ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672
8345 SENATE JUDICIARY

April 13, 1994

Senate Judiciary Committee

The Honorable Robin Taylor
The Honorable Rick Halford
The Honorable George Jacko
The Honorable Dave Donley
The Honorable Suzanne Little

Dear Representatives,

I hope this finds you well.

Please do not support CSHB 459.

The State House passed CSHB 459 Wednesday, March 30, 1994 and has sent it to you in the Senate. This bill protects and relieves unscrupulous, uncaring employers from the surety of paying a penalty when they have been ***caught and found guilty of cheating their own employees*** by withholding, under paying, or even refusing to pay wages to the employees who have worked for and are entitled to these wages. Why are our representatives passing legislation to protect or relieve the penalty for employers who have been found guilty of cheating the very people who work for them?

When employers follow the well established guidelines of the 1959 Alaska Wage and Hour Act, employers will not be penalized because they won't break the law. Just like speeding; *if you don't speed, you don't get a ticket.*

If the Senate passes CSHB 459 and it becomes law, it will be relieving the pain for employers who ***have been found guilty of cheating their own employees***. Are these the kind of employers Alaskan Senators choose to protect and encourage? What about the pain of the employees who didn't get paid after they did the work?

Please, just say No to CSHB 459.

If you have any questions or if I can help oppose this bill, *please call me* at 258-7400.

Yours truly,
/s/
Bill Quinn
2006 Crataegus Circle
Anchorage, Alaska 99508

LETTER OF OPPOSITION

If you work for an hourly wage read this

April 1994: The Alaska Senate is now considering CSHB459(JUD)am. This bill will make it easier and less painful for employers who have cheated their employees out of hourly or overtime wages. This proposed bill will allow employers *who cheat their employees* to escape penalties for underpaying their employees.

Present Law AS 23 et. seq.	Proposed Changes via CSHB 459 (JUD)am
If the employer cheats employees, employer *must pay* employees	If employer cheats employees, 459 allows the cheating employer to argue they didn't pay or under paid their employees and *violated the law* in *good faith* and maybe *not pay any penalty*
If employer cheats employees out of wages or overtime payment, employer must pay wages to employee + a penalty equal to the underpaid wages	If employer cheats employees out of wages or overtime payment, employer will be able to negotiate a settlement for less than they owe the employees or maybe nothing at all.
Simple - employer cheats employee, *employer pays; burden stays on employer*	Complicated - Employer cheats employee, employer argues it violated the law in good faith and *burden shifts to the employee* to prove the employer was acting in bad faith.
Known Costs - Simple remedy provides for simple solution with minimum litigation/expenses	Escalating Costs to *employee* - employer will now be able to argue they violated the law in good faith to *reduce or eliminate any penalty.*
CERTAIN Penalty for withholding or underpaying employee; employer does not get to under pay employee and use the employee's money *for free*	UNSURE Penalty - employer would have option of underpaying employee, and using employees money *for free;* forces employee to chase employer for the money employee *already worked for*

The State House passed CSHB 459 Wednesday, March 30, 1994 and has sent it our Senators. This bill protects and relieves unscrupulous, uncaring employers from the surety of paying a penalty when they have been ***caught and found guilty of cheating their own employees*** by withholding, under paying, or even refusing to pay wages to the employees *who have worked for and are entitled to these wages.* Tell your Senator you work for a living and you don't want your representatives passing legislation to protect or relieve the penalty for employers who have been found guilty of cheating the very people who work for them.

When employers follow the well established guidelines of the 1959 Alaska Wage and Hour Act, employers will not be penalized because they won't break the law. Just like speeding; *if you don't speed, you don't get a ticket.* Alaska's present Wage and Hour Law protects employees: *lets keep it that way.*

If the Senate passes CSHB 459 and it becomes law, it will be relieving the pain for employers who ***have been found guilty of cheating their own employees***. Are these the kind of employers we want our Alaskan Senators to protect and encourage? What about the pain of the employees who didn't get paid after they did the work? **Tell your Senator to *just say no* to CSHB459(JUD)am.**

paid for by Bill Quinn, a private citizen, P.O. Box 240554, Anchorage, Alaska, 99524-0554

217 Second Street, Suite 201
Juneau, Alaska 99801
(907) 586-2323
FAX (907) 463-5515

Alaska State Chamber of Commerce
SENATE BILL NO. 340

"Damages & Attorney Fees for Unpaid Wages"

On behalf of the Alaska State Chamber of Commerce, we wish to go on record in support of Senate Bill 340, which relates to liquidated damages and attorneys fees for minimum wage and overtime compensation claims.

As the law stands now currently, an employer who is in violation of the state's minimum wage or overtime compensation laws, is automatically liable for liquidated damages, regardless of the circumstances.

The goal of Senate Bill 340 is to change the state's standards regarding the awarding of liquidated damages to be in compliance with federal standards. This results in a more equitable situation for both parties, there is still protection for the employee, and flexibility is offered to the employer who makes a mistake in good faith, providing they meet the burden of proof.

In summary, the Alaska State Chamber of Commerce supports passage of Senate Bill 340 which would allow fairness to both employee and employer.

ARCTECH SERVICES

February 22, 1994

Representative Eldon Mulder
State Capitol, Rm. #116
Juneau, Alaska 99801-1182

Dear Representative Mulder,

I urge you to support House Bill 459. Passage of this legislation will allow the Department of Labor to settle wage and hour claims and allowing for a more fair and equitable settlement for the parties involved.

Sincerely,

M. Kathryn Thomas

P.O. BOX 3005 • KENAI, ALASKA 99611 • MI 20 KENAI [illegible]
02/22/94 03:24 9077765132 ARCTECH SERVICES 001

OUR LADY OF COMPASSION CARE CENTER
4900 EAGLE STREET
ANCHORAGE, ALASKA 99503-7446
PHONE: (907) 562-2281

February 16, 1994

Members of The State House Labor and Commerce Committee:
Reps. Bill Hudson, Chairman
Joe Green, vice Chairman
Eldon Mulder
Brian Porter
Bill Williams
Joe Sitton
Jerry Mackie

I wanted to let you know that Our Lady of Compassion Care Center wholeheartedly supports the passage of HB 459. This legislation brings much needed reform to Alaska's wage and hour statute by once again allowing for negotiated settlements and allowing the State Department of Labor (DOL) and the Alaska Courts the flexibility to mitigate what are now mandatory liquidated damages provided the employer can prove his or her error was made in "good faith". The current law, as interpreted by the Alaska Supreme Court in its "Kenny Shoe" decision, strips the DOL of its previous flexibility with regard to settlements and liquidated damages, voids private settlements, and creates a "double or nothing" situation whereby the only options open to the employer are:

1. paying the costs of an outright victory in court, or
2. paying double whatever the claim is regardless of the circumstances.

The bill will not make it easy for employers to avoid paying overtime claims or liquidated damages. It will simply provide that in cases where employers can demonstrate they have made "honest mistakes" the Department or the Courts may take this into consideration when deciding whether and how much liquidated damages are awarded. The Fair Labor Standards Act, upon which the Alaska statute is based, provides the flexibility in federal law that HB 459 seeks to allow in state law. In addition, the states of California, Oregon, and Washington already have very similar provision on their books. I can think of no reason Alaska employers should be placed under a more burdensome standard than the thousands of businesses on the rest of the Pacific Coast.
Please give HB 459 your support and move it out of the Labor and Commerce Committee as soon as possible. I look forward to working you to achieve final passage of this critically important legislation.

Sincerely,

Leissa A. Wright, Director Human Resources

February 16, 1994

Representative Bill Hudson, Chairman
House Labor and Commerce Committee
Room 101
State Capitol
Juneau, AK 99801-1182

Dear Chairman Hudson:

We strongly support the passage of HB 459. This legislation reforms Alaska's wage and hour statute by again allowing for negotiated settlements and allowing the State Department of Labor (DOL) and the Alaska Courts the flexibility to mitigate what are now mandatory liquidated damages, provided the employer can prove his or her error was made in "good faith."

The current law, as interpreted by the Alaska Supreme Court in its "Kenny Shoe" decision, strips the DOL of its previous flexibility with regard to settlements and liquidated damages, voids private settlements and creates a "double or nothing" situation whereby the employers most likely end up paying double whatever the claim is regardless of the circumstances.

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Please give HB 459 your support and move it out of the Labor and Commerce Committee as soon as possible. We look forward to working with you to accomplish the goals of this important legislation.

Sincerely,

WESTMARK HOTELS, INC.

Al Parrish
President

tkw

cc Rep. Joe Green — Rep. Eldon Mulder
Rep. Brian Porter — Rep. Bill Williams
Rep. Joe Sitton — Rep. Jerry Mackie

Westmark Corporate Office 880 H Street, Suite 101, Anchorage, Alaska 99501-3400
(907) 272-9403, Facsimile: (907) 258-0560

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ENTERPRISES, INC.
900 Aurora Avenue • Fairbanks, Alaska 99701 • (907) 451-7155

February 21, 1994

Rep. Eldon Mulder
Fax: 465-3518

Dear Eldon:

I wanted to let you know that I strongly support the passage of HB 459. We need the flexibility regarding liquidated damages that this bill allows. The present mandatory liquidated damages can actually hold up the resolution of claims, especially when an "error" has been made in good faith. Again I urge you to support passage of this bill. Thanks.

Sincerely,

Harry McDonald
President

HM/jd

FOODS CO.

6411 A Street Anchorage, Alaska 99518
Ph: (907) 561-1944

February 21, 1994

To All Members of The State House Labor and Commerce Committee

Reps: Bill Hudson (Chairman)
Joe Green (Vice Chairman)
Eldon Mulder
Brian Porter
Bill Williams
Joe Sitton
Jerry Mackie

We wanted to let you know we wholeheartedly support the passage of HB 459. This legislation brings much needed reform to Alaska's wage and hour statute by once again allowing for negotiated settlements and allowing the State Department of Labor (DOL) and the Alaska Courts the flexibility to mitigate what are now mandatory liquidated damages provided the employer can prove his or her error was made in "good faith". The current law, as interpreted by the Alaska Supreme Court in its "Kinney Shoe" decision, strips the DOL of its previous flexibility with regard to settlements and liquidated damages, voids private settlements, and creates a "double or nothing" situation whereby the only options open to the employer are 1. paying the costs of an outright victory in court, or 2. paying double whatever the claim is regardless of the circumstances.

The bill will not make it easy for employers to avoid paying overtime claims or liquidated damages. It will simply provide that in cases where employers can demonstrate they have make "honest mistakes" the Department or the Court may take this into consideration when deciding whether and how much liquidated damages are awarded. The Fair Labor Standards Act, upon which the Alaska Statute is based, provides the flexibility in federal law that HB 459 seeks to allow in state law. In addition, the states of California, Oregon, and Washington already have very similar provisions on their books. We can think of no reason Alaska employers should be placed under a more burdensome standard than the thousands of businesses on the rest of the Pacific Coast.

Please give HB 459 your support and move it out of the Labor and Commerce Committee as soon as possible. We look forward to working with you to achieve final passage of this critically important legislation.

John Cairns

John Cairns
Chairman and CEO

TESORO ALASKA

February 17, 1994

Representative Bill Hudson, Chairman
House Labor and Commerce Committee
Capitol Building
Juneau, Alaska

Subject: Statement of Support for House Bill 459

Dear Representative Hudson:

Tesoro Alaska Petroleum Company supports passage of HB 459. This bill will rectify an anomoly that currently exists between state law and the Fair Labor Standards Act. Current Alaska Wage and Hour law provides for mandatory liquidated damages when employers are found to have erred under state law, irrespective of the circumstances.

The proposed bill will not eliminate liquidated damages from future awards made under state Wage and Hour law. If passed, the new law would restore flexibility for the trier of facts when an employer has proven that its error was made in "good faith." A similar approach is used in the Federal Wage and Hour laws, as well as the comparable laws of California, Oregon, and Washington.

If you have any questions or, if we can be of assistance, please contact me. We hope HB 459 will be moved our of Committee soon and believe it's final passage will benefit the State.

Thank you,

Bernie Smith

cc: Representative Joe Green, (Vice Chairman)
Representative Eldon Mulder
Representative Brian Porter
Representative Bill Williams
Representative Joe Sitton
Representative Jerry Mackie

TEL NO.2799142 Feb 18,94 9:59 No.001 P.01

Sheraton Anchorage
HOTEL

February 17, 1994

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 1
To Chairman Bill Hudson	From Forest J. Paulson
Co.	Co.
Dept.	Phone #
Fax # 465-6790	Fax # 279-9142

Representative Bill Hudson, Chairman
House Labor and Commerce Committee
Room 101
State Capitol
Juneau, Alaska 99801-1182

Dear Chairman Hudson:

We, here at the Sheraton Anchorage Hotel, strongly support the passage of HB 459 along with many others. We think it's important that you know of our feelings.

This legislation brings much needed reform to Alaska's wage an hour statute by once again allowing for negotiated settlements and allowing the State Department of Labor (DOL) and the Alaska Courts the flexibility to mitigate what are now mandatory liquidated damages, provided the employer can prove his or her error was made in "good faith".

The current law, as interpreted by the Alaska Supreme Court in its "Kenny Shoe" decision, strips the DOL of its previous flexibility with regard to settlements and liquidated damages, voids private settlements and creates a "double or nothing" situation whereby the only options open to the employer are 1) paying the costs of an outright victory in court or 2) paying double whatever the claim is regardless of the circumstances.

The Bill will not make it easy for employers to avoid paying overtime claims or liquidated damages. It will simply provide (in cases where employers can demonstrate they made "honest mistakes") the Department or the Courts may take this into consideration when deciding whether and how much liquidated damages are awarded. The Fair Labor Standards Act, upon which the Alaska statute is based, provides the flexibility in federal law that HB 459 seeks to allow in state law. In addition, the states of California, Oregon, and Washington already have very similar provisions on their books. We can think of no reason Alaska employers should be placed under a more burdensome standard than the thousands of businesses on the rest of the Pacific Coast.

We are hoping that you will support HB 459, along with the Sheraton Anchorage Hotel, and look forward to working with you on this very important matter.

Sincerely,

Sheraton Anchorage Hotel

Forest Paulson

Forest J. Paulson
General Manager

FJP/mjd

ITT Sheraton

401 EAST 6TH AVENUE, ANCHORAGE, AK 99501
PHONE (907) 276 8700 FAX (907) 276 7561

February 16, 1994

Representative Bill Hudson, Chairman
House Labor and Commerce Committee
Room 101
State Capitol
Juneau, AK 99801-1182

Dear Chairman Hudson:

We strongly support the passage of HB 459. This legislation reforms Alaska's wage and hour statute by again allowing for negotiated settlements and allowing the State Department of Labor (DOL) and the Alaska Courts the flexibility to mitigate what are now mandatory liquidated damages, provided the employer can prove his or her error was made in "good faith."

The current law, as interpreted by the Alaska Supreme Court in its "Kenny Shoe" decision, strips the DOL of its previous flexibility with regard to settlements and liquidated damages, voids private settlements and creates a "double or nothing" situation whereby the employers most likely end up paying double whatever the claim is regardless of the circumstances.

The Bill will not make it easy for employers to avoid paying overtime claims or liquidated damages. It will simply provide (in cases where employers can demonstrate they made "honest mistakes") the Department or the Courts may take this into consideration when deciding whether and how much liquidated damages are awarded. The Fair Labor Standards Act, upon which the Alaska statute is based, provides the flexibility in federal law that HB 459 seeks to allow in state law. The states of California, Oregon, and Washington already have very similar provisions on their books. Alaska employers should not be placed under a more burdensome standard than the thousands of businesses in those states.

Please give HB 459 your support and move it out of the Labor and Commerce Committee as soon as possible. We look forward to working with you to accomplish the goals of this important legislation.

Sincerely,

WESTMARK HOTELS, INC.

Al Parrish
President

tkw

cc: Rep. Joe Green, Rep. Eldon Mulder
Rep. Brian Porter, Rep. Bill Williams
Rep. Joe Sitton, Rep. Jerry Mackie

Westmark Corporate Office 880 H Street, Suite 101, Anchorage, Alaska 99501-3400
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Five Pages

March 29, 1994

The Honorable Eldon Mulder
Alaska State Representative
State Capitol
Room 116
Juneau, Alaska 99801

Re: House Bill 459

Dear Representative Mulder:

I am writing to express my support for House Bill 459 and to make additional comments that may be of interest to you. The Article, at B4 of this mornings Anchorage Daily News provides the impetus for my comments.

I am a small business man in Alaska. Through various corporations, I own and operate Dimond Mini Storage, International Self Storage and International Moving and Storage. I have several employees and was recently sued by two former employees for overtime compensation. The cite for the appeal is in that matter is: Bobich v. Stewart, 843 P.2d 1232 (Alaska 1992). In this case, Mr. Kenneth Legacki was successful in receiving the following judgment:

Judgement for
Sharon Stewart: 21,731.00

Judgement for
Jimmie D. Stewart: 23,402.00

Liquidated damages
Sharon Stewart: 21,731.00

Liquidated damages
Jimmie Stewart: 23,402.00

DAVIS WRIGHT TREMAINE
LAW OFFICES
SUITE 1450 · 550 WEST 7TH AVENUE · ANCHORAGE, ALASKA 99501
(907) 257-5300

MEMORANDUM

TO: Alaskan Employers

FROM: Parry Grover

DATE: March 29, 1994

RE: CSHB 459, Wage and Hour Reform Legislation, (Section 4, Effective Date)

CSHB 459 will be on the House floor today. There are many inaccuracies being floated around by the only remaining opponents (plaintiff trial lawyers) of the bill. Section 4 of the bill dealing with the effective date of the legislation was not put in to protect any employer from liability in a pending case. The language of section 4 simply provides for a uniform way for cases to move through the courts. The purpose of section 4 is to eliminate the possibility that two cases that may be identical except for the date they were filed, but which are moving through the courts at approximately the same time, being handled under two different sets of rules. By applying the corrective rules of CSHB 459 to all cases which have not reached final judgment, Section 4 will assure that all cases move forward under the same albeit new rules. This will avoid the confusion of dual standards for all parties in these cases.

If an amendment is accepted which makes the bill apply only to cases filed (actions brought) on or after the effective date, we as employers can live with that. However, actions brought just before the effective date will proceed under one set of rules and actions brought after the effective date will proceed under a different set of rules. The new rules are corrective. We think it is better policy to insure that the same rules apply to all cases which have not reached closure through final judgment.

BELLEVUE, WASHINGTON · BOISE, ... FORNIA · PORTLAND, OREGON
RICHLAND, WASHINGTON · ... N · WASHINGTON, D.C.

BACK-UP MEMORANDA

DAVIS WRIGHT TREMAINE

LAW OFFICES

SUITE 1450 • 550 WEST 7TH AVENUE • ANCHORAGE, ALASKA 99501
(907) 257-5300

MEMORANDUM

TO: Alaskan Employers

FROM: Parry Grover

DATE: March 29, 1994

RE: CSHB 459, Wage and Hour Reform Legislation, Section 2 (Attorney Fees)

Plaintiff trial attorneys object to Section 2 of CSHB 459 and assert that the attorneys' fee rule embodied in AS 23.10.110(c) should not be changed. Are they right? Why not leave the attorneys' fees rule as it is?

AS 23.10.110(c) presently allows only the **plaintiff** to recover attorneys' fees in a wage & hour act lawsuit. The rule is one sided; **the employer always pays.** If the plaintiff wins the lawsuit, the employer must pay the attorneys' fees incurred by the plaintiff, and the employer must pay his own attorneys' fees. The employer pays twice. If the plaintiff loses, the employer still has to pay his own attorneys' fees. The employer gets no reimbursement for having successfully defended against the plaintiff's claims.

Plaintiffs trial attorneys obviously like this rule. There is never any "downside" to them or their client in suing the employer. They have everything to gain from taking their cases to trial, and next to nothing at risk from turning down reasonable settlement offers.

Section 2 amends AS 23.10.110(c) by providing that the prevailing party recovers costs and attorneys fees from the losing party as determined by court rule. That means **Alaska Civil Rule 82**, a copy of which is attached hereto. There are several good reasons for adopting this amendment:

1. Civil Rule 82 is the **universally accepted standard** for recovery of attorneys' fees in civil litigation in Alaska. Ninety percent of more of civil cases are decided under this rule. Judges and attorneys are familiar with the rule. The rule recognizes that the **prevailing party** should recover at least partial attorneys' fees for having been put to the trouble of successfully suing or successfully defending.

2. Civil Rule 82 is **fair**. It treats plaintiffs and defendants exactly alike. Neither side is favored. It assures the prevailing party will recover attorneys' fees.

3. Civil Rule 82 **encourages reasonable settlements.** Defendants with weak defenses are encouraged to settle because if the don't, they will be ordered to pay at least part of the plaintiff's fees. Likewise, plaintiffs with weak or frivolous cases are encouraged to settle because they could end up paying part of the defendant's fees. The rule works both ways.

4. Civil Rule 82 is **flexible.** Neither party can safely engage in vexatious litigation because Civil Rule 82 gives the court the power to award enhanced fees and even full attorneys' fees. For example, if an employer protracts wage & hour litigation by raising spurious defenses, by abusing the discovery rules or by otherwise acting unreasonably in the face of a meritorious plaintiff's wage & hour act claim, the court has considerable leeway for increasing the plaintiff's fees recovery. See Civil Rule 82(b)(3).

Section 2 of CSHB 459 should be enacted into law because it insures that **both parties** will play by the same rules. That is imminently fair.

Attachment: Alaska Civil Rule 82

DAVIS WRIGHT TREMAINE

LAW OFFICES

SUITE 1450 · 550 WEST 7TH AVENUE · ANCHORAGE, ALASKA 99501
(907) 257-5300

MEMORANDUM

TO: Alaskan Employers

FROM: Parry Grover

DATE: February 18, 1994

RE: Analysis of House Bill 459's "Good Faith and Reasonable Grounds" Exception to Liquidated Damages

Questions have been raised regarding what employers must prove to avoid assessment of mandatory liquidated damages under the "good faith and reasonable grounds" exception incorporated in Section 3(d) of H.B. 459.

The questions can be answered by reference to existing federal regulations adopted under the Fair Labor Standards Act (FLSA) and the Portal-to-Portal Act, and federal court decisions which have ruled upon the availability of that defense in a wide variety of fact situations.

1. <u>If H.B. 459 is Enacted into Law, Will an Employer Be Able to Prove it Acted Reasonably and in Good Faith by Showing the Employer Was Ignorant of the Requirements of the Alaska Wage & Hour Act</u>?

No. Ignorance of the law is no defense. Federal court decisions have held that ignorance of the requirements of the FLSA, the Portal-to-Portal Act and the Equal Pay Act does not constitute good faith or reasonable grounds. <u>See Marshall v. Brunner</u>, 668 F.2d 748 (3rd Cir. 1982); <u>Cranshaw v. Quarles Drilling Corp.</u>, 798 F.2d 1345 (10th Cir. 1986). For example, the federal appellate court in <u>Barcellona v. Tiffany English Pub, Inc.</u>, 597 F.2d 464, 469 (5th Cir. 1979), held:

> [G]ood faith requires some duty to investigate potential liability under the FLSA. . . . Even inexperienced businessmen cannot claim good faith when they blindly operate a business without making any investigation as to their responsibilities under the labor laws. Apathetic ignorance is never the basis of a reasonable belief.

FAX: (907) 257-5399

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RICHLAND, WASHINGTON · SAN FRANCISCO, CALIFORNIA · SEATTLE, WASHINGTON · WASHINGTON, D.C.

2. <u>What Must an Employer Prove to Avoid Assessment of Liquidated Damages Under the Good Faith and Reasonable Grounds Exception</u>?

Reported federal decisions show clearly that the good faith and reasonable grounds exception is not easy to satisfy. The employer has the burden of proving both that it acted in good faith (a subjective standard), and that it had reasonable grounds for believing its actions were in compliance with the law (an objective standard). If the employer fails to prove either element, the exception to mandatory liquidated damages is not available. Mireles v. Frio Foods, Inc., 899 F.2d 1407 (5th Cir. 1990); Majchrzak v. Chrysler Credit Corp., 537 F. Supp. 33 (D. Mich. 1981).

Federal regulations incorporate these dual requirements. 29 CFR § 790.22(b) restates both standards and explains:

> If these [two] conditions are met by the employer against whom suit is brought, the court is permitted, but not required, in its sound discretion to reduce or eliminate the liquidated damages which would otherwise be required in any judgment against the employer. . . . If, however, the employer does not show to the satisfaction of the court that he has met the two conditions . . ., the court is given no discretion by the statute, and it continues to be the duty of the court to award liquidated damages.

At a minimum, the dual standards require the employer to prove the honest intention to ascertain and follow the dictates of the Act. Hultgren v. County of Lancaster, Nebraska, 913 F.2d 498 (8th Cir. 1990). Thus good faith can be shown where the employer seeks out publications and opinion letters in an effort to determine whether its pay practice is lawful, Hultgren, 753 F. Supp. 809; or where it seeks the written opinion of the Department of Labor, Clay v. City of Winona, 753 F. Supp. 624.

But even if the employer has an honest, good faith belief that it acted in compliance with the law, the liquidated damages exemption will be denied the employer if its actions appear unreasonable to the court. For example, if the employer obtains the opinion of the Department of Labor, but then fails to follow the Department's recommendations, liquidated damages will be assessed. SEIU Local 102 v. County of San Diego, 784 F. Supp. 1503 (S.D. Cal. 1992). Or where the employer ignores disclaimers in Department of Labor guidelines, the exception will be denied. Renfro v. City of Emporia, Kansas, 732 F. Supp. 1116 (D. Kan. 1990).

In short, the employer must show he attempted to determine what the law requires and then took the additional, critical step of attempting to comply with the law in a reasonable manner.

3. <u>Should Alaska Attempt to Define the "Good Faith" and "Reasonable Grounds" Standards in the Statute</u>?

No, that is not necessary and might very well confuse rather than clarify. Section 3(d) incorporates the same "good faith" and "reasonable grounds" standards used throughout similar federal laws such as the FLSA, the Portal-to-Portal Act, and the Equal Pay Act. The federal regulations and court decisions provide an ample body of precedents regarding the proper interpretation of these terms in many different fact situations. <u>See</u> 29 U.S.C.A. § 260 and annotated court decisions reported therein.

The AWHA is based substantially on the FLSA. Indeed, the AWHA encourages the Alaska Commissioner of Labor to adopt "regulations and interpretations that are made by the administrator of the Wage and Hour Division of the federal Department of Labor . . .." AS 23.10.095. The Commissioner and Alaska courts should look to those federal regulations and decisions for guidance.

Perhaps most importantly, were Alaska to attempt to statutorily define these standards and do so in words any different than those used in the federal regulations, that almost certainly would lead to increased litigation. Attorneys would argue the Legislature must have intended different standards to apply in Alaska. It is no accident that Civil Rule 82 (regarding prevailing party attorneys' fees), which is unique to Alaska, is the single most often litigated court rule in this state.

There is no sound policy reason for Alaska to attempt to redefine terms which have been in use for many years in virtually identical federal administrative and court proceedings, and whose meanings are well understood.

DAVIS WRIGHT TREMAINE
Law Offices
Suite 1450 · 550 West 7th Avenue · Anchorage, Alaska 99501
(907) 257-5300

FROM: Parry Grover, Davis Wright Tremaine

DATE: February 2, 1994

RE: Analysis of proposed House Bill relating to liquidated damages and attorney fees for minimum wage and overtime compensation claims

This bill corrects two serious shortcomings with respect to the liquidated damages provision of the Alaska Wage & Hour Act (AWHA), AS 23.10.110(a):

1. It restores to the Commissioner of the Alaska Department of Labor the authority to settle minimum wage and overtime claims without assessing liquidated damages, and it authorizes settlements outside court; and

2. It grants the courts discretion in private AWHA litigation to award partial or no liquidated damages if the employer proves he acted in good faith and reasonably.

Neither action has been legally permissible since the Alaska Supreme Court's decision in McKeown v. Kinney Shoe Corp., 820 P.2d 1068 (Alaska 1991).

The policy underlying AWHA is to require employers who fail to pay their employees minimum wages or overtime compensation the unpaid minimum wages or overtime compensation which are due, and an equal amount as liquidated damages. This policy is drawn from the federal Fair Labor Standards Act (FLSA) which contains similar liquidated damages provisions.

Unlike the FLSA, however, AS 23.10.110(a) has been interpreted by the Alaska Supreme Court as mandating payment of liquidated damages in every case, regardless of whether the employer acted reasonably and in good faith. The FLSA allows the court to waive liquidated damages in whole or in part if the employer makes that showing. Moreover, prior to Kinney Shoe, the Commissioner felt he had authority in appropriate cases to settle claims without requiring payment of liquidated damages. Since that decision, the Commissioner has been required to recover liquidated damages in every case.

This bill does not remove the liquidated damages provision in AWHA. Rather, it restores the Commissioner's pre-Kinney Shoe settlement authority, and it grants the courts power to waive

liquidated damages in cases where federal law allows that discretion.

The following analysis of Sections 3 and 4 of the bill summarizes how this bill corrects AWHA:

Subsection 3(d). This provision incorporates the FLSA standard under which a court may decline to award liquidated damages where the employer proves it acted reasonably and in good faith. See 29 U.S. Code § 260. Subsection (d) applies only to private AWHA litigation. It does not affect the Commissioner's enforcement and settlement powers.

For example, an employer might incorrectly believe an employee is exempt from overtime compensation because of advice from the Department of Labor given under a good faith misunderstanding of certain facts. After trial, the court would require the employer to pay the overtime compensation, but could decide to award partial or no liquidated damages depending on circumstances of the case. It will be the employer's burden to persuade the court not to award liquidated damages.

Subsection 3(e). This provision was requested by the Commissioner. It likewise is drawn from the FLSA, 29 U.S.Code § 216, and is intended to restore the Commissioner's pre-Kinney Shoe authority to settle AWHA cases without requiring payment of liquidated damages. If the Commissioner finds it necessary to sue the employer in court and prevails at trial, an award of full liquidated damages is required under AS 23.10.110(a). Employers thus will have a powerful inducement to accept reasonable settlement proposals advanced by the Commissioner.

Subsection 3(f). This provision allows AWHA settlements made outside of court which expressly waive liquidated damages to be respected judicially. The Kinney Shoe court held that private settlements are void. The court's decision has had the effect, albeit perhaps unintended, of increasing resort to litigation. There is language in the decision which strongly suggests that only those settlements approved by a court are valid. It is poor public policy to encourage litigation and to discourage private settlements of claims.

Section 4. This effective date provision distinguishes between private AWHA litigation and enforcement of AWHA by the Commissioner. Restoration of the Commissioner's settlement authority (Subsection 3(e)) and authority for private AWHA settlements (Subsection 3(f)) are tied to the effective date of the Act. The good faith and reasonable grounds defense to liquidated damages will become available in pending private court proceedings which have not gone to final judgment prior to the effective date of the Act, and to future actions.

DAVIS WRIGHT TREMAINE
LAW OFFICES
SUITE 1450 · 550 WEST 7TH AVENUE · ANCHORAGE, ALASKA 99501
(907) 257-5300

MEMORANDUM

TO: Alaskan Employers

FROM: Parry Grover

DATE: December 6, 1993

RE: Mandatory Liquidated Damages under the Alaska Wage & Hour Act

The Alaska Wage & Hour Act (AWHA), unlike the federal legislation on which it is based, the Fair Labor Standards Act (FLSA), imposes mandatory liquidated damages in each instance where the employer is found to have underpaid overtime compensation or statutory minimum wages. The AWHA states in Alaska Stat. § 23.10.110(a):

> An employer who violates a provision of [the Alaska overtime law or minimum wage law] is liable to an employee affected in the amount of unpaid minimum wages, or unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. (Emphasis added).

The underlined language has been interpreted by the Alaska Supreme Court as being mandatory. The lower courts have no discretion to refuse to award liquidated damages. See Bobich v. Stewart, 843 P.2d 1232 (Alaska 1992); Webster v. Bechtel, Inc., 621 P.2d 890 (Alaska 1980); Alaska Int'l Industries, Inc. v. Mussara, 602 P.2d 1240 (Alaska 1979).

Prior to these rulings, the Alaska Department of Labor frequently would settle overtime claims without assessing liquidated damages. The Department will not do so now. This forces employers to chose between settling for at least double the amount claimed or bearing the costs and risks of litigation.

The FLSA, on the other hand, contains language almost identical to AWHA section 110(a) quoted above, but additionally contains the following language:

> In any action commenced prior to or on or after May 14, 1947 to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, . . . if the

employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing his act or omission was not in violation of the Fair Labor Standards Act, . . . the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in [29 U.S. Code § 216].

29 U.S. Code § 260 (Emphasis added).

Federal courts thus have ruled that the award of liquidated damages is discretionary, and a federal court need not award any liquidated damages where the employer shows: (1) it acted in good faith; and (2) it had a reasonable basis for believing it was not violating the law. See, e.g., Bratt v. County of Los Angeles, 912 F.2d 1066, 1071-73 (9th Cir. 1990), cert. denied 111 S.Ct. 962, 112 L.Ed.2d 1049.

There is no good reason for Alaska law to treat Alaskan employers more harshly than they are treated under federal law, yet that is exactly the state of affairs today. The AWHA is based on the FLSA[1]. It should be brought into conformance with the FLSA with respect to the award of liquidated damages.

---

[1] The AWHA expressly incorporates the FLSA definitions. AS 23.10.145 provides:

> If not defined in this title or in regulations adopted under this title, terms used in [the AWHA] shall be defined as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it.

Similarly, regulations promulgated by the Alaska Department of Labor reference and incorporate federal standards developed under the FLSA. See 8 AAC 15.100(b); 8 AAC 15.105; 8 AAC 15.120(a); 8 AAC 15.125(d); 8 AAC 15.160(f); and 8 AAC 15.900(b).

Rule 82. Attorney's Fees.

(a) Allowance to Prevailing Party. Except as otherwise provided by law or agreed to by the parties, the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule.

(b) Amount of Award.

(1) The court shall adhere to the following schedule in fixing the award of attorney's fees to a party recovering a money judgment in a case:

Judgment and, if awarded, Prejudgment Interest	Contested With	Contested Without Trial	Non-Contested
First $ 25,000	20%	18%	10%
Next $ 75,000	10%	8%	3%
Next $400,000	10%	6%	2%
Over $500,000	10%	2%	1%

(2) In cases in which the prevailing party recovers no money judgment, the court shall award the prevailing party in a case which goes to trial 30 percent of the prevailing party's actual attorney's fees which were necessarily incurred, and shall award the prevailing party in a case resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred. The actual fees shall include fees for legal work customarily performed by an attorney but which was delegated to and performed by an investigator, paralegal or law clerk.

(3) The court may vary an attorney's fee award calculated under subparagraph (b)(1) or (2) of this rule if, upon consideration of the factors listed below, the court determines a variation is warranted:

(A) the complexity of the litigation;

(B) the length of trial;

(C) the reasonableness of the attorneys' hourly rates and the number of hours expended;

(D) the reasonableness of the number of attorneys used;

(E) the attorneys' efforts to minimize fees;

(F) the reasonableness of the claims and defenses pursued by each side;

(G) vexatious or bad faith conduct;

(H) the relationship between the amount of work performed and the significance of the matters at stake;

(I) the extent to which a given fee award may be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts;

(J) the extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer; and

(K) other equitable factors deemed relevant.

If the court varies an award, the court shall explain the reasons for the variation.

(c) Motions for Attorney's Fees. A motion is required for an award of attorney's fees under this rule. The motion must be filed within 10 days after the date shown in the clerk's certificate of distribution on the judgment as defined by Civil Rule 58.1. Failure to move for attorney's fees within 10 days or such additional time as the court may allow, shall be construed as a waiver of the party's right to recover attorney's fees. A motion for attorney's fees in a default case exceeding $50,000 must specify actual fees.

(d) Determination of Award. Attorney's fees upon entry of judgment by default may be determined by the clerk. In all other matters the court shall determine attorney's fees.

(e) Effect of Rule. The allowance of attorney's fees by the court in conformance with this rule shall not be construed as fixing the fees between attorney and client.

(Adopted by SCO 5 October 9, 1959; amended by SCO 497 effective January 18, 1982; by SCO 712 effective September 15, 1986; by SCO 921 effective January 15, 1989; by SCO 1006 effective January 15, 1990; by SCO 1066 effective July 15, 1991; repelaed and reenacted by SCO 1118 effective July 15, 1993)

HB
472

Alaska State Legislature

Interim:
P.O. Box 1287
Soldotna, AK 99669
(907) 262-8414

Session:
State Capitol
Juneau, AK 99801
(907) 465-2693

Representative Gary L. Davis

SECTIONAL ANALYSIS

HOUSE BILL 472

"An Act relating to referrals involving dental services."

Section 1 - Amends AS 08.36.315 by adding a new subsection relating to the grounds for discipline, suspension, or revocation of a license for the receipt of compensation for referring a person to another dentist or dental practice.

Section 2 - Amends AS 45.50.471 (b) by adding two new paragraphs relating to the receipt of compensation by a dentist or advertiser for refe:ing a person to a dentist or dental practice.

FISCAL NOTE

STATE OF ALASKA **BILL NO.** HB 472

1994 LEGISLATIVE SESSION

Revision Date: 2/25/94 Department: Commerce and Economic Dev.

Title: An Act relating to referrals involving dental services. BRU: Occupational Licensing

Component: Operations

Sponsor: Rep. G. Davis

Requestor: Rep. G. Davis COMPONENT SERIAL NO. 1844

Expenditures/Revenues (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 94) cost: $ None

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

HB 472 amends authority of the Board of Dental Examiners to discipline a licensee for receiving compensation for referring a person to another dentist or dental practice. If investigations arise as a result of this bill, it may be necessary to seek increased appropriation to recuperate those costs through other sources, such as the Legislative Budget and Audit Committee. However, until then, new funds are not required to implement HB 472.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144

Division: Occupational Licensing Date: 2/25/94

Approved by Commissioner: Paul Fuhs Date: 2-28-94

Agency: Commerce and Economic Development

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RECORDS CERTIFICATION

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

Jerry Duncan
Signature of Camera Operator

10/1/97
Date

02-519 (REV 8/78)

HCR

7

SENATE COMMITTEE REPORT

DATE: 3/23/93 FURTHER:

DATE TURNED INTO OFFICE: 5/6/93

JUDICIARY Committee considered HOUSE CONCURRENT RESOLUTION NO. 7

Relating to Alcohol-Related Birth Defects Awareness Week.

and recommends:

[ ] replace with ________ CS ________ ( )

or [X] adopt previous S CS HCR 7 (HESS)

[ ] attaches amendment(s)

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

[ ] adopts ________ Letter of Intent

[ ] further referral to the ________

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
House HESS Com.	3-5-93	✓	

[ ] Appropriation No Fiscal Note

DO PASS:

Suzanne Little

George Jacko

OTHER RECOMMENDATIONS:

Adrian L. Taylor Do pass

Chair: Signature and Recommendation

HCR

11

ALASKA STATE LEGISLATURE

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MINORITY WHIP

CHAIR
CHILDREN'S CAUCUS

HEALTH, EDUCATION, & SOCIAL SERVICES

STATE AFFAIRS

ECONOMIC TASK FORCE

REPRESENTATIVE BETTYE DAVIS
DISTRICT 21

SPONSOR STATEMENT

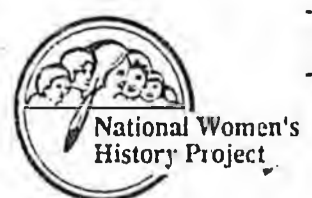
HCR 11 - Establishing March as Women's History Month

HCR 11 is intended to bring to the forefront the contributions of women in our nation and in Alaska.

The designation of March as "Women's History Month" is in response to the nationally recognized lack of published material on the role of women in history, literature and academia in general. Traditional history concentrates on economic political and military events which tend to omit the recognition of women in such activities as social change crusades, charitable and philanthropic activities and in the labor force.

Women's History Month was first designated by Congress in 1987 after five years of hard work by the National Women's History Project located in California. Every year since, Congress has passed a bi-partisan resolution selecting March as "Women's History Month." The idea of celebrating the unique, multicultural history of women has captured the attention of teachers, librarians, community groups, schools and individuals across the nation. "Women's Hall of Fame" institutions have been established in many cities and more and more published material is available. The efforts of many communities has turned national Women's History month into a major celebration and a spring-board to celebrating women's history all year round.

This resolution will not only bring about a heightened awareness of the contributions of women in Alaska's history, but nationally as well. Please join me in supporting HCR 11.



NATIONAL WOMEN'S HISTORY PROJECT

January, 1993

OUR FOUNDING MOTHERS

By Sally Roesch Wagner

National Women's History Month is one of those holidays like Mother's Day, which it seems has always been with us. But Mother's Day, herstorians have recently "discovered," was created by feminists only 100 years ago as an International Women's Peace Festival. And National Women's History Week (now Month) was created by feminists in Santa Rosa, California fourteen short years ago. I envy the future herstorians who "discover" the women and men of the National Women's History Project who have made a place on the national calendar for the business of repopulating our past.

The story the herstorians unravel will begin in 1977 with a handful of Santa Rosa feminists poring over history texts, looking for women. Growing frustrated, they experience exactly what suffragist Matilda Joslyn Gage had found 100 years before: that women have been denied "...the right to do, and when she has done, denied...the credit of doing." In the time-honored tradition of dedicated activists, these second-wave feminists organize, do their homework, and then change the world.

Their first victory comes when they convince the Sonoma County school board to designate a "Women's History Week" on the school calendar. The

Continued on p.3

History of National Women's History Month Celebrations

As recently as 1977, women's history was virtually unknown as a topic of study in the K-12 curriculum. To address this omission, the Education Task Force of the Sonoma County Commission on the Status of Women initiated a "Women's History Week" for local schools. We chose theweek of March 8 to make International Women's Day the focal point of the celebration. The celebra-tion met with enthusiastic support, and within a few years, dozens of schools planned special programs for Women's History Week, close to a hundred com-munity women partici-pated in the Community Resource Women Project, the annual "Real Women" essay contest drew hundreds of entries, and we were staging a marvelous annual parade and program in downtown Santa Rosa.

Local Celebrations

In 1979, Molly MacGregor, then the director of the Sonoma County CSW, was invited to participate in the Women's History Institute at Sarah Lawrence College, sponsored by the Women's Action Alliance and the Lilly Foundation. The institute was attended by the national leadership of a wide variety of organizations for women and girls. When she told the other participants about our countywide Women's History Week celebration, they liked the idea so much they decided to encourage their own organizations and school districts to initiate similar celebrations. The group also agreed to support our efforts to secure an official Congressional Resolution to declare "National Women's History Week." Together we achieved success! In 1981, Sen. Orrin Hatch (R-Ut) and Rep. Barbara Mikulski (D-Md) co-sponsored the first Joint Congressional Resolution for National Women's History Week.

Joaquin Miller Elementary School (Oakland, CA) was one of the first to celebrate Women's History Week.

Overwhelming Response...

As the word spread across the nation equity specialists in many state departments of education encouraged celebrations of National Women's History Week as a practical means to

Continued on p.6

The NATIONAL WOMEN'S HISTORY PROJECT

The National Women's History Project, now a thriving organization employing eleven women year 'round, as well as many volunteers and seasonal workers, had humble beginnings as a women's history class project at Sonoma State University in the early 1970s.

With photographs taken from history books, magazines and posters, we put together a slide show called "We the Women: Advocates for Social Change." We showed it in our class, and then to the Commission on the Status of Women and other local women's groups. The response was always the same: utter surprise and a tremendous emotional outpouring as women came face to face with a history that had been totally unknown to them.

in 1977 we started working with the Sonoma County Commission on the Status of Women, and, after traveling throughout the state, and sometimes beyond, with the slide show for a number of years, we began to focus our efforts on organizing a Women's History Week celebration for our local school districts and community. By various means, word of our local programs began to travel across the country, and inquiries about materials and program ideas began to be received from educators as far away as Maryland and New York. It soon became obvious that a separate organization was needed to respond to the rapidly developing interest in women's history.

In 1981, we established the National Women's History Project as an educational, nonprofit organization, to promote the multicultural study of women's history in the K-12 classroom. A 60-page *Women's History Curriculum Guide* and a *Community Organizing Guide* were our first publications. Gradually teachers contributed materials they had developed, and we obtained grants from the Women's Educational Equity Act Programs to develop curriculum materials and videos on women's history. The National Women's History Project Catalog was initiated in 1981, with a simple two-page flyer. Then books were added, more posters were printed and more curriculum materials located. Each year the offerings have expanded; the 1993 edition of the Catalog now contains more than 325 items!

From our office and warehouse in rural northern California, the Project staff organizes conferences and work-shops for state departments of education, and school districts throughout the country, provides technical assistance to program planners, coordinates the Women's History Network, publishes a quarterly newsletter, researches and writes curriculum materials for elementary and secondary classroom use, designs posters and display materials, produces videos on women's history, maintains information and photo archives on notable women, and reviews hundreds of publications for possible inclusion in the NWHP Catalog.

National Women's History Project

In the past few years we have been reaching out more actively to educators through exhibit booths at social studies and curriculum conferences through-out the country. We are also encouraging those of you who have been celebrating National Women's History Month, and/or using our materials in your classroom, to assist our efforts to reach a wider audience. We produced the "History Revisited" and "Activities to Celebrate Women's History" videos to make it easy for anyone to give a presentation on National Women's History Month to a faculty, school board or PTA meeting. And, we'll be happy to supply you with multiple copies of the NWHP Catalog for distribution to your colleagues. Please contact us to find out how you can bring National Women's history Month to your community.

National Women's History Project Staff

Executive Director:	Molly Murphy MacGregor
Projects Director:	Mary Ruthsdotter
Business Manager:	Maria Cuevas
Publications Director:	Bonnie Eisenberg
Cumputer Services:	Sharron Rose, Donna Kuhn and Denise Hawe
Administrative Assistants:	Susanne Otteman, and Lisl Smith
Shipping Department:	Kathryn Rankin, Jeanne Thomas, and Bobbi Hamblin
Archive Librarian:	Sunny Bristol

Why Women's History?

The primary goal of the National Women's History Project is to promote a more equitable portrayal of women in United States history for elementary and secondary students. During the fourteen years that our staff has been working with classroom teachers, we have seen how learning about the role of women in our nation's past helps young girls and women feel more self-assured, more willing to take responsibility for planning their futures, and more optimistic about the control an individual can have over her own life. Self-esteem is key to learning. Therefore, it is essential that the representations of women in all areas of the curriculum be historically accurate and presently realistic. Only then will the expectations of students, female and male alike, match the realities of the world they will face as adults.

Celebrating National Women's History Month sets aside a special time each March for schools and communities to recognize and celebrate the lives of countless women of all races, ages, cultures, ethnic traditions and ways of life. Women are honored who have participated in history by living out their lives, whether in ways grandly eloquent or steadfastly ordinary, and by so doing have contributed to our shared history.

This year's theme, *"Discover A New World: Women's History"* invites you to discover not only the world of people and events that has been neglected in the traditional telling of history, but also the "new world" of your own life, once you are touched by the knowledge of women's history.

What is Women's History?

Multicultural women's history tells the story of our nation's past from an expanded perspective. It does not rewrite history; but it does make very different judgements about what is important.

Traditionally history has focused on political, military, and economic leaders and events. This approach has virtually excluded women, people of color, and the mass of America's ordinary citizens. What the children of those ignored groups learn from such history is that they, and people like themselves, are unimportant, and have contributed little to our society. By expanding the focus of history to include the activities and contributions of women from all walks of life, we give all children an opportunity to see themselves as active participants in the life of the nation, capable of making important contributions to the future.

Women's history approaches the past with a wide-angle lens, taking in a much wider vision of what was going on in any given time period. In addition to the activities of the government and military in the public sphere, we also look at the private sphere, at the everyday life experiences of people from all walks of life, people just like ourselves and our own families. Women's history also provides a wealth of new role models for today's young people and for adults as well. The courageous women of the past who have dared to forge new roads join women living quietly at their families' center to create a world where future possibilities are limitless. Their stories are an inspiration for us all.

Our Founding Mothers

Continued from p. 1

women enter an historical tradition by choosing the week of March 8, International Women's Day, which originated 69 years before with a strike of working women in New York City. The observance then spread to Europe, and became an international event in 1945 with a World Congress of Women held in Paris.

They have constructed the frame; now comes the tedious job of quilting the past. Scraps of the lives of women are carefully woven into a multi-colored fabric strong enough to support our dreams of the future. Three years of stitching and the fabric covers the nation.

Women in Congress pick up the thread. The White House calls. President Carter has issued a Message encouraging all Americans to celebrate National Women's History Week, March 2-8, 1980. Women's History Week spreads like a good recipe, as friends share with friends and the pattern of women's lives is sewn in more and more towns and states across the nation. Fourteen years old and it has outgrown its week-long covering; a month can barely contain it. And it is growing...

"One Generation sows and another reaps, often forgetting what has gone before," Olympia Brown, the first regularly ordained woman minister in the U.S., wrote in her autobiography. Our granddaughters sitting in their classrooms, looked down upon by the faces of their kind through the ages, may never know the names of the women who made that knowledge possible. But we do. And today we celebrate the back-breaking, eye-straining, absolutely triumphant work of the National Women's History Project.

Written by Dr. Sally Roesch Wagner, on the occasion of the anniversary of the National Women's History Project.

The National Women's History Project originated and is now the primary promoter of National Women's History Month as a coast-to-coast focal celebration each March. National Women's History Month sets aside a time for honoring the contributions of the women who have come before us and those who are creating the historical legacy of future generations.

In thousands of schools, communities and worksites around the country, special programs, displays and events are planned that combine the theme and materials developed by our staff with the talent and creativity of local planners. Reports of these programs are exciting and heartwarming, and their numbers are increasing every year!

Beginning each fall, we conduct a national media campaign, calling attention to the fact that March is National Women's History Month.

Our staff provides short articles, feature stories, photos, quizzes, research assistance, and inspiration to hundreds of newspapers, magazines, radio and television stations. The response has been tremendous! In the past few years, publications as diverse as "Seventeen" magazine, the United Postal Workers Union newsletter, USA Today, the Houston "Chronicle," and the Prodigy Computer Network have publicized National Women's History Month to their constituencies.

Each year we work with teachers and artists to develop the national theme and commemorative poster for National Women's History Month, words and pictures that will adorn the walls in thousands of schools and offices throughout the country each March. But our work goes on every day, year 'round. Preparing for March is only one aspect of what we do.

- Because of our efforts over the past twelve years, children from New York City to San Ysidro, California, from Bayonet Point, Florida to Sitka, Alaska are being introduced to women's history in their daily classroom lessons. Today's students are learning about strong women from the past who have made important contributions to the life of our nation. Young girls are expanding the possibilities for their own futures, and boys are learning that the girls beside them are important people, too.

- In addition to developing materials for classroom use, the NWHP provides information and referrals, without charge, for hundreds of workplace, school, and community people seeking multicultural women's history information.

- Equity officials look to our Project for innovative strategies and materials to use to improve the school or workplace environments for which they're responsible.

- Organizations, libraries and museums turn to us for informative, multicultural videos and display materials.

- Since 1978, we have made the search for quality, multicultural films, books, posters, games and celebration items a lot easier. The National Women's History Project has become "the source," inventorying over 300 items for quick delivery. With the direct help of our supporters, we now distribute 220,000 Women's History catalogs each year, and hundreds of thousands of focused promotional brochures on topics like Women's Equality Day and Black History Month.

In addition to our work with schools and workplace program planners, we have become a valuable resource for the media.

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- Journalists, authors, and radio and television representatives rely on our office as a source for information about women from the past.

- We react quickly to popular media events. "The Civil War" series was a public sensation — but viewers were left wondering what women did during those tumultuous times. Our widely published "Letter to the Editor" filled in the blanks for teachers and writers alike. And our popular "Women and The Civil War" poster tells the story concisely and colorfully!

- We also furnish the media with information about women for special features throughout the year: Black History Month (February), Susan B. Anthony's birthday (February 15), Mother's Day (May), for sports and athletics in the spring, Women's Equality Day (August 26), Veteran's Day (November), and other days as we are asked.

Women's Project TUS ORT 1992

Our office has been instrumental in linking women's history enthusiasts nationwide.

● We founded The Women's History Network in 1984. It's now nationwide, and 700 members strong. The Network connects representatives of federal workplaces and local libraries with parents and historians, teachers and performers.

● Our staff coordinates activities with Network members and provides consultation for their projects and programs.

● We issue an eight-page, quarterly newsletter of current developments and topical background information. The articles we run frequently reappear in women's newspapers and magazines, and in other organizations' newsletters, too. We also compose an annotated directory of the membership to facilitate networking.

● We respond to requests from people who need specific women's history information, or women's history in a different format.

Responding to teacher requests, we continue to develop new curriculum materials where gaps are most apparent.

● Very young children were being overlooked by curriculum publishers — so we developed a number of multicultural biography units for early elementary use.

● No comprehensive, multicultural films or videos existed to quickly introduce women's history — until we produced "Women in American Life," a five-part video documentary series.

● Little information was available about the history of Mexican-American women, either in print or video. We filled this need with a biographical pamphlet, "Las Mujeres" and a 30 minute video, "Adelante Mujeres."

● Our curriculum unit on Women and the Constitution was released just in time for the bicentennial celebration in 1987.

● Efforts to increase girls' interest in math and science careers have been strengthened by the development of display materials featuring prominent women scientists: "Outstanding Women in Math and Science" display kit and a new "Women in Science and Mathematics" poster.

Every year our catalog contains hundreds of women's history books, posters and classroom materials.

● Many of these items have been created by our staff, with the help of classroom teachers, artists, and other content experts.

● Dozens of publications from publishers across the country are reviewed each year, and the best are selected for inclusion in the National Women's History Project Catalog.

Teacher training workshops, in California and throughout the country are enthusiastically received by teachers and administrators alike.

● State departments of education, school districts and regional centers across the country have requested our trainers to conduct workshops, from one to four full days.

● Hundreds of teachers, curriculum specialists, equity specialists, librarians and administrators have been introduced to strategies and resources for integrating multicultural women's history into all areas of the K-12 curriculum.

The current economic recession and the funding crisis being faced by many school districts throughout the country has caused a noticeable reduction in the sales of women's history materials for a while. But our staff has undertaken an aggressive marketing campaign which has enabled us to reach a larger audience nationwide. Response to our services and materials remains strong, and we are confident that we will continue to provide quality materials to schools, workplace program planners, community groups and parents for many years to come.

The National Women's History Project is a nonprofit educational organization 501 (c) (3), located at 7738 Bell Road, Windsor, CA 95492. Phone 707-838-6000. FAX 707-838-0478.

National Women's History Month

Continued from p. 1

achieving equity goals within the classroom. Maryland, Pennsylvania, New York, Oregon and other states developed and distributed women's history curriculum materials and program ideas to thousands of schools in their respective states. NOW and AAUW chapters sponsored women's history essay contests and other special programs in their local areas. Within a few years, thousands of schools and communities were celebrating National Women's History Week, supported and encouraged by NWHW resolutions from governors, city councils, school boards and the U.S. Congress!

The Entire Month of March

For 1987, at the request of many school districts, museums and libraries throughout the country, we decided to expand the national celebration to the entire month of March, to allow more time to explore the increasingly accessible field of women's history. Since then, the National Women's History Month Resolution has been approved with broad-based, bipartisan support in both the House and Senate.

The idea of celebrating the unique, multicultural history of women in the U.S. has captured the imaginations of teachers, librarians, community groups, women's organizations, and thousands of individuals throughout the nation. Each year programs and activities in schools and communities have become more extensive as information and program ideas have been developed and shared.

Growing Interest in Women's History

The popularity of women's history celebrations has sparked a new interest in uncovering women's forgotten heritage. A number of states and cities have instituted a "Women's Hall of Fame," or have published biographical materials on prominent women in the history of their particular locale. In many areas, state historical societies, women's organizations, and groups such as the Girl Scouts have become involved in planning Women's History Month programs. The efforts of educators, workplace program planners, parents, and community organizations in thousands of communities across the country have turned National Women's History Month into a major focal celebration, and a spring-board for celebrating women's history all year 'round.

Congressional Resolution

Designating the Month of March as

"Women's History Month"

Whereas American women of every race, class, and ethnic background have made historic contributions to the growth and strength of our Nation in countless recorded and unrecorded ways;

Whereas American women have played and continue to play a critical economic, cultural, and social role in every sphere of the life of the Nation by constituting a significant portion of the labor force working inside and outside of the home;

Whereas American women have played a unique role throughout the history of the Nation by providing the majority of the volunteer labor force of the Nation;

Whereas American women were particularly important in the establish-ment of early charitable, philanthropic, and cultural institutions in our Nation;

Whereas American women of every race, class, and ethnic background served as early leaders in the forefront of every major progressive social change movement;

Whereas American women have been leaders, not only in securing their own rights of suffrage and equal opportunity, but also in the abolitionist movement, the emancipation movement, the industrial labor movement, the civil rights movement, and other movements, especially the peace movement, which create a more fair and just society for all; and

Whereas despite these contributions, the role of American women in history has been consistently overlooked and undervalued, in the literature, teaching and study of American history:

Now, therefore, be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that March is designated as "Women's History Month." The President is authorized and requested to issue a proclamation for each of these months, calling upon the people of the United States to observe those months with appropriate programs, ceremonies, and activities.

Since 1987, this resolution, or a version similar, has been passed by Congress to designate the month of March each year as "Women's History Month."

SUBSCRIBE TO THE WOMEN'S HISTORY NETWORK

THE WOMEN'S HISTORY NEWORK offers you up-to-the-minute information about resources: books, movies and videos, historic sites, archives, exhibits, and individuals in the rapidly expanding field of women's history. Nowhere else is this information available from a single source. As a Network member you will also be supporting the vital work of the NWHP: to document and disseminate information about multicultural women's history, and to provide technical assistance to researchers, librarians, and teachers throughout the country.

As a subscriber you will receive:

- "NETWORK NEWS," the quarterly, 8-page newsletter of information for educators, researchers, program planners and general women's history enthusiasts;
- TECHNICAL ASSISTANCE from the staff of the National Women's History Project for your research or program planning;
- REFERRALS to excellent women's history performers, films, exhibits, classroom activities and the like;
- THE NETWORK DIRECTORY, listing members, and detailing their interests and experience;
- 5% DISCOUNT on purchases from the NWHP Resource Catalog

Subscribe to the Women's History Network. Write to the NWHP office for a sample copy of "Network News."

Annual Fees:
$25 individual
$50 institutional or group membership
$50 supporting member
$100 sustaining member

ADOPT - A - SCHOOL

Do you belong to a social or service organization, like Soroptomists, Kiwanis, AAUW, NOW, or BPW? Are you looking for a project that will have a positive impact on the lives of hundreds of children? Your club or organization can "Adopt a School" in your community to introduce the students and teachers to fascinating women from U.S. history. Adopt-a-School projects can include purchasing books for the library, sponsoring special NWHM programs, and other projects to improve the quality of education in your community. Request a free copy of our *Adopt-A-School* pamphlet (item # 7903) of strategies and ideas. Call or write:

National Women's History Project
7738 Bell Road, Windsor, CA 95492 707-838-6000

Putting Women Back Into History

Women's History project helps fill in the blanks

(This article was reprinted with permission from the Healdsburg (CA) Tribune.)

When the University of Pennsylvania wanted to know who was the first woman to earn a doctorate in Mathematics from its institution, the school placed a call to Windsor.

When the National Bar Association wanted to know the name of the first Hispanic individual to pass the bar, members called Windsor.

Need information on the Salem witch hunts? The first woman to play pro baseball? The first American female aviator?

Mary Ruthsdotter of the National Women's History Project, located in Windsor, has the answer. "We can answer any question you have, or find the answer by the end of the day," she said. When it comes to women's history, that is.

Biographies and information about American women, from authors to service women to the ladies who worked on the California railroads, can also be found among the copious files of the National Women's History Project.

The non-profit agency is the major supplier of women's history information and curriculum in the United States.

"I know," says Ruthsdotter, co-founder of the History Project which was established in 1978 in Santa Rosa. "you'd expect a national project like this to be in New York or some big city. But Sonoma County is where we live."

The agency, which relocated from Santa Rosa to Windsor in 1989, has been especially busy gearing up for the

Continued on page 8

Writing Women Back Into History

Continued from page 7

National Women's History Project
7738 Bell Road
Windsor, Ca 95492

month of March, National Women's History Month, but the resource center keeps up with a barrage of informational requests, material compilation, curriculum planning and public appearances all year round.

Ruthsdotter points to rows of file cabinets containing information on women's contributions to this country's evolving history, and then to the never ending bookshelves full of literary resources, which continue to grow and take over the office space on Bell Road.

The amount of information available on U.S. women shouldn't be a big surprise. "Women have always been half of the population," Ruthsdotter says. "And after wars, we've been more than half the population...but where are our stories?"

Where they're not, to a great extent, is in the text books and curriculum materials of the nation's public schools. In a 1982 study of state-recommended high school history books, the lack of significant reference to women in U.S. history was depressing to Women's History Project organizers.

"Countless hours were spent laboriously going through those books and counting how many times women were mentioned by name or pictured with names," says Ruthsdotter. "the result was so discouraging that we went back through and counted the women pictured, even if they weren't mentioned by name." At the time, women figured in only 11 percent of the texts' historical references.

Since then, Ruthsdotter acknowledges, more recent curriculum and texts show a greater awareness of women's roles in U.S. history and current events, but the progress is slow. Ruthsdotter has estimated that less than one in six of America's 105,000 public and private schools purchase materials to teach women's history and that, "even if the growth of the past five years continues through 1997, the cumulative total spent for women's history materials for all American schools will add up to less than $80 per school site."

Mary Ruthsdotter and Sunny Bristol

The Women's History Project strives to compile the information to fill in the "big blanks," as Ruthsdotter refers to them, that exist in school history and social studies programs.

Picking up a video cassette from her desk top, she says, "This is a tape about Margaret Chase Smith, the only senator to call Joe McCarthy on his investigation of communist affiliations. She was challenging someone in her own party. This was an incredible woman."

Women's History Project archivist Sunny Bristol has just returned to work from a vacation in Florida and reports to Ruthsdotter, " I heard two references to Women's History Month on the radio there. But there was no follow-up information...just the two references."

Replies Ruthsdotter, "Well, that's something. It's a start. Two references are better than nothing at all."

Bristol was excited to have found some information and a poster on Bessie Coleman, the first Black female aviator. "She had to go to France to learn how to fly," says Bristol. "They wouldn't teach her here."

The Women's History Project is working at full steam to bring these stories into American schools. Catalogs full of literary resources are made available to schools by the History Project, which also sends staff to lead workshops and to give presentations to schools and community groups across the country.

HCR
24

No. 1

FISCAL NOTE

Bill Version: CSHCR 24(JUD)

(H) Publish Date: 2/24/94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: 2-9-94

Title: Support Suit Against Federal Government

Sponsor: Barnes, Phillips, Hudson & Green

Requestor:

Dept. Affected: Alaska State Legislature

BRU: Legislative Affairs Agency

Component: House Judiciary Committee

COMPONENT SERIAL NO.

Expenditures/Revenues (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY94) cost: $ none

POSITIONS

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS: (Attach a separate page if necessary)

CSHCR 24 (JUD) simply indicates support for the Governor's decision to sue the U.S. Government for violating the Alaska Statehood Act and Alaska Statehood compact. There is no cost involved in indicating support for a decision made by the Governor.

Prepared by: Anne Williams

Phone: 465-4990

Division: House Judiciary Committee

Date: 2-9-94

Approved by Commissioner: Brian Porter

Date: 2/11/94

Agency:

PREPARER TO PROVIDE FISCAL NOTE ...GISLATIVE OFFICE

For further distr... ice

(Rev 10/93) 94fisnote.xls/OBR

Page of

Alaska State Legislature

Speaker of the House of Representatives

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

SPONSOR STATEMENT

HCR 24

HCR 24 supports the Governor's decision to authorize a suit against the United States government for violating the Alaska Statehood Act. When the Alaska Statehood Act was crafted, Congress guaranteed all attributes of sovereignty that were granted to all other states under the U.S. Constitution. However, over the past few years, the terms of the Alaska Statehood Act have been violated by the Congress. These violations include withdrawal from development of nearly 80% of the federal land from which Alaska was to derive mineral royalties. Alaska is also the only state not allowed to sell her oil resources abroad.

Alaska is a sovereign state and we must not let our sovereignty be violated. The Statehood Act was an agreement between Congress and the People of Alaska and it cannot unilaterally be changed. We must stand up for our rights now and in the future.

Alaska v. United States, United States Court of Federal Claims (Bruggnik), 90-454-L Civ.

On July 22, 1993, the State of Alaska filed a 29 billion dollar[1] lawsuit in the U.S. Court of Federal Claims against the United States government for violations of the Alaska Statehood Compact. The bases for this litigation are: breach of contract, breach of covenant of good faith and fair dealing, and fraudulent inducement. The suit requests compensation of $29,000,000,000 for a "taking" under the Fifth Amendment. The federal government filed an answer in the Federal Claims Court on November 12, 1993 and asserted several defenses, including statute of limitations. The state is preparing a comprehensive motion for summary judgment.

According to court decisions, compacts are legally enforceable contracts which cannot be unilaterally changed by either party. This suit seeks to enforce one term vital to the offer and acceptance of statehood - the so-called "90-10" split-Alaska receiving 90% of the revenues derived from mineral development under the Mineral Leasing Act on vacant and unappropriated federal lands. In the Statehood Act, Congress offered Alaska's citizens an unprecedented land base of 103,350,000 acres, the permanent ownership of all state mineral resources, and in essence, 90 percent beneficial interest in the mineral resources on federal lands unreserved or withdrawn at statehood.[2] Since Statehood, Congress has withdrawn more land area than that encompassed by the entire New England area (consisting of the states of Maine, Massachusetts, Delaware, Rhode Island, Connecticut, New Jersey and New Hampshire) from mineral development.

State v. Brown, United States District Court (Sedwick), A92-364 Civ.; State v. United States, United States Court of Federal Claims. ("Oil Export Ban").

In May 1992, the State filed two lawsuits against the United States to challenge the Congressional ban on the export of North Slope crude oil. The State filed one case in the United States District Court in Alaska, alleging that the ban violates the Tenth Amendment to the United States Constitution, and one case in United States Court of Federal Claims in Washington, D.C., seeking $2.5 billion for compensation for a fifth amendment taking. The State is represented by Birch, Horton, Bittner, and Cherot.

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[1] This figure is calculated based on the Department of Interior's current estimate of mineral reserves on withdrawn lands and the impacts created by a failure to allow development of those reserves. It is a minimum figure.

[2] The 10 percent retained by the federal government was to reimburse the federal government for its administrative costs. For the past several years the federal government has been first deducting its administrative costs and then applying the 90 percent to the remainder. This lawsuit also challenges this action which has resulted in a loss to the State of more than $1.7 million.

Defending Alaska's Statehood Compact

A PROMISE BROKEN

At statehood, Congress promised that revenues from 218 million federal acres in Alaska would help generate the mineral royalties the new state would need to be economically viable. Today, nearly 80 percent of that acreage, equal to the size of Texas, has been locked up by Congress.

(on the cover) The rattlesnake symbol with the motto " Don't Tread On Me" was used on several colonial flags and was flown in early 1776 as the rank flag of the Commander in Chief of the Fleet, Commodore Esek Hopkins. It has been combined here with eight stars of gold from the Alaska state flag, suggesting that we value our liberty and rights as much as our founding fathers.

The Statehood Compact:
A Promise Made

by Governor Walter J. Hickel

Alaskans must protect our Statehood Compact. It is the key to our ability to create a solid foundation for our economy and a quality of life we are proud to pass on to our children. To grasp the importance of the Compact requires a brief look at history.

The question of how to add states to the Union arose even before the United States Constitution was framed. As a result of the revolutionary war, the Northwest Territory was added to the original 13 colonies. In 1785 and 1787, at the urging of Thomas Jefferson, the Continental Congress adopted the Northwest Ordinances, comprehensive acts providing for governance of such lands.

There are several noteworthy provisions of these ordinances which are important today. They affect Alaska's relationship with the federal government.

- *A new state was to be admitted "<u>on an equal footing</u> with the original states in all respects whatever."*

- *The ordinances were considered "as articles of compact, between the original states and the people and states in the said territory, and forever remain unalterable, unless by common consent." (emphasis added)*

These principles have been honored throughout U.S. history. The Supreme Court has held that the authority of Congress to admit new states into the Union is limited to admission on an equal footing with all other states.

A statehood compact is recognized as more than a law that can be changed at the whim of Congress. It is an agreement between the United States of America and the people of a state. In our case, Congress even required Alaska's voters to go to the polls and approve the terms as spelled out in the Alaska Statehood Act. Like any contract, once approved, it cannot be altered by one party without the agreement of the other.

In crafting the Alaska Statehood Act, Congress not only guaranteed that we would acquire all the attributes of sovereignty granted to all states under the U.S. Constitution, it ensured that we would be able to live up to our responsibilities in practical economic terms. It did this by "making the new State master in fact of most of the natural resources within its boundaries..." according to a congressional report at the time.

The terms of the Compact included the grant to Alaska of:

- *103 million acres of land and the subsurface riches beneath those acres.*

- Ninety percent of the mineral royalties derived from federal lands in Alaska.

- The ability to manage Alaska's fish and game.

Today, those rights have been violated and remain under attack. Actions by both the U.S. Congress and federal agencies have unilaterally violated the terms of Alaska's Compact.

Shortly after statehood, Congress began locking up large areas in Alaska that could produce promised royalties recognized as essential to Alaska's economic survival. For example, in 1980 the Alaska National Interest Lands Conservation Act was enacted, establishing vast national park and refuge holdings throughout the state. This act was not foreseen at statehood. Other withdrawals have since been legislated year after year.

Today, nearly 80 percent of the federal land from which the state was entitled to receive mineral royalties has been withdrawn from mineral development. Currently, Alaska has the following federal land acreage within its borders where mineral extraction of one kind or another is prohibited, where special land designations make development inordinately expensive, or where an Act of Congress is required before even exploration may take place:

National Wildlife Refuges	75 million acres
National Parks	54 million acres

BLM restricted areas	*26 million acres*
*National Forest conservation units **	*14 million acres*
U.S. Dept. of Defense lands	*2 million acres*
Total restricted lands	*171 million acres*

To put the true dimensions of these withdrawals into perspective, 171 million acres is the same size as the entire State of Texas. To remove such a large potential revenue source without compensation to Alaska is a breach of the Compact, and the State of Alaska is seeking redress and damages.

To remedy these violations, I have directed Attorney General Charlie Cole to prepare a series of landmark lawsuits. A special team has been created within the Department of Law to prepare and prosecute these cases.

The most important suit defends the Compact itself. Other litigation will ensure access to Alaskan lands. As far back as English common law, it is a truism that land cannot be conveyed without access. But many of the Congressional withdrawals are so situated that access to state lands is blocked. This, in effect, makes the state land of little or no value.

In addition, the State of Alaska will challenge all other congressional and federal agency actions that violate the state's sovereignty or the Compact. The federal ban which

* *About half of this USFS acreage is technically open to entry, but restrictions make mineral development so expensive, it is thought to be cost prohibitive.*

forbids export of North Slope crude oil is a notorious example. It singles out Alaska, bleeding us of the benefits of our natural resources, our pioneering, and our strong environmental record. No other state is exclusively prohibited from selling its resources in the world marketplace.

The state has filed two additional suits; one to confirm Alaska's title to submerged lands beneath our navigable waters, and the other to ensure our ability to manage fish and game within our state.

Since the early 1970's, Congress has pandered to those who would lock up Alaska. This was and is considered a "cheap environmental vote." Evidence of a double standard lies in the fact that the other 49 states contain just over 30 percent of the nation's wilderness. The rest is in Alaska.

This is ironic because no state has a better environmental record. Including all of the oil activities on the North Slope, we have developed less than one-half of one percent of Alaska. In our lifetimes, we won't develop even another half of one percent of Alaska. All that we do is done carefully, obeying strict federal and state guidelines. Alaskans don't want it any other way.

Remember, neither the U.S. Congress nor the federal agencies can change our Statehood Compact without the approval of the Alaskan people.

As Alaskans, we must stand up for our rights, and each generation to follow must do the same.

Office of the Governor
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This Revised Edition Printed by the
Department of Transportation and Public Facilities

HCR

28

FISCAL NOTE

ST. TE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HCR 28

Revision Date:
Title: Get Cleary orders dissolved or changed
Sponsor: Rep. Barnes, Phillips, Williams, Toohey...
Requestor:

Dept. Affected: Alaska Court System
BRU: Trial Courts
Components:
COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) cost: $ None

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

Prepared by: C. S. Christensen III, Staff Counsel — Phone: 264-8228
Agency: Alaska Court System — Date: 02/03/94

Approved by: Arthur H. Snowden, II, Administrative Director — Date: 02/03/94
Agency: Alaska Court System

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Rev 8/93

Alaska State Legislature

Speaker of the House of Representatives

P.O. Box V
State Capitol
Juneau, Alaska 99811
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Official Business

POSITION PAPER

HCR 28

In the early 1980s, several inmates incarcerated in Alaska's correctional institutions sued the state alleging that some if not all of the conditions of their confinement were unconsitutional. Although the superior court found **no** conditions of confinement at that time to be unconstitutional, it did find that the conditions **might** become unconstitutional at some future unspecified date. Despite the fact that the plaintiffs failed to present any proof of unconsitutional conditions of confinement, the court decided, and in some cases the state agreed, to allow the court to dictate the conditions of confinement either through the settlement agreements or the court's orders and decisions. This agreement required the department to hire and pay for monitors (at no small cost) to ensure that the conditions were being met.

Since the time the lawsuit was first filed, any potential unconstitutional conditions have been rectified and continued court intervention is unnecessary. With the state's declining revenue picture, we can no longer continue to provide more than is consitutionally required.

HCR 28 urges the Governor to direct the Attorney General to take whatever steps are necessary to dissolve or modify the Cleary partial settlement agreements, court orders, and decisions in this case.

List of possible items in the Cleary Final Settlement Agreement and Order which might be eliminated should the agreement be vacated or modified.

1. Gate Money $150. per prisoner.
2. Mental Health Forensic Unit (Mike Mod.)
3. Post-secondary program administrative costs.
4. Vocational Training programs at each sentenced facility .
5. Population caps on each institution.
6. Eyeglasses.
7. Telephones for prisoners.
8. Cleary court monitor.
9. Central Compliance Administrator and Grievance Coordinator position.
10. Mentally ill halfway house.
11. Non-legal mail costs.
12. Plaintiffs' attorney fees.

when he reluctantly gave handwriting samples to police after they refused his request to consult his lawyer.

Section 12. Excessive Punishment

> **Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. Penal administration shall be based on the principle of reformation and upon the need for protecting the public.**

The first sentence of this section is drawn verbatim from Article VIII of the U.S. Bill of Rights. There has been little litigation over the constitutionality of fines and bail at either the federal or state level. The provision is understood to mean that bail may not be set higher than the amount necessary to assure the defendant's presence at trial (*John Doe v. State*, 487 P.2d 47, 1971). Thus, a judge may not seek to keep a person incarcerated by setting an unreasonably high bail.

While a definition of "cruel and unusual punishment" clearly includes torture and other forms of barbarous treatment, it has been expanded over the years to encompass punishments that are grossly disproportionate to the seriousness of the crime and to the denial of needed medical treatment (including psychiatric care) to prisoners. Indeed, some state constitutions contain, in addition to or instead of a prohibition against cruel and unusual punishment, an explicit requirement that penalties be scaled to the offense.

In Alaska, a traditional Eskimo convicted of murder claimed that his imprisonment in any facility other than the Bethel jail amounted to cruel and unusual punishment because he spoke Yupik and virtually no English, ate a Native diet which was unavailable in other prisons, and had no experience outside the traditional life of Natives in southwest Alaska. The court was unsympathetic to his claim (*Abraham v. State*, 585 P.2d 526, 1978), as it was to the claim by another prisoner that the denial of conjugal visits was a form of cruel and unusual punishment (*McGinnis v. Stevens,* 543 P.2d 1221, 1975).

The second sentence of this section, requiring that penal administration be based on the principle of reformation and the need to protect the public, has no counterpart in the U.S. Constitution, as it expresses a progressive ideal of prison reform that became popular in the late 1800s. Alaska is one of several states with a constitutional commitment to

humane and rehabilitative treatment of prisoners (for example, Oregon's constitution, Article I, Section 15, states: "Laws for the punishment of crime shall be founded on the principles of reformation, and not of vindictive justice").

The record is clear that in embracing the principle of reformation, delegates to Alaska's constitutional convention did not intend to abolish capital punishment (by means of the argument, in the words of Delegate George McLaughlin, "that you cannot reform a dead man"). Delegate James Doogan stated that the reformation language "was more or less advisory or instructive to the penal institutions." Nonetheless, the Alaska Supreme Court has interpreted it to mean that state prisoners in Alaska have a constitutional right to rehabilitation services (*Rust v. State*, 584 P.2d 38, 1978). This right was clarified in the *Abraham* case: the Eskimo who failed to convince the court that his incarceration outside of the Bethel area was unconstitutional, did convince the court that he had a constitutional right while in prison to rehabilitative treatment for his alcoholism, as such treatment was the key to reforming his criminal behavior (*Abraham v. State*, 585 P.2d 526, 1978).

Alaska's supreme court has enunciated specific sentencing goals that are inherent in the twin constitutional principles of prisoner reformation and public protection. Known as the "Chaney criteria," these are the "rehabilitation of the offender into a noncriminal member of society, isolation of the offender from society to prevent criminal conduct during the period of confinement, deterrence of the offender himself after his release from confinement or other penological treatment, as well as deterrence of other members of the community who might possess tendencies toward criminal conduct similar to that of the offender, and community condemnation of the individual offender, or in other words, reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves" (*State v. Chaney*, 477 P.2d 441, 1970). It has declared that the last of these sentencing goals, reaffirmation of societal norms, may not be used as a guise for retribution, which has no place in Alaska's constitutional scheme (*Smothers v. State*, 579 P.2d 1062, 1978).

The high court has upheld presumptive sentences adopted by the legislature (AS 12.55.125 - 175) against challenges that they conflict with this section of the constitution and that they unconstitutionally infringe on the power of the judiciary (*Nell v. State*, 642 P.2d 1361, 1982).

Penal administration in Alaska has been greatly affected in recent years by a longstanding class action suit brought by prisoners against the state alleging that overcrowding and

other substandard prison conditions violated state statutes and regulations as well as federal and state constitutional provisions, including this section. Originally filed in 1981, the suit followed the pattern of such suits in many other states. It spawned an enormous amount of litigation and negotiation that was not entirely settled a decade later. The court orders and negotiated agreements that have emerged from this so-called *Cleary* case (*Michael Cleary, et al. v. Robert Smith, et al.*, Superior Court, Third Judicial District, No. 3AN-81-5274), have, among other things, clarified and expanded the role of rehabilitation programs in Alaska's prison system.

Section 13. Habeas Corpus

> **The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or actual or imminent invasion, the public safety requires it.**

A writ of habeas corpus is a means by which a person in jail may have the legality of his detention reviewed by a court. It is not a device to determine guilt or innocence; rather, it is intended to determine whether due process was observed when a person was jailed. This is perhaps the oldest and most famous safeguard of personal liberty in the Anglo-American judicial tradition. Protection from the suspension of the writ of habeas corpus is found in the U.S. Constitution (Article I, Section 9) and the other state constitutions. This version differs from conventional statements of the right by the addition of "actual or imminent" before invasion, to account for the conditions of modern warfare.

Section 14. Searches and Seizures

> **The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.**

Here is the search-and-seizure article of the U.S. Bill of Rights (Article IV), with the addition of the words "and other property" and altered punctuation. Although this

HCR

29

FISCAL NOTE

No. 1
Bill Version: HCR 29
BIL (H) Publish Date: 2/11/94

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision Date: 1/24/94
Dept. Affected: (H) Sta
Title: Relating to the military operations
/ironmental impact statement of the United States Air
BRU:
Component:
Sponsor: Rep. James
Requestor: Rep. James
COMPONENT SERIAL NO.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
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)

	FY94	FY95	FY96	FY97	FY98	FY99
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

	FY94	FY95	FY96	FY97	FY98	FY99
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: $ None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Joe Ryan, (H) Sta Committee Aide
Phone: 465-3719
Division:
Date:

Approved by Commissioner: Rep. Al Vezey, Chairman (H) Sta Committee
Date: 2/10/94
Agency:

PREPARER
ERNOR'S LEGISLATIVE OFFICE
Fi
egislative Office

FISCAL NOTE

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Cook
3/28/94

SENATE CS FOR HOUSE CONCURRENT RESOLUTION NO. 29(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JAMES, Vezey, Mulder

SENATORS Kelly, Leman, Taylor, Miller, Sharp

A RESOLUTION

1 Relating to the military operations areas environmental impact statement of the
2 United States Air Force.

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

4 **WHEREAS** on July 9, 1993, the 11th Air Force (Alaska based United States Air Force
5 units) announced a decision to prepare an environmental impact statement to analyze proposed
6 modifications to and creation of special use airspace in Alaska; and
7 **WHEREAS** the air force is committed to a balance between the necessity of training
8 pilots for any contingency while remaining sensitive to Alaska's environment; and
9 **WHEREAS** the air force has elected to actively involve the citizens of Alaska early
10 in the process of preparing the environmental impact statement and is genuinely seeking public
11 comments and ideas; and
12 **WHEREAS** it is expected that the proposed actions of the air force relating to the
13 special use airspace will not increase overall flying in the state, will not preclude public access
14 to any airspace, will greatly enhance flight safety for civil and military aircraft, and will save
15 taxpayers' money;
16 **BE IT RESOLVED** that the Alaska State Legislature affirms that Alaska offers

1 **BE IT RESOLVED** that the Alaska State Legislature affirms that Alaska offers
2 tremendous, diverse, and realistic flight training opportunities and welcomes the United States
3 Air Force in the state; and be it

4 **FURTHER RESOLVED** that the Alaska State Legislature endorses the proposal of
5 the United States Air Force and commends the air force for the open, professional, and public-
6 minded manner in which the military operations areas environmental impact statement is being
7 prepared.

8 A COPY of this resolution shall be sent to Lieutenant General Joseph W. Ralston,
9 Commander, Alaskan Command, Elmendorf Air Force Base.

Alaska State Legislature

REPRESENTATIVE
JEANNETTE JAMES
P.O Box 56623
North Pole, Alaska 99705
(907) 488-0862

House District 34

While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3745

House Of Representatives

SPONSOR STATEMENT

January 27, 1994

HCR 29, Relating to the military operations areas environmental impact statement of the United States Air Force.

This resolution shows support for our military in Alaska and further demonstrates appreciation of their policy of involving and informing the public of military activities.

ILL: HCR 29 SHORT TITLE: COMMEND AIR FORCE: ENVIR IMPACT STATEMENT
ILL VERSION: HCR 29 AM
PONSOR(S): REPRESENTATIVE(S) JAMES,Vezey,Mulder; SENATOR(S) Kelly,Leman
aylor,Miller,Sharp

URRENT STATUS: (S) JUD STATUS DATE: 03/14/94

ITLE: Relating to the military operations areas environmental impact statement
f the United States Air Force.

1/24/94	2137	(H)	READ THE FIRST TIME - REFERRAL(S)
1/24/94	2137	(H)	STATE AFFAIRS
2/11/94	2336	(H)	STA RPT 7DP
2/11/94	2336	(H)	DP: VEZEY, KOTT, SANDERS, G.DAVIS
2/11/94	2336	(H)	DP: OLBERG, B.DAVIS, ULMER
2/11/94	2337	(H)	-ZERO FISCAL NOTE (H.STA) 2/11/94
2/17/94	2440	(H)	RULES TO CALENDAR 2/17/94
2/17/94	2440	(H)	READ THE SECOND TIME
2/17/94	2441	(H)	AM NO 1 BY DAVIES
2/17/94	2441	(H)	AM NO 1 ADOPTED Y19 N17 E3 A1
2/17/94	2442	(H)	PASSED Y32 N4 E3 A1 HCR 29 AM
2/17/94	2447	(H)	COSPONSOR(S): MULDER
2/17/94	2447	(H)	TRANSMITTED TO (S)
2/22/94	2908	(S)	READ THE FIRST TIME - REFERRAL(S)
2/22/94	2909	(S)	STATE AFFAIRS
2/22/94	2908	(S)	CROSS SPONSOR(S): KELLY, LEMAN,
2/22/94	2908	(S)	TAYLOR, MILLER, SHARP
2/28/94	3006	(S)	JUD REFERRAL ADDED AFTER STA
3/14/94	3190	(S)	STA RPT 3DP 2NR
3/14/94	3190	(S)	PREVIOUS H ZERO FN (H.STA)
3/14/94	3190	(S)	REFERRED TO JUDICIARY

RECORDS CERTIFICATION

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

Jerry Duncan
Signature of Camera Operator

10/1/97
Date

02-519 (REV 8/78)

HJR

11

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

☐ 1031 W. 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

☐ KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

☒ P. O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) ~~465-5295~~ 465-6735

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 16, 1993

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

Dear Senator Taylor:

We understand that HJR 11 has been referred to your committee for review. This letter is to express the Department of Law's opposition to that resolution.

HJR 11 is a resolution to place before the voters for the fourth time in 13 years an amendment to the Constitution of the State of Alaska to allow repeal or annulment of regulations by resolution of the legislature. If passed by the voters, the amendment would create a new section 22 in Article II of our state constitution to allow the legislature, by joint resolution, to repeal a regulation adopted by a state department or agency. The resolution would not be subject to the review, and possible veto, of the governor.

The Department of Law opposes this resolution for the following reasons:

1. Under existing law, the legislature has substantial power to guide or limit the adoption of regulations. Initially, the legislature can pass tight statutes that clearly define the executive branch's rule-making authority. The Administrative Procedure Act requires that a regulation must be consistent with the statute. See AS 44.62.030. The Department of Law makes a legal review for consistency before a regulation is filed by the Office of the Lieutenant Governor. After an executive-branch regulation is adopted, if the legislature believes that the regulation is not consistent with the enabling statute, the legislature can amend the statute to clarify its intent. The current system provides the legislature with the power to guide regulation formation.

2. Allowing the legislature to repeal a regulation by resolution would mean a major change in the way law is developed in this state. Regulations have the force of law. Repealing regulations changes law. Our constitution presently grants the power to the legislature to change law by passing

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DEPT. OF LAW OPPOSITION

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a bill, which is then subject to the governor's review and possible veto. Because the governor cannot veto a resolution, allowing repeal of regulations by resolution would allow the legislature to change law without that action being subject to the governor's review. This is an important change in our constitution's system of checks and balances between the legislative and executive branches.

3. By repealing a regulation by resolution, the legislature would not be providing policy guidance or direction that is appropriate to the legislature's law-making function. In other words, the resolution would tell the executive branch that the regulation was unacceptable, but not what is acceptable. The state agency would have to guess again and spend state money to develop a new regulation, which might not be on the "right track." By using a bill, the legislature could change statutes to give clearer policy direction to the executive branch.

4. The Administrative Procedure Act allows legislators, as well as the general public, to comment on any new regulation proposed. The executive branch considers comments in the development of regulations. In this way, the legislature and the public have input into the regulation-adoption process.

5. Finally, the voters of Alaska have voted down this type of constitutional amendment three times in the last 13 years. We assume that the public means what its votes have indicated, and that the public prefers the status quo on checks and balances in the development and enforcement of regulations.

If you have additional questions, please let me know.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: Deborah E. Behr
Deborah E. Behr
Assistant Attorney General

DEB:cl

cc: Charles Cole
Bruce Botelho

Kris Lethin

BALLOT MEASURE NO. 2

Constitutional Amendment
Legislative Annulment of Administrative Regulations
(1986 Legislative Resolve No. 60 HCS SJR 40 [Jud] am H)

BALLOT LANGUAGE

(As it will appear on the November 4, 1986, General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive branch regulations by passing a resolution that is not subject to veto by the governor or repeal by referendum. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals.

A vote "FOR" adopts the amendment. FOR ☐

A vote "AGAINST" rejects the amendment. AGAINST ☐

VOTES CAST BY MEMBERS OF THE 14TH ALASKA LEGISLATURE ON FINAL PASSAGE

House:	Yeas	31
	Nays	4
	Absent or Not Voting	5
Senate:	Yeas	17
	Nays	0
	Absent or Not Voting	3

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(HCS SJR 40 (Jud) am H)

This proposal for a constitutional amendment would allow the legislature to annul a regulation ac red by a state department or agency by its adoptio a concurrent resolution. Under the present provisic of the constitution, the legislature may annul a reg tion only by the enactment of a bill that is subject the veto of the governor; if the governor vetoes the bill, the constitution now requires a two-thirds affir tive vote of the legislature assembled in joint sessior to override the veto.

If the legislature adopts a concurrent resolution annul a regulation under the authority proposed he the annulment would be effective thirty days after t date the concurrent resolution is approved by both houses unless the resolution specified a different date The concurrent resolution would not be subject to t veto of the governor. Adoption would require three readings in each house on three separate days except that it may be advanced from second to third readin on the same day by the concurrence of three-fourths of the membership of the house considering it. Adop tion would require approval by a majority vote of eac membership of each house. The vote on final passage must be entered into the journal.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

BALLOT MEASURES FROM OTHER STATES

BALLOT MEASURE NO. 2

STATEMENT IN SUPPORT OF BALLOT MEASURE NO. 2

The issue is basically simple: should bureaucrats or the Legislature be the ultimate lawmaking authority?

All 60 members of the Legislature (40 House and 20 Senate) are elected by the people. They are all voted into, and out of, office by individual voters. The Alaska Constitution says, "The legislative (i.e., lawmaking) power of the State is vested in a Legislature consisting of a Senate. . .and a House of Representatives. . ." The Legislature proposes, considers, and enacts laws, known collectively as the Alaska Statutes (if general and permanent) or as the Session Laws of Alaska (if specific and temporary).

All bureaucrats who promulgate (i.e., enact and enforce) regulations (theoretically, to put laws into effect) are in the Executive Branch, headed by the Governor. Bureaucrats are not voted into office and thus cannot be removed by the people. Instead, bureaucrats are hired by the Governor or by his/her appointees, and thus can only be removed from office by the Governor or by somebody answerable to him/her. However, the regulations promulgated by the bureaucrats, known collectively as the Alaska Administrative Code, have the force of law and affect all of us, sometimes adversely.

What can be done about a law that's bad? It can be repealed by the Legislature or, in some cases, by the people directly via an initiative petition.

What about a regulation that's bad? It can only be repealed by the bureaucrats who promulgated it, up to and including the Governor. If the Legislature tries to repeal a regulation by passing a bill, the Governor will almost certainly (and always has, in the past) veto the bill so that the bad regulation stays in full force and effect.

Now, if the Legislature had the power to repeal regulations by passing a concurrent resolution (instead of a bill), then the resolution could not be vetoed by the Governor. Thus, the Legislature would be able to get rid of bad regulations, which in effect it cannot do now.

Would this give the Legislature too much power? Not hardly. Since the Legislature already has full power to enact laws, why shouldn't it have full power to repeal all laws, including regulations?

Why do Governors and bureaucrats oppose giving the Legislature such regulatory repeal power? Because Governors and their handpicked bureaucrats, which are answerable only to the Governor (and cannot be removed by the people, which can remove Legislators), don't want to lose the power they now have to promulgate and enforce any regulation they want. It's that simple.

If you feel that the Legislature should have the power to repeal regulations via concurrent resolution (not vetoable by the Governor), vote FOR the ballot measure. If you feel that bureaucrats should be the ultimate law-making authority, vote otherwise.

I recommend that you vote FOR. Only in this way will we realistically be able to get rid of bad regulations.

Andre Marrou
State Representative

STATEMENT OPPOSING BALLOT MEASURE NO. 2

For the third time in six years, the legislature insists on confronting the voters with a proposed constitutional amendment giving the legislature a short-cut to law-making—another attempt by the legislature to concentrate governmental power in its own hands. The voters rejected a similar proposal in 1980 and the identical proposal in 1984. It should be rejected again.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. Regulations are adopted to implement statutes. They have the force of law. Annulling them changes the law. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that would be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power between the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation, and it would empower the legislature to act in place of the executive by reversing a specific executive-branch decision.

In its intent statement accompanying this proposal, the legislature admitted that the "difficulty in achieving [the two-thirds] majority [to override a veto] in opposition to the governor and the governor's administration has led the legislature to propose this amendment." In other words, the fear that the governor might veto a bill and that not enough legislators would agree to override that veto prompted this short-cut approach to law-making. That fear overlooks the governor's accountability to the voters throughout the state.

The annulment is like a repeal. The legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. The legislature would be saying to the agency "your decision to adopt that regulation is wrong." But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive-branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the constitution's checks and balances on its power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As mentioned when the voters rejected the 1980 and 1984 proposals, this amendment would aid legislators, not the public, and it should be rejected.

Katherine D. Nordale
Delegate to the Alaska
Constitutional Convention, 1955–1956

[illegible] MEASURE NO. 1

Constitutional Amendment

LEGISLATIVE ANNULMENT OF ADMINISTRATIVE REGULATIONS

(1983 Legislative Resolve No. 15 (SCS HJR 5[Jud]))

SUMMARY

(As it will appear on the November 6, 1984 General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive-branch regulations by passing a resolution. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals. The resolution is not subject to veto by the governor, and it is not subject to repeal by referendum.

BALLOT FORM:

A vote "FOR" adopts the amendment.
A vote "AGAINST" rejects the amendment.

FOR ☐
AGAINST ☐

VOTES CAST BY MEMBERS OF THE 13TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas 19	Nays 0	Absent or Not Voting 1
House	(40 members):	Yeas 34	Nays 2	Absent or Not Voting 4

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal for a constitutional amendment would allow the legislature to annul a regulation adopted by a state department or agency by concurrent resolution. The annulment is effective thirty days after the date the concurrent resolution is approved by both houses unless the resolution specifies a different date. Adoption requires three readings in each house on three separate days except it may be advanced from second to third reading on the same day by concurrence of three fourths of the membership of the house considering it. Adoption requires approval by a majority vote of the membership of each house. The vote on final passage must be entered into the journal.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

SECTION 22. **ANNULMENT OF REGULATIONS.** The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

STATEMENT IN FAVOR OF BALLOT MEASURE NO. 1

Voters who have ever experienced irritation or anger as a result of a problem they have had with state regulations should vote in favor of Ballot Measure No. 1. While many regulations do conform to and support state laws, there are occasionally regulations which are imposed that go beyond the intent of the law and cause undue hardship on our citizens. These regulations often make no sense at all, state agency people are often at a loss to explain the meaning or sense of the regulations, and yet the state agencies involved continue to enforce them, and voters are powerless to change them.

The Alaska Constitution, patterned essentially upon the Constitution of the United States and the experience of the other states, provides a system of checks and balances among the three branches of government, and further entitles the people to their own checks and balances through the voting booth, the initiative process, and final authority over amendments to the constitution. The one major area of government that is currently not directly accessible to the people's checks and balances is the very considerable volume of administrative regulations which are written by the state agencies in the executive branch of government.

These regulations deal with every aspect of government and our lives: fish and game, education, health and social services, traffic, land development, utilities, taxes: the list is endless. And once the regulations go into effect, they have all the force of law. The problem is, that unlike the situation that occurs with laws, the agency people who make and enforce regulations are not subject to voter approval at election time; they are either appointed by the governor or by his commissioners.

While the legislature is often made aware of foolish bureaucratic requirements by unhappy constituents, it is almost powerless to do anything about them. Currently, to annul a regulation, the legislature must pass a new bill which is then subject to veto by the governor. This puts the governor in the powerful position of being able to stop a bill that would overturn a regulation made by his own subordinates.

It was never intended by the framers of our State Constitution that any governmental body except the legislature have the power to make laws. Yet, bad regulations have been written, on occasion by state agencies, which go beyond the letter and intent of the law as passed by the legislature and in effect create law on their own.

This measure would provide a reasonable avenue for annulment of bad regulations. It would allow your elected representatives in the legislature, through a majority vote of both houses, to annul regulations in the same way they pass any legislative bill, except it would not be subject to veto by the governor, who clearly has a biased position in the matter.

The House Joint Resolution which created the ballot measure had bi-partisan sponsorship during the last legislative session, and was passed with near-unanimous support by both houses of the legislature.

—Mike Szymanski,
State Representative

STATEMENT OPPOSING BALLOT MEASURE NO. 1

This proposed amendment to the Alaska Constitution is very similar to the one proposed in 1980 and rejected by the voters 82,010 to 58,808. Although the present version includes some improvements over the 1980 version, it is another attempt by the legislature to concentrate governmental power in its own hands.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. The regulations are adopted to implement statutes. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that could be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power among the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation; and it would empower the legislature to act in place of the executive by nullifying a specific executive-branch decision.

The annulment is like a repeal. In using this expedited procedure to annul a regulation, the legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. And it would not be providing the thoughtful analysis necessary to solve a problem. The legislature would be saying to the agency "your decision to adopt that regulation is wrong". But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor an appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the Constitution's checks and balances on its power when it exercises that power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As argued four years ago, when the voters rejected the 1980 proposal, this amendment would aid legislators, not the public, and it should be rejected.

—Katherine D. Nordale,
Delegate to the Alaska Constitutional Convention, 1955-1956

BALLOT PROPOSITION NO. 1

LEGISLATIVE ANNULMENT OF REGULATIONS

Constitutional Amendment

(Committee Substitute for House Joint Resolution No. 82 Amended)

SUMMARY

(As it will appear on the November 4, 1980 General Election Ballot)

This proposal would permit the legislature to annul, by adopting a resolution; regulations adopted by sta agencies. Annulment of regulations by resolution was authorized by the First State Legislature in 1959; howev in 1980 the Alaska Supreme Court held that the constitution permits the legislature to annul a regulation or by passing a bill, which requires three readings of the bill and a roll call vote which is recorded. The procedur for adopting resolutions are governed by legislative rules and require only the approval of the resolution by voi vote of a majority of both houses. A bill passed by the legislature annulling a regulation could be vetoed the governor or repealed by referendum. A resolution annulling a regulation could not.

BALLOT FORM:

A vote "FOR" adopts the amendment.

A vote "AGAINST" rejects the amendment.

FOR ☐

AGAINST ☐

VOTE CAST BY MEMBERS OF 11TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas 18	Nays 0	Absent or Not Voting 2
House	(40 members):	Yeas 36	Nays 0	Absent or Not Voting 4

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal would add a new section, section 22, to Article II of the state constitution. If adopted, the proposal would authorize the legislature to annul or set aside a regulation which has been adopted by a state department or agency. In order to annul a regulation, the legislature could adopt a concurrent resolution by approval of the resolution by majority vote of the membership of each house of the legislature. The resolution specifies the date on which the annulment of a regulation would take effect.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by a concurrent resolution approved by a majority vote of the membership of each house may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective on the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date.

STATEMENT IN FAVOR OF BALLOT PROPOSITION NO. 1

The legislature, when it writes a law, cannot foresee all of the possible details involved in carrying it out. The appropriate administrative agency is therefore allowed to write regulations which spell out who does what, when, where, and how. If the agency does no more than this no problem is created.

Unfortunately agency regulations are not always consistent with the intent the legislature had in passing the law. Sometimes an agency will get carried away and put out regulations that cause an unnecessary burden for the citizens. The First State Legislature realized this and provided a simple solution. The legislature could, by a concurrent resolution passed by a majority of each house, annul an administrative regulation. Such a resolution is not subject to the governor's veto.

The Alaska Supreme Court recently held, in a 3-2 decision, that the legislature must use a bill rather than a resolution to annul administrative regulations. But a bill is subject to the governor's veto. The governor can hardly be expected to approve a bill overruling his subordinates, who put out the regulation in the first place. The present governor has already vetoed one such bill.

The court ruling gives agency regulations equal standing with laws, *even though no single person elected by the voters has approved them.*

Our government is wisely based on dividing power among the three branches: legislative, executive and judicial. The current situation gives entirely too much power to the executive branch. Your approval of this constitutional amendment will restore the better balance under which the state operated from 1961 to 1980.

— Charles H. Parr
Chairman, House Judiciary Committee
Alaska State Legislature

STATEMENT AGAINST BALLOT PROPOSITION NO. 1

This is still another proposal by the legislature to free itself from the checks and balances of our constitution. Under the constitution, the legislature has all the power it needs to make laws and annul administrative regulations. This proposal does not aid the public in any way. What it does is allow the legislature to exercise its power to annul regulations in disregard of the constitutional requirements that each bill have a single subject, that each bill have three readings in each house, and that there be a recorded vote of the ayes and nays on final passage. It would also free the legislature from the executive veto and it would allow it to ignore the prohibition against special and local legislation.

The Alaska Supreme Court has recently ruled that the legislature must abide by the constitution's checks and balances on its power whenever it exercises that power, including when it acts to annul regulations. This amendment is intended to overrule the court's decision and erode the constitution's safeguards. It aids legislators, not the public, and it should be rejected.

— Katherine D. Nordale
Delegate to the Alaska
Constitutional Convention,
1955-1956

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

Alaska State Legislature

House of Representatives

Official Business

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

House Majority Leader

MEMORANDUM

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

FROM: Representative Gail Phillips *Gail*

SUBJECT: House Joint Resolution 11
(repeal of regulations by the legislature)

DATE: March 23, 1993

In preparation of your bill calendar for next week, I would appreciate your considering the above referenced resolution for a hearing before the Senate Judiciary Committee at your earliest possible convenience. This resolution passed the House by a vote of 36 yeas and 4 nays on Wednesday, March 10.

Even though this proposition will not appear on the ballot until 1994, it is my firm desire that passage by the legislature occur this session. The Alaska State Chamber of Commerce has gone on record supporting this resolution and are preparing to launch an extensive and lengthy educational campaign during the next 18 months in order to adequately inform the public of the importance of their affirmative vote on this issue in 1994.

I have attached, under separate cover, background material on the previous ballot measures for your committee files as well as a letter of support from Lt. Governor Coghill.

Your consideration of my request would be greatly appreciate .

GP/sgn

Attachments

SPONSOR STATEMENT

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

House Majority Leader

MEMORANDUM

TO: Senator Robin Taylor, Chairman
Senate Judiciary Committee

FROM: Representative Gail Phillips

SUBJECT: House Joint Resolution 11
(repeal of regulations by the legislature)

DATE: March 23, 1993

Background

This proposal for an amendment to the Constitution of the State of Alaska to repeal regulations by the Legislature has been placed on the ballot on three previous occasions. The chart below indicates the history of those votes. On all three occassions, the ballot proposition lost by a margin of less than 20 percent; However, my commitment in 1994 is to see that it passes by a substantial margin.

1980	1984	1986	
58,808	91,174	65,176	Yea's
82,010	98,856	94,299	May's
140,818	190,030	159,475	Total Proposition Votes
16%	4%	18%	Failure Percentage
162,653	213,173	182,526	Total Votes Cast
258,742	305,262	292,274	Total Registered Voters
63%	70%	62%	Voter Turnout

GP/sgn
Attachments

PREVIOUS ALASKA VOTES

JOHN B. COGHILL
LIEUTENANT GOVERNOR

STATE OF ALASKA
P. O. Box 110015
JUNEAU, ALASKA 99811-0015
(907) 465-3520

February 23, 1993

The Honorable Representative Gary Davis, Chairman
Administrative Regulation Review Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Davis:

I was pleased to hear that the agenda for the Administrative Regulation Review Committee includes a discussion of HJR 11/SJR 11, "Proposing an amendment to the Constitution of the State of Alaska relating to the repeal of regulations by the legislature." I would like to express my most sincere support for these resolutions.

As a member of our state's Constitutional Convention, I have a special place in my heart for all issues that have come before us which might alter the Constitution. In all cases, whether I supported the issue or not, I believe the people of Alaska should be allowed to decided if, when, and how their constitution should be changed.

The issue of regulatory review and the necessary checks and balances has been a personal crusade that is very important to me. As you may know, I sponsored this very same measure in the 16th Legislature. While some of you may not have supported Governor Hickel's Executive Order which granted regulatory review powers to the Lieutenant Governor, we had promised that we would bring the regulations closer to the people by having an elected official involved in the review process. In a letter to Governor Hickel, former Lieutenant Governor Stephen Mc Alpine expressed the following opinion:

> "...there should be an independent review within the executive branch of government to analyze the overall consequence of regulation of not only the effective operation of government but also how regulations will impact society as a whole."

LT. GOVERNOR'S SUPPORT

Representative Gary Davis
February 23, 1993
Page Two

For a short time in Alaskan history the people could look to the Lieutenant Governor, an elected official, for accountability in regulatory review. Since December of 1991, however, no elected official has had the power to review regulations. I have heard from many Alaskans throughout the years who became "victims" of regulations, but they did not elect the authors of these laws. If an elected official in the executive branch does not have the delegated authority to review laws generated in state agencies, I believe the Legislature should have that authority. If the people of Alaska are unhappy with the laws that bind them, they can go to the polls and elect new legislators who better understand their needs.

In the separation of powers, the legislature is the body of government with the power to make law. It is true that regulations undergo a legal review to ensure the regulation is consistent with the enabling statute, and that you, the Legislature could always rewrite statute if you find the regulations go beyond your intent, but I do not believe this is the best process.

Yes, this issue has been before the voters three different times, and failed each time, but never by as much as 20%. Alaskans need to be educated on this subject and I am convinced the sponsors of this resolution are committed to developing a strong educational campaign to help the people of this state understand this proposition was drafted to help them, not hurt them. Now, more than ever before, Alaskans understand how regulations affect their daily lives and will most likely be more receptive to a ballot proposition which will bring the regulations closer to the people.

I encourage your support of this resolution. It is time that all lawmakers become responsible to the public they regulate.

Sincerely,

John B. Coghill
Lieutenant Governor

JBC/lag

cc: The Honorable Representative Gail Phillips
The Honorable Senator Drue Pearce