

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8463 SENATE STATE AFFAIRS

LANDLORD-TENANT ACT
SB 155

Alaskans in Support of Previous Landlord-Tenant Legislation:

1. Alice Brewer - 563-6734
2. Charles Lippitt - 248-4770
3. Howard Thew - 277-2808
4. Pat Johnson -
5. John and Nancy Todd - 345-2257
6. Mark Begich - 337-6748
7. James Duff - 248-0663
8. Peter Hutton -
9. Alice Forman -
10. Joe Graham -
11. Edgar Price -
12. Eugene DeVine -
13. Helen Foremen - 243-5497
14. Jeanne Larson (former Pourchot Aide)
15. Pat Pourchot - 338-2425
16. Jan Hennequin
17. Hanz Metz - 337-8904
18. Nancy Williams - 562-5259
19. Gordon Williams -

Senate State Affairs Committee
SB 155 - List of Supporters
Page 2

20. Allen Levy - 272-7464

21. Janice Evenson -

22. Eric Brundquist -

23.

February 11, 1993

Mr. John Lemmon
Clerk, State Legislature
P.O. Box V 4153100
Phoenix, Arizona

Dear John,

I thank you for taking time in the teleconference
I am having with the Arizona Council meeting.

I am enclosing the article about the Legislature
with the Executive Report of Tom, and following

One article is from the Arizona Daily News. The
other is from the Phoenix Daily News - Mirror.

I hope that you can get a new bill. I think this
legislation to help conductors.

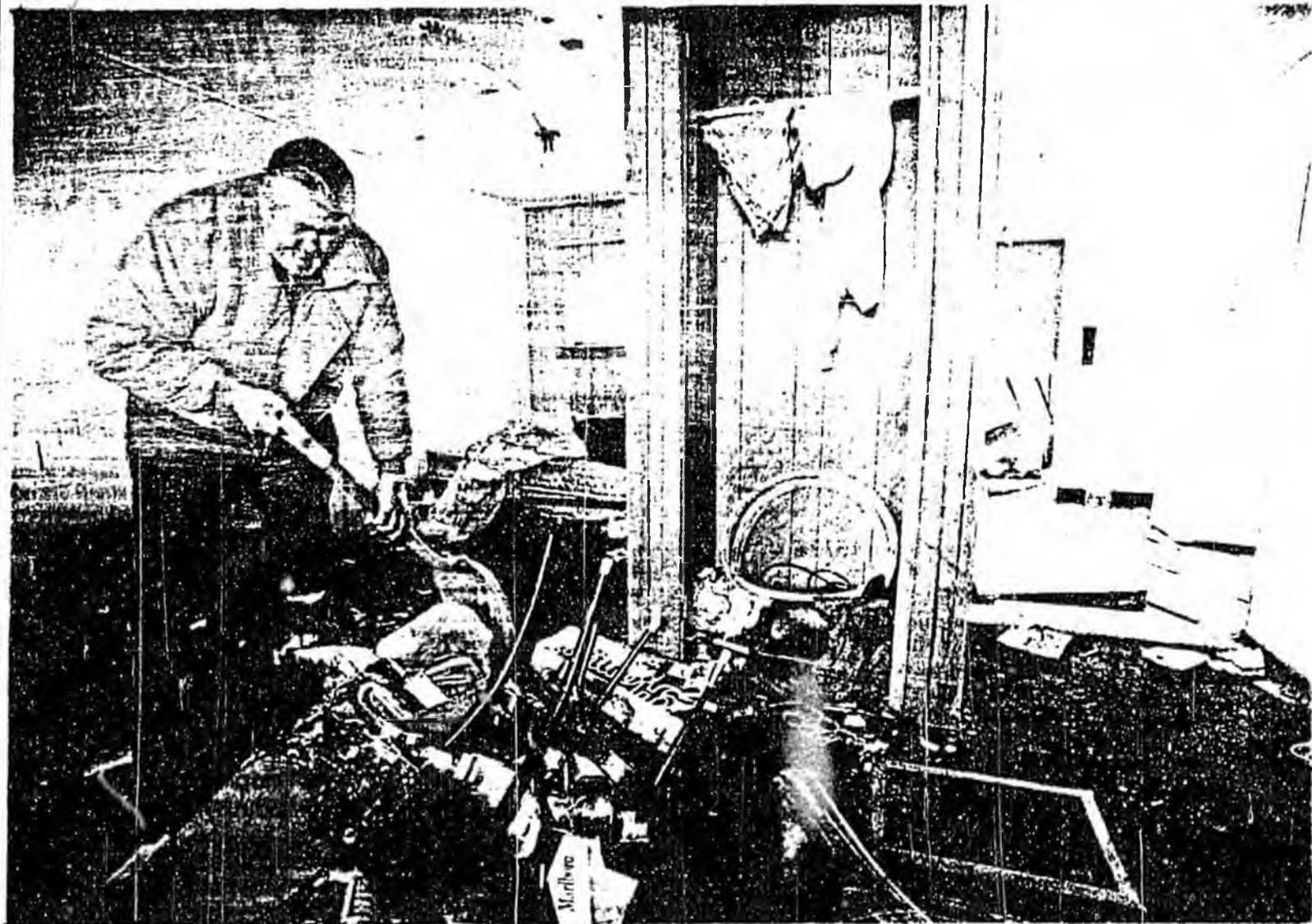
Thanks for your time.

Sincerely,

Charles Dignity

2203 Mr. Lindy Ave.

Phoenix, Arizona



Dan Hyde News-Miner

TRASHED OUT—Landlord Sam Helms scoops up garbage in a house he rents out in South Fairbanks. Helms says a former tenant caused \$10,000 damage to the home, but the renter denies any wrongdoing.

Landlord blames law for home's disorder

By KATE RIPLEY
Staff Writer

For 17 days Sam Helms watched as his tiny rental home at 1536 Stacia St. was trashed.

Helms claims unfair state landlord-tenant laws rendered him helpless in the case against his 30-year-old renter, George Cooper Jr.

Cooper moved into the rental home, one house down the street from Helms' own house, Oct. 15, Helms said. The landlord prorated the \$325 monthly rent and charged a \$200 damage deposit.

Friending with Cooper and an endless stream of friends visiting the home started almost immediately, Helms alleged. The

result is \$10,000 in damaged property, he said.

"There were continuous parties . . . There was shooting, urinating in public, fighting. It was keeping the neighbors awake," said Helms, 57, the husband of former Borough Mayor Juanita Helms.

Police officers responded when Helms called, but told him it was a civil matter, Helms said. Five days after Cooper moved in, Helms gave the renter the required 20-days notice under state law for eviction.

Then it was a matter of waiting.

"As soon as I gave him (Cooper) the eviction notice, he had 20

days to destroy my place," Helms said.

Cooper, a convicted felon, eventually was arrested Nov. 6 for violating his probation and was removed from the house, according to probation officer Lou Anne Maxwell. The man is being held without bail at Fairbanks Correctional Center.

The felony conviction stemmed from a July 1990 second-degree forgery. Cooper also was convicted of fraudulent use of a credit card, a misdemeanor.

Maxwell said an anonymous caller told her Cooper and other under-aged youths were drinking at the Stacia Street home. He also allegedly was keeping com-

pany with another convicted felon—not allowed under terms of his probation, Maxwell said.

Cooper gained media attention two years ago after a tragic vehicle accident in the village of Ruby claimed both of his legs.

While the probation violation arrest removed Cooper from Helms' rental home, the landlord said Fairbanks police should have arrested him before it got to that point.

"The police call it a civil matter, when it's malicious destruction," Helms said.

But John Shover, Fairbanks public safety director, said claiming a renter destroyer

See LANDLORD on Back Page

LANDLORD

Continued from Page A-1
property is one thing, while proving it is another.

"If it's a landlord-tenant situation, those situations generally are totally civil" rather than criminally prosecuted, Shover said.

Under state law, if a tenant destroys a landlord's property on purpose, the tenant may be guilty of vandalism and face up to one year in prison and a \$5,000 fine. The law also could require a tenant to pay for the damage.

Shover confirmed Fairbanks police responded to Helms' complaints at least four or five times. They interviewed Cooper, who denied any wrongdoing and placed the blame on friends, Shover said.

Without a confession or witnesses, Shover said the District Attorney's Office "won't touch it" and an arrest would have been pointless.

District Attorney Harry Davis said he is not intimately aware in the case. But he said the probation violation arrest was likely a speedier approach than arresting Cooper under the landlord-tenant act.

Cooper, meanwhile, maintains his innocence. In a hearing in Fairbanks Superior Court Thursday, the young man denied violating his probation. The case has not yet been scheduled for trial.

Regardless of who actually damaged Helms' rental, one look around the home tells a sad tale of destruction.

The white porcelain bathroom sink is smashed. Doors outside and inside the home are riddled with dents, perhaps made with a hammer. Ceiling tiles are either missing or punctured with holes. Empty liquor bottles, beer cans, food containers, old magazines and other debris are scattered across the floor.

The walls are filthy. Two bureaus are overturned, their drawers

smashed. A TV screen is shattered, and a dinette set dismantled.

Insurance will cover most of the estimated \$10,000 in structural damage, Helms said. But it will not replace the furniture.

Cooper has had a handful of run-ins with the law before, but several cases against him have been dismissed in the past.

He was asked to leave Southall Manor within days after he moved there May 31, 1991, according to an Alaska State Housing Authority memo.

His apartment "became a nest for street kids," the memo said.

"Teen-agers were on the roof of Southall Manor, throwing rocks into the street. In short, they had the building under seige," the memo said.

City Mayor Jim Hayes, a consumer investigator for the state attorney general's office, said his office receives about five calls daily on landlord-tenant disputes alone. Budget cuts leave his office ill-equipped to deal with the matter.

"This is a really serious problem in the Fairbanks area," Hayes said.

Hayes is a friend of Helms. He inspected the Stacia rental home as a personal favor. Helms requested help from the City Council but Hayes said there is little the city can do.

"The landlord-tenant act is a state act. The only thing we (the city) can do is just refer people to small claims court or a private attorney," he said.

Helms is bent on changing state law. He said he will organize landlords into an association for that purpose as his "winter project."

"I don't have any problem with the tenant having rights but the landlord should have equal rights," he said.

LANDLORDS!

Alaska Landlord & Property Managers Assn.
Organized 1972

10 Reasons Why You Should Join ALPMA:

- Credit report
- Promote favorable legislation
- Knowledgeable guest speakers (Accountants, Attorneys, etc.)
- Familiarization with Statutes
- Experience from others
- Enjoy forum of the association
- Problems of other members
- Education
- Marketing skills
- Helps military interaction with civilian population

NEXT MEETING
OCTOBER 8, 1992
7:00 PM

FOR INFORMATION CONTACT
ALICE BREWER
(Exec. Secretary)
563-6734



Douglas W. Isaacson
Alaska Director

CREDIT SERVICES, INC.

Alaska's Trans Union Serviced Credit Bureau

1305 21st Avenue Suite 200
P.O. Box 72739
Fairbanks, Alaska 99707
(907) 456-1749
Fax (907) 456-6203

100 W. International Airport Road
Suite 200
Anchorage, Alaska 99518
(907) 561-7272
FAX (907) 561-7278

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Joe Frost

David Gudmund

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SB

158



ALASKA COLLECTORS ASSOCIATION

A Unit Of
AMERICAN COLLECTORS ASSOCIATION, INC.



REPLY TO:

Transmitted via facsimile

March 23, 1993

Senator Loren Leman
Attn: Porita

Re: Senate Bill 158

Dear Senator Leman,

I am writing this letter to encourage your support of SB 158. On behalf of the Alaska Collectors Association we believe this legislation is vital to the credit industry. The current exemption level allows a majority of non paying consumers to remain virtually judgement proof, greatly restricting economic stimulation.

We would appreciate your support with SB 158.

Sincerely,

Will Fancher
President

WF/ml

	EXEMPTION COMPARISON			
Exemption	Alaska	Washington	Oregon	<i>Proposed</i>
Home	\$62,100.00	\$30,000.00	\$15,000.00	\$36,000.00
Personal Property	\$3,450.00	\$3,700.00	\$1,450.00	\$2,100.00
Wages	\$402.50/wk	\$127.50/wk	\$160.00/wk	\$250.00/wk
	Prepared by Senate State Affairs Committee Staff			

RESEARCH

6.13.020. What homestead may consist of

If the owner is married, the homestead may consist of the community or jointly owned property of the spouses or the separate property of either spouse: *Provided*, That the same premises may not be claimed separately by the husband and wife with the effect of increasing the net value of the homestead available to the marital community beyond the amount specified in RCW 6.13.030 as now or hereafter amended. When the owner is not married, the homestead may consist of any of his or her property.

Formerly § 6.12.020, amended by Laws 1973, 1st Ex.Sess.; ch. 154, § 6; Laws 1977, Ex.Sess.; ch. 98, § 1, eff. May 28, 1977; Laws 1981, ch. 329, § 8. Recodified as § 6.13.020 and amended by Laws 1987, ch. 442, §§ 202, 1121.

Historical and Statutory Notes

Severability—Laws 1981, ch. 329: See Historical Note following § 6.21.020.

Severability—Laws 1973, 1st Ex. Sess., ch. 154: See Historical Note following § 2.12.030.

Notes of Decisions

For basic development of Notes of Decisions, see § 6.12.020 in main Volume.

3. — By surviving spouse

Fact that homestead protection extended to heads of families by this section and § 6.12.290 encompasses certain

widowed persons not presently distinguishable from single persons in terms of providing for a family, does not indicate that latter group has been denied equal protection under the 14th Amendment. *In re Statham* (1973), 483 F.2d 436, certiorari denied 94 S.Ct. 578, 414 U.S. 1069, 38 L.Ed.2d 474.

6.13.030. Homestead exemption limited

A homestead may consist of lands, as described in RCW 6.13.010, regardless of area, but the homestead exemption amount shall not exceed the lesser of (1) the total net value of the lands, mobile home, and improvements as described in RCW 6.13.010, or (2) the sum of thirty thousand dollars, except where the homestead is subject to execution, attachment, or seizure by or under any legal process whatever to satisfy a judgment in favor of any state for failure to pay that state's income tax on benefits received while a resident of the state of Washington from a pension or other retirement plan, in which event there shall be no dollar limit on the value of the exemption.

Formerly § 6.12.050, amended by Laws 1971, Ex.Sess.; ch. 12, § 1; Laws 1977, Ex.Sess., ch. 98, § 3, eff. May 28, 1977; Laws 1981, ch. 329, § 10; Laws 1983, 1st Ex.Sess., ch. 45, § 4. Recodified as § 6.13.030 and amended by Laws 1987, ch. 442, §§ 203, 1121. Amended by Laws 1991, ch. 123, § 2.

Historical and Statutory Notes

1991 Legislation

Laws 1991, ch.123, § 2: added the exception.

Purpose—Laws 1991, ch. 123: "The legislature recognizes that retired persons generally are financially dependent on fixed pension or retirement benefits and passive income from investment property. Because of this dependency, retired persons are more vulnerable than others to inflation and depletion of their assets. It is the purpose of this act to increase the protection of income of re-

tired persons residing in the state of Washington from collection of income taxes imposed by other states." [Laws 1991, ch. 123, § 1.]

Severability—Laws 1981, ch. 329: See Historical Note following § 6.21.020.

Severability—Laws 1971, Ex.Sess., ch. 12: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [Laws

sworn to by the applicant, setting forth the name and age of the alleged incompetent or disabled husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; such facts necessary to show that the nonpetitioning husband or wife is incompetent or disabled to the degree required under RCW 6.13.210; and such additional facts relating to the circumstances and necessities of the applicant and his or her family as he or she may rely upon in support of the petition.

Formerly § 6.12.320, amended by Laws 1977, Ex.Sess., ch. 80, § 6. Recodified as § 6.13.230 and amended by Laws 1987, ch. 442, §§ 223, 1121.

Historical and Statutory Notes

Purpose—Intent—Severability—
Laws 1977, Ex.Sess., ch. 80: See Historical Note following § 4.16.190.

6.13.240. Order—Effect

If the court shall make the order provided for in RCW 6.13.210, the same shall be entered upon the minutes of the court, and thereafter any sale, conveyance, or mortgage made in pursuance of such order shall be as valid and effectual as if the property affected thereby was the absolute property of the person making such sale, conveyance, or mortgage in fee simple.

Formerly § 6.12.330. Recodified as § 6.13.240 and amended by Laws 1987, ch. 442, §§ 224, 1121.

CHAPTER 6.15—PERSONAL PROPERTY EXEMPTIONS

Section

- 6.15.010. Exempt property specified.
- 6.15.020. Pension money exempt—Exceptions.
- 6.15.025. Exemption of pension or retirement plan benefits from execution for judgment for out-of-state income tax.
- 6.15.030. Fire insurance money on exempt property exempt.
- 6.15.035. Exemption of proceeds of life, disability insurance and annuities.
- 6.15.040. Separate property of spouse exempt.
- 6.15.050. Exemptions under RCW 6.15.010—Limitations on exemptions generally.
- 6.15.060. Manner of claiming exemptions—Appraisal—Appraiser's fee.
- 6.15.070. Procedure if value of property claimed exempt exceeds exemptible value.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

6.15.010. Exempt property specified

Except as provided in RCW 6.15.050, the following personal property shall be exempt from execution, attachment, and garnishment:

(1) All wearing apparel of every individual and family, but not to exceed one thousand dollars in value in furs, jewelry, and personal ornaments for any individual.

(2) All private libraries of every individual, but not to exceed fifteen hundred dollars in value, and all family pictures and keepsakes.

(3) To each individual or, as to community property of spouses maintaining a single household as against a creditor of the community, to the community:

6.15.010

ENFORCEMENT OF JUDGMENTS

(a) The individual's or community's household goods, appliances, furniture, and home and yard equipment, not to exceed two thousand seven hundred dollars in value, said amount to include provisions and fuel for the comfortable maintenance of the individual or community;

(b) Other personal property, except personal earnings as provided under RCW 6.15.050(1), not to exceed one thousand dollars in value, of which not more than one hundred dollars in value may consist of cash, and of which not more than one hundred dollars in value may consist of bank accounts, savings and loan accounts, stocks, bonds, or other securities; and

(c) Two motor vehicles used for personal transportation, not to exceed two thousand five hundred dollars in aggregate value.

(4) To each qualified individual, one of the following exemptions:

(a) To a farmer, farm trucks, farm stock, farm tools, farm equipment, supplies and seed, not to exceed five thousand dollars in value;

(b) To a physician, surgeon, attorney, clergyman, or other professional person, the individual's library, office furniture, office equipment and supplies, not to exceed five thousand dollars in value;

(c) To any other individual, the tools and instruments and materials used to carry on his or her trade for the support of himself or herself or family, not to exceed five thousand dollars in value.

For purposes of this section, "value" means the reasonable market value of the debtor's interest in an article or item at the time it is selected for exemption, exclusive of all liens and encumbrances thereon.

Formerly § 6.16.020, amended by Laws 1965, ch. 89, § 1; Laws 1973, 1st Ex.Sess., ch. 154, § 13; Laws 1979, Ex.Sess., ch. 65, § 1; Laws 1983, 1st Ex.Sess., ch. 45, § 8. Recodified as § 6.15.010 and amended by Laws 1987, ch. 442, §§ 301, 1121. Amended by Laws 1988, ch. 231, § 5, eff. March 23, 1988; Laws 1991, ch. 112, § 1.

Historical and Statutory Notes

1991 Legislation

Laws 1991, ch. 112, § 1, throughout the section, increased the maximum value allowed for personal property exemptions; in subsec. (3)(b), inserted "and of which not more than one hundred dollars in value may consist of"; in subsec. (3)(c), increased the number of exempt

automobiles from one to two; and preceding "value" inserted "aggregate".

Severability—Laws 1988, ch. 231: See Historical Note following § 6.01.050.

Severability—Laws 1973, 1st Ex. Sess., ch. 154: See Historical Note following § 2.12.030.

Cross References

Earnings as defined in § 7.33.010(3) not exempt from garnishment under this section, see § 7.33.280.

United States Supreme Court

Bankruptcy lien avoidance, judicial liens impairing state law exemptions, see

Owen v. Owen, 1991, 111 S.Ct 1833, 114 L.Ed.2d 350.

Notes of Decisions

Corporation's potential legal negligence claim against its former attorney was property subject to execution. Iku-no v. Yip, C.A.9 (Wash.) 1990, 912 F.2d 306.

Former § 6.16.020 (see, now, this section) providing for exemption of house-

hold goods, appliances, furniture, and home and yard equipment encompassed ping-pong table, lawnmower, picnic table and benches, desk top adding machine, bowling ball and bag, tents and camping equipment, golf clubs and bag, telephones, antique stand-up radio, color

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6.15.020

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(OREGON)

ATTACHMENT & GARNISHMENT

29.225

29.220 [Repealed by 1981 c.898 §53]

29.225 Form of notice of exemptions.

(1) The notice of exemptions referred to in ORS 29.215 shall be in substantially the form set forth in this subsection. Nothing in the notice form described under this subsection is intended either to expand or restrict the law relating to exempt property. Whether property is exempt from execution, attachment and garnishment shall be determined by reference to other law. The form may be modified either to provide more complete information or to update the notice based on subsequent changes in exemption laws. However, any such modification shall not be required. The following form is for notice of exemption:

NOTICE OF EXEMPT PROPERTY

Property belonging to you may have been taken or held in order to satisfy a claim or judgment which has been asserted or entered against you. Important legal papers are enclosed.

YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.

State and federal law say certain property may not be taken. Some of the property which may not be taken is listed below.

(1) Wages or a salary as described in ORS 23.175 and 23.185 (whichever of the following amounts is more: (a) 75 percent of your take-home wages; (b) For wages payable before June 30, 1992, \$150; (c) For wages payable before June 30, 1993, \$160; or (d) For wages payable on or after July 1, 1993, \$170).

(2) Social security (including SSI).

(3) Public assistance (welfare).

(4) Unemployment benefits.

(5) Disability benefits.

(6) Workers' compensation benefits.

(7) Exempt wages, social security, welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$5,000).

(8) Spousal support, child support, or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.

(9) A homestead (home, farm, manufactured dwelling, houseboat) if you live in it, to the value of \$13,000 (\$15,000, if land is included) or proceeds from its sale for one (1) year.

(10) Household goods, furniture, radios, a television set and utensils, to \$1,450.

*(11) Automobile, truck, trailer or other vehicle to \$1,200.

*(12) Tools, implements, apparatus, team, harness or library necessary to carry on your occupation to \$750. Food for such team for 60 days.

*(13) Books, pictures and musical instruments to \$300.

*(14) Wearing apparel, jewelry and other personal items to \$900.

(15) Domestic animals and poultry for family use to \$1,000 and their food for 60 days.

(16) Provisions (food) and fuel for your family for 60 days.

(17) One rifle or shotgun and one pistol.

(18) Public or private pensions.

(19) Veterans benefits and loans.

(20) Medical assistance benefits.

(21) Health insurance proceeds and disability proceeds of life insurance policies.

(22) Cash surrender value of life insurance policies not payable to your estate.

(23) Federal annuities.

(24) Other annuities to \$250 per month, excess over \$250 per month subject to same exemption as wage.

(25) Professionally prescribed health aids for you or any of your dependents.

*(26) A tax refund allowed pursuant to ORS 310.635 or 310.640 as set forth in ORS 310.637.

*(27) Your right to receive, or property traceable to:

*(a) An award under any crime victim reparation law.

*(b) A payment, not exceeding \$7,500, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of you or an individual of whom you are a dependent.

*(c) A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.

(28) Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.

(29) The difference between what you actually owe the creditor and the total amount due listed in the writ of garnishment, if the amount listed in the writ is larger.

Note: If two or more people in your household owe the claim or judgment, each of them may claim the exemptions marked by *.

SB

161

WALTER J. HICKEL
GOVERNOR



P. O. Box 110001
Juneau, Alaska 99811-0001
(907) 463-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 12, 1993

161

*The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to statutory interest rates. This bill would change the rate of prejudgment interest and interest paid on judgments and decrees, issued by Alaska courts, from 10.5 percent to the market rate for certain investments. The bill would also lower the rate of interest payable by the state on overpayments of taxes under AS 43 and royalty and net profit shares under AS 38. Both changes should have substantial cost savings for the state.

As to interest on court judgments and decrees, AS 09.30.070 presently requires that the rate of interest is 10.5 percent a year, unless a different lawful rate was established by written contract between the parties. Additionally, prejudgment interest is also paid at the 10.5 percent rate. Currently, these statutory rates substantially exceed the present market rate for investments. The result is a bonanza for individuals who receive a favorable judgment. Also, with the statutory interest rate being fixed, the rate does not automatically respond to market rate increases during periods of high inflation, exceeding the 10.5 percentage rate. The result is that the individual who prevails suffers an additional loss when a judgment or decree is not timely paid or is paid in installments.

Section 1 of the bill remedies these problems by requiring that interest rates on judgments and prejudgment interest be set at the market rate for the sale of federal

LETTER FROM GOVERNOR

*The Honorable Rick Halford
Page 2*

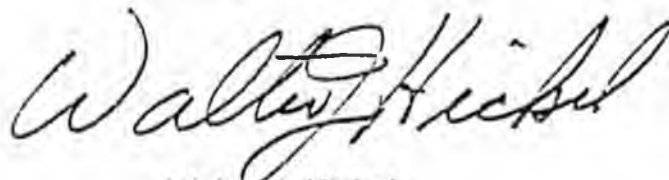
treasury bills. The bill would continue to allow individuals to establish a different interest rate on judgment by agreement, so long as the rate is not usurious, under state law. Section 1 of the bill also makes changes relating to the calculation of interest.

Section 2 of the bill changes the interest rate payable by the state on refunds of overpaid taxes under AS 43 and natural resources royalties and net profit shares under AS 38. The bill amends AS 38.05.135(e) and AS 43.05.280(a) by reducing the interest rate payable by the state on refunds of these overpaid taxes, royalties, and net profit shares from five points to two points over the quarterly Federal Reserve discount rate. The present five percentage points over the Federal Reserve discount rate for both underpayment and overpayment was designed as an across-the-board interest rate increase to discourage underpayment of these sums by those obligated to make those payments. While having that intended effect, it is also establishing the state as a favorable depository of investment funds yielding a much higher rate of interest than any other savings in banking institutions. The payment of those high yields is coming directly out of the state treasury and is not a prudent use of state resources in these years of declining available state revenue.

This bill would leave in place the provisions that discourage underpayment to the state, while removing the incentive to achieve high yields by overpaying. Also, the bill protects taxpayers in that if the overpayment was made in response to a correction made by the applicable department, the state would pay a higher interest rate, as already provided in statute.

I urge your prompt consideration and passage of this bill.

Sincerely,

A handwritten signature in black ink, reading "Walter J. Hickel". The signature is written in a cursive, flowing style with a large initial "W".

*Walter J. Hickel
Governor*

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 18, 1993

Hon. Loren Leman
Alaska State Senate
State Capitol, Room 113
Juneau, Alaska 99811

Dear Senator Leman:

We understand that SB 161, relating to interest rates, is before your committee for consideration.

Attached is a sectional analysis for the bill. The bill was proposed by the Department of Law and the Department of Revenue. The bill makes important improvements in Alaska law on interest rates as explained in the sectional analysis.

The Department of Law would appreciate scheduling of a hearing at your committee's earliest convenience.

Sincerely yours,

CHARLES E. COLE
ATTORNEY GENERAL

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

DEB:cl

cc: Charles E. Cole
Attorney General

Bruce M. Boteiho
Deputy Attorney General

Rod Mourant, Legislative Contact
Department of Revenue

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1558
FAX: (907) 456-1317

P. O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 462-5295

465-6735

SECTIONAL ANALYSIS OF
SB 161 OR HB 226

Prepared by Joseph Geldhof
Assistant Attorney General
Department of Law

INTRODUCTION

SB 161 and HB 226 were introduced at the request of the Governor. The proposed legislation contains two measures relating to interest rates.

SECTIONAL ANALYSIS

Section 1. This section repeals and reenacts the general statutory interest provisions. The proposed version basically adopts a market rate scheme for postjudgment interest based on the formula used by federal courts. In addition, this measure extends market rates for prejudgment interest in addition to past-judgment interest. Consistent with existing law, interest rates set out in contracts are not altered.

Section 2. This section alters the interest rate for "royalty oil" or "net profit share" overpayments. Basically, interest on overpayments is tied closely to market interest rates in order to reduce overpayment incentives for persons required to make royalty oil or net profit share payments under current law.

Section 3. This section makes a similar amendment to the one described in Section 2 for overpayments of state

taxes. However, a different (higher) interest rate is assessed when the overpayment results from a corrected tax assessment made by the Department of Revenue.

Section 4. This section provides for an effective date for the postjudgment interest provision discussed in Section 1. Basically, postjudgment interest on judgment or decrees entered before the effective date of this measure, if enacted, would remain unaffected.

Section 5. This section provides for an effective date for the prejudgment interest provision discussed in Section 1. Basically, prejudgment interest on judgments or decrees entered before the effective date of this measure, if enacted, would remain unaffected.

Section 6. This section provides for an immediate effective date for the provisions relating to interest payments made on overpayments of royalties, net profit share payments and taxes.

Section 7. This section provides for this entire proposal to take effect immediately.

JWG:JLB:kh

SENATE STA COMMITTEE HEARING - April 2, 1993

SB 161, Interest Rates, Refunds, Royalties, Net Profit Shares

1. Attorney General Charles Cole
2. James Baldwin, AG's Office
- ✓3. Joe Geldof, AG's Office *Will James*
4. Chris Christensen, Court System
5. Ellen ^{Brandon} or Jerry Anderson, MOA* (in Anchorage on
Teleconference to explain MOA Amendment in CS)

Jeff Mason INTERP

**DEPARTMENT OF REVENUE
INTEREST RATES ON OVERPAYMENTS/CORRECTIONS/EARNINGS
CURRENT LAW AND PROPOSED SB 161
EXAMPLES**

EXAMPLE 1

Facts: Taxpayer overpays income tax liability by \$1,000,000 on 10/1/91. Refund of interest to 3/31/93 is shown under current law and proposed HB 226 as well as the net cost to the state.

*Prop. Interest
Return 10/1/91
10/1/92*

	<u>Current Law</u>	^{SB161} <u>HB 226</u>
Interest from 10/1/91 to 3/31/93 on \$1,000,000	\$176,783	\$82,621
Less: State Short Term Investment Earning Rate on \$1,000,000 from 10/1/91 to 3/31/93	<u>\$ 55,308</u>	<u>\$55,308</u>
<u>Cost To State</u>	<u>\$121,475</u>	<u>\$27,313</u>

EXAMPLE 2

Facts: Taxpayer pays income tax assessment of \$10,000,000 on 10/1/91. Department corrects assessment on 3/31/93 resulting in a \$1,000,000 overpayment. Refund of interest is shown under current law, proposed HB 226 if simply treated as an overpayment, and compared to the interest payable under HB 226 where the overpayment is a correction in an assessment.

	<u>Current Law</u>	^{SB161} <u>HB-226- Overpayment</u>	^{SB161} <u>HB-226- Correction</u>
Interest from 10/1/91 to 3/31/93 on \$1,000,000	\$176,783	\$82,621	\$176,783
Less: State Short Term Investment Earning Rate on \$1,000,000 from 10/1/91 to 3/31/93	<u>\$ 55,308</u>	<u>\$55,308</u>	<u>\$ 55,308</u>
<u>Cost To State</u>	<u>\$121,475</u>	<u>\$27,313</u>	<u>\$121,475</u>

**DEPARTMENT OF REVENUE
INTEREST RATES ON OVERPAYMENTS/CORRECTIONS/EARNINGS
CURRENT LAW AND PROPOSED SB 161**

CURRENT LAW:

<u>Period</u>	<u>Discount Rate</u>	<u>Statutory Addition</u>		<u>Overpayment Rate- Greater Of</u>
10/1/91	5%	5%	=	10% or 11%
01/1/92	3.5%	5%	=	8.5% or 11%
04/1/92	3.5%	5%	=	8.5% or 11%
07/1/92	3.5%	5%	=	8.5% or 11%
10/1/92	3.0%	5%	=	8.0% or 11%
01/1/93	3.0%	5%	=	8.0% or 11%

HB 226 (SECTION 3):

<u>Period</u>	<u>Discount Rate</u>	<u>Statutory Addition</u>		<u>Overpayment Rates</u>	
				<u>Normal</u>	<u>Correction</u>
10/1/91	5%	2%	=	7.0%	or 11%
01/1/92	3.5%	2%	=	5.5%	or 11%
04/1/92	3.5%	2%	=	5.5%	or 11%
07/1/92	3.5%	2%	=	5.5%	or 11%
10/1/92	3.0%	2%	=	5.0%	or 11%
01/1/93	3.0%	2%	=	5.0%	or 11%

**STATE INVESTMENT EARNING
RATE-SHORT TERM-EQUALS
DISCOUNT RATE - APPROX.:**

<u>Period</u>	<u>Discount Rate</u>
10/1/91	5%
01/1/92	3.5%
04/1/92	3.5%
07/1/92	3.5%
10/1/92	3.0%
01/1/93	3.0%

QUESTIONS AND ANSWERS

Re: SB - 161

Q: What was the reason for proposing this bill?

A: There were two basic reasons. The portion of the bill (Sec. 1, 3, & 5), related to interest on pre and post judgment interest is proposed because the current rate fixed by statute is 10.5% annual interest. This amount is arbitrary and is not related to financial market interest rates. The other provisions (Sec. 2 and 3), are proposals to close loopholes that allow certain taxpayers to overpay taxes and then receive a refund plus interest above market rates.

Q: How will the pre and post judgment interest provisions work?

A: The bill would allow prejudgment interest from the time a lawsuit is filed until the court enters judgment. Prejudgment interest would be based on the sale of federal Treasury Bills (T-Bills) in the week prior to filing a lawsuit. After judgment a different interest rate would apply based on the sale of T-Bills the week before the court enters judgment.

Q: Isn't this rather complicated?

A: No. The interest rate provisions were taken in large part from existing interest rate provisions in federal law. The provisions were designed to be simple and easy to use.

Q: O.K., if you say so, but how will it work?

A: Let's say a business owner ships \$1000 worth of merchandise to an individual who refuses to pay. A lawsuit commences on January 1, 199X. The week before January 1, 199X, the interest rate for T-Bills is 5%. The lawsuit goes on for two years until January 1, 199Y, when the court enters judgment in favor of the business owner for \$1000 plus costs, fees, and interest. The business owner will receive prejudgment interest for two years at 5% simple interest on the \$1000 in addition to costs and fees (which are determined separately).

Q: That's prejudgment interest, but what about interest after a judgment?

- A. Well, lets continue with the situation above. Assume that the T-Bill interest rate the week before the judgment was entered was 6%. The business owner would be entitled to post judgment interest on the entire sum owing (\$1000 + interest @ 5% + costs and fees) at the rate of 6% annually, until satisfied.
- Q. Is this going to be difficult for the average person?
- A. Not really. The current system is a bit easier because only one interest calculation is required. But, under the new system the methodology is still the same, the only factor that will change is the interest rates.
- Q. So, the methodology's the same, the calculations are just done twice with a market interest rate?
- A. Exactly.
- Q. Where do you get the interest rate?
- A. The bill proposes that the Alaska Court System shall periodically distribute notice of the interest rate. One person from the court system can call the federal treasury department to get the interest rate. It's easy, in fact the federal government has a toll free number where you can obtain the rate of interest. The court system can then distribute the interest rate information to each clerks office. It's possible that the court system can fax out the rate each week. If the court system uses a programmed, late-night broadcast fax to sent out the rate, it shouldn't cost much either. In any event, every court clerk's office will have a clipboard or posting of the weekly interest rates available for the public, judges and lawyers.
- Q. Is this proposal different from the current system in any other way?
- A. Yes, in several respects. Besides changing the interest rate, the bill clearly requires payment of both pre and post judgment interest. The bill also provides that a prevailing party receives prejudgment interest from the time when a lawsuit is filed and a summons is served on the other side. This is different than the current case where prejudgment interest can be awarded from the time a demand for compensation is made.
- Q: I'm not sure I follow that -- demand for what?
- A: Well, lets say you own a car dealership. Someone walks in to check out the new "BELCHFIRE 400." They slip on

your walkway and write a letter demanding millions. Two years later (the day before the statute of limitation runs,) they sue. A year later you're served with a summons. Three years later they obtain a judgment for \$10,000 against you. Under current law, they can probably receive interest at 10.5% annually for six years. The bill would provide payment of prejudgment interest based on market rates for three years.

Q: So who benefits from this bill?

A: Everyone, at least in theory. An artificial interest rate set arbitrarily by the legislature ill serves the public. Financial resources are systematically transferred via lawyers and judges to people who obtain judgments without regard to market rates. In practice, state agencies that are required to pay judgments will certainly save money so long as T-Bill interest rates stay below 10.5%. If the republic experiences a protracted period of inflation like the 1970's, it is conceivable that agencies would pay more than 10.5% annually interest.

Q. Whoa! You mean the state might have to pay more than 10.5% annual interest on judgments?

A: Sure. If the interest rate for T-Bill sales goes up, up, up, and eventually exceeds 10.5%. Remember, this is a market rate bill without a floor or ceiling. But that's acceptable--what's good sauce for a recessionary goose is also acceptable for the inflationary gander.

Q. One final question about the pre and post interest rate proposal. A lot of contracts have interest rates built into the deal. Does this bill change that?

A. No. Anyone can lawfully contract for a specific interest rate or no interest rate at all. The only thing people can't do is contract for a rate in excess of the maximum rate allowed by law.

Q: Now, about the proposal in section 2 -- the stuff about "royalty oil" and "net profit" -- does this impact the average business?

A: No, only business' required to make royalty oil, net profit share payments.

Q: This won't affect someone running a gas station in Spenard?

A: No.

- Q: So, Section 2 has a narrow application designed to close unintended investment opportunity loopholes in the current law?
- A: That's correct
- Q: What about Section 3?
- A: Application of this section is broader than Section 2. Persons and organizations that owe taxes to the state are prevented from depositing taxes as an "investment" with the state in a fashion similar to Section 2. However, if the state requires payment based on an assessment that turns out to be too high, the taxpayer receives a refund with interest calculated at a higher rate.
- Q. So, if the State's assessment is wrong and someone pays the tax assessment, they may get a higher interest rate on the refunded portion of their tax bill.
- A. That's my understanding.

FISCAL NOTE

Revision Date: 03/04/93
Title: Interest Rates on Judgements

Department Affected: DOT&PF
BRU:

Sponsor: Governor
Requestor:

Component:
Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS

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

Estimate of current year (FY93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Jeffrey C. Ottesen

Phone: 465-2951

Division: Engineering & Operations Standards

Date: March 4, 1993

Approved by Commissioner: *Frank G. Tulin*
Frank G. Tulin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: March 4, 1993

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FISCAL NOTE

No. 3

STATE OF ALASKA
1993 LEGISLATIVE SESSION

B. Bill Version: SB161

(S) Publish Date: 3-12-93

Revision Date:
Title: Rates of Interest on Judgements and Tax Overpayments

Dept. Affected: Revenue
BRU: Revenue Operations
Component: Oil & Gas Audit & Income & Excise

Sponsor: Governor
Requestor: Governor

COMPONENT SERIAL NO. 115 & 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
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						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: Chuck Logsdon
Division: Oil & Gas Audit Division
Approved by Commissioner: Darrel J. Rexwinkel
Agency: Revenue

Phone: 276-1363 ext. 265
Date: 3/2/93
Date: 3/2/93

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ANALYSIS OF REDUCED INTEREST FOR OVERPAYMENTS OF TAXES, ROYALTIES AND NET PROFIT SHARES

This legislation would reduce the interest rate paid by the State for voluntary overpayment of taxes, royalty or net profit shares. The interest rate currently paid is 5 percentage points above the federal reserve discount rate to member banks. This legislation would reduce that to 2 percentage points above the federal reserve rate.

The revenue impact of this legislation would be determined by the savings that will result from the difference which would be paid under the current low interest rates rather than previously prescribed minimum interest rate. The current minimum interest paid could be considered an attractive investment in today's economy. The savings in interest payments on a \$1 million voluntary overpayment for a single fiscal year could range from \$32.2 to \$129.3 depending upon the interest rates at the time.

FISCAL NOTE

No. 2

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SB 161

(S) Publish Date: 3-12-93

Revision Date: _____

Title: 'An act relating to interest rates.'

Sponsor: _____

Requestor: Governor

Department Affected: Administration

BRU: Risk Management

Component: Risk Management

COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

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

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

Estimate of current year (FY93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

See Attached

Prepared by: Donald Hitchcock, Director
Division: Risk Management

Phone: 465-2180
Date: _____

Approved by Commissioner: Nancy Bear Usher
Agency: Administration

Date: 3/21/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS: (continued)

While it is not possible to accurately project future fiscal impacts on such subjective figures as anticipated claims settlement payments on claims outstanding for more than one year, the State could realize fiscal savings with the passage of this legislation. Of course, if Treasury Bill yield rates were to increase due to inflationary or other pressures, the State rate would react accordingly. Since all Division of Risk Management funding is computed and collected by allocation formula and through Reimbursable Service Agreements (RSAs), any savings in costs would be reflected in 'cost of risk' billings to the agencies affected.

FISCAL NOTE

No. 1

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SB161

(S) Publish Date: 3-12-93

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to interest rates and calculation of interest under certain judgments and decrees and on ref..." BRU: Finance
 Sponsor: Rules Committee Component: Finance
 Requestor: Governor COMPONENT SERIAL NO. 59

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

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

POSITIONS

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

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Don Wanie, Director Phone: 465-2240
 Division: Finance Date: _____

Approved by Commissioner: Nancy Bear Usher Date: 3/12/93
 Agency: Department of Administration

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8-GS1024E
Luckhaupt
3/29/93

CS FOR SENATE BILL NO. 161(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to interest rates and calculation of interest under certain
2 judgments and decrees and on refunds of certain taxes, royalties, or net profit
3 shares; and providing for an effective date."

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

5 * Section 1. AS 09.30.070 is repealed and reenacted to read:

6 Sec. 09.30.070. INTEREST. (a) Interest shall accrue on a money judgment
7 in a civil case. Interest shall be calculated from the date of entry of the judgment, at
8 a rate equal to the coupon issue yield equivalent, as determined by the secretary of the
9 United States Treasury, of the average accepted auction price for the last auction of
10 52-week United States Treasury bills settled immediately before the date of the
11 judgment, except that a judgment or decree founded on a contract in writing, providing
12 for an interest rate not exceeding the legal rate of interest for that type of contract,
13 bears interest at the rate specified in the contract if the interest rate is set out in the
14 judgment or decree.

Handwritten notes on the right margin:
1. This is a bill to
change the way interest is
calculated on judgments.

Handwritten initials: ML

1 (b) Except when the court finds that the parties have agreed otherwise,
2 prejudgment interest shall be awarded on a money judgment in a civil case.
3 Prejudgment interest accrues from the date process is served on the defendant or a
4 counterclaim or cross-claim is served on the opposing party if no summons is issued,
5 until the entry of judgment. Prejudgment interest shall be calculated at a rate equal
6 to the coupon issue yield equivalent, as determined by the secretary of the United
7 States Treasury, of the average accepted auction price for the last auction of 52-week
8 United States Treasury bills settled immediately before the issuance of the summons
9 or filing of the counterclaim or cross-claim.

10 (c) Interest shall be computed daily to the date of payment and may not be
11 compounded.

12 (d) The Alaska Court System shall periodically distribute notice of the interest
13 rate under this section and any changes in it.

14 * Sec. 2. AS 29.45.500(b) is amended to read:

15 (b) If, in payment of taxes legally imposed, a remittance by a taxpayer through
16 error or otherwise exceeds the amount due, and the municipality, on audit of the
17 account in question, is satisfied that this is the case, the municipality shall refund the
18 excess to the taxpayer. The refund of the excess must include payment of [WITH]
19 interest on the excess tax payment computed from the date the municipality
20 received the excess tax payment to the date the municipality paid the refund at
21 a rate equal to the average percent of the return on all investments of the
22 municipality during the three-month period ending on the date the refund is made
23 [AT EIGHT PERCENT FROM THE DATE OF PAYMENT]. A claim for refund filed
24 one year after the due date of the tax is forever barred.

25 * Sec. 3. AS 38.05.135(e) is repealed and reenacted to read:

26 (e) If a royalty or net profit share payment to which the state is entitled under
27 AS 38.05.135 - 38.05.181 is overpaid, the amount overpaid bears interest in a calendar
28 quarter at the rate of two percentage points above the annual rate charged member
29 banks for advances by the 12th Federal Reserve District as of the first day of that
30 calendar quarter, compounded quarterly as of the last day of that quarter. However,
31 if the overpayment is the result of a correction made by the department, the amount

1 overpaid bears interest at the rate and in the manner provided in (d) of this section.

2 * Sec. 4. AS 43.05.280(a) is repealed and reenacted to read:

3 (a) If a tax levied under this title is overpaid, the amount overpaid bears
4 interest in a calendar quarter at the rate of two percentage points above the annual rate
5 charged member banks for advances by the 12th Federal Reserve District as of the first
6 day of that calendar quarter, compounded quarterly as of the last day of that quarter.
7 However, if the overpayment is the result of the correction of an assessment or return
8 made by the department, the amount overpaid bears interest at the rate and in the
9 manner provided in AS 43.05.225(1).

10 * Sec. 5. Beginning on the effective date of this Act, postjudgment interest accrues under
11 judgments or decrees in civil cases entered on or after the effective date of this Act, at the rate
12 and in the manner specified in AS 09.30.070 as repealed and reenacted by sec. 1 of this Act.
13 Postjudgment interest accrues under judgments or decrees in civil cases entered before the
14 effective date of this Act at the rate and in the manner specified under law in effect at the
15 time that judgment or decree was entered.

16 * Sec. 6. For claims or causes of action in civil cases for which judgment has not been
17 entered before the effective date of this Act, prejudgment interest accrues before the effective
18 date of this Act at the rate and in the manner specified under law in effect at the time that
19 claim or cause of action accrued. After the effective date of this Act, prejudgment interest
20 accrues on that claim or cause of action at the rate and in the manner specified in
21 AS 09.30.070 as repealed and reenacted by sec. 1 of this Act.

22 * Sec. 7. Beginning on the effective date of this Act, interest accrues on overpayments of
23 royalties, net profit share payments, taxes, and on interest accrued on them before the effective
24 date of this Act, at the rates and in the manner specified in AS 29.45.500(b), as amended by
25 sec. 2 of this Act, in AS 38.05.135(e), as repealed and reenacted by sec. 3 of this Act, and
26 in AS 43.05.280(a), as repealed and reenacted by sec. 4 of this Act.

27 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

MUNICIPALITY OF ANCHORAGE
1993 LEGISLATIVE PROGRAM

LEGISLATIVE ISSUES

TITLE: A.S.29.45.500(b) Paying Interest on Tax Remittance Refunds

To reduce expenditures by eliminating the requirement to pay interest on certain overpayments made by taxpayers.

Amend A.S.29.45.500(b): "If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the municipality, on audit of the account in question, is satisfied that this is the case, the municipality shall refund the excess to the taxpayer with interest from the date of payment at a rate equal to the average percent of return on the municipality's investments during the three months prior to the date the refund is made. [AT EIGHT PERCENT FROM THE DATE OF PAYMENT]."

As of November 18, 1992, the Municipality paid in excess of \$37,000 in interest on tax overpayments. We estimate that 30% of this amount was through taxpayer errors, i.e. duplicate remittances by different parties, e.g., lending institutions and individuals. We feel that the Municipality should not be required to pay interest on what is essentially a voluntary overpayment by the taxpayer.

At current rates of interest, this requirement technically allows taxpayers to "bank" funds with the Municipality and receive a higher than market rate of return.

Contact: Jerry Anderson, Chief Fiscal Officer
Phone: 343-8610

(33)

8-GS1024V ✓
Luckhaupt
4/6/93

CS FOR SENATE BILL NO. 161(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to interest rates and calculation of interest under certain
2 judgments and decrees and on refunds of certain taxes, royalties, or net profit
3 shares; and providing for an effective date."

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

5 * Section 1. AS 09.30.070 is repealed and reenacted to read:

6 Sec. 09.30.070. INTEREST ON JUDGMENTS; PREJUDGMENT INTEREST.

7 (a) Interest shall accrue on judgments and decrees for the payment of money. Interest
8 shall be calculated from the date of entry of the judgment or decree, at the rate
9 determined by the commissioner of revenue under (b) of this section, except that a
10 judgment or decree founded on a contract in writing, providing for an interest rate not
11 exceeding the legal rate of interest for that type of contract, bears interest at the rate
12 specified in the contract if the interest rate is set out in the judgment or decree.

13 (b) Not later than December 15 of each year the commissioner of revenue shall
14 determine the interest rate to be applied to judgments and decrees for the payment of

1 money for the following calendar year. The rate shall be set at an amount equal to the
2 average coupon issue yield equivalent, as determined by the secretary of the United
3 States Treasury, of the average accepted auction price for auctions of 52-week United
4 States' Treasury bills settled during the immediate December through November before
5 the determination. The commissioner of revenue shall communicate this rate to the
6 administrative director of the Alaska court system and to the revisor of statutes. The
7 Alaska court system shall distribute notice of the interest rate.

8 (c) Except when the court finds that the parties have agreed otherwise,
9 prejudgment interest shall be awarded on a money judgment in a civil case.
10 Prejudgment interest accrues from the date process is served on the defendant or a
11 counterclaim or cross-claim is served on the opposing party if no summons is issued,
12 until the entry of judgment. Prejudgment interest shall be calculated at the rate
13 determined by the commissioner of revenue under (b) of this section for the calendar
14 year when the summons was issued or the counter claim or cross-claim was filed.

15 (d) Interest shall be computed daily to the date of payment and may not be
16 compounded.

17 * Sec. 2. AS 29.45.500(b) is amended to read.

18 (b) If, in payment of taxes legally imposed, a remittance by a taxpayer through
19 error or otherwise exceeds the amount due, and the municipality, on audit of the
20 account in question, is satisfied that this is the case, the municipality shall refund the
21 excess to the taxpayer. The refund of the excess shall include payment of [WITH]
22 interest on the excess tax payment computed from the date the municipality
23 received the excess tax payment to the date the municipality paid the refund at
24 a rate equal to the average percent of the return on all investments of the
25 municipality during the three-month period ending on the date the refund is made
26 [AT EIGHT PERCENT FROM THE DATE OF PAYMENT]. A claim for refund filed
27 one year after the due date of the tax is forever barred.

28 * Sec. 3. AS 38.05.135(e) is repealed and reenacted to read:

29 (e) If a royalty or net profit share payment to which the state is entitled under
30 AS 38.05.135 - 38.05.181 is overpaid, the amount overpaid bears interest in a calendar
31 quarter at the rate of two percentage points above the annual rate charged member

1 banks for advances by the 12th Federal Reserve District as of the first day of that
2 calendar quarter, compounded quarterly as of the last day of that quarter. However,
3 if the overpayment is the result of a correction made by the department, the amount
4 overpaid bears interest at the rate and in the manner provided in (d) of this section.

5 * Sec. 4. AS 43.05.280(a) is repealed and reenacted to read:

6 (a) If a tax levied under this title is overpaid, the amount overpaid bears
7 interest in a calendar quarter at the rate of two percentage points above the annual rate
8 charged member banks for advances by the 12th Federal Reserve District as of the first
9 day of that calendar quarter, compounded quarterly as of the last day of that quarter.
10 However, if the overpayment is the result of the correction of an assessment or return
11 made by the department, the amount overpaid bears interest at the rate and in the
12 manner provided in AS 43.05.225(1).

13 * Sec. 5. AS 45.45.010(a) is amended to read:

14 (a) The rate of interest in the state is the rate determined annually by the
15 commissioner of revenue under AS 09.30.070 [10.5 PERCENT A YEAR] and no
16 more on money after it is due except as provided in (b) of this section.

17 * Sec. 6. Beginning on January 1, 1994, postjudgment interest accrues under judgments or
18 decrees in civil cases entered on or after January 1, 1994, at the rate and in the manner
19 specified in AS 09.30.070 as repealed and reenacted by sec. 1 of this Act. Postjudgment
20 interest accrues under judgments or decrees in civil cases entered before January 1, 1994, at
21 the rate and in the manner specified under law in effect at the time that judgment or decree
22 was entered.

23 * Sec. 7. For claims or causes of action in civil cases for which judgment has not been
24 entered before January 1, 1994, prejudgment interest accrues before January 1, 1994, at the
25 rate and in the manner specified under law in effect at the time that claim or cause of action
26 accrued. On or after January 1, 1994, prejudgment interest accrues on that claim or cause of
27 action at the rate and in the manner specified in AS 09.30.070 as repealed and reenacted by
28 sec. 1 of this Act.

29 * Sec. 8. Beginning on the effective date of this section, interest accrues on overpayments
30 of royalties, net profit share payments, taxes, and on interest accrued on them before the
31 effective date of this Act, at the rates and in the manner specified in AS 29.45.500(b), as

1 amended by sec. 2 of this Act, in AS 38.05.135(e), as repealed and reenacted by sec. 3 of this
2 Act, and in AS 43.05.280(a), as repealed and reenacted by sec. 4 of this Act.

3 * Sec. 9. Notwithstanding AS 09.30.070, the commissioner of revenue, by December 15,
4 1993, shall determine the interest rate to be applied on judgments and decrees by the method
5 provided in AS 09.30.070, as amended by sec. 1 of this Act, for calendar year 1994, and shall
6 communicate that determination to the administrative director of the Alaska court system and
7 the revisor of statutes.

8 * Sec. 10. Except for secs. 1, 6, and 7 of this Act, this Act takes effect immediately under
9 AS 01.10.070(c).

10 * Sec. 11. Sections 1, 6, and 7 of this Act take effect January 1, 1994.

Wickham
4-7-93
8-GS1024J

CS FOR SENATE BILL NO. 161(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to interest rates and calculation of interest under certain
2 judgments and decrees and on refunds of certain taxes, royalties, or net profit
3 shares; and providing for an effective date."

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8 shall be calculated from the date of entry of the judgment or decree, at the rate
9 determined by the commissioner of revenue under (b) of this section, except that a
10 judgment or decree founded on a contract in writing, providing for an interest rate not
11 exceeding the legal rate of interest for that type of contract, bears interest at the rate
12 specified in the contract if the interest rate is set out in the judgment or decree.

13 (b) Not later than December 15 of each year the commissioner of revenue shall
14 determine the interest rate to be applied to judgments and decrees for the payment of

1 money for the following calendar year. The rate shall be set at an amount equal to the
2 average coupon issue yield equivalent, as determined by the secretary of the United
3 States Treasury, of the average accepted auction price for auctions of 52-week United
4 States' Treasury bills settled during the immediate December through November before
5 the determination, rounded to the nearest 1/100 percent. The commissioner of revenue
6 shall communicate this rate to the administrative director of the Alaska court system
7 and to the revisor of statutes. The Alaska court system shall distribute notice of the
8 interest rate.

9 (c) Except when the court finds that the parties have agreed otherwise,
10 prejudgment interest shall be awarded on a money judgment. Prejudgment interest
11 accrues from the date of injury or harm. Prejudgment interest shall be calculated at
12 the rate determined by the commissioner of revenue under (b) of this section for the
13 calendar year when the initial summons was issued or the initial counter claim or
14 cross-claim was filed.

15 (d) Interest shall be computed daily to the date of payment and may not be
16 compounded.

17 * Sec. 2. AS 29.45.500(b) is amended to read:

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19 error or otherwise exceeds the amount due, and the municipality, on audit of the
20 account in question, is satisfied that this is the case, the municipality shall refund the
21 excess to the taxpayer. The refund of the excess shall include payment of [WITH]
22 interest on the excess tax payment computed from the date the municipality
23 received the excess tax payment to the date the municipality paid the refund at
24 a rate equal to the average percent of the return on all investments of the
25 municipality during the three-month period ending on the date the refund is made
26 [AT EIGHT PERCENT FROM THE DATE OF PAYMENT]. A claim for refund filed
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1 banks for advances by the 12th Federal Reserve District as of the first day of that
 2 calendar quarter, compounded quarterly as of the last day of that quarter. However,
 3 if the overpayment is the result of a correction made by the department, the amount
 4 overpaid bears interest at the rate and in the manner provided in (d) of this section.

5 * Sec. 4. AS 43.05.280(a) is repealed and reenacted to read:

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 7 interest in a calendar quarter at the rate of two percentage points above the annual rate
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 9 day of that calendar quarter, compounded quarterly as of the last day of that quarter.
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 19 AS 09.30.070 as repealed and reenacted by sec. 1 of this Act. Postjudgment interest accrues
 20 under judgments or decrees entered before January 1, 1994, at the rate and in the manner
 21 specified under law in effect at the time that judgment or decree was entered.

22 * Sec. 7. For claims or causes of action for which judgment has not been entered before
 23 January 1, 1994, prejudgment interest accrues before January 1, 1994, at the rate and in the
 24 manner specified under law in effect at the time that claim or cause of action accrued. On
 25 or after January 1, 1994, prejudgment interest accrues on that claim or cause of action at the
 26 rate and in the manner specified in AS 09.30.070 as repealed and reenacted by sec. 1 of this
 27 Act.

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 29 of royalties, net profit share payments, taxes, and on interest accrued on them before the
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8 AS 01.10.070(c).

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#1 adopted

amend #2 adopted

amend #3

8-GS1024J
Luckhaupt
4/6/93

CS FOR SENATE BILL NO. 161(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

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10 judgment or decree founded on a contract in writing, providing for an interest rate not
11 exceeding the legal rate of interest for that type of contract, bears interest at the rate
12 specified in the contract if the interest rate is set out in the judgment or decree.

13 (b) Not later than December 15 of each year the commissioner of revenue shall
14 determine the interest rate to be applied to judgments and decrees for the payment of

#2 adopted → "rounded" to nearest 100th percent.

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#3 Remove

delete
OK
not needed
criminal judgment

same

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New Sec.
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 delete

delete #1

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10 * Sec. 11. Sections 1, 6, and 7 of this Act take effect January 1, 1994.

8-GS1024J ✓
Luckhaupt
4/6/93

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OK. in
SPLAW

*rounded to the nearest one hundredth percent.
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John

Instead of
putting money
in savings at
3% or less - or pay
your property taxes
and you get 10.5
for the period held
by the City.



Forget it Buddy —

you're an

Engineer —

albeit a range 10!



Senate Committee On
State Affairs

Does AG's
office have a
problem with the
^{1st} concern of the
Court system —
Page 1, line 7 ?



Senate Committee On
State Affairs

What about having
interest set annually?

or semi-annually
quarterly

SB

168

SENATOR LOREN LEMAN'S OFFICE

TELECOPIER COVER SHEET

State Capitol, Juneau, Alaska 99811

907-465-2095 (office)

907-465-3810 (fax)

ATTN: Jon McKay FAX: 278-6328

OFFICE: _____ PHONE: 276-5231

FROM: Portia Babcock DATE/TIME: 3/23/93 4³⁰ pm

COMMENTS: _____

NUMBER OF PAGES (including cover sheet):

33

THE ALASKA
JOURNAL OF COMMERCE

TO: Senator Loren Leman
Attn: Portia Babcock FAX: 465-3810

FROM: Robert J. Gould FAX: 276-4428

SUBJECT: SB 168
"An Act relating to newspapers of general circulation"

Attached is a listing of circulation figures for Alaska daily, weekly or bi-weekly newspapers as reported in the 1992 Alaska Media Directory to which John McKay referred at yesterday's hearing. Since some of these papers use controlled (i.e., free) circulation, the attached figures may not necessarily meet the proposed paid circulation requirement of SB 168 for certain papers.

For reference, I am also attaching the advertising costs incurred by all executive branch departments among Alaskan newspapers for FY 1989 as reported in the November 1990 OMB report.



<u>Paper</u>	<u>Circulation</u>
Alaska Journal of Commerce	3,200
Aleutian Eagle	3,800
All Alaska Weekly	4,000
Anchorage Daily News	79,938
The Aniak Paper	250
Arctic Sounder	1,900
Arctic Star	7,000
Barrow Sun	1,000 +
Borough Post	1,000 +
Bristol Bay News	3,000
Bristol Bay Times	3,000
Capital City Weekly	16,000
Chilkat Valley News	1,100
Chugiak-Eagle River Star	4,250
Copper River Country Journal	1,500
Cordova Times	1,750
Daily Sitka Sentinel	2,905
The Delta Paper	1,300
Eagles Call	2,500
Fairbanks News-Miner	19,700
Frontiersman	6,600
Homer News	4,000
Island News	1,600
Juneau Empire	8,000
Ketchikan Daily News	4,700
Kodiak Daily Mirror	3,800
Mukluk News	700
Nome Nuggett	3,200
North Pole Independent	3,000
The Northern Light	5,000
Peninsula Clarion	5,000
Petersburg Pilot	1,800
Seward Phoenix Log	2,000
Skagway News	750
Sourdough Sentinel	7,500
Tundra Drums	6,300
Valdez Pioneer	4,200
Valdez Vanguard	1,800
Valley Sun	10,000
Village Voice	4,300
Wrangell Sentinel	1,500

APPENDIX 3

ADVERTISING COSTS BY VENDOR

Newspaper	FY 1989 Costs
All Alaska Weekly	\$ 5,175
Anchorage Daily News	277,490
Anchorage Times	110,687
Advocate	653
Air Alaska	1,004
Alaska Journal of Commerce	10,419
Aleutian Advocate	656
Aleutian Eagle	16,552
Alaska Fisherman	4,346
Arctic Sounder	5,199
Barrow Sun	10,632
Bristol Bay News	6,768
Bristol Bay Times	9,992
Borough Post	4,678
Capital City Weekly	3,437
Chilkat Valley News	3,371
Chugiak-Eagle River Star	4,703
Copper Valley View	5,052
Cordova Times	5,839
Sitka Sentinel	17,117
Delta Paper	4,981
Fairbanks Daily News-Mirror	193,363
Frontiersman	20,523
Homer News	12,587
Island News	5,081
Journal of Commerce	6,254
Juneau Empire	205,122
Ketchikan Daily News	54,999
Kodiak Daily Mirror	14,556
Kodiak Fisherman	319
Alaska Rural Newspapers*	1,955
Mukluk News	3,005
Nome Nugget	21,966

APPENDIX 3

NPP Publishing [ⓐ]	1,480
Pacific Rim Publishing [*]	3,383
Peninsula Clarion	29,172
Petersburg Pilot	9,027
Ptarmigan Ptimes	700
Senior Voice	1,523
Skagway News	535
Seward Phoenix Log	7,190
Tundra Drums	25,586
Tundra Times	38,267
Valley Sun	4,584
Valdez Vanguard	8,344
Wrangell Sentinel	6,910
Alaska Subtotal	<u>1,199,909</u>
New York Times	1,553
Portland Daily Journal	15,272
Portland Observer	405
Portland Oregonian	2,004
Seattle Times	18,560
Wall Street Journal	4,123
Washington Post	1,532
Non-Alaska Subtotal	43,457
TOTAL	<u><u>\$ 1,243,366</u></u>

Source: AKSAS

* Air Alaska, Alaska Journal of Commerce, and others.

Barrow Sun, Borough Post, Aleutian Eagle, etc.

ⓐ Cordova Times and Valdez Vanguard.

Note: Appendices 2 and 3 totals are not equal, apparently due to AKSAS entry errors or the inclusion in Appendix 3 data of subscription costs.

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

MEMORANDUM

March 12, 1993

SUBJECT: Considerations in draft relating to newspapers of general circulation (Work Order No. 8-LS0838VA)

TO: Senator Loren Leman
Attn: Portia

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the draft of the bill that you requested relating to newspapers of general circulation.

The two-year publication requirement makes your bill vulnerable to an equal protection challenge. The outcome of a challenge is unclear. To reduce the chances of a challenge succeeding, the legislative record on the bill should indicate that the two-year period, as opposed to, for example, a one-year period, is needed to ensure that the newspaper is sufficiently established. The record should also indicate the reasons for this conclusion.

With regard to the declaration that a publication qualifies as a newspaper of general circulation for a particular area, you may wish to consider having an executive branch agency provide this service. However, please keep in mind that, whether the executive or judicial branch provides this service, the determination will have to be made for each specific statute due to the "relevant area" factor. In other words, the publication cannot make one request for a determination and thereafter be considered a "newspaper of general circulation" for all the statutes. Since the definition of "newspaper of general circulation" is tied to a "relevant area," each determination will have to be made based on the relevant area that the governing statute or regulation is addressing.

Regulations are covered by the definition in this bill because AS 01.10.060 applies to the "laws of the state," and "laws" includes regulations.

If I may be of further assistance, please advise.

TLB:lmb
93-070.lmb

Sec. 01.10.055. Residency. (a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

(b) A person demonstrates the intent required under (a) of this section

(1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and

(2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state. (§ 1 ch 67 SLA 1983)

NOTES TO DECISIONS

Jurisdiction over divorce action. — This section does not affect the common-law rule that Alaska courts have jurisdiction over a divorce action when one of the parties is domiciled in Alaska, where "do-

micile" is defined as physical presence plus an intent to remain permanently. *Perito v. Perito*, 756 P.2d 895 (Alaska 1988).

Sec. 01.10.060. Definitions. In the laws of the state, unless the context otherwise requires,

(1) "action" includes any matter or proceeding in a court, civil or criminal;

(2) "daytime" means the period between sunrise and sunset;

(3) "month" means a calendar month unless otherwise expressed;

(4) "municipality" means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality;

(5) "nighttime" means the period between sunset and sunrise;

(6) "oath" includes affirmation or declaration;

(7) "peace officer" means

(A) an officer of the state troopers;

(B) a member of the police force of a municipality;

(C) a village public safety officer;

(D) a United States marshal or deputy marshal; and

(E) an officer whose duty it is to enforce and preserve the public peace;

(8) "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person;

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(9) "personal property" includes money, goods, chattels, things in action, and evidences of debt;

(10) "property" includes real and personal property;

(11) "real property" is coextensive with land, tenements, and hereditaments;

(12) "signature" or "subscription" includes the mark of a person who cannot write, with the name of that person written near the mark by a witness who writes the witness's own name near the name of the person who cannot write; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names to the sworn statement;

(13) "state" means the State of Alaska unless applied to the different parts of the United States and in the latter case it includes the District of Columbia and the territories;

(14) "writing" includes printing. (§ 4 ch 62 SLA 1962; am § 2 ch 66 SLA 1965; am § 10 ch 117 SLA 1968; am § 19 ch 74 SLA 1985; am § 1 ch 60 SLA 1990)

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Revisor's notes. — Reorganized in 1985 to alphabetize the defined terms.

Cross references. — For additional definition of "peace officer", see AS 11.81.900(b); for listing of peace officers for purposes of the Fish and Game Code, see AS 16.05.150; for a definition of "police officer", see AS 18.65.290.

Effect of amendments. — The 1990 amendment rewrote paragraph (7).

Opinions of attorney general. — The statutory framework of the Alaska Statutes viewed as a whole contemplates that for any publicly employed law enforcement officer to be considered a peace officer within the meaning of present paragraph (7), he or she must be empowered with a full range of police duties and authority and must be currently functioning on essentially a full-time basis in that role. September 18, 1977, Op. Att'y Gen.

Law enforcement officers within the category "peace officers" as used in present paragraph (7) include, but are not limited to, state troopers, fish and wildlife protection officers and police officers employed by police departments of incorporated municipalities. September 18, 1977, Op. Att'y Gen.

Law enforcement officers with limited police authority with respect to specific statutes or ordinances are not police officers and are not necessarily peace officers either, at least within the meaning of present paragraph (7). September 18, 1977, Op. Att'y Gen.

Comparing the classification of "peace officer" in present paragraph (7) with that of "police officer," it is apparent that police officers, as defined in AS 18.65.290(2), are always peace officers since they have full police duties that are exercised on a full-time basis. However, the converse of this proposition can never be the case; that is, peace officer status does not automatically vest one with the status of a police officer since peace officers are not necessarily employees of a police department and do not necessarily have the power to enforce all the penal, traffic or highway laws of the state. September 18, 1977, Op. Att'y Gen.

Because AS 11.55.020 (now AS 11.61.220) excepts only "peace officers" from the general prohibition against carrying concealed weapons, other persons, including state employees charged with limited law enforcement duties, unless a peace officer within the meaning of present paragraph (7), may not carry concealed weapons. December 22, 1977, Op. Att'y Gen.

A comparison of the language of AS 18.65.010(b), which describes the general powers and duties of a specially commissioned officer, with that of AS 18.65.080, which describes the powers and duties of commissioned officers of the Department of Public Safety with particular reference to "member" of the state troopers, supports the conclusion that a specially commissioned officer is a "peace officer" for

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POSITION PAPER

TO: Senator Loren Leman
Attn: Portia Babcock (FAX: 465-3810)

FROM: Alaska Journal of Commerce

SUBJECT: SB 168
"An Act relating to newspapers of general circulation"

PURPOSE OF
LEGISLATION: To promote competition within the private sector among
newspapers for publication of legal notices required by state law

DISCUSSION:

Alaska is one of the few (perhaps only) states where publication of legal notices occurs in metropolitan daily newspapers (e.g., The Juneau Empire, The Anchorage Daily News, The Fairbanks News-Miner and The Nome Nugget). In most other jurisdictions, required legal notices are published in daily or weekly newspapers catering in part to legal, banking and real estate professionals that provide the most efficient dissemination of notice at a cost of publication substantially less than that charged by larger circulation metro dailies. In these other jurisdictions, state statutes typically define with specificity the requirements and qualifications for newspapers suitable for public notice. Such statutory qualifications address editorial content, publication schedule, minimum paid circulation and other criteria to ensure that the widest potential audience with interest in public notices may be reached at the most competitive cost.

Currently no such statutory specificity exists in Alaska. Where requirements for publication are stated by law, it is only with the general language of "publication in a newspaper of general circulation." Therefore, definition of "of general circulation" is subject to interpretation by reference to case law precedent and statutory authority in Alaska and other jurisdictions

In the case of certain types of legal notices, in particular default notices pursuant to

real estate foreclosures, this situation has prompted interested Alaskan parties (banks, title companies and attorneys) who are ultra cautious by nature to use only metro dailies for legal notices where qualification of the publishing venue would seem to be unassailable in the event of litigation. In addition, until recently a targeted legal publication alternative has not existed in Alaska unlike most other jurisdictions. The result has been to create de facto monopoly publishing entities in each of Alaska's four judicial districts.

SB 168 would provide the specificity that is currently lacking for qualifying newspapers of general circulation. In so doing, it would establish a needed level of comfort for banks, title companies and attorneys to consider alternatives to the publishing status quo.

At current advertising rates, the cost savings would be substantial. For example, in the Third Judicial District, the Anchorage Daily News charges almost triple the cost of legal advertising compared to the Alaska Journal of Commerce. Presumably, similar cost savings would be available for public sector legal notice advertising as well which would benefit the state's executive branch as well as municipalities.

It is important to note that SB 168 in no way changes the status of existing metro dailies which would continue to qualify as papers of general circulation. It would merely provide statutory certainty that other papers (e.g., The Alaska Journal of Commerce, The Eagle River Star, The Frontiersman) also qualify thereby allowing the legal advertiser additional flexibility to choose the paper best suited for the purpose at the most competitive cost.

Other than the potential public sector cost savings noted above, SB 168 has no fiscal impact.

* RESEARCH MEMORANDUM *

.....

SUBJ: Use of the Alaska Journal of Commerce for the Publication of Legal Notices

DATE: September 22, 1992

.....

ISSUE:

Does the Alaska Journal of Commerce constitute a "newspaper of general circulation" within the meaning of various provisions of law requiring publication of legal notices in such a newspaper?

BACKGROUND:

Since the demise of the Anchorage Times, the rates for legal advertising in the Daily News have increased approximately 50%, or to over twice what comparable ads used to cost in the Times. Rates for legal advertising in the Alaska Journal of Commerce (AJC) are comparable to the rates formerly charged by the Times. Use of the AJC as an alternative forum for publication of legal notices would therefore result in a substantial cost savings, as well as bring competitive market forces to bear on the prices and quality of service offered by the Daily News.

According to information provided by the AJC (see Appendix A), as of August 1, 1992, it had 2,530 paid subscribers. An additional 2,000-3,000 copies are distributed through other channels. Readership is spread across a wide range of professions, trades, and businesses. While focusing primarily on business, legal, and financial news, the AJC also contains articles of general interest, such as would be included in the lead section or Metro section of the Daily News.

ANALYSIS:

Based on the one Alaska Supreme Court opinion to consider the meaning of the phrase "newspaper of general circulation," as well as cases on the issue from other jurisdictions, the AJC does qualify as a newspaper of general circulation.

In Moore vs. State, 553 P.2d 8 (Alaska 1976), the Alaska Supreme Court considered whether the Anchorage Times qualified as a newspaper of general

circulation in the Kachemak Bay area. The Times had a circulation of approximately 130 in the Homer area, out of the population of approximately 3,500. The court held that this number of readers, "albeit small, was not so insignificant that the newspaper would fail to reach a diverse group within the community." 553 P.2d at 22. In reaching this conclusion, the court noted that both qualitative and quantitative aspects were involved in determining whether a newspaper was one of general circulation. Because the Times carried news on a variety of subjects of general interest to the average reader, it satisfied the qualitative aspect. In holding that the Times also satisfied the quantitative aspect of the term "general circulation," the court noted that a statistical analysis would be "most inappropriate because size of readership is only one factor which must be considered in determining whether a particular newspaper is one of general circulation." 553 P.2d at 22, note 21.

The Moore opinion is consistent with cases from other jurisdictions. Unless expressly required by the specific statute in question, no case found holds that publication must take place in the newspaper with the largest circulation within the relevant area. One case specifically notes that interpreting the statute at issue as favoring metropolitan dailies over smaller weekly papers would be "contrary to the established policy of this State [California] which is to encourage competitive enterprise and to proscribe monopolistic tendencies." Petitions of Herald Publishing Company, 313 P.2d 584, 590 (Cal.App. 1957). All of the cases make it clear that, while more than a de minimis number of readers is required, the quantitative aspect of "general circulation" is of less importance than its qualitative aspect. Readership need only be large enough to assure that the desired notice does reach a diverse group within the community, or the specific group affected by the notice in question.

The qualitative aspect of "general circulation" focuses on the substantive content of the paper in question and the diversity of its readership. The newspaper must not be so restricted in content or distribution that it reaches only a narrow class of persons within the community, such as a specific trade group. However, newspapers similar to the AJC, that are devoted primarily to legal and business news, are routinely held to be of general circulation, as long as they contain some items of general interest. See Generally, Annotation, What Constitutes Newspaper of "General Circulation," 24 ALR4th 822, § 5; Shulansky vs. Michaels, 484 P.2d 14 (Ariz.App. 1971); Bankers Trust Co. vs. Terll, 231 NYS 2d 374 (1962); Burak vs. Ditson, 229 N.W. 227 (Iowa 1930). In the Shulansky case, a weekly paper dealing basically with legal and business news, and with a paid circulation of 2,169, was held to be a newspaper of general circulation within the city of Phoenix, Arizona. At that time, Phoenix had a population of over 500,000. The court noted that the newspaper included among its readers a wide range of occupations and businesses, and concluded that the readership was of sufficient size and diversity to give notice to those concerned and to qualify as a newspaper of general circulation in Phoenix. 484 P.2d at 70. In comparison, the AJC has a somewhat larger circulation within a smaller population base, and circulates to the same sort of persons and businesses as did the Arizona paper.

Several other cases were reviewed that dealt with newspapers that appear to have been very similar to the AJC, and nearly all of the cases hold those newspapers to be of general circulation. Bulldog Concrete Forms Sales Corp. vs. Taylor, 195 F.2d 417 (7th Cir. 1952); In re Green, 131 P. 91 (Cal.App. 1913); Baldwin vs. Brown, 224 P. 462 (Cal. 1924). The exceptions involved newspapers that had no circulation at all among those to be affected by the notice published, or which had only a de minimis number of subscribers and no news of general interest. Wahl vs. Hart, 332 P.2d 195 (Ariz. 1958); State ex rel. Yaegar vs. Rose, 114 So. 373 (Fla. 1927). These newspapers are easily distinguished from the AJC. The Alaska Journal of Commerce should therefore be considered a newspaper of general circulation.

SURVEY OF NEWSPAPERS RE: SECOND CLASS MAIL PERMIT

<u>Newspaper</u>	<u>Permit (Y/N)</u>
Anchorage Daily News	Yes
Palmer Frontiersman	Yes
Valley Sun	No
Eagle River Star	Yes
Kodiak Daily Mirror	Yes
Tundra Times	
Valdez Pioneer	Number Not in Service
Barrow Sun	Number Not in Service
Nome Nugget	Yes
Juneau Empire	Yes
Fairbanks News Miner	Yes
Homer News	Yes
Peninsula Clarion	Yes
Kodiak Fisherman	Number Not in Service
Capital City Weekly	Yes
Southeast Alaska Business Journal	Yes
Bristol Bay Times	No
Ketchikan Daily News	Yes
Seward Phoenix Log	Yes
Sitka Senteral	Yes

STATE-BY-STATE COMPARISON OF STATUTES DEFINING NEWSPAPER OF GENERAL CIRCULATION

State	1	2	3	4	5	6	7	8	9	10	11	12	13
AL	X								51 WK			X	
AR			X	1 YR	4 PP/ 5 CL		X	40%	X	50% OF CIR			X
AE									1 YR				
CA				1 YR			X			X	1 YR	1 YR	X
CO	X		X										
CT			X										
DE			X										X
FL													X
ID				78 WK 1 YR	4 PP/ 5 CL				X	200			
IN		X	X	3 YR					3 YR	50%			

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|-------------------------------------|---|
| 1. English | 7. Local/Telegraphic News of General Character |
| 2. Published Daily | 8. Percentage of News Content |
| 3. Published Weekly | 9. Second Class Postal Permit |
| 4. Continuous Publication Existence | 10. Paid Subscriptions |
| 5. Size | 11. Printed at Place of Publication |
| 6. Published Within County | 12. Physical Publication Within Affected Area |
| | 13. Not Intended for Particular Class/Trade or Primarily for Advertising or Legal Notices |

STATE	1	2	3	4	5	6	7	8	9	10	11	12	13
KY		X	X	2 YR	4 PP			25%	X	X		X	
LA	X			5 YR					5 YRS	5 YRS		X	
ME	X									X		X	
MA				6 MO	4 PP		X		X			X	
MI	X			1-2 YR			X	25%		X			
MN	X	X	X		1,000 SQ IN			25-50%		500		X	
MS				X									X
MO		X	X	3 YR					X	X			
MT				1 YR	X				X				
NE	X		X	1 YR						300	X		
NV		X	X	1-2 YR		X			X				
NJ	X		X	1 YRS	X			35%	2 YRS				
NH		X	X	26 WK					X				
NC				26 WK					X	X		X	
ND	3/4			1 YR			X		X	150			

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|-------------------------------------|---|
| 1. English | 7. Local/Telegraphic News of General Character |
| 2. Published Daily | 8. Percentage of News Content |
| 3. Published Weekly | 9. Second Class Postal Permit |
| 4. Continuous Publication Existence | 10. Paid Subscriptions |
| 5. Size | 11. Printed at Place of Publication |
| 6. Published Within County | 12. Physical Publication Within Affected Area |
| | 13. Not Intended for Particular Class/Trade or Primarily for Advertising or Legal Notices |

STATE	1	2	3	4	5	6	7	8	9	10	11	12	13
OH			X	4 PP		X	X		X	50% OF CIR			
OK			2/WK	104 WK		X			X	X			
OR	X			1 YR	4 PP/ 5 CL					50% OF CIR.		X	
PA		X	X						X				X
SD	X	X	X	1 YR	X		X	25¢		200/ 50% OF CIR			
TX			X	1 YR			X	25¢	X				
UT				18 MO					X	200			
VT			X			X							
VA	X		X	24 WK					X	X			
WA	X			6 MO					X			X	

- 1. English
- 2. Published Daily
- 3. Published Weekly
- 4. Continuous Publication Existence
- 5. Size
- 6. Published Within County

- 7. Local/Telegraphic News of General Character
- 8. Percentaga of News Content
- 9. Second Class Postal Permit
- 10. Paid Subscriptions
- 11. Printed at Place of Publication
- 12. Physical Publication Within Affected Area
- 13. Not Intended for Particular Class/Trade or Primarily for Advertising or Legal Notices

Arizona

COUNTIES
Title 11

- retrieve direct history, precedential history and parallel citations with the Insta-Cite service

For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

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Ch. 6

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ARTICLE 1. ADMINISTRATION AND ENFORCEMENT

Historical and Statutory Notes

For establishment of joint legislative committee on zoning changes and urban growth policy provision of Laws 1986, Ch. 348, effective May 9, 1986, see Historical Note preceding § 9-461.

Law Review Commentaries

City planning, Swedish techniques. 21 Ariz. L.Rev. 795 (1979). Exclusionary zoning: Damage actions under Civil Rights Act. Law & Soc. Order, 1971, p. 538.

§ 11-801. Definitions

In this chapter, unless the context otherwise requires:

1. "Area of jurisdiction" means that part of the county outside the corporate limits of any municipality.
2. "Board" means the board of supervisors.
3. "Commission" means the county planning and zoning commission.
4. "Inspector" means the county zoning inspector.
5. "Newspaper of general circulation in the county seat" means a daily or weekly newspaper if any is published in the county seat.
6. "Zoning district" means any portion of a county in which the same set of zoning regulations applies.
7. "Zoning ordinance" means an ordinance adopted by the board of supervisors, which shall contain zoning regulations together with a map setting forth the precise boundaries of zoning districts within which the various zoning regulations are effective.

8. "Zoning regulations" means provisions governing the use of land or buildings, or both, the height and location of buildings, the size of yards, courts and open spaces, the establishment of setback lines and such other matters as may otherwise be authorized under this chapter and which the board deems suitable and proper.

Amended by Laws 1971, Ch. 129, § 1, eff. May 6, 1971; Laws 1987, Ch. 225, § 2, eff. May 6, 1987.

Agencies	6093
.....	6100
.....	6150
Is, Documents, and Certificates	6200
.....	6250
.....	6300
.....	6500
.....	6600
Extras	6650
.....	6700
.....	6800
.....	6850
.....	6860
.....	6900
s in Real Property	6950
.....	7000
Public Purposes	7050
.....	7100
ration Act [Repealed]	7200
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ms	7250
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ublic Services	7290
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ed]	7320
.....	7400
Voting	7450
al Records	7460

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Chapter 1

PUBLICATIONS AND OFFICIAL ADVERTISING

Article	Section
1. General	6000
2. Establishing Standing as Newspaper of General Circulation	6020
3. Publications	6040
4. Manner of Publications	6060
5. Foreign Language Newspapers	6075

California

Article 1

GENERAL

- Sec.
- 6000. Newspaper of general circulation.
 - 6001. Newspapers for particular classes.
 - 6002. Established; modification of name.
 - 6003. Printed.
 - 6004. Published.
 - 6004.5. General circulation.
 - 6005. Printed and published as not synonymous.
 - 6006. Standing of prior newspaper.
 - 6007. Discontinuance of publication because of war.
 - 6008. Newspaper of general circulation.

§ 6000. Newspaper of general circulation

A "newspaper of general circulation" is a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, which has a bona fide subscription list of paying subscribers, and has been established, printed and published at regular intervals in the State, county, or city where publication, notice by publication, or official advertising is to be given or made for at least one year preceding the date of the publication, notice or advertisement.

(Stats.1943, c. 134, p. 987, § 6000.)



Washington

LEGAL PUBLICATION

65.16.020

Key Number Digests:
Newspapers 4.
Notice 11.

NOTES OF DECISIONS

When weekly newspaper's regular day of publication falls on holiday, publication therein of notice on such holiday is valid. *Kelliher v Investment & Securities Co.* (1934) 177 Wn 32, 30 P2d 935.

65.16.020 Qualifications of legal newspaper. The qualifications of a legal newspaper are that such newspaper shall have been published regularly, at least once a week, in the English language, as a newspaper of general circulation, in the city or town where the same is published at the time of application for approval, for at least six months prior to the date of such application; shall be compiled either in whole or in part in an office maintained at the place of publication; shall contain news of general interest as contrasted with news of interest primarily to an organization, group or class; and shall hold a second class mailing permit: *Provided*, That in case of the consolidation of two or more newspapers, such consolidated newspaper shall be considered as qualified if either or any of the papers so consolidated would be a qualified newspaper at the date of such legal publication, had not such consolidation taken place: *Provided*, That this section shall not disqualify as a legal newspaper any publication which, prior to June 8, 1961, was adjudged a legal newspaper, so long as it continues to meet the requirements under which it qualified.

LEGISLATIVE HISTORY

1. Enacted Laws 1921 ch 99 § 1 p 293, which read: "No newspaper shall be considered a legal newspaper for the publication of any advertisement, notice, summons, report, proceeding or other official document now or hereafter required by law to be published unless such newspaper shall have been published in the English language continually (legal holidays and Sundays excepted) as a daily or weekly newspaper, as the case may be, in the city or town where the same is published at the time of the publication of such official document, for at least six months prior to the date of such publication, and shall be printed either in whole or in part in an office maintained at the place of publication: *Provided*, That in case of the consolidation of two or more newspapers such consolidated newspaper shall be considered a legal newspaper if either or any of the papers so consolidated would be a legal newspaper at the date of such legal publication, had not such consolidation taken place: *Provided*, further, That nothing in this

approval

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Pennsylvania

45 Pa.C.S.A. § 101

LEGAL NOTICES

any newspaper so affected shall not be disqualified to publish official and legal advertising in the event that publication is resumed within one week after it again becomes possible.

(2) A printed paper or publication, regardless of size, content, or time of issue, or number of copies issued, distributed and circulated gratuitously, is not a newspaper.

(3) A printed paper or publication, not entitled to be entered, or which has been denied entry, as second class matter in the United States mails under the Postal Rules and Regulations of the United States is not a newspaper.

"Newspaper of general circulation." A newspaper issued daily, or not less than once a week, intended for general distribution and circulation, and sold at fixed prices per copy per week, per month, or per annum, to subscribers and readers without regard to business, trade, profession or class.

"Nonpareil." A type 6 type points in depth or height.

"Notice." A formal printed announcement, transmitting intelligence, information, or warning, to a particular person, or generally to all persons who may read such notice.

"Official advertisement." A notice, advertisement, publication, or statement, or an abstract of a notice, advertisement, publication, or statement, required to be made by law, rule, order, or decree of court, by any person, or in the conduct of the business of a private or public corporation, or on the order of any government unit, or in the performance of any official duty imposed by law, rule, order, or decree of court, resolution or ordinance.

"Official advertising and legal advertising." Any advertisement, notice, statement, report, resolution, ordinance, or abstract of the same, required by law, rule, order or decree of court, by resolution of any board of directors, shareholders or officers of any corporation or unincorporated association, or any government unit to be printed and published for a valuable consideration in a newspaper.

"Official newspaper." A newspaper designated by a government unit for the publication of notices and statements required by rule, order, resolution, or ordinance of such unit.

"Ordinance." A municipal rule or regulation, adopted in the manner required by statute or home rule charter, by the lawfully constituted officers of any political subdivision or municipal or other local authority.

"Periodical." A printed paper or publication, issued in pamphlet or book form, regardless of page size or number of pages, at stated