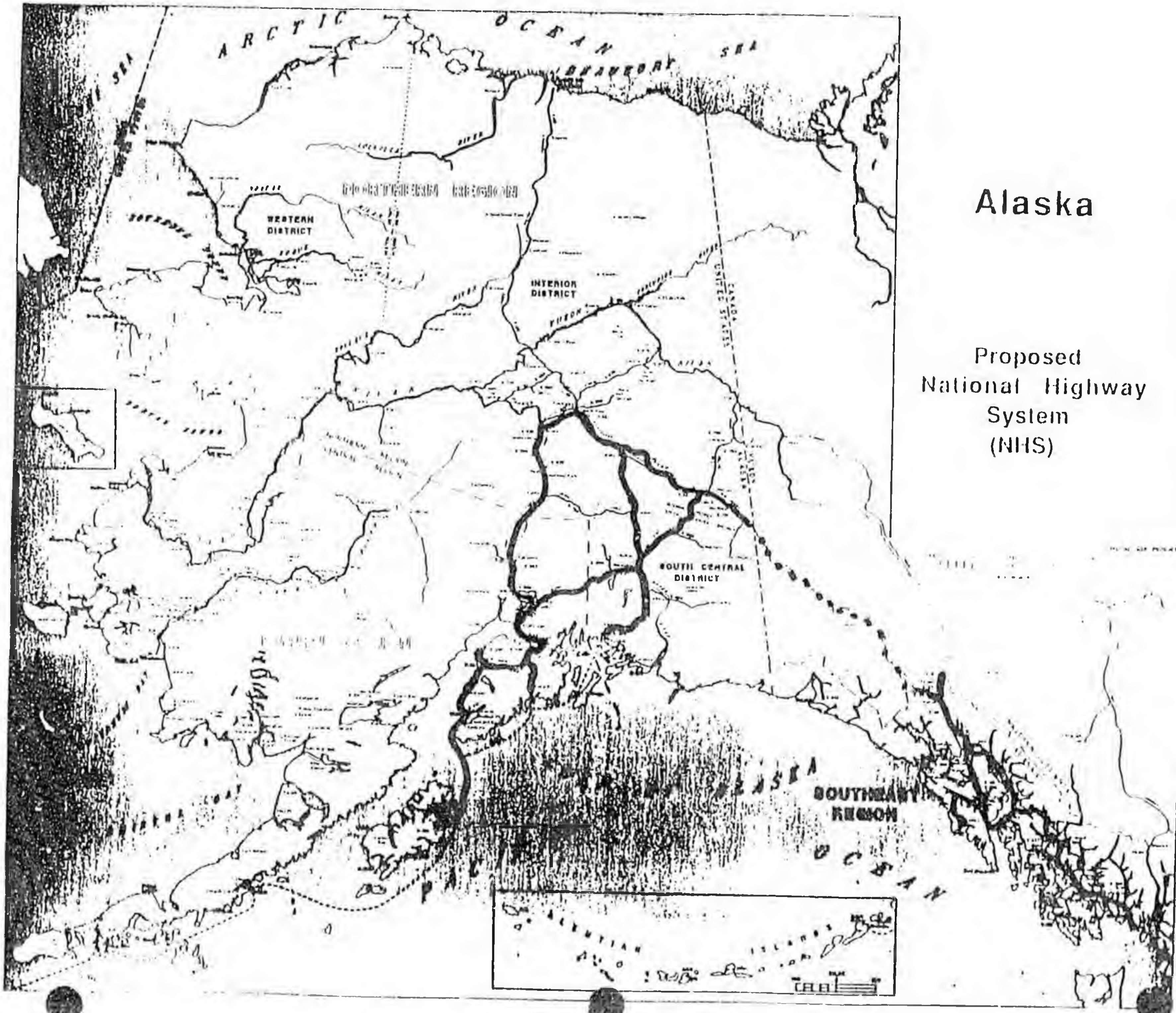
AK HIGHWAY MAPS



Juneau
Proposed
National Highway System (NHS)
FAVORITE CHANNEL
ADMIRALTY ISLAND
STEPHENS PASSAGE
DOUGLAS ISLAND
AIRPORT
DASHED ROAD SYMBOL INDICATES UNCONSTRUCTED ROUTE.

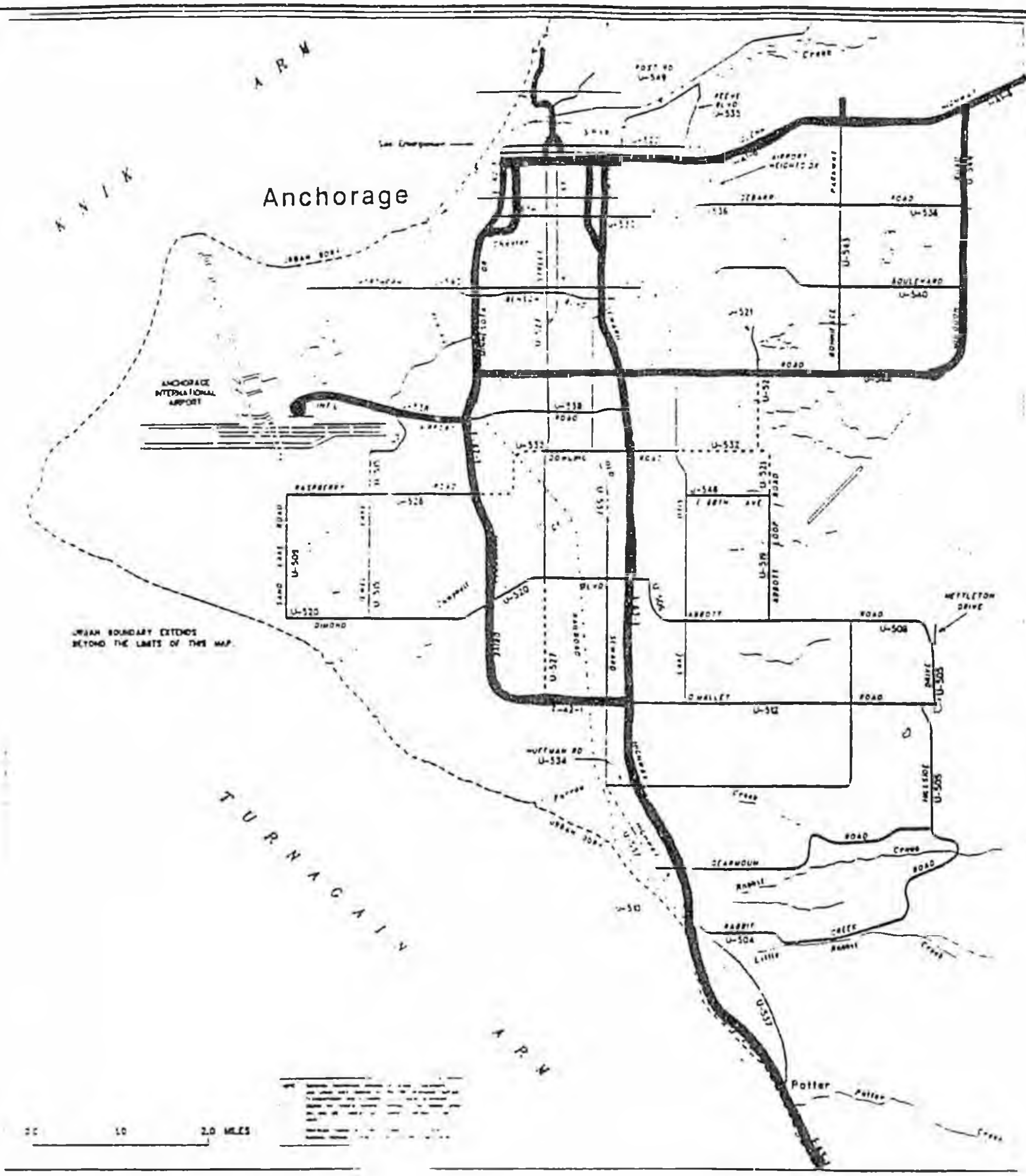


Proposed
National Highway System (NHS)



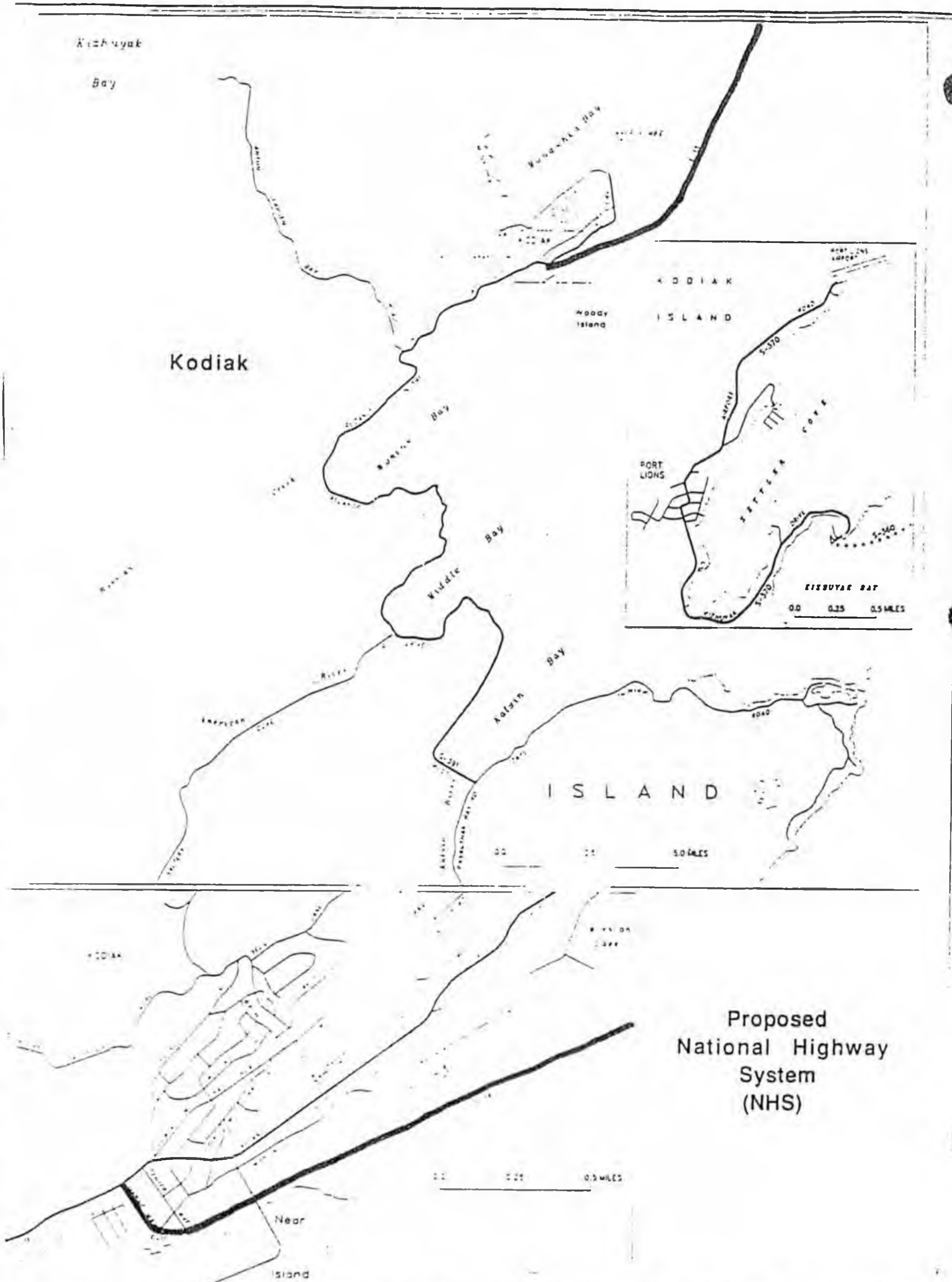
Alaska

Proposed
National Highway
System
(NHS)

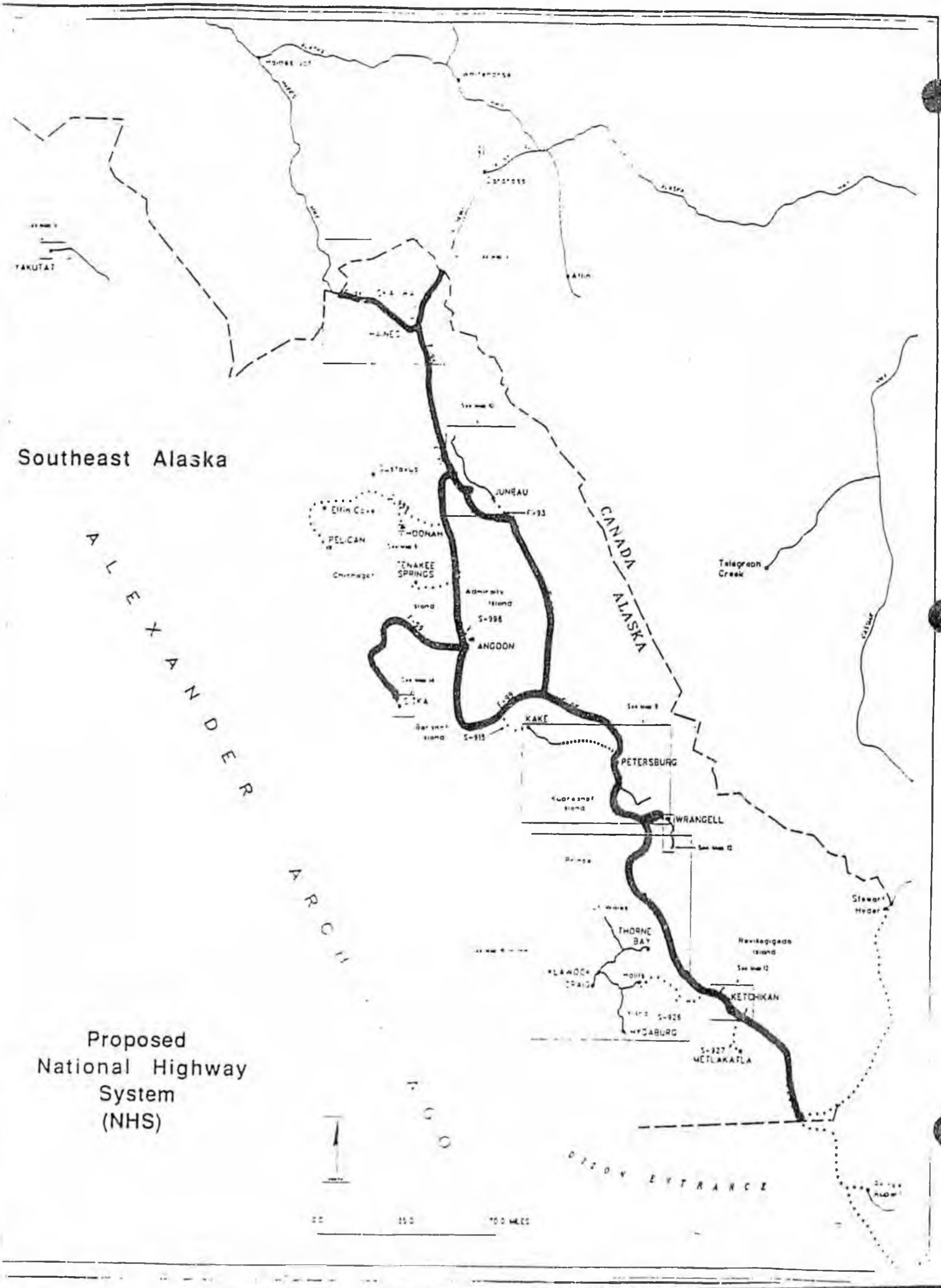


Proposed National Highway System (NHS)

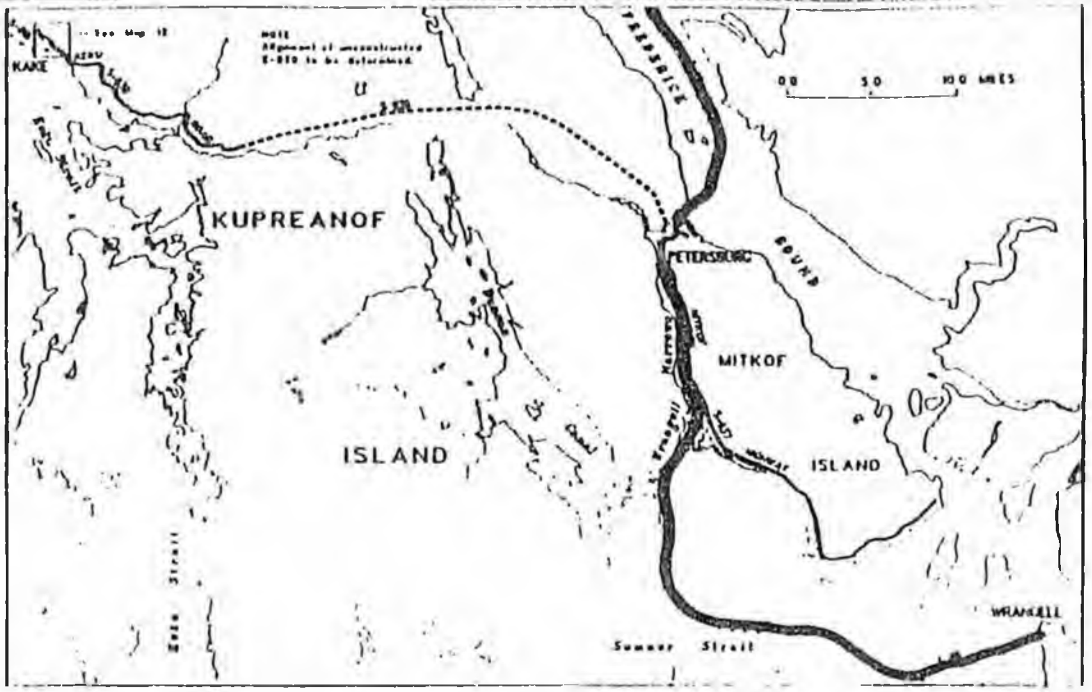
DASHED ROAD SYMBOL INDICATES UNCONSTRUCTED ROUTE.

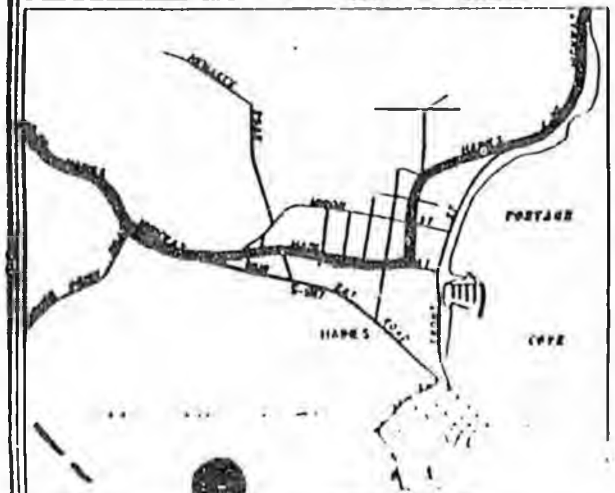


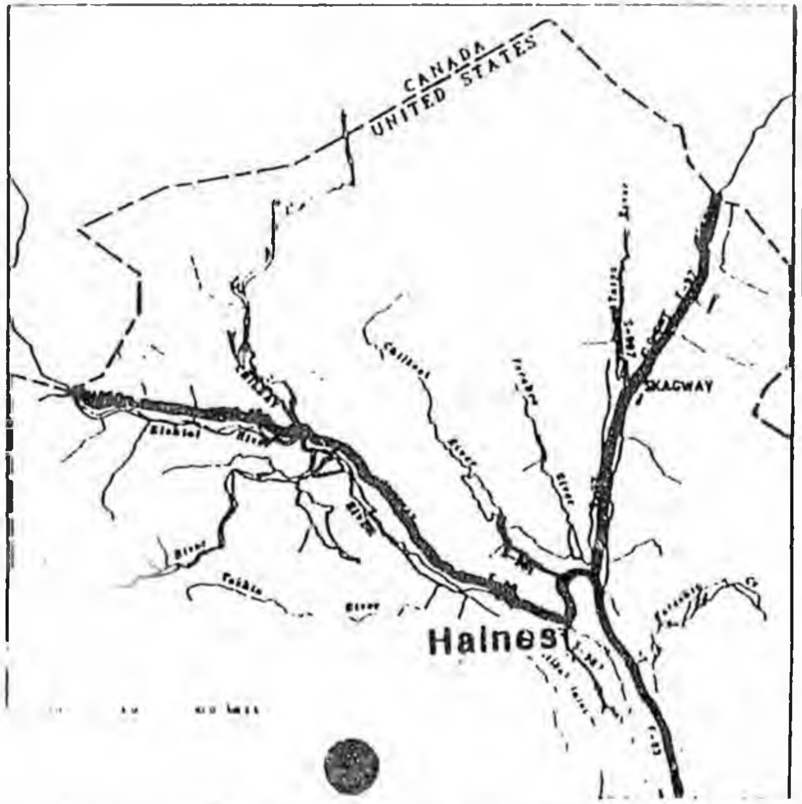
Proposed National Highway System (NHS)

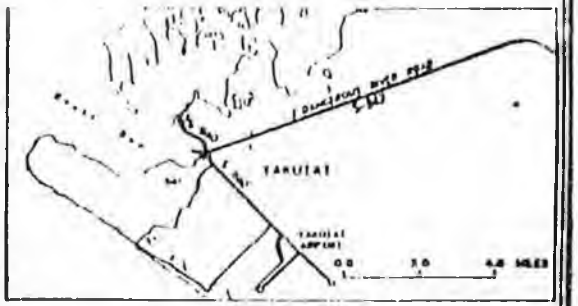


Southeast Alaska
Proposed National Highway System (NHS)
CANADA
ALASKA
ALEXANDER ARCHIPELAGO
YAKUTAT
HAINES
JUNEAU
F-93
Elfin Cove
PELICAN
HOONAH
TENAKEE SPRINGS
Admiralty Island
S-998
ANGOON
SITKA
KAKE
S-915
PETERSBURG
WRANGELL
THORNE BAY
KLAWOCK
CRAIG
S-926
HYDABURG
KETCHIKAN
S-927
METLAKATLA
Revillagigedo Island
Telegraph Creek
Stewart
Hyder
DIXON ENTRANCE
Atlin

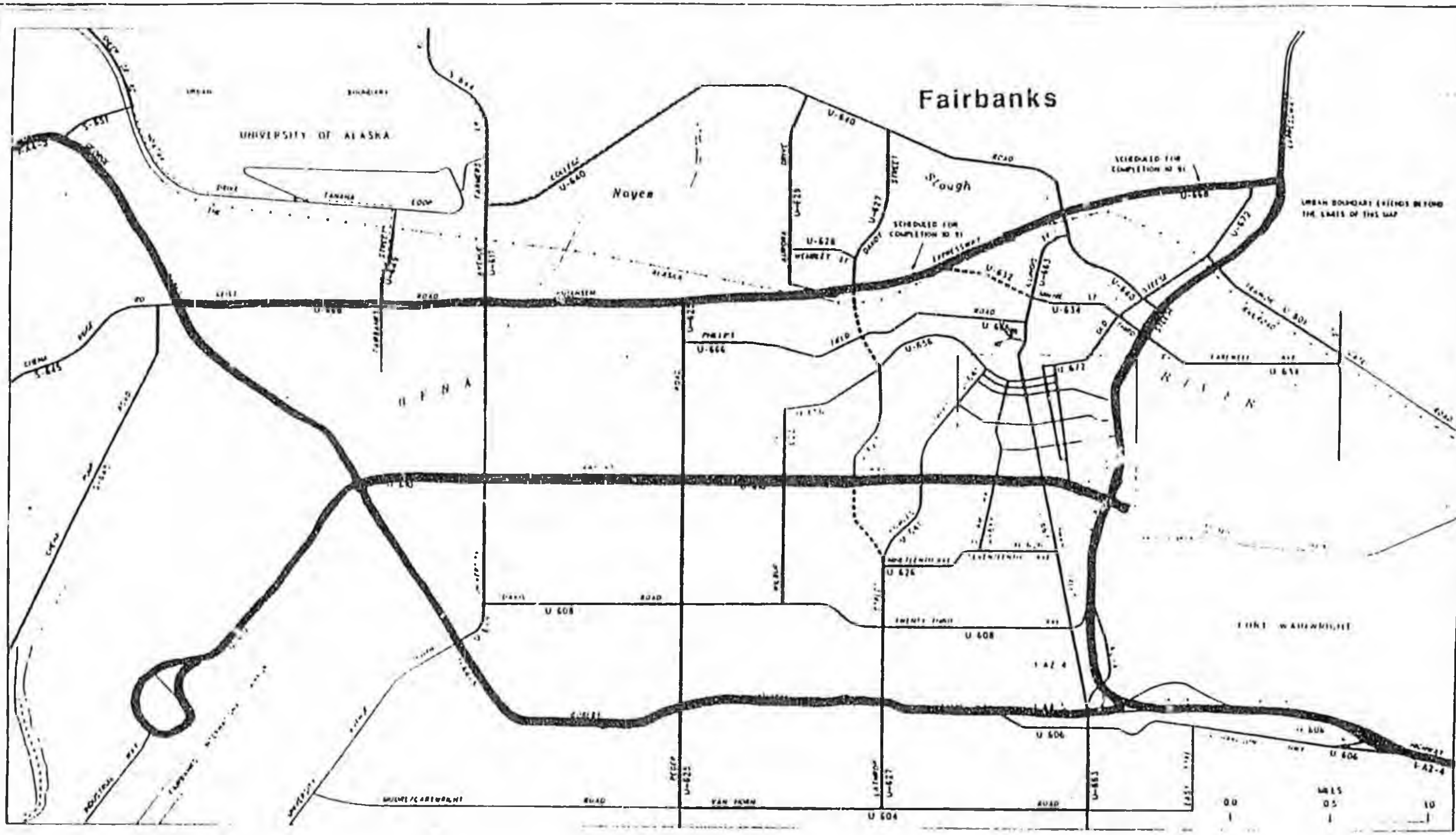








Proposed NHS



Proposed National Highway System (NHS)

#6

Alaska Permanent Fund
Real Estate Portfolio
Direct Investments

	Property	Permanent Fund Ownership	Number of Partners	Permanent Fund Investment	Cost of 100% of Investment
1	Hampton Woods	19.6%	6	1,242,642	6,333,549
2	Williamsburg Apartments	19.6%	6	1,617,407	8,243,666
3	Chatham's Mark	19.6%	6	1,676,581	8,545,264
4	Avalon Park Apartments	40.0%	2	3,444,725	8,611,812
5	Logan's Mark	19.6%	6	1,696,305	8,645,796
6	Park at Wells Branch Apts	19.6%	6	1,814,652	9,243,992
7	Amberwood Apartments	39.4%	2	3,742,210	9,500,407
8	Lemay Lake Apartments	19.6%	6	1,893,550	9,651,122
9	The Springs Apartments	19.6%	6	1,913,275	9,751,654
10	Brookstone Apartments	19.6%	6	1,932,999	9,852,187
11	Hunt's View Apartments	19.6%	6	1,972,448	10,053,252
12	Plaza Port West	13.4%	5	1,370,297	10,241,381
13	Goldbelt Building	40.0%	2	4,161,831	10,404,576
14	Zia Vista Apartments	40.0%	2	4,165,180	10,412,950
15	Conservatory Apartments	19.6%	6	2,366,938	12,063,902
16	Tree Tops Apartments	40.0%	2	4,955,649	12,389,122
17	Tri-County Corp. Center	33.3%	3	4,130,595	12,391,786
18	Eastridge Apartments	40.0%	2	4,985,158	12,462,895
19	Royal Farms Apartments	40.0%	2	5,432,099	13,580,247
20	Bridgewater Apartments	33.3%	3	4,965,889	14,897,666
21	Overlook Apartments	40.0%	2	5,973,706	14,934,266
22	Skyler Ridge Apartments	40.0%	2	6,126,795	15,316,988
23	Innesbrook Apartments	40.0%	2	6,349,682	15,874,204
24	Villages of Forest Ridge	33.3%	2	5,467,086	16,401,257
25	MNTX Business Center	40.0%	2	7,130,326	17,825,816
26	Club at Tanasbourne	40.0%	2	7,210,300	18,025,750
27	Waterford Place Apts.	40.0%	2	7,401,600	18,504,000
28	Bank of California Center	40.0%	2	8,014,113	20,035,281
29	Amador Oaks Apartments	39.7%	3	8,105,813	20,417,665
30	Siesta Key & Cedar Key	16.7%	2	3,455,269	20,733,686
31	Bristol Place Apartments	40.0%	2	8,535,550	21,338,875
32	Riverbend Apartments	40.0%	2	9,505,718	23,764,295
33	Mill Pond & Conifer Creek	40.0%	2	9,662,512	24,156,280
34	Paragon Building	25.0%	2	6,513,231	26,052,926
35	Crystal Creek Apartments	40.0%	2	10,779,871	26,949,678
36	Lakefront Apartments	40.0%	2	11,024,930	27,562,325
37	Arboretum Lakes	40.0%	2	11,255,740	28,139,349
38	37 West 57th Street	40.0%	2	11,441,158	28,602,896
39	Island Club Apartments	40.0%	4	13,491,470	33,728,676
40	Blue Ash Business Park	23.7%	5	8,155,945	34,485,734
41	Club Apartments	33.3%	2	12,363,540	37,090,620
42	Alameda Industrial Prop.	40.0%	2	15,098,981	37,747,453
43	Dallas Industrial Port.	40.0%	4	15,393,732	38,484,330
44	Frontier Building	19.0%	8	8,171,630	42,963,352
45	Westwood Place	31.8%	2	14,141,683	44,442,748
46	One Corporate Plaza	40.0%	3	17,934,596	44,836,490
47	Danada Centers	40.0%	3	18,400,000	46,000,000
48	MIW-OPUS Properties	33.1%	4	17,940,559	54,213,859

	Property	Permanent Fund Ownership	Number of Partners	Permanent Fund Investment	Cost of 100% of Investment
49	Oakwood Mall	16.7%	3	9,964,000	59,784,000
50	ARA Reading Center	31.4%	3	18,785,746	59,851,424
51	Ontario Place	40.0%	4	23,960,000	59,900,000
52	Beaverton/Redmond Tech.	40.0%	2	25,259,853	63,149,632
53	Walnut Building	38.2%	3	24,933,348	65,235,707
54	Fiesta Mall	40.0%	4	26,232,300	65,580,750
55	919 North Michigan	40.0%	3	28,554,686	71,386,714
56	Harman International	40.0%	2	32,014,143	80,035,357
57	South Park Tower	40.0%	2	32,045,962	80,114,906
58	University Square Mall	21.0%	6	19,509,524	93,011,894
59	One O'Hare Center	40.0%	6	38,551,026	96,377,564
60	Owings Mills	25.3%	4	25,491,300	100,955,644
61	IBM's SWMD Headquarters	40.0%	2	41,416,084	103,540,209
62	St. Louis Center	16.6%	5	18,494,089	111,449,115
63	McKinley Mall	10.6%	4	15,037,838	141,363,617
64	Monroeville Mall	17.1%	3	26,009,927	152,058,063
65	1818 Market Street	16.1%	7	25,724,266	159,829,672
66	135 East 57th Street	22.7%	3	37,573,374	165,322,851
67	Westside Pavilion	12.3%	7	29,796,506	242,186,977
68	Tysons Corner Center	38.0%	6	145,049,462	381,709,112

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THE INSTITUTIONAL REAL ESTATE LETTER

The Information Source For Industry Insiders

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PROSPECTUS

SECURITIZATION — by Steve Bergsman

REITs On a Tear

Déjà Vu—Have We Been Here Before?

Real estate investment trusts have been on a tear. For the first quarter of 1993, REITs posted returns of 19.1 percent, easily outdistancing the S&P 500 which only managed a 4.3 percent return. This was an even faster start than in 1992 when REITs blistered the market for a 20.7 percent return, again showing up the S&P 500 which only notched a decent 7.7 percent return.

It's not just the market performance of REITs that has caught the eye of the investor—last year, the REIT market raised $6.6 billion, nearly $2 billion greater than the previous record year of $4.8 billion. More than half of that $6.6 billion was raised by existing REITs which were extremely active in the real estate market, acquiring $2 billion worth of properties. REITs suddenly became the Japanese of the Nineties. The paradox is, after mugging the U.S. real estate market with a seemingly inexhaustible supply of capital, the Japanese have disappeared. Will the same thing happen *Continued, Page 5*

CO-INVESTMENT — by Steve Bergsman

The Dark Side

Co-Investment May Be Trendy, But It's Not All Wine and Roses

The concept of co-investing has been around for decades, but recently, it seems to have become the "in" thing to do. Increasingly, over the past three years, investors and investment managers alike have been dressing their portfolios up with co-investments—the institutional investment community's analog of the "grunge" look.

The "grunge look"—ripped jeans and flannel shirts—may be popular in some circles today, but it certainly isn't for everyone. Neither is co-investment. Even if co-investment is particularly well-suited to the needs of your fund, there are numerous issues which must be considered to make sure your beneficiaries don't end up in rags and tags.

Like the grunge look, the trendsetter for co-investment came out of the Pacific Northwest. Since the mid-1980s, the **Alaska Permanent Fund**—a $15 billion endowment organized for the benefit for *Continued, Page 15*

ARTICLE

COVER STORY

Co-Investment

Trendy, But It's Not All Wine and Roses

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all the citizens of Alaska and funded by taxes on mineral extraction revenues—has been the leader in the U.S. co-investment movement.

The reason? As always, necessity is the mother of invention. By statute, the maximum interest the Permanent Fund can hold in any single property is 40%. This means that, in order to make separate account investments work—and the Alaska Permanent Fund's Real Estate Investment Officer, **Pete Jeans**, very much wants his fund to be a separate account investor—the Fund has no choice but to co-invest (join with other tax-exempt funds to make a purchase).

As a result, for the last eight years, Jeans has made co-investment after co-investment, bringing into his real estate plays more than 100 pension fund investment partners. The approach has worked well for the Alaska Permanent Fund, and now Jeans has come south to spread his gospel throughout the "Lower 48." (More than 40 pension, foundation and endowment funds recently attended a private conference on co-investment in Dallas, sponsored by the Alaska Permanent Fund and its advisors.)

Obviously, Jeans is having some success spreading the word. He credits this success to the discontent so many pension plans have been feeling over the real estate investment programs in which they invested during the early to mid-1980s. During those formative years, Jeans explains, the institutional investor community enthusiastically embraced the concept of blind pool commingled fund investing. With this approach, a group of tax-exempt investors would invest their capital in a specified group trust, insurance company separate account or limited partnership organized and managed by an investment manager in order to enable those investors to acquire a diversified portfolio of real estate assets. The problem with these funds, says Jeans, is that investment decisions and management responsibilities were left in the hands of a third party who had ultimate discretion over the funds—and who almost always had significant conflicts of interest. To make matters worse, when the real estate market collapsed, funds trying to escape the calamity discovered they were blocked by poorly-conceived exit strategies.

Today, pension plans, still tangled in the webs of commingled funds but anxious to get in on the buying opportunity of a lifetime, are looking for new paradigms—alternative forms of real estate investment that can offer greater control and liquidity. Of course, the ultimate control results when a pension fund acquires properties directly with no partners. Some funds are unable or disinclined to go that route, however, which, according to Jeans, is what makes co-investment so appealing today.

If one considers investment structures on a continuum, notes **Allen Andersen**, a Principal with the Dallas office of **Arthur Andersen Real Estate Service Group**, they will fall somewhere between sole ownership and commingled funds. Where on the continuum co-investment lies—especially in regards to the control issue—is still subject to debate. Andersen, for one, says he would place co-investment closer to commingled funds on the spectrum, rather than placing it squarely in the middle.

Of the many forms of co-investment, the least popular have been those which require advisors, operating partners or developers to put their own capital at risk alongside the investors. While some investors now require such arrangements, others shy away because of the obvious inherent conflicts of interest. (As **Bob Burke**, a Principal of **AMB Institutional Realty Advisors** likes to point out, the investment management industry appears to have come full circle. The real estate investment management industry really took off, explains Burke, when the Employee Retirement Income Security Act of 1974 (remember ERISA?) mandated that pension funds interject a fiduciary between pension plan assets and deal promoters. Today, notes Burke, pension funds requiring their advisors to co-invest effectively are requiring them to become promoters—creating, once again, precisely the kinds of conflicts the provisions of ERISA sought to eliminate.)

An examination of many of these structures also will reveal that the advisor/developer/operator often stands to receive back in fees during the first few years of the investment, an amount equal to or exceeding the capital it generally committed to the partnership. In such cases, the pension fund's coinvesment "partner" may have little or no capital at risk after the first few years.

To make matters worse, warns Allen Andersen, when the other partner is not a tax-exempt fund there usually is a disproportionate level of investment. The tax-exempt investor typically funds something akin to 90-95% of the investment and the advisor, 5-10%. Those kinds of splits don't really do what the pension fund wants them to do.

Of the many forms of co-investment, the least popular have been those which require advisors, operating partners or developers to put their own capital at risk alongside the investors.

When pension funds do require their investment managers to put their own capital at risk in the deal, adds **Jim Curtis**, a Principal with San Francisco-based workout specialist **The Bristol Group**, they typically are seeking to align the interests of their partners with their own. The hope, explains Curtis, is that, by having their capital at risk alongside the pension fund's capital, the operating partner will be more attentive to the management of the pension fund's investments. "That's the hope,"

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notes Curtis. "We've learned, however, that people can make equally as bad investment decisions with their own money as with somebody else's." Clearly, therefore, having capital at risk is no guarantee that things will go well.

Curtis also cautions that frequently the partner doesn't even have its own capital at risk. "They raise it from other sources or they borrow it. The problem is, when the capital contributed is non-recourse, the investment manager or promoter really isn't at risk at all. In such cases," warns Curtis, "all that these co-investment requirements really create is the *illusion* of comfort."

In addition, an incompatibility of incentives often exists in these types of investments, according to **Ron Karp** of the Summit, NJ-based consulting firm **Ronald A. Karp & Associates**. Karp notes that there is a mismatch in the long-term stability and financial staying power of the pension plan versus the investment advisor or operating partner. "If the investment gets into trouble, who is going to fund the losses? Obviously, it's going to be the pension plan. And that is going to create a problem when it comes to decision-making."

The most popular form of co-investment, however, is between similar investors with similar objectives and resources, such as two or more pension plans. Even here, however, there are variations and concerns. One type of co-investment, for example, relies on an advisor who brings together investors with a common investment strategy. The advisor then executes transactions accordingly. A second type of co-investment occurs when investors unite under their own initiative—when the co-investment is investor-driven, rather than manager-driven.

The principal feature of every co-investment, however, is that it involves more than one investor (the typical co-investment involved between three to five investors). Therein lies co-investment's strength—and its weakness.

For a smaller pension plan, co-investment offers the opportunity to participate in transactions larger than those the plan otherwise would be able to execute on its own. "Small funds may not be able to invest in large projects simply because their allocation is insufficient," explains **Terry Ahern**, a Principal with the Cleveland-based **Townsend Group**. It also enables a larger investor to achieve more diversification than otherwise would be possible by investing directly. According to its Chief Real Estate Investment Officer, Grayson Sanders, for example, the Ameritech Pension Trust has assembled a roughly $1.2 billion real estate portfolio over the past ten years. Sanders notes, however, that because it has acquired much of that portfolio by co-investing with other tax-exempt funds, Ameritech's $1.2 billion position is covered by a portfolio of more than $14 billion in real estate assets.

... co-investments ... are nothing more than a commingled fund warmed over.

Investors who have done co-investments often say they like being involved with other participants with similar goals because there is a comfort with being associated with other entities that have the same investment strategy. Or, as **Andy Smith**, President of **L&B Real Estate Counsel Inc.** says, "There is a warm and cozy feeling about doing a large investment with others." Why? For one thing, there is a lot more due diligence, explains Smith. Each partner gets to scrutinize the deal; there are more checks and balances so it's less likely there will be any surprises.

Despite the lack of surprises, there also is going to be a lot more work—and fiduciary liability—for the co-investors. By co-investing rather than commingling, for example, tax-exempt investors not only have to review the potential investments, but also must participate in the decision to acquire. In addition, they must be involved in decisions concerning the ongoing management of the property, and when and how eventually to divest. The problem is, without a third party fiduciary to share the risks, a pension fund subject to ERISA provisions must shoulder the fiduciary liability associated with making these decisions alone.

Despite the extra work and liabilities, however, this is precisely the kind of control that was lacking in the commingled funds, and precisely the kind of control that many tax-exempt investors now want. When investors were passively investing in commingled funds, advisors and managers made those decisions. When advisors became promoters, and began structuring funds as partnerships to avoid being subjected to fiduciary liability under ERISA, they still made the decisions, but investors no longer enjoyed any insulation from fiduciary liability. When investors realized they weren't going to receive any fiduciary insulation, they started questioning why they should give up control. This issue, and this issue alone, is the primary driving force behind the co-investment trend. "Investors were very concerned about the lack of control in commingled funds," explains Alaska's Pete Jeans. "They wanted to be part of the process. Co-investment gives the investor more control."

Or does it?

LESSONS LEARNED

The old axiom of real estate used to be "location, location, location." But, counters **Tim Getz**, Investment Officer with the **Ohio Public Employees Retirement System**, the axiom really should be "control, control, control. You're not going to get that control," warns Getz, "by sharing your decision-making power." Getz speaks from experience—his fund was a pioneer in both the early commingled fund and co-investment movements. "One of the lessons that we learned from commingled funds was that the investor didn't make portfolio decisions. The decisions were always being made by someone else. When things got difficult, it was impossible to achieve consensus." Getz warns that the problem is no different with co-investments, which he says are nothing more than a commingled fund warmed over."

As noted before, one of the strengths of co-investment is the added layer of scrutiny. This also is a weakness, however, because it often can be difficult if not impossible to get multiple parties to come to a decision. And, since co-investors don't always have equal shares, by definition, someone is bound to end up with a minority interest. Obviously, that can be a real problem if the majority investors have a different point of view than the minority investors.

"Co-investment complicates every single aspect of a transaction," says **Susan Hudson-Wilson**, Director of Portfolio Strategy for Boston-based **Aldrich, Eastman and Waltch**. "All of a sudden there are two or more parties—very interested parties—that need and ought to be satisfied on every single aspect of the investment." As Hudson-Wilson points out, however, a hot button for one co-investor may not be so hot for another. This can make it extremely difficult to structure a transaction.

Once a co-investment has been completed, however, there essentially are five decisions upon which co-investors have to agree: leasing; capital improvement; budget; sale; and an exit strategy. In a co-investment, the way for the investors to feel their way through those processes, says L&B's Smith (who has been putting together co-investment deals since the 1970s) is to make sure that one participant never has more than 50 percent of the vote. To make a co-investment program work, explains Smith, a reasonable level of democracy must be established.

Michael Evans, National Director with **Ernst & Young**'s Real Estate Advisory Services in San Francisco, counters that co-investment adds another, unneeded level to problem solving over the life of the asset. "When there are decisions to be made by different investors who have changing objectives and strategies, there is always going to be the potential for conflicts of interest."

Hudson-Wilson concedes that co-investment may be a great way for a small pension plan to participate in larger investments, but reiterates that, "there is true lack of control when you need it most." At the point when you most need and want to do something big—like invest more or reduce the size of your investment—you discover that your options aren't much different than if you had invested in a commingled fund.

A FORMULA FOR SUCCESS

Co-investors typically try to avoid the problem of potential conflicts of interest by finding other investors with similar investment objectives. "The big key to success in co-investment is picking your partners," admits Jeans. "It does little good to find a partner who wants to hold properties for the long term, if you want to sell after three years."

Cab Grayson, Managing Director of **CB Commercial Realty Advisors**, feels that establishing a pre-existing association for co-investment can greatly enhance the success of the co-investment. "These associations of like-minded investors agree in advance to a defined real estate investment strategy, acquisition process, standardized contracts covering the decision-making powers of investors and transferability of interests, and pre-negotiated investment management fees that are performance-based and aligned with the investors' interests. The associations and the predefined process allow the investment manager to move quickly and to better negotiate with the seller." CB completed its first co-investment in 1981 and has created an active co-investment association of like-minded investors. **Scott Tracy**, Grayson's partner at CB Commercial, adds that, "The association prompts the co-investors to address most of the issues beforehand, and minimizes the difficulties in gaining consensus. Investors agree that, once the initial acquisition decision has been made, the advisor is given a defined level of discretion on operating decisions, thereby reducing disputes.

When constructing the co-investment, it is critical that the rights of the co-investors be stated clearly and definitively. "You must have a mechanism for resolving disputes among the participants," warns **Jim Snyder**, President of **Kennedy Associates Real Estate Counsel**, a Seattle-based advisor that has been putting together co-investments for the past 15 years. Snyder explains that the problem-solving process among the co-investors should be formalized as a general part of the co-investment agreement. Sometimes the process could be as simple as a majority vote among the co-investors, but it also should include a way to allow an unhappy investor to exit the co-investment. As noted, liquidity is one reason why pension plans are looking at co-investment. Investors, therefore, need to be assured that there is an easy out if they want to leave.

"Our experience," says Jeans, "has been that, if we're having a problem or disagreement with a partner, we call a meeting and sit down together face-to-face. Ninety-nine percent of the time we can solve the problem. In those few instances where it absolutely doesn't work out, the partner can leave." According to Jeans, that usually means the other partners will buy out the disgruntled party.

The **New York State Teachers Retirement System** also has been involved in co-investment transactions in the past, but none recently. "We're not saying we won't do anymore, but when we have a choice, we prefer to invest on our own," notes **Jim Campbell**, Assistant Real Estate Officer at NYSTRS. The Fund wants to control its own destiny, Campbell explains, and it is tougher to do that when hooked into other investors. "It can be frustrating to be in a deal with an investor who has a shorter term horizon or is handicapped by political decision-making processes."

The bottom line is, co-investment is a little like "the Force" —that wonderful source of power that Luke Skywalker discovers in George Lucas' Star Wars. Like the Force, co-investment can be either of great benefit, or great harm to the user—depending on how you approach it. And, as with all sources of power, investors must not forget that co-investment has its dark side. ❖

Steve Bergsman is a freelance real estate writer in Mesa, Arizona.

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November 16, 1993

VIA FACSIMILE

Mr. Pete Jeans
Real Estate Investment Officer
Alaska Permanent Fund Corporation
P.O. Box 25500
Juneau, Alaska 99802-5500

Dear Pete:

You have asked us to review the proposed legislative amendments to Section 37.13.120(g) of the Alaska Statutes in the context of our experience as investment counsel for the Alaska Permanent Fund Corporation (the "APFC"). We understand that the legislative amendment to be reviewed by the Board would modify subsection (g)(16) of Section 37.13.120 to provide:

> (g) Subject to the limitations contained in this section, the board may invest fund assets at the competitive national market rates or prices that are applicable to each investment only in
>
> . . .
>
> (16) Equity interests in, and debt obligations secured by mortgages granted a first lien on, real estate located in the United States.

We believe that this proposed amendment would be beneficial in carrying out the investment policies of the APFC for several reasons. First, it would allow the APFC to effect real estate investments that fulfill its investment objectives without imposing legal constraints that may not be relevant to ensuring that the investments are prudent. Second, the existing provisions of Section 37.13.120 that would remain unchanged by this legislative proposal ensure that sufficient fiduciary safeguards are present in connection with the acquisition of real estate by the APFC. Third, and perhaps most significantly, the proposed

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amendment would allow the APFC to invest in real estate on terms that are comparable to the terms available to ERISA-regulated corporate and Taft-Hartley (union) retirement plans and a majority of governmental retirement systems. By adopting the standards utilized by most tax-exempt institutional investors, the APFC will be poised to compete more effectively with such investors for real estate opportunities and to exert the degree of control that many of such investors have viewed as conducive to maximizing return and minimizing risk in their real estate portfolio investments.

The current provisions of Section 37.13.120(g)(16) include specific limitations that mandate, among other requirements, that the APFC not hold greater than a 40 percent beneficial ownership interest in a real estate investment at the time of acquisition, that the real estate investment is improved by completed buildings and that such buildings are substantially leased. These types of restrictions are typically referred to as "legal list" statutes and were commonly used in state statutes applicable to public and private retirement plan investments prior to 1974.

The enactment of the federal ERISA statute in 1974 eliminated the applicability of these legal list statutes to private corporate and union retirement plans. ERISA imposed general fiduciary standards applicable to all types of investments. The foundation of these fiduciary standards is the prudence and diversification rules of Section 404 of ERISA. These rules are incorporated into Sections 37.13.120(a) and (c) of the Alaska Statutes and are fully applicable to the APFC's real estate investments.

The drafters of ERISA abandoned the legal list statutes in favor of general rules of prudence and diversification for two reasons. First, to the extent that a restriction found in a legal list is a restriction appropriate to effecting a prudent and diversified investment, the legal list restriction is merely duplicative with the general fiduciary standards. Moreover, to the extent that the restriction was unnecessary to ensuring that appropriate fiduciary caution was exercised in effecting an investment, the legal list restriction was viewed as impeding the plan's ability to pursue prudent acquisition opportunities.