ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8438 SENATE RESOURCES

DRAFT 11/12/1993

Principles for concensus on Response Fund Funding

Goals:

*Maintain strong State-led spill prevention and response program.

*Build and maintain $50 million spill reserve.

*Attempt to achieve greater equity in funding sources for non-crude/hazardous substance prevention and response.

Strategy:

*Expand Response Fund Sources, including cost recovery.

*Simplify accounting mechanism to impose/suspend crude oil surcharge.

*Don't diminish the Response Fund's capability to fund necessary programs until other sources are in place for non-crude/hazardous substance prevention and response.

2/ 2

Specific concerns to meet when applying the Strategy:

*Even though the Spill Reserve approaches $37 million, and thus just $13 million would be necessary to reach a reserve figure of $50 million, the formula for suspending the tax requires at least $65 million more be collected, above additional expeditures, before the tax is suspended.

*There are now no built-in incentives for the legislature to credit repayments to the state from fund expenditures to the fund in collecting the tax.

*There is a perception that some authorized fund expenditures should be unauthorized or further limited. Further checks and balances may be necessary.

*The size of the spill prevention and response program seems to grow to match funds available from the tax, and should instead be set to meet needs for the environment and safety and funded from an equitable series of sources on the "polluter pays" principle.

3 3

Other possible funding sources:

*Receipts from cost recovery/reimbursement

*Mitigation: damages, fines, etc.

*Fees: possible fee for contingency plan review by non-crude facilities, financial responsibility submissions, etc. Loading fees have been discussed as possible UST funding source.

*Substitution of general funds -- interest on the spill reserve, use of other tax revenues.

Method to suspend the tax and include other sources:

*Amend the tax law to state, simply, that the tax is collected when the balance of the fund, less obligations appropriated by the legislature or spent from the spill reserve as provided by law, is less than $50 million.

*Consider an incentive clause to state that the tax will not be collected in such a year unless other named sources (any the legislature chooses from the list above) are also appropriated to the fund.

4

4.

Method to further limit fund expenditures:

*Remove full funding for the SERC by making an all-hazards SERC.

*Repeal the provision that allows ferries to be built with the Fund.

*Further checks and balances, such as requiring review of capital and operating expenditures by a body such as the SERC in case of spill prevention and response plans, and the HSSTRC in case of research.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

02–576(2/77)

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Projected trends in current cost components:

SPAR Director -- Maintain Response Fund; some GF.

Industry Preparedness -- Program may need to grow to cover unregulated facilities or substances, as evidenced by Indian Spill and chlorine leaks statewide that required evacuation. Non-crude facilities could be asked to pay a fee for c-plan review.

Government Preparedness -- Convert SERC to Disaster Planning; primarily GF/Federal Funds. Other agencies' funding for SERC participation would follow suit.

Contaminated Sites -- Program attempts cost recovery; loading fees or other GF could increase equity; EPA is considering allowing states access to superfund; Coast Guard has given state access to oil pollution fund.

UST Program Administration -- Costs could be borne by same source as the UST grant program. Program should have reduced grant requirements as insurance deadlines take hold late in decade. General funds, loading fees are possible sources. Mitigation account is current source for grant program.

Other DEC Divisions -- Maintain Response Fund.

Other Departments -- Maintain Response Fund or alternate funding source for c-plan review by ADF&G, DNR. Maintain Response Fund for Dept. of Law, DMVA on cost sharing, Public Safety for investigations.

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If surcharge is split ($.03/.02), what is available?

[At a nickel a barrel, revenue estimates are $26 million collected in 1993 available for FY 1995]

	.02	.03
FY 95	$10,400	$15,600
FY 96	9,840	14,760
FY 97	9,040	13,560
FY 98	8,240	12,360
FY 99	7,560	11,340
FY 00	6,800	10,200

Spill Reserve Projected at end of FY 1994: $36,588.3

Mitigation account revenues projected:

FY95	FY96	FY97	FY98	FY99	FY00
5,300	8,300	8,600	8,900	9,000	1,000

Funding need:
$14.1 million/yr.

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Options: [In all cases, look for alternate funding sources.]

1. [DEC proposal] Collect only as much is necessary for the spill reserve and to run spill prevention and response program. Channel cost recovery directly to the Fund through an incentive clause in the tax, including projected Exxon reimbursements to the fund.

2. [Current HB 238] Split the nickel: .03/.02, and channel cost recovery to the fund or the spill reserve. [This leaves potential major deficit in spill response program.]

3. [Modified HB 238] Split the nickel but Exxon Fund cost recovery directly to the Fund. [This leaves surplus that may be appropriated elsewhere.]

Tax collected:		Option 1	Option 2/3	Deficit/Surplus
1993 for FY	'95	$26.0	$26.0	(3.7)/1.5
1994	'96	0.0	9.8	(4.3)/5.0
1995	'97	7.8	9.0	(5.1)/8.5
1996	'98	5.3	9.0	(5.9)/11.5
1997	'99	5.2	8.6	(6.5)/6.0
1998	'00	13.2	7.8	(7.3)/(.3)

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Oil and Hazardous Substance Prevention and Response Fund				c:\windows\legislation\238dec2.xls			
DEC Proposal 11/93					Revised 11/9/93		
	FY94	FY95	FY96	FY97	FY98	FY99	FY2000
Revenue (In Thousands)							
Balance Forward Unreserved/Unobligated Spill Reserve	27,084.1	36,588.3	53,706.3	47,822.3	50,000.0	50,000.0	50,000.0
.05 Surcharge Necessary to Maintain Spill Reserve	26,700.0	26,000.0	.0	7,760.7	5,283.0	5,183.0	13,183.0
Mitigation Account Transfers	661.2	5,300.0	8,300.0	8,600.0	8,900.0	9,000.0	1,000.0
TOTAL AVAILABLE IN FUND	54,445.2	67,888.3	62,006.3	64,183.0	64,183.0	64,183.0	64,183.0
PROJECTED EXPENDITURES							
SPAR Director's Office	880.7	992.0	992.0	992.0	992.0	992.0	992.0
Industry Preparedness Program	2,321.9	2,579.0	2,579.0	2,579.0	2,579.0	2,579.0	2,579.0
Government Preparedness and Response Program	4,027.4	3,682.3	3,682.3	3,682.3	3,682.3	3,682.3	3,682.3
Contaminated Sites Program	2,949.3	2,839.0	2,839.0	2,839.0	2,839.0	2,839.0	2,839.0
Underground Storage Tank Program	108.3	108.0	108.0	108.0	108.0	108.0	108.0
Division of Information and Administrative Services	748.5	746.5	746.5	746.5	746.5	746.5	746.5
Division of Environmental Quality (Lab, Poll Prev.)	309.5	334.0	334.0	334.0	334.0	334.0	334.0
Response Fund Administration (Other Agencies)							
Fish and Game	190.7	184.2	184.2	184.2	184.2	184.2	184.2
Natural Resources	108.0	108.0	108.0	108.0	108.0	108.0	108.0
Law (Cost Recovery, Prosecution, Enforcement)	1,300.2	750.0	750.0	750.0	750.0	750.0	750.0
Labor	9.5	.0	.0	.0	.0	.0	.0
Community and Regional Affairs	13.5	.0	.0	.0	.0	.0	.0
Health and Social Services	12.0	.0	.0	.0	.0	.0	.0
Public Safety	53.0	50.0	50.0	50.0	50.0	50.0	50.0
DOT/PF	8.5	.0	.0	.0	.0	.0	.0
DMVA	611.0	210.0	210.0	210.0	210.0	210.0	210.0
University of Alaska/Research	200.0	200.0	200.0	200.0	200.0	200.0	200.0
Capital Budget	2,774.0	400.0	400.0	400.0	400.0	400.0	400.0
Estimate of Spill Reserve Use	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0
SUBTOTAL PROJECTED EXPENDITURES	17,357.0	14,183.0	14,183.0	14,183.0	14,183.0	14,183.0	14,183.0
Spill Reserve Balance	36,588.3	53,706.3	47,822.3	50,000.0	50,000.0	50,000.0	50,000.0

ASSUMPTIONS:

FY94 Revenues are based on appropriations made in FY94 budget.

FY94 projected is based on FY94 Adjusted Budget.

Transfers from Mitigation Account from Exxon settlement are $8.0 million/yr for FY96-FY99.

Cost recovery will begin to increase based on enhanced procedures and efforts.

Mitigation Account is appropriated to the Response Fund.

State Owned Sites are cleaned up using General Funds (194 is projected FY95 Cost).

Average annual expenditures for emergency response from the spill reserve will be 1,000.0.

FY95 Other sources cover 400.0 of SERC in Govt. Preparedness Program and in other agencies.

FY95 reduce DOL $350.0 eliminate Exxon Project. Dept. of Law expenditures will fall or come, as needed, from Spill Reserve.

Total Surcharge Collected reflects amount needed to cover Projected Expenditures. The Mitigation Account transfers count toward the $50.0 million spill reserve balance. The Mitigation Account transfers are estimates projected.

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OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
HB 238 Version "M" work draft compared to DEC proposed changes

HB 238 Features	DEC Proposal (11/93)
◆Change name of fund to include "prevention" (sec. 1,4,6,7, 28,37,42)	☞Include this change
◆Amend the Alaska Disaster Act by changing the priority in which the Governor may have access to money to respond to a disaster (sec. 2,3)	■Leave current statute which gives first recourse to money regularly appropriated to state agencies
◆Create catastrophic oil release fund and contingency abatement fund to replace response fund (sec. 27,28)	■Leave current statute which establishes OHSRR Fund as a single account
◆create separate mitigation account for each account above (sec. 31,32)	■Leave current statute which establishes a single mitigation account
◆divide surcharge - 2¢ and 3¢ with 2¢ to be deposited into the abatement account and 3¢ to be deposited into the catastrophic acct. (sec. 9,11,14)	■Leave surcharge at 5¢ whole ■Include provision which would allow any other fund sources appropriated to be used for the prevention and response program, so as to increase equity on the "polluter pays" principle.
◆catastrophic acct. cap $50.0 m (sec. 12,13)	■Amends provision that suspends the surcharge to include amounts recovered as reimbursement for monies

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previously expended from the fund, considers spill reserve balance. (Tax in a given year is amount needed to replenish spill reserve to $50.0 million after reimbursements are put in and annual funding requirement is taken out.)

begin calculating the balance of the spill reserve with a "clean slate"

◆remove requirement that DEC annually revise the statewide master plan, commissioner makes the determination when revision is necessary (sec. 21)	☞Include this change
◆remove requirement that the statewide master plan be submitted to the public, Legislature and SERC for annual review (sec. 22)	☞Include this change
◆when DEC revises the statewide master plan that it go through public comment and SERC approval (sec. 23)	☞Include this change
◆remove requirement that DEC annually revise the regional contingency plans, commissioner makes the determination when revision is necessary (sec. 24)	☞Include this change
◆provides same procedures for review and revision of statewide plans apply to regional plans (sec. 25)	☞Include this change

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◆amend definition of "catastrophic oil discharge" as >100,000 barrels or a release for which the governor has declared a disaster (sec. 26)	☞Include a portion of the change which adds the term "release" as well as "discharge", a disaster declaration is not necessary to access spill reserve for spills and contaminated sites
	■Include technical amendment to ensure that the definition of "containment and cleanup" includes other permutations of these words
◆delete restoration, and research and development as authorized uses of the fund (sec. 41)	■Leave current statute which allows these uses
	■Delete provision for the fund to pay for the ferry
◆repeals use of fund for the Citizen's Oversight Council (sec. 48)	☞Include this provision
◆clarify equipment purchase for depots and corps as authorized use of the fund (sec. 30)	☞Include a definition elsewhere in statute to make certain these equipment purchases are included as a use of the fund
◆deletes the following reporting requirements: PCNs, contracts>20.0, purchases>10.0 (sec. 36)	☞Include deletion of PCN reporting requirement
◆amend definition of "threatened release" to require a determination by the commissioner if it is not impending (sec. 44,46)	■Leave current definition which defines "threatened release" to mean there is an imminent danger that a release will occur
◆move SERC to DMVA (sec. 47)	■Leave current status

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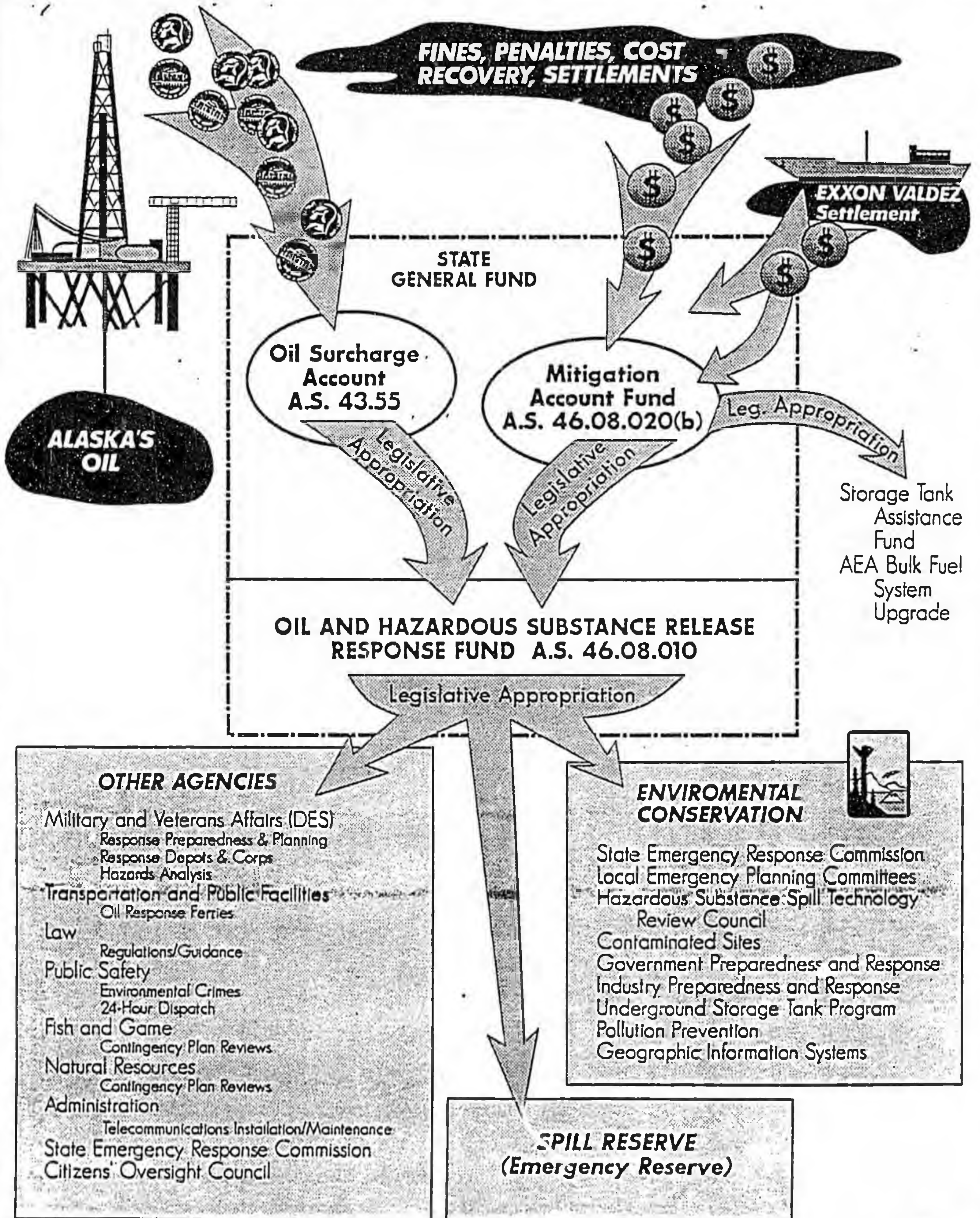
11/5/93



— RESPONSE FUND FLOW CHART —

Date NOV 1 9 1993

Anchorage Daily News

Client No. 33

Adding to spill fund just part of oil business overhead

Those who cannot remember the past are condemned to repeat it.

— George Santayana

By STAN STANLEY

In a blatant attempt to increase oil-industry profits, the Alaska Oil and Gas Association has lobbed the first salvo in its renewed attempt to get out of contributing to state oil-spill prevention programs. The salvo came in the form of a newspaper insert purporting to prove that Alaskans agree with industry thinking on several oil-related issues, including the use of the so-called 470 Fund. AOGA's propaganda piece is a blatant distortion of facts and shameless manipulation of the truth.

The message AOGA sends through this campaign is distressing: Notwithstanding expensive TV ads extolling its concerns for the environment, the oil industry has learned little since the Exxon Valdez.

They'll spend millions improving their image in glossy media campaigns, but as soon as the political heat cools, they're at it again, chipping away at the very programs that lower the risk of oil spills and reduce the damage if a spill does occur. It's time we Alaskans let the oil industry, our legislators and the Hickel administration know that we haven't forgotten 1989, even if they have.

Since the Exxon Valdez oil spill, oil producers have paid a nickel-per-barrel conservation surcharge into a pool called the 470 Fund. By law, the purpose of the surcharge is to ensure a long-term funding source for spill-prevention programs and to respond to future spills.

When the fund balance reaches $50 million, the surcharge is suspended until the fund drops below that level. Because the fund is used to pay for ongoing programs, such as review of industry contingency plans and evaluation of spill drills, it takes longer to reach the cap than if the money simply stayed there.

AOGA and its members want to limit how the fund can be used so they don't have to keep paying the surcharge. If the 470 Fund were strictly a response reserve, to be used only if a spill occurs, the $50 million

COMPASS ARTICLES: AOGA & PRINCE WILLIAM SOUND RCAC

balance would be reached quickly and stay there, unless and until there was a big oil spill. In the meantime, industry would not have to pay the nickel per barrel.

Their strategy is to rewrite legislative history by claiming that a response reserve is the only valid use of the 470 Fund. It simply isn't true and a glance at the law proves it.

We agree that there have been some abuses of the 470 Fund and we wholeheartedly support clear-cut guidelines to stop questionable uses of the fund in the future. We, too, want assurances that the fund is spent well and wisely and for the purposes it was established to serve.

Most Alaskans believe oil has been good for our state. But oil development and oil transportation carry significant risk, as we learned all too vividly in 1989.

It's only right that a hugely profitable industry help pay for state programs to reduce the risk created by that industry's activities. It ought to be part of the cost of doing business. But apparently the oil companies that comprise AOGA don't want to pay it anymore and they're distorting the truth to try to get their way.

AOGA claims its survey shows that Alaskans don't want money from the 470 Fund used except as a spill reserve. Anybody familiar with this type of survey knows it's easy to get answers that serve your purpose if you know how to phrase the question. The AOGA survey manipulated responses by providing only part of the picture.

Last year, oil industry lobbyists tried but failed to push through legislation to limit how the 470 Fund can be used. AOGA's survey is a clear and unmistakable offensive ploy to get a bill passed early in the coming legislative session.

It's time we Alaskans let the oil industry, our legislators and the Hickel administration know that we haven't forgotten 1989, even if they have.

☐ **Stan Stanley is executive director of Prince William Sound Regional Citizens' Advisory Council.**

FORUM / LETTERS

AOGA supports bill to fix the oil-spill-response fund

By ARDIE GRAY

In a recent Compass piece, Stan Stanley, executive director of the Prince William Sound Regional Citizens' Advisory Council, accused the Alaska Oil and Gas Association (AOGA) of distorting facts and manipulating the truth when AOGA released results of its recent statewide public opinion survey. Mr. Stanley may not agree with the findings of our recent survey, but the facts are that:

- Seventy-nine percent of Alaskans surveyed feel that money placed in the oil and hazardous substance release response fund ("470" fund) should stay there until it builds up to $50 million; and
- Eighty-six percent of Alaskans surveyed support the goal of building the "470" fund up so that $50 million would be available to respond to future spills if necessary.

After reading Mr. Stanley's article, it appears that, at the bottom-line level, we actually agree on some major points:

1. An oil spill response capability is very important to Alaska;
2. There have been abuses to the oil spill fund since it was established in 1989;
3. The abuses should be stopped; and
4. The "470" fund should be used for the purpose intended.

What was intended?

After the 1989 spill, the legislature established a nickel-per-barrel surcharge on oil production to be paid into the "470" fund. The original intent of this tax was that it provide the state with an independent spill containment and cleanup capability in the event of future spills. Oil companies would continue to pay a nickel per barrel until the fund reached $50 million. Once the fund reached $50 million, the tax would be temporarily suspended.

But an odd thing happened between 1989 and now — the industry has paid more than $110 million into the fund; however, due to a combination of spending and accounting problems created by the statute, the Department of Administration reports the fund balance at minus $13 million. This means that even with no further expenditures, the industry would have to pay an additional $63 million in taxes before the $50 million cap could be reached.

Money from the "470" fund has been used for cleaning up state campgrounds, state airports, privately owned greenhouses, responding to chlorine leaks and buying new ferries. These may be important concerns, but they are not oil spill emergencies.

While it is certainly true that a portion of the "470" surcharge should be used to support spill prevention efforts, there are public policy questions as to how money from the fund is being spent.

The original fiscal notes from the 1989 and 1990 sessions projected annual expenditures from the "470" fund on the order of $5 million per year. Expenditures have grown to levels significantly higher than that. In fact, the "470" fund is currently being used to fund one-third of the Department of Environmental Conservation's operating budget for ongoing programs. The Governor's Organizational Efficiency Task Force Summary Report stated in June 1992, "the liberal use of the fund appears to be driving up total state spending with little concern for efficiency."

Money from the "470" fund has been used for cleaning up state campgrounds, state airports, privately owned greenhouses, responding to chlorine leaks and buying new ferries. These may be important concerns, but they are not oil spill emergencies.

The Alaska Oil and Gas Association supports funding for appropriate spill prevention and preparedness efforts. In fact, the petroleum industry has invested more than $225 million in oil spill prevention and response programs and equipment in Prince William Sound alone.

AOGA also supports a nickel-per-barrel surcharge for oil spill prevention and response. But because of the abuses of the past, we believe the nickel-per-barrel surcharge should be split: 2 cents to the Dept. of Environmental Conservation to provide a permanent and secure source of funding for oil spill prevention programs so long as oil is being produced in Alaska and 3 cents per barrel that would be paid into the "catastrophic oil discharge reserve" account to provide for the $50 million emergency fund originally envisioned in 1989.

Legislation was introduced last session which would provide this kind of security to both DEC and to the public to guarantee a $50 million oil spill emergency fund. AOGA supports this legislation.

We, like Mr. Stanley, want assurances that the fund is spent well and wisely and for the purpose it was established to serve. Unfortunately, this has not been the case. The "470" fund is broken and it should be fixed.

☐ **Ardie Gray is the public affairs manager of the Alaska Oil and Gas Association.**

SB
217

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

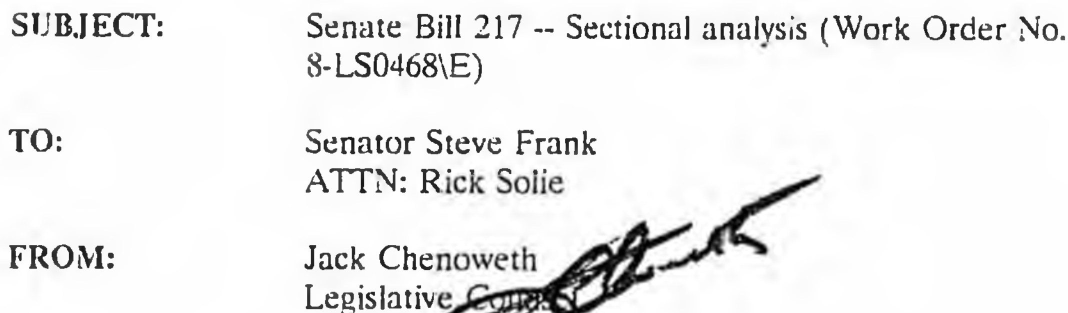
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

M E M O R A N D U M — January 21, 1994

SUBJECT: Senate Bill 217 -- Sectional analysis (Work Order No. 8-LS0468\E)

TO: Senator Steve Frank
ATTN: Rick Solie

FROM: Jack Chenoweth
Legislative Counsel



The measure proposes (1) to permit the University of Alaska to select and receive the conveyance of one million acres of land that has been selected by the state under the provisions of section 6(b) of the Alaska Statehood Act and (2) to hold the land selected in trust as part of the University endowment.

Specifically--

Bill section 4, proposing a new section, AS 14.40.365, would authorize selection of, and conveyance of, state land by the University:

-- Subsection (a) sets the total amount of land the University may select and describes the kind of land that is available to the University to complete its selection, tying the description of the kind of land that may be selected to its status on the date the land is selected.

-- Subsection (b) sets aside the effect of AS 38.05.125(a) to allow the state to pass the mineral estate in the land selected to the University.

-- Subsection (c) mandates conveyance of University selections "unless the commissioner [of natural resources] determines under [subsection (d)] that the title should not be conveyed," but places all costs of survey of the land on the University.

-- Subsection (d) precludes the commissioner of natural resources from conveying land if the conveyance of the proposed selection is not in the state's best interests, and identifies six factors that the commissioner is to consider.

SECTIONAL ANALYSIS (ORIGINAL VERSION)

-- Subsection (e) authorizes appeals to the courts of a decision by the commissioner under (d) not to convey land.

-- Subsection (f) declares that the University takes land conveyed to it subject to any outstanding possessory interest--any outstanding interest in the party held or asserted by a third party--but gives to the University the right to any consideration otherwise due the state for that possessory interest from date of conveyance to termination of the possessory interest.

-- Subsection (g), applicable to the land conveyances, imposes on the commissioner of natural resources the duty to provide notice and allow access.

-- Subsection (h) subjects the land tnat is transferred or conveyed to the University to certain laws:

-- section 6(i) of the Statehood Act, reserving to the state--under subsection (b), presumably to the University the mineral estate;

-- article IX of the state constitution, addressing, generally, matters of finance and taxation;

-- AS 19.10.010, a provision relating to the reservation of state land for public highway purposes; and

-- the rights of the state under former 43 U.S.C. 932--more commonly known as RS 2477, rights-of-way over unreserved public land for public highway construction;

but it excludes from selection by and conveyance to the University certain lands obtained by the state under the Alaska Omnibus Act, P.L. 96-70.

Bill section 2 amends AS 14.40.170(a) to add to the duties of the Board of Regents responsibility for the land selected and conveyed to the University under AS 14.40.-365, and requires the Regents to include within their required annual report a discussion of the earnings of that land.

Bill section 3 adds "land selected by and conveyed to the University [of Alaska] under AS 14.40.365" as land that is not to be treated as part of the state public domain land.

Bill section 5: A key provision, this amendment of AS 14.40.400(a) amends the provision that directs the University to establish an endowment trust fund for land conveyed to it under the 1929 grant to the Territory of Alaska for the benefit of the University to require deposit into the trust the land selected by the University and conveyed by the state under AS 14.40.365. The land selections made under bill section 4 would be managed under applicable trust principles.

Bill section 6: This amendment of AS 29.45.030(a) would extend to the land selected by the University and conveyed to it under AS 14.40.365 the exemption from municipal taxation that is provided to other land granted by the federal or state governments to the University for land grant purposes, by extending to this selected land the exception to an exemption of state land held for purposes of investment.

Bill section 1 incorporates into proposed findings and a statement of purpose a brief statement of the history of University land transactions and a justification for this measure.

JBC:mi
94-009.mai

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

January 27, 1994

The Honorable Steve Reiger
Alaska State Lesislature
State Capitol
Juneau, Alaska 99801-1182

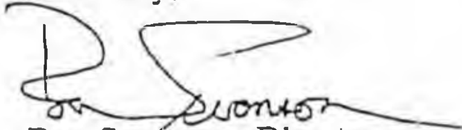
Dear Senator Reiger:

As you requested yeserday, attached is a copy of the testimony I gave on Senate Bill 217.

The amendments that were proposed would allivate most but not all of our concerns that were expressed in my testimony.

Please feel free to contact me if you have any further questions.

Sincerely,



Ron Swanson, Director
Division of Land

attachment

cc: Senator Frank w/attachment
Brian Rodgers w/attachment
Jerry Gallagher

0-J9 LH

TESTIMONY ON ORIGINAL BILL: DNR

DIVISION OF LEGAL SERVICES

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M E M O R A N D U M January 29, 1994

SUBJECT: Draft CSSB 217 ( ) (Work Order No. 8-LS0468)

TO: Senator Steve Frank
ATTN: Rick Solie

FROM: Jack Chenoweth
Legislative Counsel

The enclosed draft is based on the instructions you provided early Friday morning. Let me try to walk you through the bill pointing out how I have handled each item.

Item 1 -- Remove reference to "mineral estate" and substitute specific reference to the elements of the subsurface estate that are conveyed: At the end of proposed AS 14.40.365(b), I substitute the exact language--"fossils" included--of the reserved mineral estate from AS 38.05.125(a). (If you wanted to drive the point home, we could, additionally, amend AS 38.05.125(c) to insert a reference to "AS 14.40.365.")

Item 2 -- the University takes the land as a state agency: I think you are already covered by proposed AS 14.40.365(h)(1).

Item 3 -- oil and gas exploration license land: I address this in the revision of proposed AS 14.40.365(d)(2) contained in the bill's section 5 and, in bill section 13, give the provision a contingent effective date.

Item 4 -- disposition of income: Since the committee adopted Senator Sharp's motion to adopt Brian Rogers amendment, I started with that--you'll see it set out as bill section 6--but adapted the language, and also made an "Except as provided in . . ." insert to the second sentence of proposed AS 14.40.365(f).

Item 5 -- municipal land selection: This is addressed in proposed AS 14.40.-365(d)(1)(A) and (B), in both section 4 and section [illegible]. I did not prepare language setting a limitation in the number of years that a municipality was given to select under AS 29.65, nor did I set a limitation on the number of years that the University

had to select. See if these provisions cover the problems of selections both by the current municipalities and by any newly-incorporated ones.

Item 6 -- the University to cover the costs, probably under reimbursable service agreements, of department handling of selections and conveyances: Is the language of proposed AS 14.40.365(i) sufficient?

I also had a note that reference to "conveyance" in the mental health trust land provision should be expanded to say "designation" and have made that addition in the bill's section 11(1).

You asked me if I couldn't redraft proposed AS 14.40.365(a)(1) to avoid the "is subject to only" language. I have expanded (a)(1) into (a)(1) - (3) and tried to restate the proposition in paragraph (a)(3).

The committee adopted amendments that I prepared at your request, identified as E.1 and E.2, also have been incorporated into the draft.

Is there anything omitted?

JBC:gc
94-067.glc

Enclosure

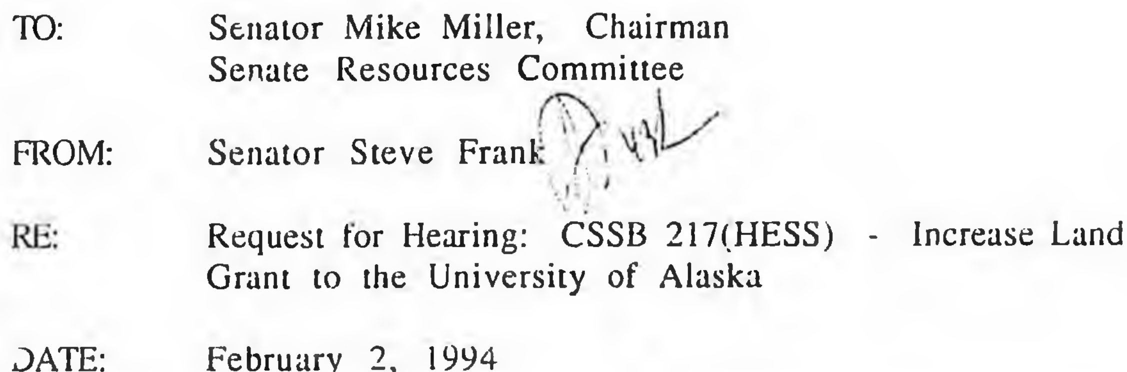
STEVE FRANK

119 N. Cushman, Rm. 213
Fairbanks, Alaska 99701
(907) 452-3421

Alaska State Legislature

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709
Capitol Rm. 417

Senate



TO: Senator Mike Miller, Chairman
Senate Resources Committee

FROM: Senator Steve Frank

RE: Request for Hearing: CSSB 217(HESS) - Increase Land Grant to the University of Alaska

DATE: February 2, 1994

I am writing to request a hearing for SB 217 in the Resources Committee at your earliest convenience.

The legislation, would allow the University of Alaska to select up to one million acres of land from the State of Alaska, and the income produced from those lands would be available for university programs.

Under the Congressional Morrill Act of 1862, each state was entitled to receive a grant for public lands, the income from which would provide the financial base of operation for at least one college or university. The University of Alaska received about 112,000 acres of land, less than any other western public land state and less than the national average entitlement of over 300,000 acres with New Mexico and Oklahoma receiving about one million.

I believe that an additional grant of land would bring Alaska up to the level of other western states and follows through with the original purpose of land grant colleges.

Thank you for your consideration.

SPONSOR STATEMENT

The University of Alaska
a "Land Grant" University

The University of Alaska calls itself a "Land Grant University" in the tradition of American land grant universities, providing teaching, research and public service to the people of Alaska. While the university has attempted to mold itself in the land grant tradition, one piece of that tradition is lacking — a sufficient land grant.

In 1915, Congress provided a land grant of approximately 250,000 acres — every section 33 in the Tanana Valley — to support the Territorial agricultural college and school of mines, together with a site for the institution itself. In 1929 Congress granted an additional 100,000 acres of public lands for the exclusive use and benefit of the Agricultural College and School of Mines.

In 1959, the Alaska Statehood Act extinguished the university's right to receive the unsurveyed sections 33 of the Tanana Valley. Congress so acted because its land grant to the state was by far the most generous of all state land grants. Supporters of the extinguishment said the state clearly was receiving enough land that it could provide necessary land to support the university. The State of Alaska has never kept this moral obligation to the University of Alaska.

Forty-nine of the states received land grants to support their universities. In all but one, the universities received more land than the University of Alaska, notwithstanding the fact that Alaska's state land grant is 16 times the size of the average state land grant. In eighteen of the lower 48 states, the entire federal land grants — 100% — went to support the universities. In Alaska, less than one percent — 0.11% — went to the university.

The State of Alaska did not manage what land the university received well. In 1978, following legislative appropriation of the university's most valuable acreage, the university sued, eventually winning a legislative settlement that reconstituted the university land trust. Later litigation brought replacement land for the legislatively-appropriated acreage. Still, nearly one-quarter of the university's original and replacement land grant — 50,000 acres of limited timber cutting rights in the Gulf Coast — remains tied up in litigation.

Alaskans look to the University of Alaska to provide for some of its financial needs by "managing the ranch" — earning income from the federal land grant, yet Alaskans do not realize the paucity of lands managed by the university.

If the University of Alaska received the average percentage of the total federal grant to the state — 42.01% of the State of Alaska grant— the university would be managing 43 million acres, and would probably need no further state support. If the University of Alaska received a proportional share of the total federal grant to universities — 5.09% of the State of Alaska grant — the university would be managing 5.3 million acres. Even bringing the University of Alaska's federal grant up to the average of the smaller states — 340,000 acres — would triple the size of the university's federal grant.

Under existing laws (the Act of 1929 and the Alaska National Interest Lands Conservation Act of 1978), the university has the right to select several thousand additional acres of federal land. Under the state's moral obligation, the university should have the right to select somewhere between several hundred thousand and several million acres of state land. It is time for the State of Alaska to help the University of Alaska to receive its land inheritance.

STATEMENT FROM U OF A

State Land Grant Rankings

Ranked by the amount of federal land given to Higher Education	
1 New Mexico	1,346,546
2 Oklahoma	1,050,000
3 New York	990,000
4 Arizona	849,197
5 Pennsylvania	780,000
6 Ohio	699,120
7 Utah	556,141
8 Illinois	526,080
9 Indiana	436,080
10 Montana	388,721
11 Idaho	386,686
12 Alabama	383,785
13 Missouri	376,080
14 South Dakota	366,080
15 Massachusetts	360,000
16 Mississippi	348,240
17 Washington	336,080
18 North Dakota	336,080
19 Wisconsin	332,160
20 Kentucky	330,000
21 Tennessee	300,000
22 Virginia	300,000
23 Iowa	286,080
24 Michigan	286,080
25 Georgia	270,000
26 North Carolina	270,000
27 Louisiana	256,292
28 Minnesota	212,160
29 Maine	210,000
30 Maryland	210,000
31 New Jersey	210,000
32 California	196,080
33 Arkansas	196,080
34 Florida	182,160
35 Connecticut	180,000
36 South Carolina	180,000
37 Texas	180,000
38 Kansas	151,270
39 New Hampshire	150,000
40 Vermont	150,000
41 West Virginia	150,000
42 Colorado	138,040
43 Oregon	136,165
44 Nevada	136,080
45 Nebraska	136,080
46 Wyoming	136,080
47 Rhode Island	120,000
48 Alaska	**112,064**
49 Delaware	90,000
50 Hawaii	0
TOTAL	16,707,787
Average	334,156

Ranked by the percentage of the state grant given to Higher Education	
1 New York	100.00%
2 Pennsylvania	100.00%
3 Massachusetts	100.00%
4 Tennessee	100.00%
5 Virginia	100.00%
6 Georgia	100.00%
7 North Carolina	100.00%
8 Maine	100.00%
9 Maryland	100.00%
10 New Jersey	100.00%
11 Connecticut	100.00%
12 South Carolina	100.00%
13 Texas	100.00%
14 New Hampshire	100.00%
15 Vermont	100.00%
16 West Virginia	100.00%
17 Rhode Island	100.00%
18 Delaware	100.00%
19 Kentucky	93.06%
20 Oklahoma	33.92%
21 Ohio	25.34%
22 Washington	11.04%
23 Indiana	10.79%
24 South Dakota	10.66%
25 North Dakota	10.62%
26 New Mexico	10.52%
27 Idaho	9.09%
28 Illinois	8.44%
29 Arizona	8.05%
30 Alabama	7.67%
31 Utah	7.41%
32 Montana	6.52%
33 Mississippi	5.71%
34 Missouri	5.07%
35 Nevada	4.99%
36 Nebraska	3.93%
37 Iowa	3.55%
38 Wisconsin	3.26%
39 Wyoming	3.13%
40 Colorado	3.09%
41 Michigan	2.36%
42 Louisiana	2.24%
43 California	2.22%
44 Kansas	1.94%
45 Oregon	1.94%
46 Arkansas	1.64%
47 Minnesota	1.29%
48 Florida	0.75%
49 Alaska	**0.11%**
50 Hawaii	0.00%
TOTAL	5.09%
Average	42.01%

Ranked by the amount of federal land given to the States	
1 Alaska	**104,569,251**
2 Florida	24,214,366
3 Minnesota	16,422,051
4 New Mexico	12,794,718
5 Michigan	12,142,846
6 Arkansas	11,936,834
7 Louisiana	11,441,343
8 Arizona	10,543,753
9 Wisconsin	10,179,804
10 California	8,825,508
11 Iowa	8,061,262
12 Kansas	7,794,669
13 Utah	7,501,797
14 Missouri	7,417,022
15 Oregon	7,032,847
16 Illinois	6,234,655
17 Mississippi	6,097,997
18 Montana	5,963,338
19 Alabama	5,006,663
20 Colorado	4,471,604
21 Wyoming	4,342,520
22 Idaho	4,254,448
23 Indiana	4,040,518
24 Nebraska	3,458,711
25 South Dakota	3,435,373
26 North Dakota	3,163,552
27 Oklahoma	3,095,760
28 Washington	3,044,471
29 Ohio	2,758,862
30 Nevada	2,725,228
31 New York	990,000
32 Pennsylvania	780,000
33 Massachusetts	360,000
34 Kentucky	354,807
35 Tennessee	300,000
36 Virginia	300,000
37 Georgia	270,000
38 North Carolina	270,000
39 Maine	210,000
40 Maryland	210,000
41 New Jersey	210,000
42 Connecticut	180,000
43 South Carolina	180,000
44 Texas	180,000
45 New Hampshire	150,000
46 Vermont	150,000
47 West Virginia	150,000
48 Rhode Island	120,000
49 Delaware	90,000
50 Hawaii	0
TOTAL	328,426,536
Average	6,568,531

STATE LAND GRANT RANKINGS

FISCAL NOTE

STATE OF ALASKA BILL NO. SB217

1994 LEGISLATIVE SESSION

Revision Date: Original
Title: "An Act relating to land of the University of Alaska and authorizing the University of Alaska to select additional..."
Sponsor: Senator Frank
Requestor: Senator Frank

Dept Affected: Natural Resources
BRU: Resource Development
Component: Land Development
Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	873.6	773.6	754.6	647.4	647.4	647.4
TRAVEL	6.0	6.0	6.0	6.0	6.0	6.0
CONTRACTUAL	92.5	192.5	192.5	192.5	192.5	92.5
SUPPLIES	15.0	15.0	15.0	13.0	13.0	13.0
EQUIPMENT	64.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1,051.1	987.1	968.1	858.9	858.9	758.9

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0

CHANGE IN REVENUES ( )	** SEE NOTE IN ANALYSIS BELOW.			

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY95	FY96	FY97	FY98	FY99	FY00
1002 Federal Receipts						
1003 GF Match						
1004 GF	1,051.1	987.1	968.1	858.9	858.9	758.9
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	1,051.1	987.1	968.1	858.9	858.9	758.9

Estimate of any current year (FY94) cost: $ None (assume effective date 7/1/94 or later)

POSITIONS

POSITIONS	FY95	FY96	FY97	FY98	FY99	FY00
FULL-TIME	16	14	14	12	12	12
PART-TIME	3	4	4	3	3	3
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

** Note: Transferring one million acres of the best revenue-producing land to the University would decrease the general fund by the same amount it increases revenue to the University. It is impossible to project the exact amount without knowing what lands are transferred to the University.

Prepared by: Ron Swanson, Director Phone : 762-2692
Division: Land Date : 25-Jan-94
Approved by Commissioner: Harry A. Noah Date: 25-Jan-94
Agency: Natural Resources

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FISCAL NOTE
& ANALYSIS: DNR

BACKGROUND FOR SB217 FISCAL NOTE

Assumptions and background

- 6-year project to adjudicate the selections (takes process to the grant of management authority; need for survey and conveyance work will continue for many years)
- Staff consolidated in Anchorage for efficiency
- 640 acres average parcel size for adjudication (1,000,000 acres=166,167 acres/year=260 parcels/year=640 acres/day each year)
- No planning or selection work needed. University selections come from existing state-selected or state-owned land, and are exempt from AS 38.04.
- AS 14.40.365(c) says, "The university shall bear all costs of survey of the land." We assume this means they pay the surveyor's costs, but have included one half-time CSAII for survey instructions and plat review.
- Realty Services will prepare cost projections for title and conveyance work; LRIS will prepare cost projections for LAS, GIS, and other information services.
- Cost projections are level - no inflation is assumed
- State pays for phase 1 environmental audit

Item	Code	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
Project management and adjudication (NRMI, 1 NROI, NRTI/II)	100	263.5	263.5	263.5	263.5	263.5	263.5
Survey support (½CSAII)	100	28.0	28.0	28.0	28.0	28.0	28.0
Realty services (NROII, 3 NROI, 2 NRTI/II, CTIII, DPC)[1]	100	350.1	350.1	350.1	261.9	261.9	261.9
Business Programming (A/PIV)[2]	100	75.0	38.0	19.0	0	0	0
GIS support (A/PIII)[3]	100	65.0	33.0	33.0	33.0	33.0	33.0
Status graphics support (NRMI-1 mo/yr, ¼NROII for year 1 only, NROI)	100	77.0	61.0	61.0	61.0	61.0	61.0
SUBTOTAL	100	858.60	773.60	754.60	647.40	647.40	647.40
Travel (Proj. mgr., adjudication, realty)	200	6.0	6.0	6.0	6.0	6.0	6.0
Public notices under AS 38.05.945	300	7.5	7.5	7.5	7.5	7.5	7.5
Realty services - BLM computer runs, etc.	300	10.0	10.0	10.0	10.0	10.0	10.0
Office space - Realty Services	300	75.0	75.0	75.0	75.0	75.0	75.0

[1] Years 1-3 include all listed staff; years 4-6 assume slowdown while surveys are completed, and assume staff = NROII, 2NROI, NRTI/II, CTIII, and DPC only.

[2] Full-time in year 1, half-time in year 2, one-quarter time in year 3

[3] Full-time in year 1, half-time in years 2-6

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Phase 1 environmental audit/hazardous materials survey[4]	300	0	100.0	100.0	100.0	100.0	0
SUBTOTAL		92.50	192.50	192.50	192.50	192.50	92.50
Supplies - Adjudication and project management	400	4.0	4.0	4.0	4.0	4.0	4.0
Supplies - Realty Services	400	8.0	8.0	8.0	6.0	6.0	6.0
Supplies - LRIS	400	3.0	3.0	3.0	3.0	3.0	3.0
SUBTOTAL		15.00	15.00	15.00	13.00	13.00	13.00
Computers for adjudicators and tech	500	16.0	0	0	0	0	0
Computers for realty services	500	48.0	0	0	0	0	0
SUBTOTAL		64.00	0.00	0.00	0.00	0.00	0.00
TOTAL		1,036.10	987.10	968.10	858.90	858.90	758.90

[4]Assumes university selections would be identified in years 1-4 and surveyed for environmental hazards in years 2-5. Based on costs of environmental audit for mental health lands. Process would use primarily air photos and existing data to screen sites, with site-specific follow-up only as needed.

SENATE BILL 217

An Act relating to the University of Alaska and authorizing them to select additional state public domain land.

We support in principal the University having more land to support its various educational programs. We are concerned about short term availability of suitable land. We also have some concerns serious concerns on timing.

Presently we are under a court order to reconstitute the Mental Health Trust Lands. Guidance on how do that is contained in Chapter 66, SLA 1991. This statute requires us to complete that task by December 1994. Presently we are evaluating the 500,000 - 600,000 acres of land that the Mental Health plaintiffs believe is suitable replacement land.

Also during the next year we have an obligation to certify entitlements for 4 municipalities and begin the process to convey at least 580,000 acres of land to 19 communities throughout the state.

Creating another obligation and more conflicts on top of these obligations that we already have will have a major impact on the departments already serious backlog. There is also the possibility of more extended litigation like we are already experiencing with Mental Health land.

We are finding from our work on re-constituting the Mental Health Trust and fulfilling municipal entitlements that the state has minimal suitable land available that can generate short term revenues. For example, we have only been able to identify 142,895 acres of surface values (residential,commercial, industrial) and 20,636 acres of forestry values for a combined worth of $220.2 million. Identifying land for possible long term (50 - 100 years) potential is easier but no guaranteed.

Another concern is by splitting up what is available we are adding to overhead management costs and creating further conflicts between land owners. An example of this is Yakataga where the potential for four land owners exists (Mental Health, University, Municipal and State). The result is that the formula for figuring sustained yield for timber sales is lowered to a point so that no one can harvest timber in an economical manner. If there was only one land owner, however, timber could be cut, the money put in the general fund, and allocated by the legislature to appropriate programs including university and mental health.

In the same light, general fund revenues will decrease by the same amount university revenues would increase if a million acres of high-value land are conveyed to the university. For example, I would expect the University to select all the land where we have existing leases and contracts. These contracts have a net worth to the state of between $25 to $30 million depending on pay off dates. No accurate cost projection can be made, however, for additional land they may select without knowing the

location of the land to be conveyed.

Lastly, the bill exempts the conveyance process from utilizing AS 38.04 and 38.05 process although it does require the department to make a "best interest finding." As we are experiencing with Mental Health, every action we take proves to be very controversial which leads to numerous administrative and judicial appeals.

AMENDMENTS PROPOSED

Establish a selection deadline thus eliminating an open ended situation for land use planning and conflicts with other disposal programs. Specify at what point management changes, allowing DNR to issue quit-claim deeds, or interim conveyances prior to land surveys being completed but allowing adequate public protection so title conflicts, wild deeds and third-party conflicts do not result.

It would be beneficial for the legislature to define what types of land they want us to convey by classification type. For example, is the intent to include oil and gas and coal in the definition of mineral. The University has always sought the conveyance of land valuable for oil and gas - a position we have always refuted. If the legislature wants us to include more than minerals it should change the wording in Section 4 to state "including mineral, oil, gas and coal."

It should also be noted that the bill conveys "mineral estates", which could cause legal problems under Section 6(i) of the Statehood Act. The University often states that is a public agency, not private. On the other hand they have also argued with DNR that under the Forest Practices Act they should be considered a private land owner and not a state owner. This problem could be easily fixed by stating that any land obtained by the University under this Act shall be considered as state land and that Section 6 (i) applies.

8-LS0468\R
Chenoweth
2/15/94

CS FOR SENATE BILL NO. 217( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS FRANK, Kerttula, Miller, Rieger, Taylor, Sharp

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the University of Alaska and university land, authorizing the
2 University of Alaska to select additional state public domain land, and defining
3 net income from the University of Alaska's endowment trust fund as 'university
4 receipts' subject to prior legislative appropriation; and providing for an effective
5 date."

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

7 * Section 1. FINDINGS AND PURPOSE. The legislature finds that
8 (1) as the beneficiary under the provisions of the Acts of August 30, 1890, and
9 March 4, 1907, designating the Alaska Agricultural College and School of Mines as
10 beneficiary, and of March 4, 1915, 38 Stat. 1214, transferring certain land for its location and
11 support, the University of Alaska is a land grant university;
12 (2) under the Acts of March 4, 1915, 38 Stat. 1214, and January 21, 1929, 45
13 Stat. 1091, the Congress of the United States granted to the Territory of Alaska certain federal

1 land to be held in trust for the benefit of the predecessor of the University of Alaska;
2 (3) the Territory was unable to receive most of the land conveyed by the Act
3 of March 4, 1915, before repeal of that Act by sec. 6(k) of the Alaska Statehood Act (P.L. 85-
4 508, 72 Stat. 339);
5 (4) the Congress of the United States granted the State of Alaska the right to
6 select 102,500,000 acres of federal land under sec. 6(b) of the Alaska Statehood Act;
7 (5) the land selection rights embodied in the Alaska Statehood Act reflect in
8 part congressional recognition that the state would need the land to support its government and
9 programs, and the Congress assumed that the State of Alaska would in turn devote some of
10 the land or the income from it for the use and benefit of the University of Alaska;
11 (6) most land grant colleges in the western United States have obtained a larger
12 land grant from the federal government than the University of Alaska has received;
13 (7) an academically strong and financially secure state university system is a
14 cornerstone to the long-term development of a stable population and to a healthy, diverse
15 economy in the state; and
16 (8) it is in the best interests of the state and the University of Alaska that the
17 university take ownership of a significant and substantial portfolio of income producing land
18 in order to provide income for the support of public higher education in the state.
19 * Sec. 2. AS 14.40.170(a) is amended to read:
20 (a) The Board of Regents shall
21 (1) appoint the president of the university by a majority vote of the
22 whole board, and the president may attend meetings of the board;
23 (2) fix the compensation of the president of the university, all heads of
24 departments, professors, teachers, instructors, and other officers;
25 (3) confer such appropriate degrees as it may determine and prescribe;
26 (4) have the care, control, and management of
27 (A) all the real and personal property of the university; and
28 (B) land
29 <u>(i)</u> conveyed to the Board of Regents by the
30 commissioner of natural resources in the settlement of the claim of the
31 University of Alaska to land granted to the state in accordance with the

1 Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance
2 with the Act of January 21, 1929 (45 Stat. 1091), as amended; and
3 (ii) selected by the university and conveyed to it by
4 the commissioner of natural resources under AS 14.40.365;
5 (5) keep a correct and easily understood record of the minutes of every
6 meeting and all acts done by it in pursuance of its duties;
7 (6) under procedures to be established by the commissioner of
8 administration, and in accordance with existing procedures for other state agencies,
9 have the care, control, and management of all money of the university and keep a
10 complete record of all money received and disbursed;
11 (7) adopt reasonable rules for the prudent trust management and the
12 long-term financial benefit to the university of the land of the university;
13 (8) provide public notice of sales, leases, exchanges, and transfers of
14 the land of the university or of interests in land of the university;
15 (9) report each year within the first 10 days of the convening of a
16 regular session of the legislature on the expenditures made during the preceding fiscal
17 year from the funds of the University of Alaska that are derived from sales, leases,
18 exchanges, or transfers of the land of the university or of interests in land of the
19 university
20 (A) that were conveyed to the University of Alaska in
21 settlement of the claim of the University of Alaska to land granted to the state
22 in accordance with the Act of March 4, 1915 (38 Stat. 1214), as amended, and
23 in accordance with the Act of January 21, 1929 (45 Stat. 1091), as amended;
24 and
25 (B) that were selected by and conveyed to the university
26 under AS 14.40.365.
27 * Sec. 3. AS 14.40.291 is amended to read:
28 Sec. 14.40.291. LAND OF THE UNIVERSITY OF ALASKA NOT PUBLIC
29 DOMAIN LAND. Notwithstanding any other provision of law, university-grant land,
30 state replacement land that becomes university-grant land on conveyance to the
31 university, land selected by and conveyed to the university under AS 14.40.365, and

1 any other land owned by the University of Alaska is not and may not be treated as
2 state public domain land. Title to or interest in [TO] land described in this section
3 may not be acquired by adverse possession, prescription, or in any other manner except
4 by conveyance from the university. The land is subject to condemnation for public
5 purpose in accordance with law.
6 * Sec. 4. AS 14.40 is amended by adding a new section to read:
7 Sec. 14.40.365. UNIVERSITY LAND FROM STATEHOOD ACT LAND
8 SELECTION CONVEYANCES. (a) The University of Alaska may select and is
9 entitled to receive the conveyance of 1,000,000 acres of land conveyed to the state
10 under sec. 6(b) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339) that, on the
11 date of its selection by the university,
12 (1) has not been conveyed by the state;
13 (2) has not been reserved by law from the public domain;
14 (3) is not land
15 (A) included in a five-year proposed oil and gas leasing
16 program under AS 38.05.180(b); or
17 (B) leased under, or for which a lease application is pending
18 under, AS 38.05.180(d);
19 (4) is not subject to a possessory interest or encumbrance other than
20 (A) a lease that is not an oil or gas lease;
21 (B) a timber contract;
22 (C) a mining claim;
23 (D) a sale of materials under AS 38.05.110 - 38.05.120;
24 (E) a land use permit or right-of-way issued by the Department
25 of Natural Resources under AS 38.05;
26 (5) is not necessary to carry out the purpose of an interagency land
27 management agreement; or
28 (6) is not subject to conveyance under a land exchange or land
29 settlement agreement.
30 (b) Notwithstanding AS 38.05.125(a), the transfer of ownership and
31 management of land from the Department of Natural Resources to the Board of

1 Regents of the University of Alaska under this section includes the interest of the state
2 in the oil, gas, coal, ores, minerals, fissionable materials, geothermal resources, and
3 fossils which may be in or on the land.
4 (c) When the University of Alaska selects the land to which it is entitled under
5 this section, unless the commissioner of natural resources determines under (d) of this
6 section that title to the land should not be conveyed, the commissioner of natural
7 resources shall convey title to the land selected.
8 (d) The commissioner of natural resources may not convey title to any land
9 selection made by the university under this section if the commissioner determines that
10 the proposed selection
11 (1) includes land for which, at the time of its selection under this
12 section,
13 (A) a municipality has made a selection under AS 29.65, unless
14 the land selection is, at a later date, rejected by the commissioner of natural
15 resources or relinquished by the municipality; or
16 (B) the commissioner reasonably believes may be selected by
17 a municipality under AS 29.65.030, but the commissioner may not withhold
18 under this subparagraph the conveyance of title to land selected by the
19 university for more than three years after the date of the municipality's
20 incorporation;
21 (2) is not in the best interests of the state; in making a determination
22 under this paragraph as to whether a selection by the university is in the best interests
23 of the state, the commissioner shall consider
24 (A) the interest of the general public in retention of the land in
25 state ownership;
26 (B) ensuring an appropriate diversity in the character of land
27 owned by the state and by the university;
28 (C) the public benefits achieved by conveyance of the land to
29 the university;
30 (D) the probable potential for the development of the land and
31 its resources and the probable income to the university from the conveyance of

1 the land;

2 (E) benefits to the university from the conveyance of the land

3 to it; and

4 (F) the efficiency of the management of the land resulting from

5 the conveyance of the land.

6 (e) The Board of Regents may appeal to the superior court a decision of the

7 commissioner of natural resources not to convey to the university land selected by it

8 under this section.

9 (f) When land is conveyed to the university under this section, the university

10 takes the land subject to any possessory interest held by another person on the

11 effective date of the conveyance. Except as provided in AS 14.40.368, the university

12 is entitled to receive the consideration due under that interest for the duration of the

13 interest.

14 (g) In conveying land to the university under this section, the commissioner

15 of natural resources shall give public notice under AS 38.05.945(b) and (c) and provide

16 for access under AS 38.05.127, but other provisions of AS 38.04 and AS 38.05 do not

17 apply.

18 (h) Land transferred or conveyed to the university under this section

19 (1) is subject to

20 (A) section 6(i) of the Alaska Statehood Act (P.L. 85-508, 72

21 Stat. 339);

22 (B) art. IX of the state constitution;

23 (C) AS 19.10.010; and

24 (D) the rights of the state under former 43 U.S.C. 932 (sec. 8,

25 Act of July 26, 1866, 14 Stat. 253);

26 (2) excludes any interest transferred to the state by quit claim deed

27 dated June 30, 1959, under authority of the Alaska Omnibus Act, P.L. 86-70, 73 Stat.

28 141.

29 (i) The university shall bear all costs of selection and conveyance of the land

30 that it selects under this section and, subject to appropriation, shall reimburse the

31 Department of Natural Resources for the reasonable costs of expenses incurred by that

1 department relating to that selection and conveyance. If land selected by the university
2 is unsurveyed at the time of conveyance, the commissioner shall survey, or may
3 approve the university's survey of, the exterior boundaries of an approved selection
4 without interior subdivision, and shall issue patent in terms of the exterior boundary
5 survey. If land selected by the university has been surveyed at the time of
6 conveyance, the boundaries must conform to the public land subdivisions established
7 by the approved survey.
8 * **Sec. 5.** AS 14.40.365(d) is repealed and reenacted to read:
9 (d) The commissioner of natural resources may not convey title to any land
10 selection made by the university under this section if the commissioner determines that
11 the proposed selection
12 (1) includes land for which, at the time of its selection under this
13 section,
14 (A) a municipality has made a selection under AS 29.65, unless
15 the land selection is, at a later date, rejected by the commissioner of natural
16 resources or relinquished by the municipality; or
17 (B) the commissioner reasonably believes the land may be
18 selected by a municipality under AS 29.65.030, but the commissioner may not
19 withhold under this subparagraph the conveyance of title to land selected by the
20 university longer than three years after the date of the municipality's
21 incorporation;
22 (2) includes land that, at the time of its selection under this section, is
23 subject to an oil and gas exploration license, or that the commissioner reasonably
24 believes will be made part of, an oil and gas exploration license issued under
25 AS 38.05.131 - 38.05.134;
26 (3) is not in the best interests of the state; in making a determination
27 under this paragraph as to whether a selection by the university is in the best interests
28 of the state, the commissioner shall consider
29 (A) the interest of the general public in retention of the land in
30 state ownership;
31 (B) ensuring an appropriate diversity in the character of land

1 owned by the state and by the university;
2 (C) the public benefits achieved by conveyance of the land to
3 the university;
4 (D) the probable potential for the development of the land and
5 its resources and the probable income to the university from the conveyance of
6 the land;
7 (E) benefits to the university from the conveyance of the land
8 to it; and
9 (F) the efficiency of the management of the land resulting from
10 the conveyance of the land.
11 * Sec. 6. AS 14.40 is amended by adding a new section to read:
12 Sec. 14.40.368. DISPOSITION OF INCOME FROM EXISTING
13 ENCUMBRANCES. The state is entitled to receive the income from land selected by
14 and conveyed to the University of Alaska under AS 14.40.365 that is subject to a
15 lease, contract, claim, sale, permit, or right-of-way identified in AS 14.40.365(a)(4) for
16 the duration of the term of the lease, contract, claim, sale, permit, or right-of-way, and
17 during any renewal of it that is authorized by the lease, contract, claim, sale, permit,
18 or right-of-way, or by law. The equitable title to and responsibility for the
19 management of the land selected vests with the University of Alaska only upon
20 conclusion of the term of the lease, contract, claim, sale, permit, or right-of-way, and
21 any renewal authorized by law.
22 * Sec. 7. AS 14.40.400(a) is amended to read:
23 (a) The Department of Revenue shall establish a separate endowment trust
24 fund in which all net income derived from the sale or lease of the land granted under
25 the Act of Congress approved January 21, 1929, **and the land selected by and**
26 **conveyed to the university under AS 14.40.365,** and in which all monetary gifts,
27 bequests, or endowments made to the University of Alaska for the purpose of the fund,
28 shall be held in trust.
29 * Sec. 8. AS 14.40.400(e) is amended to read:
30 (e) **Subject to legislative appropriation, the** [THE] Department of
31 Administration shall disburse the net income from the trust fund upon vouchers

1 approved by the president and treasurer of the University of Alaska specifying the
2 purpose for which the money is to be used and showing it is to be used in conformity
3 with this section.
4 * Sec. 9. AS 14.40.491 is amended to read:
5 Sec. 14.40.491. DEFINITION OF UNIVERSITY RECEIPTS. In AS 14.40.120
6 - 14.40.491, "university receipts" includes
7 (1) student fees, including tuition;
8 (2) receipts from university auxiliary services;
9 (3) recovery of indirect costs of university activities;
10 (4) **the net income of the trust fund established in AS 14.40.400 and**
11 receipts from sales and rentals of university property;
12 (5) federal receipts;
13 (6) gifts, grants, and contracts; and
14 (7) receipts from sales, rentals, and the provision of services of
15 educational activities.
16 * Sec. 10. AS 29.45.030(a) is amended to read:
17 (a) The following property is exempt from general taxation:
18 (1) municipal property, including property held by a public corporation
19 of a municipality, or state property, except that
20 (A) a private leasehold, contract, or other interest in the
21 property is taxable to the extent of the interest;
22 (B) notwithstanding any other provision of law, property
23 acquired by an agency, corporation, or other entity of the state through
24 foreclosure or deed in lieu of foreclosure and retained as an investment of a
25 state entity is taxable; this subparagraph does not apply to federal land granted
26 to the University of Alaska under AS 14.40.380 or 14.40.390, or to other land
27 granted to the university by the state to replace land that had been granted
28 under AS 14.40.380 or 14.40.390**, or to land conveyed by the state to the**
29 **university under AS 14.40.365**;
30 (C) an ownership interest of a municipality in real property
31 located outside the municipality acquired after December 31, 1990, is taxable

1 by another municipality; however, a borough may not tax an interest in real
2 property located in the borough and owned by a city in that borough;
3 (2) household furniture and personal effects of members of a
4 household;
5 (3) property used exclusively for nonprofit religious, charitable,
6 cemetery, hospital, or educational purposes;
7 (4) property of a nonbusiness organization composed entirely of persons
8 with 90 days or more of active service in the armed forces of the United States whose
9 conditions of service and separation were other than dishonorable, or the property of
10 an auxiliary of that organization;
11 (5) money on deposit;
12 (6) the real property of certain residents of the state to the extent and
13 subject to the conditions provided in (e) of this section;
14 (7) real property or an interest in real property that is exempt from
15 taxation under 43 U.S.C. 1620(d), as amended;
16 (8) property of a political subdivision, agency, corporation, or other
17 entity of the United States to the extent required by federal law; except that a private
18 leasehold, contract, or other interest in the property is taxable to the extent of that
19 interest;
20 (9) natural resources in place including coal, ore bodies, mineral
21 deposits, and other proven and unproven deposits of valuable materials laid down by
22 natural processes, unharvested aquatic plants and animals, and timber.
23 * Sec. 11. APPLICABILITY OF UNIVERSITY SELECTION RIGHTS UNDER
24 AS 14.40.365 TO LAND. In addition to the land that, under AS 14.40.365(d), the
25 commissioner of natural resources may not convey to the University of Alaska, the
26 commissioner of natural resources may not convey land that, at the time of its selection by
27 the university,
28 (1) is subject to designation for conveyance or conveyance to the Alaska
29 Mental Health Trust Authority under sec. 54, ch. 66, SLA 1991;
30 (2) is land that the commissioner of natural resources reasonably believes
31 should be designated for conveyance or conveyed to the Alaska Mental Health Trust Authority

1 under sec. 55, ch. 66, SLA 1991, as compensation to that trust for original mental health trust
2 land not available for return to the corpus of the trust; or
3 (3) is land described in sec. 56, ch. 66, SLA 1991, as listed in "Lands
4 Hypothecated to the Mental Health Trust, May 1991" located in the office of the director of
5 the division of lands, Department of Natural Resources, in Anchorage, Alaska, that has been
6 hypothecated to secure reconstitution of the mental health trust; however, as the reconstitution
7 of the mental health trust is accomplished and the hypothecated land is released on a pro rata
8 basis, the University of Alaska may select the land and the commissioner may convey it.
9 * **Sec. 12.** LEGISLATIVE INTENT. It is the intent of the legislature that, if sec. 11 of
10 this Act has not taken effect on or before the effective date of secs. 1 - 4 and 6 - 10 of this
11 Act, the commissioner of natural resources reject, as inconsistent with the best interests of the
12 state, selections of land by the University of Alaska under AS 14.40.365, added by sec. 4 of
13 this Act, of land described in sec. 11 of this Act.
14 * **Sec. 13.** Section 5 of this Act takes effect on the effective date of a version of House Bill
15 199 or Senate Bill 150 of the Eighteenth Alaska State Legislature authorizing oil and gas
16 exploration licensing on state land that is passed by the Eighteenth Alaska State Legislature.
17 * **Sec. 14.** Section 11 of this Act takes effect on the effective date of ch. 66, SLA 1991.

SB
238

MEMORANDUM

State of Alaska
Department of Law

TO: Paul C. Rusanowski, Director
Division of Governmental
Coordination

DATE: March 3, 1993

FILE NO: 663-92-0618

TEL NO: 465-3600

SUBJECT: Alaska Coastal Policy Member's Eligibility to Hear Petitions Under AS 46.40.100

FROM: Elizabeth J. Kerttula
Assistant Attorney General

SUMMARY OF ATTORNEY GENERAL'S OPINION ON CPC MEMBERS' ELIGIBILITY TO HEAR PETITIONS

At your request, we are providing you with a short summary of our opinion concerning CPC members' eligibility to hear petitions.

As the opinion notes in the background section, in 1977 when the legislature enacted AS 46.40.100, it created an ability for certain people to appeal issues to the CPC through "petitions." In 1984, when the CPC promulgated its regulations creating the consistency review process for consistency determinations in 6 AAC 50, it amended a section of the regulations that specifically allowed consistency determinations to be reviewed by the CPC, intending to have consistency determinations appealed to court rather than to the CPC. However, there was no commensurate statutory change to AS 46.40.100. Since a regulation cannot remove a statutory right, the ability to bring a petition from a final consistency determination to the CPC remains. This situation has created a dual appeal mechanism and conflicts have arisen.

Your questions involve important Administrative Procedure Act ("APA")-due process concerns and delegation issues. As a general principle, the APA and its due process implications require that when an agency is performing an independent adjudicatory review, the review must be impartial. Concerning the delegation of duties, although commissioners have general authority to delegate functions vested in their departments, specific statutory and regulatory requirements take precedence over this general authority. Using these general principles, we analyzed your specific questions.

Rather than repeat the questions again (which we do in the opinion) we have outlined our responses below.

1(a). If a commissioner participates in a commissioner-level elevation concerning a consistency determination, that commissioner may not participate in a CPC petition concerning the same consistency determination.

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1(b). If a CPC public member participates in a decision concerning a matter at a local level, that public member may not participate in a CPC petition concerning the same decision.

2. A commissioner may not delegate his or her responsibility to participate in a commissioner-level elevation of a consistency determination to a subordinate in order to allow him or herself the ability to sit on a petition on the consistency determination. Similarly, APA-due process concerns and the ACMP statutes and regulations do not allow a commissioner to delegate his or her authority to sit on a CPC petition if the commissioner has participated in an elevation. This creates a conflict between the ACMP statutes and regulations that should be resolved.

3. Neither a commissioner nor a public member (nor their alternates) may participate in a petition proceeding when the commissioner's department or the public member's municipality initiates the petition.

4. Neither a commissioner nor a public member (nor their alternates) may participate in a petition proceeding when the petition is against the commissioner's department or the public member's municipality (there is an exception noted in the opinion).

In conclusion, we hope this summary is of assistance to you.

EJK:smm

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

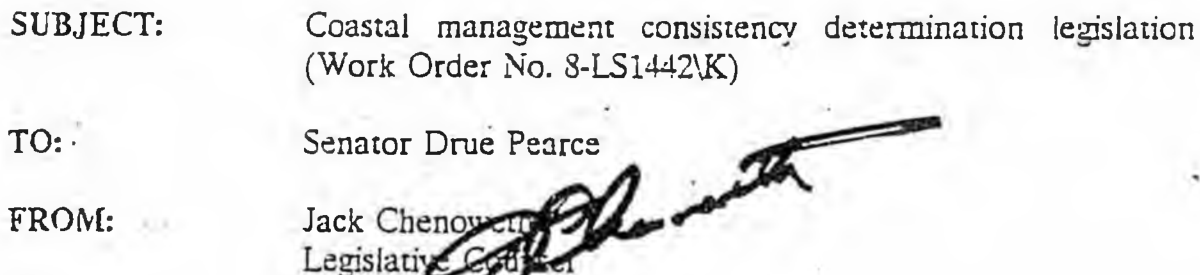
(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

M E M O R A N D U M   January 4, 1994

SUBJECT: Coastal management consistency determination legislation (Work Order No. 8-LS1442\K)

TO: Senator Drue Pearce



FROM: Jack Chenoweth
Legislative Counsel

A word about the bill, provided to you earlier today, and its specific provisions.

The measure substantially codifies the Coastal Policy Council's consistency review practices based upon suggestions provided by the Department of Law, the Division of Governmental Coordination (part of the office of management and budget), and, following a late December teleconference, the Coastal Policy Council.

Bill section 1: This provision amends AS 46.40.040, the section enumerating the duties of the Alaska Coastal Policy Council. It deletes a dated reference to the deadline for approval of the Council's initial program regulations and standardizes a reference to the applicability of the Administrative Procedure Act. Substantively, the bill section directs the Council to adopt regulations to establish a (project) consistency review and determination process that conforms to the requirements of AS 46.40.096.

Bill section 2: This bill section, adding a proposed AS 46.40.096, outlines the essential elements of the consistency review and determination process. Subsection (a) directs the council to adopt regulations for consistency determinations, whether those determinations are to be made by the council (coordinating the review of multiple agencies) or by a single state agency. Subsection (b)--a parallel provision to existing AS 44.19.145(a)(11)--clarifies that, when a consistency review is required for a project that requires a permit from but one state agency, that agency, rather than the office of management and budget's division of governmental coordination, has the responsibility to coordinate the consistency review. Subsection (c) sets out public notice and public comments in conjunction with consistency determinations; the council's regulations may distinguish as to notice depending on the circumstances

of the project, but the essential components of notice are set out. Subsection (d) sets out procedures for obtaining the comments of interested parties, directing preparation of proposed consistency determinations, allowing opportunity for parties to secure review of a proposed consistency determination, and directing preparation of the final consistency determination. Subsection (e) treats with the filing and handling of petitions for review of proposed consistency determinations, setting limits on who may petition and when the petitions may properly be considered. Subsection (f) authorizes the council to limit consideration of a review petition when the opportunity for full consideration of the petition might cause the state to miss a deadline set by federal law for submission of a federal consistency determination. Subsection (g) supplies definitions for terms used in the section.

Bill section 3: Existing AS 46.40.100 is captioned "Compliance and Enforcement." Within that section, AS 46.40.100(b) permits certain parties to file petitions seeking review of enforcement action. This bill section revises AS 46.40.100(b), amending it to permit the Coastal Policy Council to have a limited opportunity to ascertain whether a "reviewing entity" responsible for a consistency determination has fairly considered or not fairly considered comments received in the course of completing a proposed consistency determination. The principal addition on that point is set out in the subsection's proposed paragraph (1): the council is given a choice either to **remand** a determination so that the reviewing agency gives fair consideration to comments or the council may **dismiss** it--the council itself may not substitute its judgment for that of the reviewing entity on the merits of the consistency determination. The disposition of other petitions--enforcement petitions other than those relating to reviews of consistency determinations--are handled, as under current law, under the subsection's paragraph (2). In both instances, the petitioning process is no longer subject to the Administrative Procedure Act but rather to regulations of the Coastal Policy Council. The hearing requirement no longer calls for a "public hearing"--the hearing may be limited to participation by eligible parties--but notice is to be given, again, in all instances, under particular requirements of a later subsection, subsection (f). Because the petition process identified in this section may be used to secure review of consistency determinations and for other purposes, mention of specific parties who may file petitions in cases other than consistency reviews is removed from this subsection and restated in proposed subsection (g).

Bill sections 4 and 5: These provisions make parallel amendments to AS 46.40.100(c) and (d). The intent of the substantive amendments to both is to make sure that the specific requirements of the two subsections do not apply to the consideration and disposition of petitions seeking consistency review. Again, the council may dispose of petitions seeking consistency review only in the manner authorized by AS 46.40.-100(b)(1)--that is, by remand or dismissal.

Bill section 6: The section adds two additional subsections to AS 46.40.100. Subsection (f) is a substituted notice provision applicable to consideration and

disposition of all compliance and enforcement provisions. It draws from the special notice provisions outlined in AS 38.05.945 that are applicable to certain land actions under the Alaska Land Act, with amendments and substitutions recommended by the Division of Governmental Coordination. Subsection (g) draws from material deleted in AS 46.40.100(b) to identify parties that may petition for the general compliance and enforcement remedies set out in AS 46.40.100(b)(2).

Bill section 7 sets out definitions for additional terms used in AS 46.40.010 - 46.40.210.

JBC:pl:mi
94-010.plm

Alaska State Legislature

During Interim:
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Anchorage, AK 99503-3925
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Fax (907) 561-4194

During Session:
State Capitol
Juneau, AK 99801-1182
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Senator Drue Pearce
District F

To: Senator Mike Miller, Chair
Senate Resources Committee

From: Senator Drue Pearce, Co-Chair
Senate Finance Committee

Date: January 14, 1994

Re: Request for hearing on Senate Bill 238 in Senate Resources Committee.

I respectfully request that you consider hearing Senate Bill 238, Coastal Zone Management Procedures, in your committee as soon as possible.

Currently, the Coastal Policy Council coordinates State agencies and local coastal districts in a process of reviewing and issuing State permits for proposed development projects affecting natural resources in Alaska's coastal zones. Senate Bill 238 clarifies when and how certain parties can petition the Coastal Policy Council during an Alaska Coastal Management Program consistency review. These clarifications will ensure that complaints are heard and addressed in a timely manner. This bill will ensure that citizens, State agencies, and affected projects have a voice in the development policies of our state's coastal areas.

The bill as proposed is the result of intensive collaboration between the Alaska Coastal Policy Subcommittee, the Alaska Department of Law, Senator Drue Pearce, and other interested parties.

SPONSOR STATEMENT

WALTER J. HICKEL, GOVERNOR

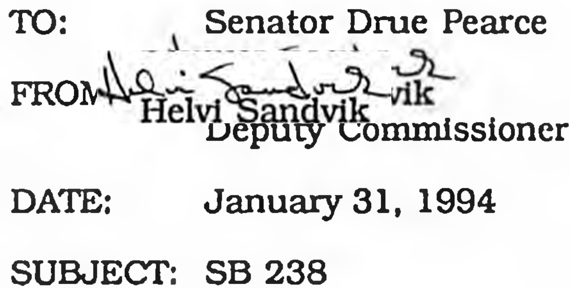
3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652
FAX: (907) 586-8365
PHONE: (907) 465-3900

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

MEMORANDUM



TO: Senator Drue Pearce

FROM: Helvi Sandvik
Deputy Commissioner

DATE: January 31, 1994

SUBJECT: SB 238

It is with some interest to note that you are sponsoring work on Senate Bill No. 238 relating to coastal policy. The Division of Governmental Coordination now, by regulation, requires a consistency review and determination on all projects constructed in the State which includes Coastal Zone management.

During development of any project involving federal interest, the state is required to comply with 42 USC 4321-4347 (National Environmental Policy Act of 1972). The involved federal agency must certify that the total public involvement process has been met under federal law. Almost without exception, any DOT&PF project is subject to NEPA.

A typical Federal-Aid project will have at least one and sometimes two formal hearings. These are part of the department's Public Involvement Plan prepared for each project. If a bridge is involved in or over navigable waters, an additional hearing and public involvement is required by <u>both</u> the U.S. Corps of Engineers and the U.S. Coast Guard. During the development of a project, the public involvement process can involve up to four (4) opportunities for public involvement and hearings. To require an additional hearing by a state agency would, in our case, appear to be redundant. Each separate hearing or public involvement requirement adds a minimum of about three months to the project development process.

DOT&PF is presently in contact with coastal districts through the review process mandated by the Division of Governmental Coordination.

It would cut time and expense in the DOT&PF's project development process if a provision could be included that would exempt DOT&PF (and perhaps others) if public involvement had been accomplished during the Federal and/or State processes.

If there is any way to shorten the process while still maintaining intent of SB 238, we feel it would benefit the development of transportation projects in Alaska.

25A-T34LH

cc: J.K. Ginger Johnson, Legislative Liaison, DOT&PF

Alaska Coastal Policy Council
January 11, 1994

Public Members

Mr. Scott Novak, Cordova City Council (Public Member Co-chair)
Mayor Donald Long, City of Barrow
Mr. Robert Fagerstrom, Nome City Council
Mr. Al Unok, Kotlik City Council
Mayor Frank Kelty, City of Unalaska
Mr. David Arestad, Houston City Council
Mr. Drew Scalzi, Kenai Peninsula Borough Assembly
Ms. Lynda B. Walker, ~~Haines City Council~~
Ms. Phyllis Yetka, Ketchikan Gateway Borough Assembly

State Members

Shelby Stastny, Office of Management and Budget
Alternate: Dr. Paul Rusanowski, Division of Governmental Coordination (State Member Co-chair)
Commissioner Paul Fuhs, Department of Commerce and Economic Development
Alternate: Mr. Chris Gates, Division of Economic Development
Commissioner Edgar Blatchford, Department of Community and Regional Affairs
Alternate: Mr. Bob Walsh, Division of Municipal and Regional Assistance
Commissioner John Sandor, Department of Environmental Conservation
Alternate: Deputy Commissioner Mead Treadwell, DEC
Commissioner Carl Rosier, Department of Fish and Game
Alternate: Mr. Frank Rue, Division of Habitat and Restoration
Commissioner Harry Noah, Department of Natural Resources
Alternate: Mr. Ron Swanson, Division of Land
Commissioner Bruce Campbell, Department of Transportation and Public Facilities
Alternate: Mr. Mike McKinnon, Division of Planning

COASTAL POLICY COUNCIL MEMBER LIST

MEMORANDUM STATE OF ALASKA

To: Alaska Coastal Policy Council

Date: January 12, 1994

File: ACMPBILL.94
Telephone: 465-8800
Telecopy: 465-3075

From: Paul C. Rusanowski, Director
Division of Governmental
Coordination

Subject: ACMP Legislation:
Senate Bill 238

Senator Drue Pearce ~~introduced Senate Bill 238, which~~ would amend the Alaska Coastal Management Act (AS 46.40) to clarify how and when certain parties can appeal, or "petition", the Coastal Policy Council during an Alaska Coastal Management Program (ACMP) consistency review (see attached legislation). Senate Bill 238 incorporates an approach recommended by the Alaska Coastal Policy Council at its October 27, 1993 meeting.

As directed by the Council, the Division of Governmental Coordination staff worked with a Council subcommittee, other interested parties, and Senator Pearce on the legislation. Senate Bill 238 includes many suggestions made by the Council subcommittee and other parties during a December 28, 1993 teleconference (see attached list of participants).

Why is Senate Bill 238 Needed?

Under the ACMP, State agencies and local coastal districts participate in a coordinated process for reviewing and issuing State permits for proposed development projects affecting natural resources and uses in Alaska's coastal zone. Proposed projects are reviewed to ensure they are consistent with the standards of the ACMP and the policies of a coastal district program. The commissioners of the Departments of Environmental Conservation, Natural Resources, and Fish and Game, on appeal as an "elevation", make the final decision on a consistency determination. The commissioners also sit on the Alaska Coastal Policy Council, which has heard petitions on a few consistency determinations made by commissioners in recent years.

Senate Bill 238 would correct the problems experienced with these recent petitions and the difficulties identified in a March 2, 1993 informal Attorney General opinion regarding due process and delegation when a petition occurs *after* a final commissioner-level

decision on a consistency review.[1] Under the current ACMP statutes and regulations, the State resource agency commissioners may not delegate their responsibility to participate in a commissioner-level "elevation" of a consistency determination, nor may they delegate their authority to decide a petition when they have participated in the final consistency determination. However, as noted in the informal AG opinion, the commissioners cannot sit in both capacities. In a recent example, the State resource agencies were unable to participate in Council action on a petition affecting coastal resources and land uses.[2] General principles of due process and delegation under the Administrative Procedure Act dictate a change in the statute or regulations, or both to rectify the conflict.

How Would Senate Bill 238 Fix the Problem?

Senate Bill 238 would amend the Alaska Coastal Management Act (AS 46.40) to allow certain parties to petition the Coastal Policy Council when a preliminary, or "proposed", consistency determination is issued by a State agency. The petitioner would seek Council review of whether the petitioner's comments had been fairly considered by the State agency coordinating the ACMP consistency review. If the agency had done its job, the Council would dismiss the petition. Otherwise, the Council would remand the proposed consistency determination to the agency to give fair consideration to the petitioner's comments and to prepare a revised proposed consistency determination.

A final consistency decision would be made by the State resource agencies. Unlike the current situation, SB 238 would not allow a petition on a final consistency determination. Also, SB 238 resolves the due process and delegation concerns because the State resource agency commissioners – as members of the Coastal Policy Council – would only be reviewing a staff level *proposed* consistency decision, and therefore could still make the *final* State decision on the consistency review, if a further appeal (as an elevation) occurs after the petition process is completed.

---

[1] March 2, 1993 Memorandum from Elizabeth Kerttula, Alaska Department of Law, to Paul Rusanowski, Division of Governmental Coordination, "Alaska Coastal Policy Council Members' Eligibility to Hear Petitions Under AS 46.40.100", 27 pp (see attached March 3, 1993 summary).

[2] The Timber Creek Trapping Cabin Permit petition, in Bering Straits Coastal Management Program and the Koyuk IRA Council v. Alaska Department of Natural Resources, was submitted to the Council on July 1992, heard by a hearing officer in May 1993, and dismissed by the Coastal Policy Council in October, 1993.

Senate Bill 238 would, in effect, place the Coastal Policy Council in an intermediary role as a referee on the State's consistency review process, on petition from a coastal district, citizen of a district, State agency, or project applicant. The Council – with its statewide membership of locally elected officials and State agency commissioners – would provide oversight to ensure that State agencies follow procedures and give fair consideration to the broad interests commenting on proposed projects in Alaska's coastal areas (see attached Council membership).

What Would Senate Bill 238 Do?

Briefly, Senate Bill 238 would do the following:

Section 1. Amend AS 46.40.040 to add a new duty of the Alaska Coastal Policy Council to establish, by regulation, a consistency review and determination process.

Section 2. Amend AS 46.40 to add a new section (AS 46.40.096) which identifies the key elements of the consistency review process, including:

- the agency coordinating the review
- public notice requirements
- request for comments on a proposed project
- an elevation which can occur as a "subsequent review" of a proposed consistency determination (also, who can request an elevation and who reviews)
- the opportunity for certain parties to petition the Council about a proposed determination
- limitations on when a party may petition the Council
- flexibility to limit consideration of a petition when a federal law sets a deadline for the State of Alaska's response on a consistency determination for a federal agency permit or activity,
- the final consistency determination and
- definitions for "affected coastal resource district" and "reviewing entity."

Section 3. Amend the existing petition statute AS 46.40.100 (b) to:

- provide for a petition to the Council on a proposed consistency determination
- replaces the requirement for a hearing under the Administrative Procedure Act (AS 44.62) with a hearing established in regulation by the Council
- specify that the Council's standard of review is whether the agency coordinating the consistency review fairly considered the petitioner's comments submitted during the review period, and

- provide for petition dismissal or remand of the proposed determination to the agency for a revised proposed consistency determination

Section 4. Amend the existing petition statute AS 46.40.100(c) to clarify that the subsection would continue to address a petition which might be submitted on general district actions regarding implementation of its coastal program, and not a petition about district actions on a State consistency determination under AS 46.40.096.

Section 5. Similar to Section 4, this section would amend the existing petition statute AS 46.40.100(d) to clarify that the subsection would not apply to a petition about State agency actions on a consistency determination under AS 46.40.096.

Section 6. Add new subsections under the existing petition statute AS 46.40.100 which:

- establish requirements for the notice of a hearing held by the Council to consider a petition
- identify, as in the current statute, the parties which have the opportunity to petition the Council on "general", non-consistency petitions.

Section 7. Amend AS 46.40.210 to add definitions for "consistency review" and "office."

* * *

The Division of Governmental Coordination will continue to work with Senator Pearce, the Council subcommittee, and other interested parties as this legislation proceeds. The bill is referred to Senate Resources Committtee, but committee action is not yet scheduled. Please feel free to call me at 465-8800, or Gretchen Keiser of my staff at 465-3541 if you have any questions.

Attachments

cc: Alaska Coastal Districts
Senator Drue Pearce
Patty Bielawski, Accord Env.
Susan Braley, DEC
Janet Burleson, DNR
Jack Chenoweth, LAA
Raga Elim, Governor's Office
Kerry Howard, DGC
Jon Isaacs, Issacs & Associates
Beth Kerttula, DOL

John King, OCRM
Gabrielle LaRoche, DCED
Bob Laurie, DOTPF
Tom Loman, NSB
Mary McMahon, DGC
Steven B. Porter, Arco Alaska
Pam Rogers, DNR
Glenn Seaman, DFG
Chrystal Smith, AML
Nancy Wainwright, Anchorage
Nelda Warkentin, DCRA

ACMP CONSISTENCY REVIEW PROCESS OVERVIEW
Prepared for the Coastal Policy Council; February 9, 1993

Introduction

The Division of Governmental Coordination (DGC) administers the Alaska Coastal Management Program (ACMP). In addition to coordinating preparation of district programs and serving as staff to the Coastal Policy Council (CPC), DGC also coordinates State reviews of activities in the coastal zone involving State and federal permits. This overview provides a summary of this latter function, the consistency review process.

Consistency Review Process

The consistency review regulations, also known as 6 AAC 50, provide a streamlined, coordinated process for reviewing and issuing State permits for proposed development projects affecting natural resources in Alaska's coastal zone. A brochure entitled, "How to Apply for State Permits in Alaska's Coastal Zone", is attached. It provides a brief summary of most of the information presented in this overview. In addition to coordinating projects that require State permits, DGC is also responsible for coordinating consistency reviews for direct federal actions [e.g. Corps of Engineers (COE) dredging permit] and projects that require federal permits [e.g. an Environmental Protection Agency (EPA) NPDES permit].

Coastal development projects are reviewed to ensure they are consistent with the standards of the ACMP and the policies of approved local coastal district programs. Project decisions, absent an approved district program, are based on ACMP standards found at 6 AAC 80. If there is an approved district program, project decisions are also based on enforceable district policies contained in those programs.

For each project, the consistency review regulations provide a structure for project review, issue resolution and decision-making, with the full involvement of State agencies, local coastal districts and the project applicant. The public is always welcome to participate in an advisory role.

The regulations require that:

1. All appropriate permits for a project are included in a single review. When an applicant proposes a project in the coastal zone, they are first required to complete a Coastal Project Questionnaire (CPQ). The CPQ contains questions designed to help applicants and State agencies determine what permits will be needed from State and federal agencies. If requested by the applicant, the coordinating agency can also assist with a pre-application meeting to ensure that all necessary permits have been identified and all back-up material is in order. When a CPQ and associated permit applications

are submitted to the coordinating agency, the packet is examined for completeness. As soon as an application packet is determined to be complete, the coordinating agency distributes it and a review schedule to all reviewers.

A project, and all necessary permits, are reviewed in a single review and a conclusive consistency determination is issued to the applicant for the project and all related permits. Typically, an applicant has to obtain permission from several agencies to conduct a project. Federal and State agencies from which permits may be needed include the U.S. Army COE, the EPA, the U.S. Forest Service (USFS), the Bureau of Land Management (BLM), and the State Departments of Environmental Conservation, Fish and Game and Natural Resources.

2. A single State agency contact is designated to coordinate the State's review of coastal development projects. For projects requiring a federal permit, or permits from two or more State agencies, or for direct federal actions, DGC is the coordinator of the review. For projects requiring permits from a single State agency, the agency issuing the permits acts as coordinator of the review. The coordinating agency is responsible for the administrative process involved with the review and assisting the applicant with the permitting and consistency review process.

3. Regulatory deadlines are established for consistency reviews and state permit decisions. Projects are reviewed under a 30-day review schedule, or more typically a 50-day review schedule, when agency permits have public notice requirements. Deadlines are also established for the distribution of information to reviewers, receipt of comments from reviewers, requests for additional information, notice to the applicant on the proposed consistency determination and issuance of the final or conclusive determination. The deadlines are not discussed in detail here, but, for your information, they are listed in a chart that appears in the attached brochure. State agencies with permits required by the project must issue their permits within 5 days of the conclusive consistency determination, unless additional review is required by statute or regulation.

4. The applicant, affected coastal district and State resource agencies concur with the consistency determination for a project before it is issued. Project reviewers submit comments on the proposed project and permits to the coordinating agency. The comments may include proposed changes to the project, or recommend stipulations which, if incorporated into the project, would render it consistent with the standards of the ACMP. The coordinating agency gives due deference to the commentor within their area of expertise. "Due deference", as defined in regulation, means that deference which is appropriate in the context of the commentor's expertise and area of responsibility, and all the evidence available to support any factual assertions. A coastal resource

district is considered to have expertise in the interpretation and application of the enforceable policies of its approved program [6 AAC 50.120 (a)].

If an applicant, State resource agency or an affected coastal district consider a proposed consistency determination to be unacceptable, opportunities exist to elevate a decision to policy makers of state resource agencies for reconsideration. The regulations first provide for a 15-day elevation to division directors and, if necessary, a second 15-day elevation to the commissioners of the resource agencies.

Exceptions to the 6 AAC 50 Process

There are a few exceptions to the 30-day and 50-day review schedules worth noting. Regulations found at 6 AAC 50.050 require DGC to publish a list of permits which have been categorically approved as being consistent with the ACMP, and a list of general concurrence determinations which, with standard stipulations, are also consistent with the ACMP. The list of these approvals is known as the Classification of State Agency Approvals, and is more common known as the "ABC" list, where "A" stands for categorically approved projects, "B" stands for general concurrence projects and "C" contains a list of permits which are subject to an individual consistency review. Permits qualify for the "A" list if they are so de minimis that they will have no significant impact in the coastal zone. Projects qualify for the "B" list if they are for routine activities that can effectively be made consistent with the ACMP by imposing standard stipulations on the applicable permits. An example of an "A" list permit is a Fish Habitat permit for minor instream work to improve or restore fish habitat and an example of a "B" list activity is Surface Oiling of Roads (GC-11). Permits on the "A" and "B" list are not subject to further agency review against the ACMP standards or district enforceable policies, and permits can be issued once it is determined applicants qualify under an "A" or "B" list approval.

The 6 AAC 50 regulations (6 AAC 50) also provide for emergency expedited reviews, but these are limited to true emergencies as defined in the Disaster Relief Act of 1974 (U.S.C. 5122), a catastrophic oil discharge; or where an expedited review is necessary for the preservation of the public peace, health, safety or general welfare.

Statistics

In terms of statistics, DGC typically coordinates approximately 500 project reviews a year. In FY92, DGC coordinated the review of 517 projects, 84 of which were non-consistency reviews (e.g. National Environmental Policy Act (NEPA) reviews, Outer Continental Shelf (OCS) reviews, etc.). Detailed statistics aren't currently available for FY92, but in FY91 the average review time of our 30-

day and 50-day reviews, respectively, was 25 and 48 days. Other FY91 statistics show that 22% of projects reviewed were determined to be consistent as proposed, 77% were found consistent with stipulations, and less than 1% were determined to be inconsistent. In FY 92, 13 projects were elevated to the directors for further consideration, and 4 of the 13 were elevated to the Resource Agency commissioners for final decision.

Over the years, statistics have shown that the bulk of the projects reviewed for consistency are for Public Utilities or Facilities (20%), followed by Fisheries, including Aquatic Farming and Hatcheries (18%), Oil and Gas activities (15% , Miscellaneous Activities (13%), Private Residential (12%) and Mining and Commercial (both with 11%). The numbers and percentages of project reviews and types are fairly stable year-to-year, although aquatic farming reviews decreased in FY92.

Many projects that are reviewed for consistency include new, difficult, or interesting issues. Often times, as a result of consistency reviews, the ACMP working group, which is currently composed of representatives from the State resource agencies and coastal districts, is directed to prepare guidance to assist future reviews. For example, during previous years, the ACMP working group developed procedural guidance on how to implement the Coastal Development Standard (6 AAC 80.040), and on how to place stipulations that are needed for consistency but which are outside the purview of individual agency authorities (i.e. "homeless stips"). Guidance was also developed on how to interpret provisions of federal regulations regarding "associated facilities" (CFR 930.21). The ACMP working group is often called upon to clarify procedures to facilitate the 6 AAC 50 review process.

Conclusion

During the almost 9 years the consistency review regulations have been in place, they have provided an effective and predictable process for coastal development activities that has been well-received by State agencies, coastal districts, and applicants. A paper published in *Agroborealis* in 1990 entitled, "Permit Reform in Alaska's Coastal Zone", by Thomas Gallagher, provides a survey critique of the consistency review process. The paper concludes that the consistency review process is successful in achieving its primary goals of coordinating permits and involving local communities. Other benefits noted include a savings in time and money, helping applicants obtain their federal permits, and reducing conflict. A copy of that paper is also attached for your information.

If you have questions about this overview, or would like additional information about the consistency review process, please contact Kerry Howard, DGC Project Analyst, at 465-3562.

Participants in a Teleconference to
Consider a Work Draft of a Bill
Addressing AS 46.40.100 and Petitions under the Alaska Coastal Management Program

1:30 pm - 4:00 pm, December 28, 1993

Alaska Coastal Policy Council Subcommittee on Petitions:

Frank Kelty, CPC public member from Unalaska
Scott Novak, CPC public co-chair from Cordova
Frank Rue, Director, Division of Habitat/Restoration, DFG
Paul Rusanowski, Director, Division of Governmental Coordination, OMB
Ron Swanson, Director, Division of Land, DNR

Other Coastal Policy Council members:

Bob Walsh, Director, Division of Municipal/Regional Assistance, DCRA

Other Interested Parties in Working Group:

Coastal Districts Representatives

Sue Flensburg, Director, Bristol Bay Coastal Resource Service Area Program
Linda Freed, Planning Director, Kodiak Island Borough
Pat Galvin, Copeland, Landye, Bennett & Wolf, Anchorage (representing the Northwest Arctic Borough)
Tom Loman, Wildlife Department, North Slope Borough
Darcy Richards, Director, Aleutians West CRSA Program

State Agency Representatives

Susan Braley, Division of Environmental Quality, DEC
Kerry Howard, DGC
Gretchen Keiser, DGC
Beth Kerttula, DOL
Gabrielle LaRoche, Division of Economic Development, DCED
Pam Rogers, Division of Oil and Gas, DNR
Glenn Seaman, Division of Habitat/Restoration, DFG
Nelda Warkentin, Division of Municipal/Regional Assistance, DCRA

Industry/Public Representatives and Private Individuals

Patty Bielawski, Accord Environmental, Anchorage
Jon Isaacs, Isaacs & Associates, Anchorage
Charles McKey, Anchorage
Steven B. Porter, Arco Alaska, Anchorage
Nancy Wainwright, Anchorage

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 238

Revision Date:		Dept. Affected:	Office of the Governor
Title:	Review of proposed projects under the ACMP and relating to petitions for compliance	BRU:	Office of Management & Budget
		Component:	Governmental Coordination
Sponsor:	Senator Pearce		
Requestor:		COMPONENT SERIAL NO.	0018

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	<2.0>	<2.1>	<2.2>	<2.3>	<2.4>	<2.6>
CONTRACTUAL	<27.9>	<29.3>	<30.8>	<32.3>	<34.0>	<35.7>
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	<29.9>	<31.4>	<33.0>	<34.6>	<36.4>	<38.3>
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE (Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts	<29.9>	<31.4>	<33.0>	<34.6>	<36.4>	<38.3>
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	C
Other	C	0	0	0	0	C
TOTAL	<29.9>	<31.4>	<33.0>	<34.6>	<36.4>	<38.3>

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Paul C. Rusanowski, Director DGC — Phone: 465-3562
Division: Governmental Coordination — Date: 1/21/94
Approved by Commissioner: [signature] — Date: 1/21/94
Agency: OMB 1-21-94

PREPARER T[redacted]ATIVE OFFICE

Fo

FISCAL NOTE: OMB

(Rev 10/93) 94fano.sts/OBR

Fiscal Analysis of Senate Bill 238

The legislation would save money because the expenses associated with conducting a formal hearing process under the Administrative Procedure Act (AS 44.62) would be eliminated. These costs are: hiring a hearing officer, hearing room arrangements, staff travel to hearing, and transcribing the hearing proceedings. SB 238 would establish an informal hearing process before the Alaska Coastal Policy Council for petitions relating to proposed projects reviewed under the Alaska Coastal Management Program.

Assumptions:

1. The number of petitions in a given fiscal year (average: 1/yr) would not change.

2. As has occurred on a petition in the past year, the Coastal Policy Council would continue to meet via teleconference to consider future petitions.

3. The expenses for public notices of Council deliberations, teleconferencing, mailing, and supplies would remain substantially the same.

Savings The estimated FY95 savings in travel expenditures ($2.0) are based on actual FY93 costs for staff and attorney travel to participate in a formal hearing. The estimated FY95 savings in contractual expenditures are based on an average of actual contractual expenditures for petitions during FY91 - FY93 for: hearing officer contract ($25.0), hearing room fees ($1.4), and transcription costs ($1.5).

The Division of Governmental Coordination is staff to the Coastal Policy Council. The program Assistant Attorney General provides legal counsel to the CPC. SB 238 will reduce staff and attorney workload on petitions, and free up their time to address other Council work. No savings in personal services is estimated.

Fund Source Federal receipts under the Coastal Zone Management Act are the source of funding for travel and contractual expenditures for petitions under AS 46.40.100.

SB
240

WALTER J. HICKEL, GOVERNOR

JAN 3 1 1994

DEPARTMENT OF FISH AND GAME

HABITAT AND RESTORATION DIVISION

P.O. BOX 25526
JUNEAU ALASKA 99802-5526
PHONE: (907) 465-4105/4125
FAX: (907) 465-4759

January 25, 1994

The Honorable Gary Davis
Alaska State Legislature
State Capitol, Room 15
Juneau, AK 99811

Dear Representative Davis:

Your staff requested information on tax incentive programs from other states that are similar to the Kenai program established by SB236/HB306. Based on conversations with other state fish and wildlife management agencies and The Nature Conservancy, the State of Oregon may have the only riparian tax incentive program specifically directed at restoring or enhancing degraded fish habitat. I have included the following information on the Oregon program: (1) a three page public information summary (prepared by Oregon Department of Fish and Wildlife); (2) the enabling Oregon Statutes (§316.084 and notes); and (3) the riparian lands tax incentive program regulations.

It is important to note that there are several key differences between Oregon's program and that proposed in SB236/HB306:

- Tax relief in the Oregon program is from state property tax exemption and personal income tax. Since Alaska does not have either a state property or personal income tax, such a program cannot be developed for Alaska. The proposed legislation allows a credit against municipal property taxes.

- The Oregon program is not regionally focussed (i.e., restoration/enhancement projects can occur on any river or stream), whereas the SB236/HB306 focus on a specific watershed -- the Kenai River and its tributaries.

- Both the Oregon riparian personal tax credit program and the proposed legislation provide for project certification by the state fish and wildlife/habitat management agency -- the agency with expertise in whether a project would restore or enhance fish habitat.

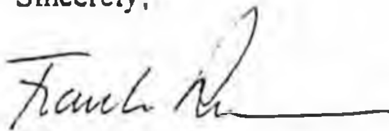
1/25/94
ADF&G HABITAT DIVISION LETTER

11-KBLH

Based on discussions with staff at the Oregon Department of Fish and Wildlife, the principal defects in Oregon's riparian tax incentive program involve the lack of a watershed focus and an inadequate monetary incentive for landowners to protect common property resources. Consequently, there has been little landowner participation in the Oregon program and it has had limited success in protecting fish habitat. SB236/HB306 addresses these concerns by focusing on the Kenai River and allowing for a maximum exemption of up to 50 percent of project costs.

I hope this addresses your needs. Let me know if I can provide additional information.

Sincerely,



Frank Rue
Director

Enclosures

cc: Representative Gail Phillips
Senator Suzanne Little
Representative Mike Navarre
Senator Drue Pearce
Gerry Gallagher, DNR
Lance Trasky
Geron Bruce

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

M E M O R A N D U M January 26, 1994

SUBJECT: Tax credit for river habitat protection improvements (SB 240)

TO: Senator Drue Pearce

FROM: Tamara Brandt Cook
Director TBC

Here is the sectional summary you requested.

Sec. 1. Permits a municipality to provide for a river habitat protection credit by ordinance to be applied to offset property taxes on land upon which an improvement has been constructed that aids in protecting the Kenai River or a tributary of that river or restoring fish habitat in the Kenai River or a tributary.

The amount of the credit must be based on a percentage of the costs of the improvement. A credit may only be granted for an improvement that has been constructed in compliance with state and federal laws and certified by the Department of Fish and Game. A credit may not be granted for certain types of improvements listed.

The Department of Fish and Game is required to establish by regulation criteria to be used in determining whether an improvement qualifies for a credit.

TBC:lmb
94-025.lmb

SECTIONAL SUMMARY

Alaska State Legislature

During Interim:
3111 C Street, Suite 150
Anchorage, AK 99503-3925
(907) 561-2038
Fax (907) 561-4194

During Session:
State Capitol
Juneau, AK 99801-1182
(907) 465-4993
Fax (907) 465-3872

Senator Drue Pearce
District F

Sponsor Statement

This bill would permissively authorize the Kenai Borough to offer credits against real property taxes whenever a land owner completes an eligible project to protect or restore river bank fish spawning habitat. Eligible projects would be determined by the Department of Fish and Game. The Kenai River municipalities would pass the ordinances needed to administer the program within their jurisdiction.

This bill would provide the Kenai Peninsula Borough with an additional tool to protect fisheries resources along the Kenai River. Senate Bill 240 sets parameters that allow local governments flexibility in determining their needs and interests, while protecting river bank habitats. No local government is required to offer these credits. If the program proves effective on the Kenai River, it may serve as a pilot project for other areas of the state.

I introduced this bill in cooperation with the Kenai Borough and Mayor Don Gilman and have worked extensively with them to develop this language.

RESOLUTION #94-1, February 10, 1994
A Resolution related to tax assessments on lands along the Kenai River

Introduction:

It is the mission of the Kenai River Special Management Area Advisory Board to assist the Department of Natural Resources in preserving and protecting the fish and wildlife habitat and resources on the Kenai River, and to promote the recreational opportunities on the river.

Whereas since the inception of the KRSMA in 1984, we have found that:

1. Protecting existing riparian river habitat in its natural state is extremely critical for the habitat needs of Kenai River fish; and

2. Valuable riparian habitat along the Kenai River is being subjected to more and more development pressure as private property is developed for commercial and private use; and

3. Encouraging river bank landowners to voluntarily protect the river banks and rehabilitate damaged riparian habitat lands is a high priority for restoring the full vitality of fish habitat on the Kenai River; and

4. Property tax assessment laws require that any improvements, even for rehabilitating damaged river banks, be taxed at their full and true value,

And Whereas Senate Bill 240 and House Bill 306 will allow municipalities to provide tax credits to offset the costs of certain Kenai River habitat protection improvements, so long as the improvements meet certain criteria established by the Department of Fish and Game,

Therefore be it resolved that the Kenai River Special Management Area Advisory Board encourages the Alaska Legislature to pass Senate Bill 240 and House Bill 306, as proposed for amendment in attached copy.

Adopted February 10, 1994 by the Kenai River Special Management Area Advisory Board.

____

Jim Richardson, Vice President, KRSMA Advisor Board

A BILL

FOR AN ACT ENTITLED

"An Act relating to an optional municipal tax credit for costs of certain river habitat protection improvements."

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

• Section 1. AS 29.45 is amended by adding a new section to read:

Sec. 29.45.046. RIVER HABI AT PROTECTION TAX CREDIT.

(a) A municipality may by ordinance provide for a river habitat protection credit to be applied to offset a portion of the property taxes due on land, or an interest in land taxable under this chapter, upon which an improvement has been constructed that aids in

(1) protecting the Kenai River or a tributary of the Kenai River from degradation of fish habitat due to public or private use; or

(2) restoring riparian fish habitat along or in the Kenai River or a tributary of the Kenai River that has been damaged by land use practices.

(b) The amount of a river habitat protection credit shall be based upon a percentage of the verifiable costs of the improvement and may not exceed 50 percent of the total amount of taxes levied upon the land or upon the taxable interest in the land during a single tax year, but the credit may be granted for more than one years. The ordinance may limit the availability of a credit to some, but not all types of improvements for which a credit may be granted under this section and to some, but not all areas of the municipality. A credit may only be granted for an improvement that has been constructed in compliance with state and federal laws and certified by the Department of Fish and Game under (c) of this section. The Department may require submission of plans for approval prior to construction as a condition of certification. A credit may not be granted for an improvement

New Text Underlined [DELETED TEXT BRACKETED]

(1) required under state or federal law; [OR AS A CONDITION OF A PERMIT FOR OR EXEMPTION FROM A REQUIREMENT FOR LAND DEVELOPMENT GRANTED BY THE FEDERAL, STATE, OR MUNICIPAL GOVERNMENT;

(2) CONSTRUCTED OR DESIGNED SOLEY TO PREVENT NATURAL EROSION;

(3) CONSTRUCTED OR DESIGNED PRIMARILY TO PROVIDE COMMERCIAL ACCESS TO A STREAM OR A RIVER; OR (4)]

(2) located more than 150 feet from the mean high tide line or ordinary high water line; in this paragraph, "ordinary high water line" means that line on the shore of the nontidal portion of a [A NONTIDAL] river or stream that reflects the highest level of water during an ordinary year and is established by fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area.

(c) The Department of Fish and Game shall by regulation establish criteria and procedures as necessary to be used in determining whether an improvement is effective in accomplishing the purposes listed in (a)(1) or (2) of this section. Upon application by the owner of land or taxable interest in land, the department shall certify whether an improvement meets the criteria established under this subsection.

New Text Underlined [DELETED TEXT BRACKETED]

FISCAL NOTE

STATE OF ALASKA — **BILL NO.** SB240

1994 LEGISLATIVE SESSION

Revision Date:	Original	Dept Affected:	Natural Resources
Title:	"An Act relating to municipal tax credit for cost of certain habitat improvements."	BRU:	Parks and Recreation Management
		Component:	Parks Management
Sponsor:	Senator Pearce		
Requestor:	Senator Pearce	Component Serial No.	452

Expenditures/Revenues (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY95	FY96	FY97	FY98	FY99	FY00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS

POSITIONS	FY95	FY96	FY97	FY98	FY99	FY00
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

SB240/HB306 as it presently exists will provide an economic incentive to Kenai River land owners who desire to restore or rehabilitate their damaged river banks. It unfortunately may give the impression that "improvements" are desireable, and therefore eligible for tax incentives. Not all "improvements" should be encouraged, and in fact, improvements should only be encouraged to restore damaged riparian habitat.

Prepared by:	Neil Johannsen, Director	Phone :	762-2600
Division:	Parks Management	Date :	1-Feb-94
Approved by Commissioner:	Harry A. Noah	Date:	1-Feb-94
Agency:	Natural Resources		

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

(SB240.XLS Rev 2/1/94) For further distribution information call the Governor's Legislative Office

FISCAL NOTE: DNR

8-LS1450\J
Cook
2/11/94

CS FOR SENATE BILL NO. 240( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR PEARCE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to an optional municipal tax credit for costs of certain river
2 habitat protection improvements."

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

4 * Section 1. AS 29.45 is amended by adding a new section to read:

5 Sec. 29.45.046. RIVER HABITAT PROTECTION TAX CREDIT. (a) A
6 municipality may by ordinance provide for a river habitat protection credit to be
7 applied to offset a portion of the property taxes due on land, or an interest in land
8 taxable under this chapter, upon which an improvement has been constructed that aids
9 in

10 (1) protecting the Kenai River or a tributary of the Kenai River from
11 degradation of fish habitat due to public or private use; or

12 (2) restoring riparian fish habitat along or in the Kenai River or a
13 tributary of the Kenai River that has been damaged by land use practices.

14 (b) The amount of a river habitat protection credit shall be based upon a

1 percentage of the verifiable costs of the improvement and may not exceed 50 percent
2 of the total amount of taxes levied upon the land or upon the taxable interest in the
3 land during a single tax year, but the credit may be granted for more than one year.
4 The ordinance may limit the availability of a credit to some, but not all types of
5 improvements for which a credit may be granted under this section and to some, but
6 not all areas of the municipality. A credit may only be granted for an improvement
7 that has been constructed in compliance with state and federal laws and certified by
8 the Department of Fish and Game under (c) of this section. A credit may not be
9 granted for an improvement

10 (1) required under state or federal law; or

11 (2) located more than 150 feet from the mean high tide line or ordinary
12 high water line; in this paragraph, "ordinary high water line" means that line on the
13 shore of the nontidal portion of a river or stream that reflects the highest level of water
14 during an ordinary year and is established by fluctuations of water and indicated by
15 physical characteristics such as a clear, natural line impressed on the bank, shelving,
16 changes in the character of soil, destruction of terrestrial vegetation, the presence of
17 litter and debris, or other appropriate means that consider the characteristics of the
18 surrounding area.

19 (c) The Department of Fish and Game shall by regulation establish criteria to
20 be used in determining whether an improvement is effective in accomplishing the
21 purposes listed in (a)(1) or (2) of this section. Upon application by the owner of land
22 or taxable interest in land, the Department of Fish and Game shall certify whether an
23 improvement meets the criteria established under this subsection. The Department of
24 Fish and Game may by regulation establish procedures to be used in applying for
25 certification, and may require submission of plans for approval before construction of
26 an improvement as a condition of certification.

Questions About the Riparian Tax Incentive Program

1. Will public access be required if I sign a Riparian Management agreement? NO. *The program is designed for Riparian maintenance and enhancement — not public use.*

2. Can all my land be exempt from taxes? NO, *only land up to 100 feet landward from the stream is eligible for tax exemption.*

3. Can this program work in conjunction with federal Cost-Share land improvement programs? YES. *ASCS, SCS, SWCD programs may provide funding for improvement projects and the tax exemption may be a further benefit to landowners if provisions of a Management Plan can be agreed upon.*

4. If I sell my land will the new owner be responsible for the Management Plan? *New owners are not liable; however, they may renew the agreement if they so desire.*

5. Will I be liable for back taxes if I sell my property? *NO, but if you withdraw from the program while you still own the property, or you are found in violation of the terms of the agreement, up to 5 years back taxes can be assessed.*

6. Are livestock grazing and timber harvest allowed? *The management agreement may specify terms of grazing and timber removal as long as the objectives of the management agreement are met and Riparian protection is assured.*

OREGON RIPARIAN TAX INCENTIVE PROGRAM

Riparian Tax Incentive
Oregon Department of Fish and Wildlife
P.O. Box 3503
Portland, Oregon 97208

To:

JAN 20 '94 01:19PM ADFG/HABITAT DIVISION P.3/15

Oregon Department of Fish and Wildlife

Lower taxes — while helping to improve Oregon's natural resources.

The Department of Fish and Wildlife has a program that offers complete property tax exemption for improving or maintaining qualifying Riparian lands. Streamside lands (riparian) up to 100 feet from a stream can be included in this tax exemption program.

Riparian zones declared important.

When the Riparian Tax Incentive law was passed in 1981, the Oregon Legislative Assembly declared that "it is in the best interest of the state to maintain, preserve, conserve and rehabilitate riparian lands to assure the protection of the soil, water, fish and wildlife resources of the state for the economic and social well-being of the state and its citizens."

Healthy Riparian zones are important to the resource by providing:

- increased water during summer low flow periods
- erosion control by stabilizing streambanks with protective vegetation
- flood control
- more and better varieties of habitats for wildlife
- cooler water due to shading resulting in better habitat for salmon, trout and steelhead

Requirements o. landowner in this program.

The landowner and the Department of Fish and Wildlife must agree to a management plan. This agreement for a riparian area must detail protection measures that could include:

- fencing the area from livestock
- instituting beneficial livestock grazing systems
- providing an uncultivated "leave strip" next to a stream
- accomplishing improved fish passage
- plans to minimize effects of such activities as timber removal, stream crossings, culverts, irrigation check dams, etc.

If a riparian area is already in good shape it may qualify for property tax exemption by an agreement to maintain the area in its present condition. Withdrawal from the program or violation of the terms of the riparian management plan can result in a penalty of up to 5 years back taxes being assessed.

Instream habitat improvements are eligible for a State Income Tax Credit.

If instream improvements are required in the Riparian Management Plan, the landowner may receive a state income tax credit for 25% of personal out-of-pocket project costs. Qualifying projects and improvements could include:

- fencing
- gabions
- rock jetties/deflectors
- streambank or habitat plantings
- bank stabilization work

Application for preliminary project certification from a local Department of Fish and Wildlife office is required as the first step in receiving the income tax credit.

BENEFITS ... for lan. ers and the resource.

Landowners benefit initially by a reduction in the property taxes. All lands included in the management plan for the riparian area are excluded from the landowners taxable land base.

Stabilization of the streambanks prevents the loss of valuable cropland, and reduces maintenance costs.

Improved riparian habitat helps many wildlife species while providing higher quality spawning and rearing areas for fish.

How You Can Become Involved

First, your land must be zoned Agriculture, Range or Forest in your LCDC acknowledged County Land Use Plan. If your land is eligible, then get a copy of your most recent tax assessment records (for tax lot information) and a plat map or aerial photo of the property.

Then you must develop a management plan in consultation with a Department of Fish and Wildlife biologist. If a plan can be agreed to by both parties, the agreement is signed and the county assessor is then notified of the transaction. The tax exemption will then be in effect starting with the next full year. (Example: Plans filed in 1984 will start receiving tax exemption for the 1985 tax year.)

In order to contact your local Department of Fish and Wildlife biologist, check your phone book under:

OREGON STATE OF ...
Fish and Wildlife
Department of
1234 Riparian Rd 999-9999

ODFW
(503) 229-5400

OCT 16 '92 18:15 BOB PENNEY/PENN
JAN 28 '94 01:20PM ADF&G/HABITAT DIVISION

Date: ______________

Thank you for your interest in Oregon's Riparian Tax Incentive Program!

Included below are explanations of the two features of the program and information on how you can become involved.

PROPERTY TAX EXEMPTION

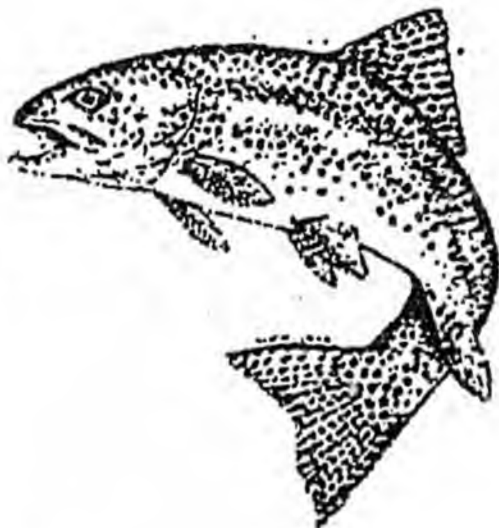
Participation in this part of the program will involve a Riparian Land Management Agreement with the Oregon Department of Fish and Wildlife. This agreement will detail the land to be designated as Riparian which can be up to 100 feet landward of the stream channel. Measures to be taken that will ensure Riparian zone protection and enhancement must then be agreed upon by both parties. Our District Fish and Wildlife Biologist for your area will serve as the Department agent and provide guidance in working out an agreement. Once the agreement is signed, that Riparian land designated in the agreement will receive the property tax exemption. This exemption registered with the County Assessor, will remain in effect as long as terms of the agreement are adhered to.

PERSONAL INCOME TAX CREDIT

Landowners who spend funds on fish habitat improvement projects (i.e., gabions, stream obstruction removal, bank stabilization, etc.) may receive a personal income tax credit totaling 25% of actual project costs. Preliminary project plans and costs must be certified by ODFW District Biologists. Projects must meet fish habitat management goals of the Department. Upon satisfactory completion of the project, final certification by local ODFW biologists will provide for the tax credit. The tax credit may then be applied to the landowners next Oregon State income tax assessment.

YOUR NEXT STEP:

To pursue your interest in Riparian habitat protection and improvement contact at your convenience:



____
ODFW DISTRICT BIOLOGIST

____

____

Phone: ______________

THE
FOLLOWING
DOCUMENTS
ARE
POOR
ORIGINAL
COPIES

(2) If any part of sections 1 to 6 of this Act is held unconstitutional:

(a) ORS 316.680 and 316.087 shall remain in effect the same as if this Act had not been enacted. Any Oregon personal income taxes paid by a benefit recipient of the Public Employes' Retirement System on account of a benefit received pursuant to ORS 237.001 to 237.315 shall not be refunded if an additional benefit equal to the taxes paid has been paid under section 5 of this Act or ORS 237.233.

(b) Section 5 of this Act and the amendments to ORS 237.233 by section 5b of this Act shall stand repealed. Any amounts paid to a benefit recipient by the Public Employes' Retirement Board, pursuant to section 5 of this Act or ORS 237.233, shall not be repaid.

(c) If a benefit recipient has paid tax for which the recipient has not received a benefit under section 5 of this Act or ORS 237.233, the member may claim a refund of the tax paid.

(3) Any funds remaining in the Public Employes' Tax Account shall revert to the General Fund.

(4) No refund of income taxes shall be allowed or made under this section unless a claim therefor is filed within 90 days after the determination that the provisions of sections 1 to 5 of this Act are unconstitutional is final.

(5) For the purposes of this section, "benefit" and "benefit recipient" have those meanings given in section 5 of this Act. [1989 c.906 §7]

Sec. 10. Section 5 and the amendments to ORS 237.201, 237.233, 316.087 and 316.680 by sections 2, 3, 5b and 5c of this Act first apply to retirement benefits paid during the 1989 calendar year. [1989 c.906 §10]

Note: Section 82, chapter 625, Oregon Laws 1989, provides:

Sec. 82. (1) Except as provided in subsections (2) to (4) of this section and sections 83 to 92 of this Act, the amendments by this Act apply to transactions or activities occurring on or after January 1, 1989, in tax years beginning on or after January 1, 1989.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended by the Tax Reform Act of 1986 (P.L. 99-514) and other Acts, relative to those dates, contained in the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(3) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended by the Tax Reform Act of 1986 (P.L. 99-514) and other Acts, relative to those dates, contained in the Family Support Act of 1988 (P.L. 100-485) shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(4) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended by the Tax Reform Act of 1986 (P.L. 99-514) and other Acts, relative to those dates, contained in the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(5)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 1989, and the deficiency, or any portion thereof, is attributable to any retroactive treatment under this Act, then any interest or penalty assessed under ORS chapter 305, 314, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 1989, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under this Act, then notwithstanding ORS 314.415 or other law, the refund shall be paid without interest.

(c) Any changes required on account of this Act for a tax year beginning prior to January 1, 1989, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the change or changes relate within the period as specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1989 return is filed, whichever period expires later. [1989 c.625 §82]

316.077 [1969 c.493 §16; renumbered 310.637]

CREDITS

316.078 Tax credit for employment related expenses. (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter in an amount equal to a percentage of employment-related expenses allowable pursuant to section 21 of the Internal Revenue Code as of December 31, 1988, notwithstanding the limitation imposed by section 26 of the Internal Revenue Code as of December 31, 1988. The percentage shall be determined on the basis of federal taxable income, as defined in section 63 of the Internal Revenue Code as of December 31, 1988, and as reflected on the federal return, whether or not a joint return, of the taxpayer for the taxable year, in accordance with the following table:

If federal taxable income is:	The percentage is:
Not over $5,000	30%
Over $5,000 but not over $10,000	15%
Over $10,000 but not over $15,000	8%
Over $15,000 but not over $25,000	6%
Over $25,000 but not over $35,000	5%
Over $35,000 but not over $45,000	4%
Over $45,000	0%

(2) A nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by subsection (1) of this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(3) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085,

or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(4) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(5) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter. [1975 c.572 §154; 1977 c.872 §3; 1979 c.691 §4; 1983 c.534 §9; 1985 c.802 §4; 1987 c.293 §10; 1989 c.625 §7; 1989 c.1047 §11]

Note: Section 12, chapter 1047, Oregon Laws 1989, provides:

Sec. 12. The amendments to ORS 316.078 by section 11 of this Act apply to tax years beginning on or after January 1, 1989. [1989 c.1047 §12]

316.079 Credit for certain disabilities. A $50 credit, against income taxes owed, shall be allowed a taxpayer who as of the close of the taxable year has suffered a permanent and complete loss of function of both legs or both arms or one leg and one arm as certified to by a public health officer. The certificate shall be in a form prescribed by the department and shall be filed with the first return in which the credit is claimed. [1973 c.120 §2]

316.080 [1953 c.304 §12; renumbered 316.475]

316.081 [1973 c.503 §13; 1975 c.705 §11; 1981 c.507 §1; renumbered 316.844]

316.082 Credit for taxes paid another state. (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual, or on an Oregon S corporation of which the individual is a member (to the extent of the pro rata share of the individual of the S corporation), for the taxable year by another state of the United States or the District of Columbia on income derived from sources therein and that is also subject to tax under this chapter.

(2) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the adjusted gross income of the taxpayer derived from sources in the other taxing jurisdiction bears to the entire adjusted gross income of the taxpayer as modified by this chapter.

(3) The department shall provide by rule the procedure for obtaining credit provided by this section and the proof required.

(4) No credit allowed under this section or ORS 316.292 shall be applied in calculating tax due under this chapter if the tax upon which the credit is based has been claimed as a deduction, unless the tax is restored to income on the Oregon return.

(5) For purposes of this section, "Oregon S corporation" means a corporation that has elected S corporation status for Oregon excise and income tax purposes. [1969 c.493 §17; 1981 c.501 §3; 1987 c.647 §11]

Note: See note under 316.042.

316.083 Exception to ORS 316.844. ORS 316.844 shall not apply in any case in which a carryover basis for certain property acquired from a decedent dying after December 31, 1976, is provided by section 1023 of the Internal Revenue Code (Tax Reform Act of 1976). [1977 c.666 §35]

316.084 Credit for fish habitat improvement. (1) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter, based upon the cost of a fish habitat improvement project certified under ORS 496.260. The amount of the credit shall be 25 percent of the amount certified.

(2) To qualify for the credit under this section:

(a) The fish habitat improvement project must have been given final certification by the State Department of Fish and Wildlife as provided in ORS 496.260.

(b) The credit must be claimed for the year in which final certification for the project is granted.

(c) The taxpayer who is allowed the credit must be the person who actually expended funds for construction or installation of the project.

(d) The fish habitat improvement project must not be required by existing federal or state statute.

(3) The credit allowed in any one year shall not exceed the tax liability of the taxpayer.

(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried