

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8627 HOUSE JUDICIARY

HB

434

Alaska State Legislature



*Waived
3-26-96*

House of Representatives House Judiciary Committee

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

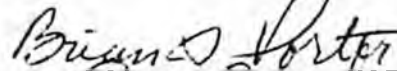
March 26, 1996

TO: House Judiciary Committee members

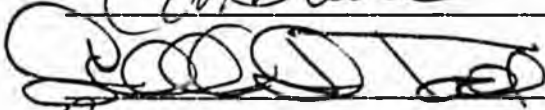
FROM: Tom Meyer 

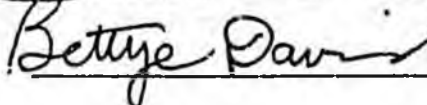
RE: Request for waiver of CSHB 434 (L & C) through committee

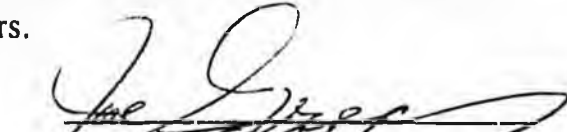
Chairman Porter asks that committee members consider waiving the above bill through the committee. CSHB 434 (L & C) amends the unclaimed property provisions. It will facilitate paperwork reduction and simplify property disposal. It received 6 DP's and 1 NR in L & C and 5 DP's in State Affairs.




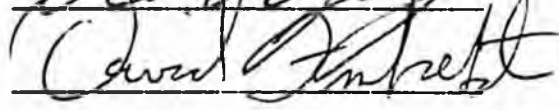












STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

March 26, 1996

P.O. BOX 110400
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2300
FACSIMILE: (907) 465-2389

The Honorable Brian Porter
Alaska State Legislature
House Judiciary Committee
State Capitol, Room 120
Juneau, Alaska 99801

RE: CSHB 434(L&C), Unclaimed Property

Dear Representative Porter:

CSHB 434(L&C) , would update the statutes for Unclaimed Property Program (UCP). This bill has been referred to your committee after passing out (with minor amendments) of the State Affairs and Labor & Commerce committees with eleven "do pass" recommendations (and 1 NR). I am writing to ask that you schedule this legislation for a hearing in your committee.

Under this program the state acts as a perpetual custodian of abandoned personal property. Examples of abandoned property include money left in bank savings accounts or deposits left with utility companies and the business cannot locate the owner. Thus property becomes abandoned or unclaimed. The purpose of the act is to protect, safeguard and account for property until it is claimed by the owner. When an owner or heir comes forward, the state must surrender either the property in its original form or the proceeds from its sale. The proposed changes would streamline the process for both businesses and the state.

I am forwarding the following information to support the legislation:

- Updated fiscal note.
- Updated sectional analysis.
- Issue paper explaining the program and merit for changes.
- 4 letters from various business organizations supporting the legislation.

CSHB 434 (L&C) is the product of extensive work by employees of our department, auditors from the Office of Management and Budget, two House committees and the National Conference of Commissioners on Uniform State Laws. I look forward to working with you and request that you and your committee give this your prompt attention.

Thank you for your consideration.

Sincerely,


Wilson L. Condon
Commissioner

96-032

Revision Date: _____ Dept. Affected: Revenue
 Title: Unclaimed Property BRU: Audit Operations
 Component: Income and Excise Audit
 Sponsor: (H) kLS
 Requestor: (H) JUD COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact to the department's operations in implementing this legislation. The proposed changes should reduce the administrative work required for private businesses (holders of unclaimed property) and the department to comply with the Unclaimed Property Program statute. The entire program is accomplished using three employees. The operational efficiencies gained will allow more time to be spent in locating owners of abandoned property versus unnecessary recordkeeping.

Prepared by: Paul E. Dick Phone: 465-2320
 Division: Income and Excise Audit Date: March 26, 1996
 Approved by Commissioner: Wilson L. Condon *Paul A. Kenney* Date: March 26, 1996
 Agency: Department of Revenue

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DEPARTMENT OF REVENUE
INCOME & EXCISE AUDIT DIVISION

CSHB 434(L&C)
Unclaimed Property Act Amendments
9-GH2025\F
March 26, 1996
Page 1 of 2

Amendments in this bill reflect changes to statutes recommended in an OMB audit completed last fall. The changes are intended to streamline administration of the unclaimed property program for both businesses and the state. The bill will also facilitate holders (i.e. banks, insurance companies, utility companies, etc.) in complying with unclaimed property reporting and remittance requirements.

Section 1 amends AS 34.45.200(e) to clarify that mutual funds and automatic reinvestment accounts are included in the scope of unclaimed property. Property would be deemed unclaimed after seven years from the date of last communication from an owner or from the date that mail addressed to an owner was returned as undeliverable.

Section 2 amends AS 34.45.280(b) by increasing aggregate reporting to \$100 for all holders (from \$50 to \$100 for life insurance companies and from \$25 to \$100 for all other companies). Holders may report property items valued under the reporting limit in the aggregate and are not required to report individual detail.

Section 3 amends AS 34.45.280(d) to provide for a universal filing due date of November 1 for reporting all unclaimed property. This section would change the filing due date for insurance companies (currently May 1) to conform with the due date for all other companies (November 1).

Section 4 amends AS 34.45.280(e) by increasing the minimum property value for which holders are required to send written notice to owners prior to reporting with the state. The minimum value would increase from \$50 to \$100, consistent with the increased aggregate amount in section 2 and 7.

Section 5 amends AS 34.45.310(a) to establish a universal date of June 30 for publication of unclaimed property owners reported to the state during the previous year. Current statutes require that the state publish owner names and information from insurance company reports by September 1 and from all other holder reports by March 1. The National Conference of Commissioners on Uniform State Laws have adopted a similar change.

Section 6 amends AS 34.45.310(b) by repealing requirements to publish owner's last known address. In accord with the amendment in section 8, which requires that holders report and remit property simultaneously (report/remit), this section repeals provisions for the owner to petition holders for unclaimed property. Report/remit eliminates the necessity for owners to correspond with both the department and holder to claim property.

Section 7 amends AS 34.45.310(c) by increasing the value of items for which the department is required to publish an owner's name. The value would increase from \$50 to \$100, consistent with aggregate reporting in section 2 and 4.

Section 8 amends AS 34.45.320(a) by requiring holders to report and remit property simultaneously (report/remit). Under report/remit, property is immediately available to owners from the state, thereby eliminating correspondence with the holder to claim property.

Section 9 repeals and reenacts AS 34.45.700 to clearly define an owner's rights when entering into an agreement with fee finders (persons who locate unclaimed property owners and assist them in claiming property). This section provides that an agreement would be unenforceable if made prior to the date payment or delivery is made to the state or within 24 months after the payment or delivery is made to the state. Agreements would be enforceable only if in writing and the fee or compensation is not more than 20% of the value of property under \$500 and not more than 10% if the value of the property is \$500 or more. This sections requires that pertinent information relating to the agreement be disclosed in the agreement.

Section 10 amends AS 34.45.760(3) to define "business association" in conformity with the National Uniform Unclaimed Property Act.

Section 11 amends AS 34.45.760(10) to include warrants into the definition of "intangible property".

Section 12 repeals AS 34.45.310(d) which requires that a notice be mailed by the department to the owner's last known address. This would eliminate a duplicate notice as holders are required to contact owners prior to reporting to the department under AS 34.45.280(e). This section repeals AS 34.45.310(e) which specifies items to be included in the notice. This section repeals AS 34.45.320(c) which requires that accounts reported in the aggregate (\$50 for life insurance and \$25 for others) be delivered when the report is filed. Requirements under this subsection would be replaced by amendments in section 8.

Section 13 provides that the act take effect July 1, 1996.

**ALASKA DEPARTMENT OF REVENUE
INCOME AND EXCISE AUDIT DIVISION
March 12, 1996**

Issue Paper for CSHB 434, Unclaimed Property Act

MERITS FOR AMENDING UNCLAIMED PROPERTY Program ACT (UCP,) AS 34.45.

OVERVIEW

Under this program the state acts as a perpetual custodian of abandoned personal property. Examples of abandoned property include money left in bank savings accounts or deposits left with utility companies and the business cannot locate the owner. Thus property becomes abandoned or unclaimed. The purpose of the act is to protect, safeguard and account for property until it is claimed by the owner. When an owner or heir comes forward, the state must surrender either the property in its original form or the proceeds from its sale.

Financially the program costs approximately \$185,000 annually (3 full time employees) and deposits into the general fund range between \$1.5 and \$2.0 million. Over the past three years over three thousand people have been located by UCP staff and had their property returned.

NEED FOR CHANGE

Changes are needed so we can reduce the administrative paper work required to operate the program and increase the efforts to locate owners and additional unclaimed property. In relation to this the Office of Management and Budget (OMB) completed an audit in October 1995 and working together with UCP staff developed the following recommended changes in UCP statutes.

- Income & Excise Audit Division require holders to report once annually and to remit the abandoned property to the state at the same time. Current law requires remittance subsequent to reporting.
- Require all holders to report unclaimed property to the state on the same date. Two different time periods are used now and one date would be more efficient.
- Raise the level of property value below which aggregate holder reporting is allowed. Also increase the property value required for individual notification. All values would be set consistently at \$100 throughout the UCP statutes. This would reduce paperwork for businesses and the state and prevent us from paying more to return property than it is worth.
- Adopt the draft language proposed by the National Conference of Commissioners of Uniform State Laws as it relates to the reporting requirements of mutual fund companies.
- Changes notification requirements to eliminate duplicate mail notices.
- Require the publishing of property owners' names only after the property in the state's custody.

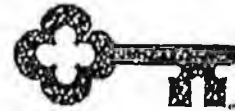
Need for Change, continued

Income and Excise Audit also recommends the following change:

- Require heirs to identify in writing the nature and value of property and fee charged for information leading to the location of the property. Also allows a contract to be valid for six months and compensation percentages to have a maximum value.

RECOMMENDATION

These statutory changes are needed in order to more efficiently and effectively administer the program. Statutory dual reporting by the holder and dual processing by the state will be eliminated. Funds will be received at the time of reporting eliminating duplicate posting and reconciling. More efforts can be applied to locating owners as well as holder education and compliance. These changes will benefit firms and entities (i.e. banks, insurance companies and utilities) reporting unclaimed property, the State of Alaska and Alaska's unclaimed property owners. Efforts to locate the rightful owners can be increased.



February 23, 1995

KeyBank
Post Office Box 100420
Anchorage, AK., 99510-0420

Rachel Marshall
State of Alaska
Unclaimed Property Section
P.O. Box 110420
Juneau, AK 99811-0420

Via FAX

(907) 562-6100

Dear Rachel:

Key Bank of Alaska has review the proposed changes to the Unclaimed Property Act AS 34.45.

*Aggregating accounts with balances less than \$100 will streamline the paperwork.

*Key Bank currently pays and delivers all property shown on the report by November 1st each year. This eliminates having to go through the process again for May. It also eliminates the confusion of determining who has the property when the names are published in the paper.

*Key Bank agrees that there needs to be rules for heirfinders. Customers are harassed at times by these people and then realize very little gain. It also causes problems when the Bank is trying to locate the customer to return the property at the same time the heirfinder is trying to engage them in a contract.

The proposed changes appear to reduce paperwork and streamline the process of escheating abandoned property. Key Bank supports these recommendations.

Sincerely,

Jennifer Ferguson
Assistant Vice President
Bank Operations

America's Best Choice



CHUGACH ELECTRIC

ASSOCIATION, INC.

February 28, 1996

Ms. Rachael E. Marshall
Administrator
State of Alaska
Department of Revenue
Unclaimed Property Section
P.O. Box 110420
Juneau, AK 99811-0420

Via fax 907-465-2375

Dear Rachael:

I have reviewed the proposed unclaimed property statute changes as you requested. I apologize for the tardiness of my reply - Chugach is in the process of closing its books for the year and also in the middle of its annual audit.

Overall, I found that the proposed changes simplify reporting requirements for entities such as ours. Raising the value of the property to be reported from \$25 to \$100 will significantly reduce our paperwork, and thus make the filing easier.

Section 8 (a) requires payment of unclaimed property at the time of filing the report which I believe is what Chugach Electric has historically done anyway, so I am in agreement with that change as well.

Thank you for the opportunity to review these proposed changes.

Sincerely,

Jody Wolfe
Accounting Manager

JW/r
Jody@CHUGACH.COM

State Farm Insurance Companies



One State Farm Plaza
Bloomington, IL 61710-0001

Thomas M. Deighan
Counsel
(309) 766-2850
Telecopy (309) 766-5594 or
766-1919

February 23, 1996

Ms. Rachel E. Marshall
Department of Revenue
Unclaimed Property Division
P.O. Box 110420
Juneau, AK 99811-0420

Re: Alaska Unclaimed Property Act

Dear Ms. Rachel:

This letter is to confirm that State Farm Mutual Automobile Insurance Company supports the proposed amendments to the Alaska Unclaimed Property Law.

Raising the aggregate limit, raising the property value limit for mail notice, and requiring all holders to report and pay on November 1 would significantly reduce the burden of complying with the terms of the Act.

Sincerely,

Thomas M. Deighan



Trial Courts

State of Alaska

THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA
99501

February 26, 1996

OFFICE OF THE CLERK

Rachael E. Marshall, Administrator
Unclaimed Property Section
P O Box 110420
Juneau, AK 99811

Dear Ms. Marshall:

In a recent letter received from you, I was asked to give my thoughts on the proposed changes in legislation for unclaimed property. For the past two years, the court system has submitted reports and funds to the Unclaimed Property Section by November 1st. Previously, the process was completed in three steps; reports submitted by November 1st, research and issuance of checks to customer after publication, and any unclaimed funds submitted by May 1st.

Using the previous process, customers were directed by the publication to contact the Unclaimed Property Section for instructions. The customer was then referred to the appropriate court for disbursement of funds. The court issued checks only after research and proper verification. This process confused customers, thus conveying the appearance of poor customer service.

Transferring funds to the Unclaimed Property Section with the reports has decreased clerical workload, increased efficiency and promoted good customer service. I support the proposed changes in legislation.

If anything further is needed, please contact me at 907-264-0465.

Sincerely,

Cathy Franklin,
Supervisor, Trial Court Accounting

HB

437



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

January 22, 1996

The Honorable Brian Porter
Chairman, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Porter:

I am writing to request a hearing on House Bill 437, establishing a Judicial Officers' Compensation Commission. This bill was introduced by the Judiciary Committee at the request of the Alaska Supreme Court.

HB 437 creates a new Judicial Officers Compensation Commission to assume the judicial salary functions of the existing State Officers Compensation Commission. As you know, the existing commission recommends compensation levels for judges and other state officers to the legislature; its proposals frequently go unheeded for reasons unrelated to their merits.

In contrast, the commission created by HB 437 would have the authority to actually establish compensation levels for supreme court justices, judges of the court of appeals, judges of the superior court and district court judges. This commission, appointed by the governor, could submit proposed salary and per diem for those officers to the legislature every two years. These compensation levels would take effect on the effective date of the first appropriation to fund the increase, unless disapproved by a bill that was enacted into law within 60 days of submission.

The Honorable Brian Porter
January 22, 1996
Page

Approximately 26 states, as well as the federal government, currently operate compensation commissions. In nine of those jurisdictions, the commission has the authority to establish compensation amounts. The purpose behind the existence of these commissions is simple: to see that fair decisions are made regarding the compensation of certain government officials, and to reduce the political battles that inevitably surround such salary decisions.

An essential goal of the Alaska Court System is to attract and retain highly qualified jurists. Achieving this goal requires salaries that are commensurate with the qualifications and responsibilities of the office, which has proven problematic. When adjusted for the cost of living, Alaska judicial salaries are ranked approximately 33th among the 50 states, a slip in position of 23 places since the last pay increase in 1991.

I hope that you will agree with the supreme court on the need for HB 437. Please feel free to contact my office if you require any additional information on this piece of legislation.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'C. S. Christensen III', written in dark ink.

C. S. Christensen III
Staff Counsel

HB 437 "An Act establishing the Judicial Officers Compensation Commission; relating to the compensation of supreme court justices, judges of the court of appeals, judges of the superior court, and district court judges; and providing for an effective date."

- Approximately 26 states and the federal government operate some form of compensation commission. In nine of those jurisdictions, the commission actually sets the salary of certain public officials, rather than merely offering recommendations to the legislature.
- The existing State Officers Compensation Commission does not have the power to establish salaries, only to make recommendations to the legislature. The legislature has generally not acted on its recommendations.
- The commission created by HB 437 is modeled very closely on the existing commission. There are two major differences: the new commission will have the power to establish compensation for justices and judges, not make recommendations, and the new commission will have a list of specific factors it must consider in determining fair compensation for justices and judges.
- The commission has five members appointed by the governor to four-year terms. Among the members must be a business executive, a person with experience in personnel management, a representative of a nonpartisan voters' organization, an economist, and a lawyer. (section 7)
- The commission meets every other year. It must hold public hearings. (section 7)
- The commission may consider the compensation of justices of the supreme court, judges of the court of appeals, judges of the superior court, and district court judges. (section 7)
- "Compensation" is defined as salary and per diem. (section 7)
- No later than the 10th day of the regular session in each odd-numbered year, the commission must submit a report on its findings to the legislature. It may also submit an order changing the compensation of justices and judges. (section 7)

- The legislature has 60 days in which to reject the order by enacting a law. This rejection must be done by law, since the legislature may not overturn an administrative order by resolution. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980). If an order is not rejected within 60 days, and if the legislature has appropriated the money to fund it, the order becomes effective on the effective date of the appropriation. If the order is rejected, it must be rejected in its entirety. (section 7)
- The standards for setting salaries which the commission must follow are modeled on Illinois law, with modifications to reflect Alaska conditions. These standards have been upheld by the Illinois Supreme Court.
- Two jurisdictions operating a statutory compensation commission similar to that proposed by HB 437 have had their law challenged (Illinois and the federal government). This delegation of legislative power to set salaries has been upheld three separate times by the federal courts, as well as by the Illinois Supreme Court.
- A legislative body may delegate its power to set the salaries of public officials, even when the constitution provides that such salaries must be set "by law," as long as the legislature retains the ultimate control over the salaries. This control exists if the following conditions are met:
 1. There should be specific standards to guide the commission in its determination of salaries. HB 437 contains such standards in section 7.
 2. There should be a holdover period in which the legislature can reject the salaries proposed by the commission. In section 7, HB 437 provides for a 60-day period in which the legislature may reject compensation proposed by the commission.
 3. The legislature must retain control over the appropriation process. This control is affirmed in section 7.
 4. The legislature must retain the power to pass overriding legislation at a later date if it wishes to change salaries. Since one legislature cannot bind another, this power cannot be taken away by HB 437.

HOUSE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE BY REQUEST

Introduced:
Referred:

A BILL
FOR AN ACT ENTITLED

1 "An Act establishing the Judicial Officers Compensation Commission; relating to
2 the compensation of supreme court justices, judges of the court of appeals, judges
3 of the superior court, and district court judges; and providing for an effective
4 date."

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

6 * Section 1. AS 22.05.140(a) is repealed and reenacted to read:

7 (a) The compensation of a supreme court justice shall be established by order
8 of the Judicial Officers Compensation Commission.

9 * Sec. 2. AS 22.07.090(a) is repealed and reenacted to read:

10 (a) The compensation of a judge of the court of appeals shall be established
11 by order of the Judicial Officers Compensation Commission. The compensation of a
12 judge may not be diminished during the term of office, unless by general law applying
13 to all salaried officers of the state.

14 * Sec. 3. AS 22.10.190(a) is repealed and reenacted to read:

1 (a) The compensation of a superior court judge shall be established by order
2 of the Judicial Officers Compensation Commission.

3 * Sec. 4. AS 22.15.220(a) is repealed and reenacted to read:

4 (a) The compensation of a district court judge shall be established by order of
5 the Judicial Officers Compensation Commission.

6 * Sec. 5. AS 22.15.230 is amended to read:

7 Sec. 22.15.230. ADDITIONAL COMPENSATION. Subject to rule of the
8 supreme court, a [DISTRICT JUDGE OR] magistrate shall receive a per diem
9 allowance and a transportation allowance commensurate with that authorized for other
10 state employees.

11 * Sec. 6. AS 39.23.240(b) is amended to read:

12 (b) The commission may review the compensation, benefits, and allowances
13 of the governor, lieutenant governor, [JUSTICES AND JUDGES OF THE COURT
14 SYSTEM,] and the heads of the principal departments and shall prepare a report of its
15 recommendations for the legislature. The commission shall notify the legislature that
16 the report is available.

17 * Sec. 7. AS 39.23 is amended by adding new sections to read:

18 **ARTICLE 2. JUDICIAL OFFICERS COMPENSATION COMMISSION.**

19 **Sec. 39.23.500. JUDICIAL OFFICERS COMPENSATION COMMISSION**
20 **ESTABLISHED.** (a) The Judicial Officers Compensation Commission is established
21 in the Office of the Governor. The commission is composed of five members
22 appointed by the governor. Members serve staggered terms of four years.
23 Commission membership shall include at least one business executive, one person with
24 experience in personnel management, one representative of a nonpartisan voters'
25 organization, one economist, and one lawyer. A vacancy shall be filled for the balance
26 of the unexpired term. A commission member may serve no more than two complete
27 consecutive terms.

28 (b) The commission shall elect a member to chair its meetings. A majority
29 of the commission members constitutes a quorum to transact business. The affirmative
30 vote of three members is required to approve the commission's report or an order on
31 compensation.

1 (c) The commission shall meet every other year at the call of the chair. Notice
2 of a meeting shall be mailed to each member at least 15 days before the date
3 scheduled for the meeting.

4 (d) The commission shall hold a public hearing to discuss its findings before
5 submitting its report or an order to the legislature.

6 Sec. 39.23.510. PROHIBITIONS AGAINST STATE OR MUNICIPAL
7 SERVICE. A member of the commission may not be employed by the state, including
8 the University of Alaska, serve as a member of another state board, commission, or
9 authority, or hold elective state or municipal office during membership on the
10 commission.

11 Sec. 39.23.520. COMPENSATION. Members of the commission serve
12 without compensation but are entitled to per diem and travel expenses authorized for
13 members of boards and commissions under AS 39.20.180.

14 Sec. 39.23.530. STAFF. (a) If requested by the commission, the Alaska Court
15 System shall provide staff for the commission.

16 (b) If requested by the commission, the director of personnel in the Alaska
17 Court System shall serve as secretary to the commission.

18 Sec. 39.23.540. DUTIES OF THE COMMISSION. (a) The commission shall
19 review the compensation of supreme court justices, judges of the court of appeals,
20 judges of the superior court, and district court judges. The commission shall submit
21 a report to the legislature on its findings every odd-numbered year no later than the
22 10th day of the regular session of the legislature. A commission member who does
23 not concur in the report may file a minority report.

24 (b) If the commission finds that compensation over which it has jurisdiction
25 should change, the commission shall submit an order with the report making changes
26 to the compensation. Before submitting a report or order on compensation, the
27 commission shall give reasonable public notice of its preliminary findings, solicit
28 public comments, and give due regard to the public comments.

29 (c) An order changing the compensation of a justice or judge takes effect
30 unless a bill disapproving the order in its entirety is enacted into law within 60 days
31 after the order is submitted to the legislature. Unless disapproved, an order increasing

1 the compensation of a justice or judge is subject to funding through legislative
2 appropriation and takes effect on the effective date of the first appropriation to fund
3 the increase.

4 (d) Unless disapproved, an order decreasing the compensation of the supreme
5 court justice, judges of the court of appeals, judges of the superior court, or district
6 court judges takes effect on the effective date of a general law applying to all salaried
7 officers of the state that diminishes compensation, but only if the order is consistent
8 with the general law.

9 Sec. 39.23.550. FILING WITH LIEUTENANT GOVERNOR AND
10 CERTIFICATION. The commission shall, upon transmitting an order on
11 compensation to the legislature, file the order in the office of the lieutenant governor.
12 When the order becomes effective, the commission shall certify the copy of the order
13 on file in the office of the lieutenant governor.

14 Sec. 39.23.560. POLICY OF THE LEGISLATURE. It is the policy of the
15 legislature that the commission determine an equitable rate and form of compensation
16 for supreme court justices, judges of the court of appeals, judges of the superior court,
17 and district court judges. In determining the compensation for each office, the
18 commission shall consider the following factors:

- 19 (1) the skill required;
- 20 (2) the time required;
- 21 (3) the opportunity for other earned income;
- 22 (4) the value of judicial services as performed in other states and in the
23 federal government;
- 24 (5) the value of similar services when performed in the private sector
25 of this state and in other states based on the responsibility and discretion required in
26 the office;
- 27 (6) the reasonable expenses incurred in performing the judicial service;
- 28 (7) the percentage change in the Consumer Price Index for Anchorage,
29 Alaska, as determined by the United States Department of Labor, Bureau of Labor
30 Statistics since the last compensation adjustment;
- 31 (8) the compensation presently received by the judicial officers and all

1 other benefits received;

2 (9) the interests and welfare of the public and the financial ability of
3 the state to meet the costs;

4 (10) the geographic cost-of-living based on a judicial officer's primary
5 place of assignment;

6 (11) the cost-of-living differential between Anchorage, Alaska, and
7 other locations in the United States; and

8 (12) other factors that are normally or traditionally considered in the
9 determination of compensation.

10 Sec. 39.23.570. ADMINISTRATIVE PROCEDURE ACT. The regulation-
11 making provisions of AS 44.62 (Administrative Procedure Act) do not apply to
12 proceedings of the commission.

13 Sec. 39.23.600. DEFINITIONS. In this chapter,

14 (1) "commission" means the Judicial Officers Compensation
15 Commission;

16 (2) "compensation" means the salary and per diem paid a judicial
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21 by sec. 7 of this Act, one of the initial members appointed to the Judicial Officers
22 Compensation Commission shall serve a one-year term, one member shall serve a two-year
23 term, one member shall serve a three-year term, and two members shall serve four-year terms.

24 * Sec. 10. When the Judicial Officers Compensation Commission files its first order
25 changing the compensation of justices of the supreme court or judges of the court of appeals,
26 superior court, or district court, it shall address the compensation of all of those judicial
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28 * Sec. 11. Sections 1 - 5 and 8 of this Act take effect on the date that the first order
29 changing the compensation of justices and judges issued by the Judicial Officers
30 Compensation Commission takes effect.

31 * Sec. 12. Sections 6, 7, 9, and 10 of this Act take effect immediately under

1 AS 01.10.070(c).

Alaska State Legislature



House of Representatives House Judiciary Committee

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

January 22, 1996

TO: House Judiciary Members

FROM: Tom Meyer, Committee Aide

RE: Judicial Salary Commission bill

Attached is a copy of filed yet to be numbered HB ____ (JUD) that will be scheduled for hearing and sponsored by the House Judiciary Committee. This bill establishes a judicial salary commission. The bill is sponsored by the committee by request of the Court System without commitment of support from the committee.

HOUSE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced:

Referred:

A BILL
FOR AN ACT ENTITLED

1 "An Act establishing the Judicial Officers Compensation Commission; relating to
2 the compensation of supreme court justices, judges of the court of appeals, judges
3 of the superior court, and district court judges; and providing for an effective
4 date."

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

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7 (a) The compensation of a supreme court justice shall be established by order
8 of the Judicial Officers Compensation Commission.

9 * Sec. 2. AS 22.07.090(a) is repealed and reenacted to read:

10 (a) The compensation of a judge of the court of appeals shall be established
11 by order of the Judicial Officers Compensation Commission. The compensation of a
12 judge may not be diminished during the term of office, unless by general law applying
13 to all salaried officers of the state.

14 * Sec. 3. AS 22.10.190(a) is repealed and reenacted to read:

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2 of the Judicial Officers Compensation Commission.

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5 the Judicial Officers Compensation Commission.

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7 Sec. 22.15.230. ADDITIONAL COMPENSATION. Subject to rule of the
8 supreme court, a [DISTRICT JUDGE OR] magistrate shall receive a per diem
9 allowance and a transportation allowance commensurate with that authorized for other
10 state employees.

11 * Sec. 6. AS 39.23.240(b) is amended to read:

12 (b) The commission may review the compensation, benefits, and allowances
13 of the governor, lieutenant governor, [JUSTICES AND JUDGES OF THE COURT
14 SYSTEM,] and the heads of the principal departments and shall prepare a report of its
15 recommendations for the legislature. The commission shall notify the legislature that
16 the report is available.

17 * Sec. 7. AS 39.23 is amended by adding new sections to read:

18 ARTICLE 2. JUDICIAL OFFICERS COMPENSATION COMMISSION.

19 Sec. 39.23.500. JUDICIAL OFFICERS COMPENSATION COMMISSION
20 ESTABLISHED. (a) The Judicial Officers Compensation Commission is established
21 in the Office of the Governor. The commission is composed of five members
22 appointed by the governor. Members serve staggered terms of four years.
23 Commission membership shall include at least one business executive, one person with
24 experience in personnel management, one representative of a nonpartisan voters'
25 organization, one economist, and one lawyer. A vacancy shall be filled for the balance
26 of the unexpired term. A commission member may serve no more than two complete
27 consecutive terms.

28 (b) The commission shall elect a member to chair its meetings. A majority
29 of the commission members constitutes a quorum to transact business. The affirmative
30 vote of three members is required to approve the commission's report or an order on
31 compensation.

1 (c) The commission shall meet every other year at the call of the chair. Notice
2 of a meeting shall be mailed to each member at least 15 days before the date
3 scheduled for the meeting.

4 (d) The commission shall hold a public hearing to discuss its findings before
5 submitting its report or an order to the legislature.

6 Sec. 39.23.510. PROHIBITIONS AGAINST STATE OR MUNICIPAL
7 SERVICE. A member of the commission may not be employed by the state, including
8 the University of Alaska, serve as a member of another state board, commission, or
9 authority, or hold elective state or municipal office during membership on the
10 commission.

11 Sec. 39.23.520. COMPENSATION. Members of the commission serve
12 without compensation but are entitled to per diem and travel expenses authorized for
13 members of boards and commissions under AS 39.20.180.

14 Sec. 39.23.530. STAFF. (a) If requested by the commission, the Alaska Court
15 System shall provide staff for the commission.

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22 10th day of the regular session of the legislature. A commission member who does
23 not concur in the report may file a minority report.

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25 should change, the commission shall submit an order with the report making changes
26 to the compensation. Before submitting a report or order on compensation, the
27 commission shall give reasonable public notice of its preliminary findings, solicit
28 public comments, and give due regard to the public comments.

29 (c) An order changing the compensation of a justice or judge takes effect
30 unless a bill disapproving the order in its entirety is enacted into law within 60 days
31 after the order is submitted to the legislature. Unless disapproved, an order increasing

1 the compensation of a justice or judge is subject to funding through legislative
2 appropriation and takes effect on the effective date of the first appropriation to fund
3 the increase.

4 (d) Unless disapproved, an order decreasing the compensation of the supreme
5 court justice, judges of the court of appeals, judges of the superior court, or district
6 court judges takes effect on the effective date of a general law applying to all salaried
7 officers of the state that diminishes compensation, but only if the order is consistent
8 with the general law.

9 Sec. 39.23.550. FILING WITH LIEUTENANT GOVERNOR AND
10 CERTIFICATION. The commission shall, upon transmitting an order on
11 compensation to the legislature, file the order in the office of the lieutenant governor.
12 When the order becomes effective, the commission shall certify the copy of the order
13 on file in the office of the lieutenant governor.

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15 legislature that the commission determine an equitable rate and form of compensation
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17 and district court judges. In determining the compensation for each office, the
18 commission shall consider the following factors:

- 19 (1) the skill required;
- 20 (2) the time required;
- 21 (3) the opportunity for other earned income;
- 22 (4) the value of judicial services as performed in other states and in the
23 federal government;
- 24 (5) the value of similar services when performed in the private sector
25 of this state and in other states based on the responsibility and discretion required in
26 the office;
- 27 (6) the reasonable expenses incurred in performing the judicial service;
- 28 (7) the percentage change in the Consumer Price Index for Anchorage,
29 Alaska, as determined by the United States Department of Labor, Bureau of Labor
30 Statistics since the last compensation adjustment;
- 31 (8) the compensation presently received by the judicial officers and all

1 other benefits received;

2 (9) the interests and welfare of the public and the financial ability of
3 the state to meet the costs;

4 (10) the geographic cost-of-living based on a judicial officer's primary
5 place of assignment;

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7 other locations in the United States; and

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CS FOR HOUSE BILL NO. 437(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

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1 AS 01.10.070(c).

HB

443

CITY OF UNALASKA

P.O. BOX 610
UNALASKA, ALASKA 99685-0610
(907) 581-1251 FAX (907) 581-1417



March 20, 1996

The Honorable Brian Porter, Chair
The Honorable Joseph Green, Vice Chair
House Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99801-1182

RE: **HB 443**

Dear Representative Porter and Representative Green:

The City of Unalaska supports the goal of CSHB 443(STA), increasing the State's motor fuel tax. Specifically, we support an increase in the tax on motor fuel used in watercraft, as well as the establishment of a special fund for the revenue derived from marine fuel taxes to be used for paying the costs of constructing and maintaining harbor facilities.

As you may be aware, Alaska is unique among all states in its dependence upon marine transportation systems and facilities. Communities throughout Alaska are inextricably dependent on port and port-related infrastructure. Over 90 percent of Alaska's population lives within ten miles of the coast or along a major river. The 140 ports and harbors in Alaska represent community-based service hubs that support a variety of resource-related industries, commerce, transportation activities, and recreational opportunities.

A marine fuel tax special fund would establish a predictable and stable annual funding program for developing and expanding port and harbor facilities. It would allow for revenues generated by port and harbor user activities to be used for port and harbor development purposes. Appropriations from this fund, along with local matching funds, would provide local governments with a reliable mechanism for securing federal participation in and encouraging private financing of port and harbor development projects. The marine fuel tax special fund would also provide an incentive to local governments in Alaska for acquiring title to state-owned port and harbor facilities.

The Honorable Brian Porter
The Honorable Joseph Green
March 20, 1996
Page 2

Again, the City of Unalaska supports an increase in the State's motor fuel tax the establishment of a special fund for the revenue derived from marine fuel taxes to be used for paying the costs of constricting and maintaining harbor facilities. Thank you for your consideration of our position regarding this important legislation.

Very truly yours,

CITY OF UNALASKA



Mark Earnest
City Manager

cc: Representative Con Bunde
Representative Cynthia Toohey
Representative Al Vezey
Representative Bettye Davis
Representative David Finkelstein

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 443 (STA)

Revision Date: 3/19/96 Dept. Affected: DOT&PF
 Title: Increase Motor Fuel Tax BRU: Office of the Commissioner
 Component: various
 Sponsor: Rules by request of Long Range Fiscal Plan Comm
 Requester: House Judiciary COMPONENT SERIAL NO. N/A

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES		105.0	2,105.0	2,405.0	2,805.0	3,105.0
TRAVEL						
CONTRACTUAL			3,500.0	3,900.0	4,200.0	4,600.0
SUPPLIES			900.0	1,000.0	1,100.0	1,200.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	105.0	6,505.0	7,305.0	8,105.0	8,905.0
CAPITAL EXPENDITURES		4,900.0	4,900.0	5,000.0	5,100.0	5,200.0
CHANGE IN REVENUES ()						

FUND SOURCE		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1004 GF		(26,995.0)	(42,295.0)	(42,295.0)	(42,295.0)	(42,295.0)
1005 GF/Program Receipts						
Transportation Fund - Highways		27,100.0	48,800.0	49,600.0	50,400.0	51,200.0
Transportation Fund - Harbors		4,900.0	4,900.0	5,000.0	5,100.0	5,200.0
TOTAL	0.0	5,005.0	11,405.0	12,305.0	13,205.0	14,105.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS							
FULL-TIME	0	1	20	23	27	30	
PART-TIME	0	0	0	0	0	0	
TEMPORARY	0	0	0	0	0	0	

ANALYSIS: (Attach a separate page if necessary)

This fiscal note assumes: 1) expenditures from the dedicated fund begin on the first day of FY98 (July 1, 1997).
 2) Revenue estimates are based on the fiscal note analysis provided by Dept. of Revenue dated 3/15/96.
 3) The fund does not include off-highway revenues (est. \$6.4 million in FY98).
 4) Dedicated funds available are first used to offset current general fund expenditures (in conjunction with those shown on the fiscal note for CSHJR 49 (TRA)).
 5) Any additional funds are appropriated to DOT&PF for increased operating (Highways M&O) or increased capital (Harbors) expenditures.
 6) The new position for FY98 is for an accountant to perform the separate fund accounting (and personal services to fully fund an existing accounting position). Additional new positions for FY99-2002 are for equipment operators and maintenance leaders (or similar maintenance job class). A portion of the personal services funding would decrease the existing vacancy factor for maintenance units, increase the months budgeted for existing seasonal maintenance positions and increase budgeted overtime for maintenance positions.
 7) This fiscal note does not assume any costs of existing DOT&PF Administrative functions which provide services to the highway maintenance program activities are funded from the dedicated fund. These indirect costs could be partially funded by the increased revenues to the Transportation (Highway) fund, which would further reduce general fund expenditures. Costs would be distributed on the basis of a cost allocation plan among the different modes of transportation, public facilities, and capital project oversight.

Prepared by: Robin Smith Phone: 465-3911
 Program Budget Analyst
 Division: Administrative Services, Headquarters Date: 3/19/96
 Approved by: [Signature] Date: 3/19/96
 Commissioner
 Agency: Department of Transportation and Public Facilities

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
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Fiscal Note CSHB 443 (STA)
Increased Motor Fuel Tax
Dept of Transportation & Public Facilities

HIGHWAYS						
	FY97	FY98	FY99	FY00	FY01	FY02
Dedicated Transportation Fund - Highway						
Highway Increased Revenue (with population growth adjustment) *		27,100.0	48,800.0	49,600.0	50,400.0	51,200.0
Amount of M&O Highways Operating Budget to be switched to dedicated Transportation Fund (Highway)		27,100.0	39,400.0	39,400.0	39,400.0	39,400.0
Amount of M&O Facilities Operating Budget to be switched to dedicated Transportation Fund (Highway) - Highways Maintenance Station Bldgs		0.0	3,000.0	3,000.0	3,000.0	3,000.0
Increased Funding Available for Highways Maintenance & Operations **	0.0	0.0	6,400.0	7,200.0	8,000.0	8,800.0
General Funds - Highway						
Amount of M&O Highways Operating Budget to be switched from General Funds +		(27,100.0)	(39,400.0)	(39,400.0)	(39,400.0)	(39,400.0)
Amount of M&O Facilities (Highways Buildings) Operating Budget to be switched from General Funds		0.0	(3,000.0)	(3,000.0)	(3,000.0)	(3,000.0)
New GF Cost for Separate Accounting for Highway Fund		75.0	75.0	75.0	75.0	75.0
Net effect to DOT&PF General Funds	0.0	(27,025.0)	(42,325.0)	(42,325.0)	(42,325.0)	(42,325.0)
* Revenues Based on Department of Revenue Calculations (dated 3/15/96)						
** Additional funding from this increased revenue assumed to be made available for highway maintenance						
+ A portion of the current GF operating budget for Highways Maintenance and Operations is already switched to the dedicated fund in the revised fiscal note for CSHJR 49 (TRA).						

Fiscal Note CSHB 443 (STA)
 Increased Motor Fuel Tax
 Dept of Transportation & Public Facilities

HARBORS						
	FY97	FY98	FY99	FY00	FY01	FY02
Dedicated Transportation Fund - Harbor						
Marine Fuel Increased Revenue (with population growth adjustment) *		4,900.0	4,900.0	5,000.0	5,100.0	5,200.0
Increased Funding Available for Harbor Capital Improvements **		4,900.0	4,900.0	5,000.0	5,100.0	5,200.0
General Funds - Harbor						
Amount of Current Harbor Budget to be switched from General Funds +		0.0	0.0	0.0	0.0	0.0
New GF Cost for Separate Accounting for Harbor Fund		30.0	30.0	30.0	30.0	30.0
Net effect to DOT&PF General Funds		30.0	30.0	30.0	30.0	30.0
* Revenues Based on Department of Revenue Calculations (dated 3/15/96)						
** Additional funding from this increased revenue assumed to be made available for harbor capital improvements.						
+ Total Current Harbor GF funding (\$1 million) is switched in revised fiscal note for CSHJR 49 (TRA).						

**DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES**
Testimony for House State Affairs Committee on HB 443
3/12/96

The Department of Transportation and Public Facilities supports HB 443, more specifically, the department supports an increase in highway and marine motor fuel taxes if the taxes will be dedicated to the mode from which the taxes were collected.

HB 443 was introduced at the request of the Long Range Financial Planning Commission as a component of an overall long-range fiscal plan. The bill proposes an increase in the highway motor fuel tax from the current eight cents per gallon to twenty two cents per gallon and an increase in the marine motor fuel tax from the current five cents per gallon to eight cents per gallon. The bill also repeals the exemption currently in place for the use of Gasohol. The Department of Revenue estimates that even without the increase in motor fuel tax, the lost revenue from use of Gasohol will be in excess of six million dollars for FY 1997.

The highway fuel tax increase will provide the department with revenue which will enable the department to increase maintainance on state owned roads and highways. An increase in maintenance will extend the life of our roads and highways. This will make Federal construction funds available for other important highway projects in the state.

There are other factors which make increasing the motor fuel tax an important issue for this legislature to address. In January, the US General Accounting Office released a report entitled "HIGHWAY FUNDING, Alternatives for Distributing Federal Funds". The report did not make specific recommendations, however, the GAO did layout seven alternatives for distribution of the nation's Federal Highway funds. In four of the alternatives, Alaska's overall share goes from \$231 million FY 1995 dollars to approximately \$40 million FY 1995 dollars. In only one alternative, Alaska's best case in this report, the state share goes from \$231 million to \$89 million.

If Congress decided to adopt even the best GAO alternative, Alaska could stand to lose \$191 million dollars. For this reason, the department believes it is prudent to indicate to other states, and to Congress that we are doing all we can to maintain the transportation system we have, and to show a commitment to maintain our transportation system in the future. Fortunately, the state has a strong advocate in Senator Stevens who sits on the Senate Appropriations committee. But the potential for losing valuable Federal Highway funds is still there, and even if we do manage to maintain the current level of funding through the next Federal Highway spending authorization, we can eventually expect a decline in Federal Highway funds for Alaska.

The marine fuel tax increase coupled with the dedicated fund, will provide the department with funding for a harbor transfer program. The program would involve funding capital projects for state owned harbors to upgrade the facilities to a condition where the departemnt could turn the facilites over to the local municipality. The department estimates that all but twenty-two of the facilities currently owned by the state could reasonably be transferred in five years. The proposed program would basically get the state out of the harbor business.

CS FOR HOUSE BILL NO. 443(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 3/18/96

Referred: Judiciary, Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE LONG RANGE FINANCIAL
PLANNING COMMISSION

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the tax on transfers or consumption of motor fuel, and
2 repealing the exemption from that tax for motor fuel which is at least 10 percent
3 alcohol by volume; and providing for an effective date."

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

5 * Section 1. AS 43.40.010(a) is amended to read:

6 (a) There is levied a tax of 15 [EIGHT] cents a gallon on all motor fuel sold or
7 otherwise transferred within the state, except that

8 (1) the tax on aviation gasoline is four and seven-tenths cents a gallon;

9 (2) the tax on motor fuel used in and on watercraft of all descriptions is
10 eight [FIVE] cents a gallon; and

11 (3) the tax on all aviation fuel other than gasoline is three and two-tenths
12 cents a gallon.

13 * Sec. 2. AS 43.40.010(a) is amended to read:

14 (a) There is levied a tax of 22 [15] cents a gallon on all motor fuel sold or

1 otherwise transferred within the state, except that
2 (1) the tax on aviation gasoline is four and seven-tenths cents a gallon;
3 (2) the tax on motor fuel used in and on watercraft of all descriptions is
4 eight cents a gallon; and
5 (3) the tax on all aviation fuel other than gasoline is three and two-tenths
6 cents a gallon.

7 * Sec. 3. AS 43.40.010(b) is amended to read:

8 (b) There is levied a tax of 15 [EIGHT] cents a gallon on all motor fuel
9 consumed by a user, except that

10 (1) the tax on aviation gasoline consumed is four and seven-tenths cents
11 a gallon;

12 (2) the tax on motor fuel used in and on watercraft of all descriptions is
13 eight [FIVE] cents a gallon; and

14 (3) the tax on all aviation fuel other than gasoline is three and two-tenths
15 cents a gallon.

16 * Sec. 4. AS 43.40.010(b) is amended to read:

17 (b) There is levied a tax of 22 [15] cents a gallon on all motor fuel consumed
18 by a user, except that

19 (1) the tax on aviation gasoline consumed is four and seven-tenths cents
20 a gallon;

21 (2) the tax on motor fuel used in and on watercraft of all descriptions is
22 eight cents a gallon; and

23 (3) the tax on all aviation fuel other than gasoline is three and two-tenths
24 cents a gallon.

25 * Sec. 5. AS 43.40.015(d) is amended to read:

26 (d) A certificate of use is not required

27 (1) for fuel exempted under AS 43.40.100(2)(C) [, (F),] or (K); and

28 (2) for fuel exempted under AS 43.40.100(2)(J) other than fuel sold or
29 transferred under this exemption to a person who is engaged in construction or mining
30 activity.

31 * Sec. 6. AS 43.40.030(a) is amended to read:

32 (a) Except as specified in AS 43.40.010(j), a person who uses motor fuel to

1 operate an internal combustion engine is entitled to a refund of 11 [SIX] cents a gallon
2 if

3 (1) the tax on the motor fuel has been paid;

4 (2) the motor fuel is not aviation fuel, or motor fuel used in or on
5 watercraft; and

6 (3) the internal combustion engine is not used in or in conjunction with
7 a motor vehicle licensed to be operated on public ways.

8 * Sec. 7. AS 43.40.030(a) is amended to read:

9 (a) Except as specified in AS 43.40.010(j), a person who uses motor fuel to
10 operate an internal combustion engine is entitled to a refund of 16 [11] cents a gallon
11 if

12 (1) the tax on the motor fuel has been paid;

13 (2) the motor fuel is not aviation fuel, or motor fuel used in or on
14 watercraft; and

15 (3) the internal combustion engine is not used in or in conjunction with
16 a motor vehicle licensed to be operated on public ways.

17 * Sec. 8. AS 43.40.100(2)(F) is repealed.

18 * Sec. 9. Sections 1 - 8 of this Act take effect only if, at the November 1996 general election,
19 the voters approve a constitutional amendment that establishes a special fund for the revenue
20 derived from state taxes on fuel used for the propulsion of highway or road use vehicles and
21 limits the use of money in that fund and the income earned from the fund's investment to paying
22 the costs of road and highway maintenance.

23 * Sec. 10. If this Act takes effect, secs. 1, 3, 5, 6, and 8 of this Act take effect July 1, 1997.

24 * Sec. 11. If this Act takes effect, secs. 2, 4, and 7 of this Act take effect July 1, 1998.

25 * Sec. 12. Section 9 of this Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

Bill Version: CSHB 443 (STA)

(H) Pub. Date: 3/18/96

**STATE OF ALASKA
1996 LEGISLATIVE SESSION**

Revision Date: 3/13/96
 Title: Increase Motor Fuel Tax
 Sponsor: Rules by request of Long Range Fiscal Plan Comm
 Requester: House State Affairs

Dept. Affected: DOT&PF
 BRU: Office of the Commissioner
 Component: various
 COMPONENT SERIAL NO. AAA-530

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES		2,575.0	4,075.0	4,375.0	3,575.0	5,775.0
TRAVEL						
CONTRACTUAL		3,500.0	6,525.0	6,925.0	12,000.0	12,775.0
SUPPLIES		725.0	1,300.0	1,400.0	3,025.0	3,150.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	6,800.0	10,900.0	11,700.0	20,600.0	21,700.0

CAPITAL EXPENDITURES		4,900.0	6,600.0	6,700.0	6,800.0	6,900.0
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		(47,900.0)	(47,900.0)	(47,900.0)	(47,900.0)	(47,900.0)
1005 GF/Program Receipts						
Transportation Fund - Highways		54,700.0	58,600.0	59,600.0	68,500.0	69,600.0
Transportation Fund - Harbors		4,900.0	6,600.0	6,700.0	6,800.0	6,900.0
TOTAL	0.0	11,700.0	17,300.0	18,400.0	27,200.0	28,600.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0	26	40	40	50	50
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This fiscal note assumes amendments to make the bill dependent on passage of a constitutional amendment to create a dedicated transportation fund and an amended effective date of July 1, 1997. It is assumed expenditures from the dedicated fund will begin on the first day of FY98 (July 1, 1997), which is the same day that the dedicated fund comes into existence. Revenue deposited to the dedicated fund will lag behind the start of the fiscal year. Funding is included to establish an Accountant position to design and implement dedicated fund accounting mechanisms. Increased funding based on increased revenues is assumed to be made available for increased operating (Highways M&O) or increased capital (Harbors) expenditures. New positions for FY98-2002 are assumed to be equipment operators and maintenance leaders (or similar maintenance job class) and the accountant position for performing the separate fund accounting. Additional personal services funding would decrease the existing vacancy factor for maintenance units, increase the months budgeted for existing seasonal maintenance positions and increase budgeted overtime for maintenance positions. Existing DOT&PF Administrative functions including Planning and Design and Construction functions as well as fiscal, personnel, supply, management and other services provided to the maintenance program will be partially funded by the Transportation (Highway) fund. Costs will be distributed on the basis of a cost allocation plan between the different modes of transportation, public facilities, and capital project oversight.

Prepared by: Sam Kito III Phone: 465-3900
 Special Assistant
 Division: Office of the Commissioner Date: _____
 Approved by: *Joseph P. Williams* Date: 3/13/96
 Commissioner
 Agency: Department of Transportation and Public Facilities

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COMMITTEE COPY

Fiscal Note HB 443
 Increased Motor Fuel Tax
 Dept of Transportation & Public Facilities

Increased Revenue from Fuel Taxes						
	FY97	FY98	FY99	FY00	FY01	FY02
Motor Fuel Tax Increase - Highways						
Total Motor Fuel Tax Collections minus Off-Highway Rebate *		73,300.0	76,200.0	76,200.0	83,600.0	83,600.0
minus FY96 Revenue (This amount of highway maintenance funding switched to dedicated fund in fiscal note for HJR49)		(20,400.0)	(20,400.0)	(20,400.0)	(20,400.0)	(20,400.0)
Increased Revenue from HB 443 - Highways		52,900.0	55,800.0	55,800.0	63,200.0	63,200.0
Increase with Population Growth Adjustment - Highways *		54,700.0	58,600.0	59,600.0	68,500.0	69,600.0
Marine Fuel Tax Increase - Harbors						
Total Marine Fuel Tax Collections *		12,400.0	13,900.0	13,900.0	13,900.0	13,900.0
minus FY96 Revenue (This amount of harbor capital improvements shown as funded by the dedicated fund in fiscal note for HJR49)		(7,600.0)	(7,600.0)	(7,600.0)	(7,600.0)	(7,600.0)
Increased Revenue from HB 443 - Harbors		4,800.0	6,300.0	6,300.0	6,300.0	6,300.0
Increase with Population Growth Adjustment - Harbors *		4,900.0	6,600.0	6,700.0	6,800.0	6,900.0
Total Increased Revenue		59,600.0	65,200.0	66,300.0	75,300.0	76,500.0
Revenues Based on Department of Revenue Calculations (dated 3/11/96)						

Fiscal Note HB 443
Increased Motor Fuel Tax
Dept of Transportation & Public Facilities

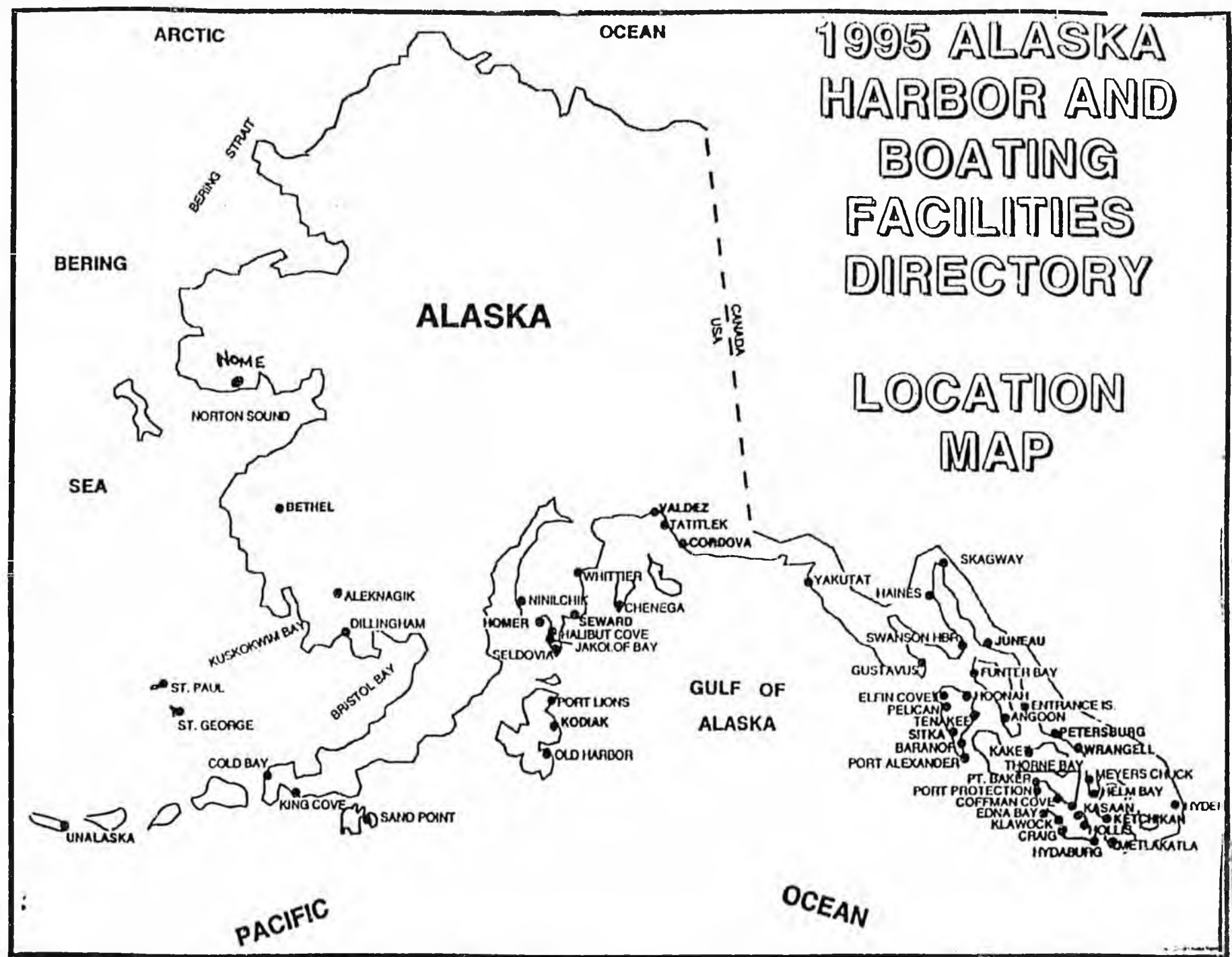
	FY97	FY98	FY99	FY00	FY01	FY02
Highway increased Revenue *		54,700.0	58,800.0	59,600.0	68,500.0	69,600.0
Items in Current Budget to be Switched from General Funds to Dedicated Fund - Highways						
Remaining M&O Highways Operating Budget		36,200.0	36,200.0	36,200.0	36,200.0	36,200.0
M&O Facilities - Highways Maintenance Station Bldgs		3,000.0	3,000.0	3,000.0	3,000.0	3,000.0
Administrative Functions related to Highways Function		7,700.0	7,700.0	7,700.0	7,700.0	7,700.0
Capital Budget - Non Routine Maintenance		1,000.0	1,000.0	1,000.0	1,000.0	1,000.0
New Cost Separate Accounting for Highway Fund		75.0	75.0	75.0	75.0	75.0
Increased Funding Available for Highways Maintenance & Operations		6,725.0	10,825.0	11,825.0	20,525.0	21,825.0
Marine increased Revenue *		4,900.0	6,800.0	6,700.0	6,800.0	6,900.0
New Cost Separate Accounting for Harbor Fund		30.0	30.0	30.0	30.0	30.0
Increased funding available for Capital Harbors Program		4,870.0	6,570.0	6,670.0	6,770.0	6,870.0
Total Department Increased Funding Available (after accounting costs)		11,595.0	17,195.0	18,295.0	27,295.0	28,495.0
* Revenues Based on Department of Revenue Calculations (dated 3/11/96)						

Fiscal Note HB 443
 Increased Motor Fuel Tax
 Dept of Transportation & Public Facilities

FY98 Expenditure Authorization by Funding Sources			
	General Funds	Dedicated Transport Fund	Total
Highways			
M&O - Highways	(36,200.0)	42,925.0	6,725.0
M&O Facilities - Highways Bldgs	(3,000.0)	3,000.0	0.0
Administrative Functions	(7,700.0)	7,700.0	0.0
Low Cost Separate Accounting		75.0	75.0
Deferred/Emergency Repairs	(1,000.0)	1,000.0	0.0
Total Highways	(47,900.0)	54,700.0	6,800.0
Harbors			
Capital Maintenance, Emergency Repair and Low Harbor Capitalization Program		4,870.0	4,870.0
Low Cost Separate Accounting		30.0	30.0
Total Harbors	0.0	4,900.0	4,900.0
TOTAL DEPARTMENT	(47,900.0)	59,600.0	11,700.0
All other years equal to FY98 plus additional revenue from population growth adjustment to fuel tax rates. Additional funding from this increased revenue assumed to be made available for highway maintenance program and for capital harbor program.			

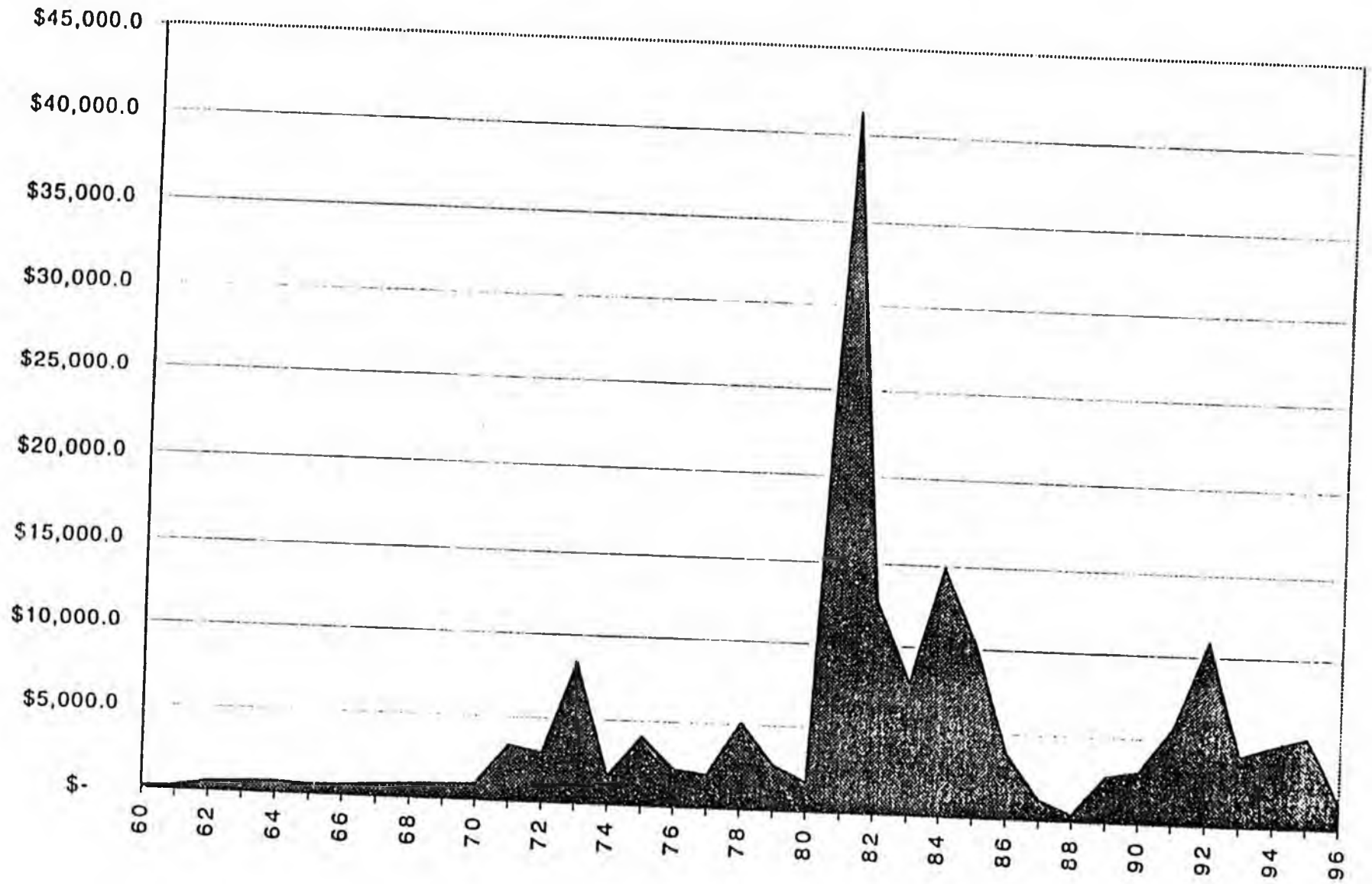
1995 ALASKA HARBOR AND BOATING FACILITIES DIRECTORY

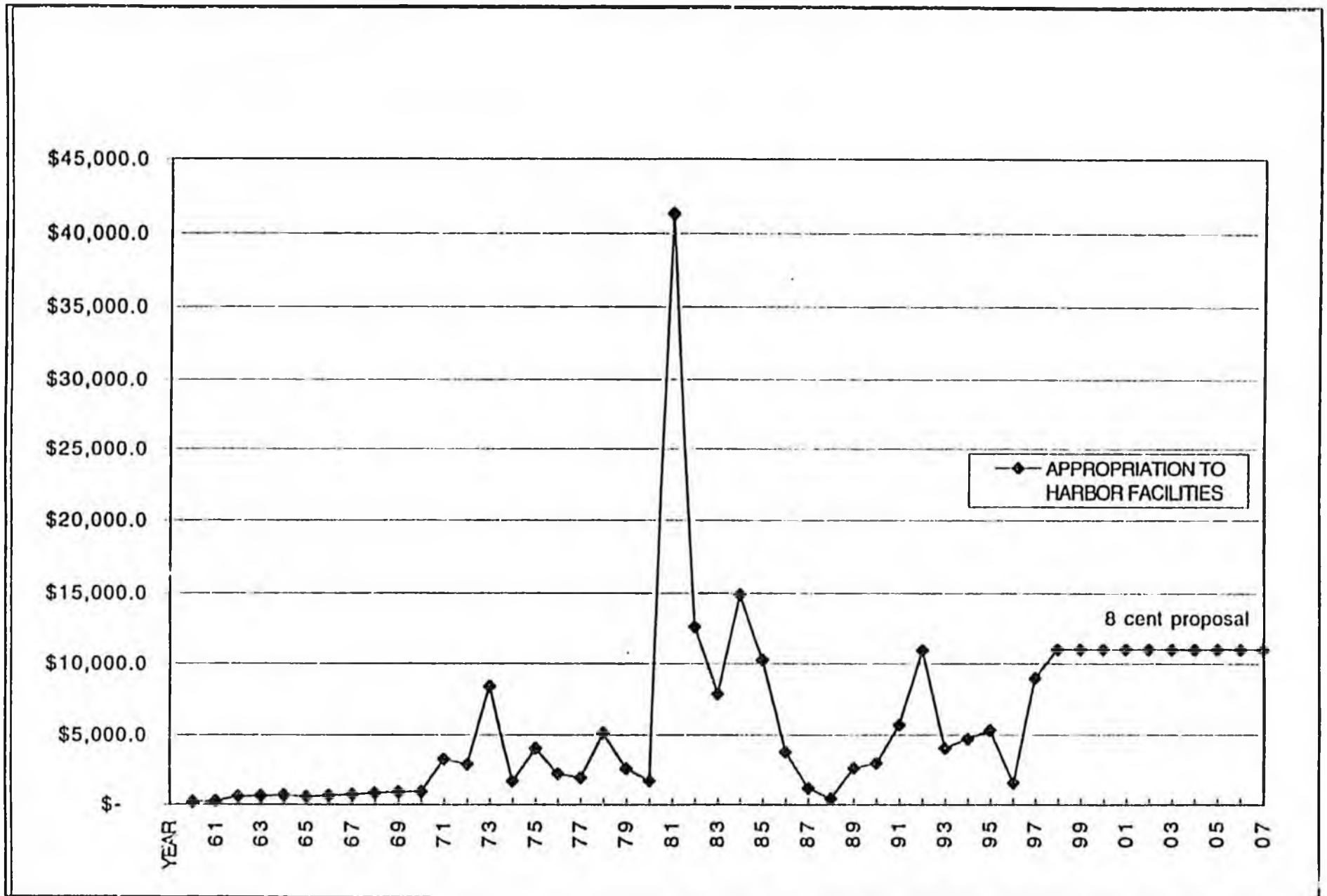
LOCATION MAP




Shee. Chart 4

■ APPROPRIATION TO HARBOR FACILITIES



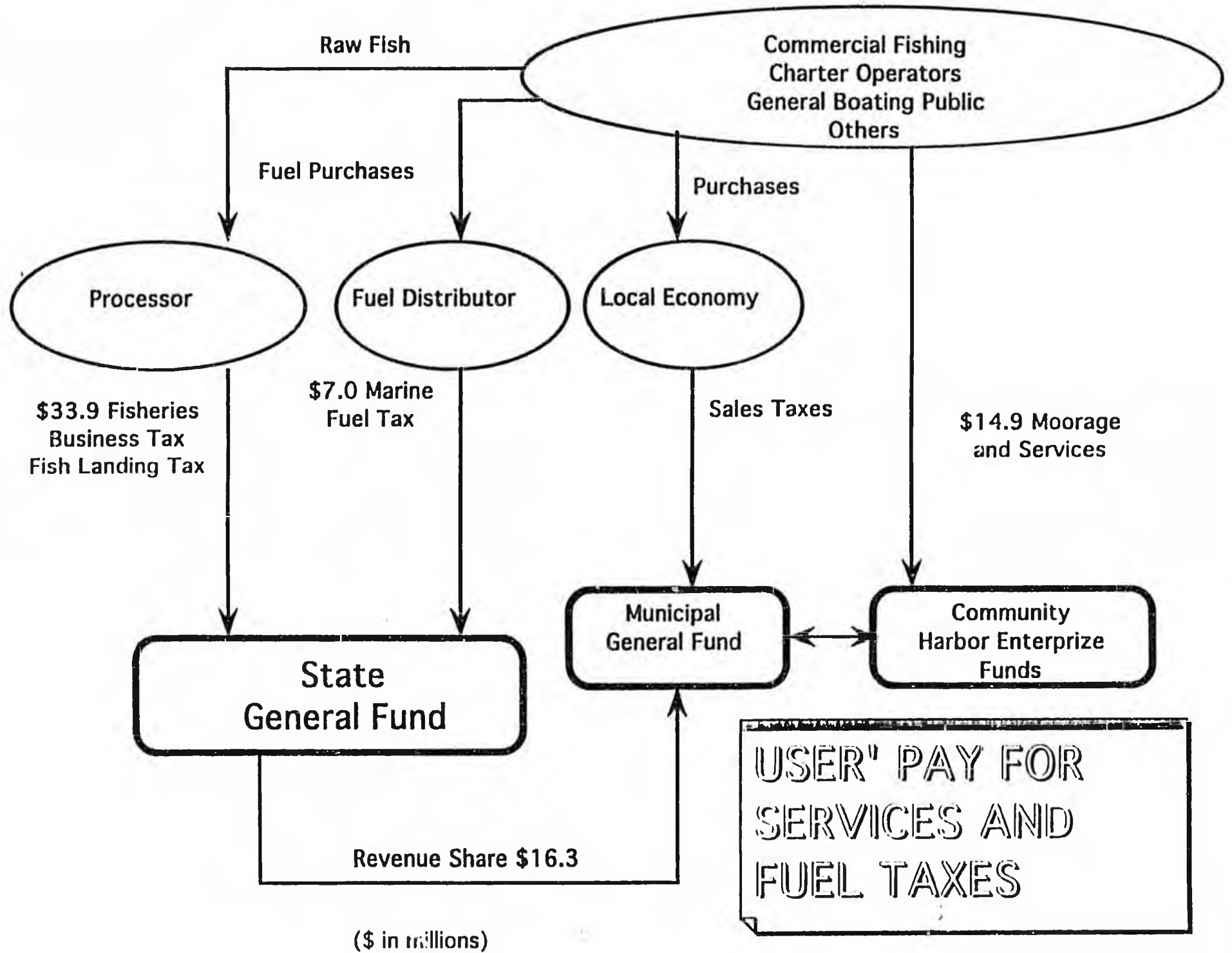




Some Facts about Public Harbor's in Alaska

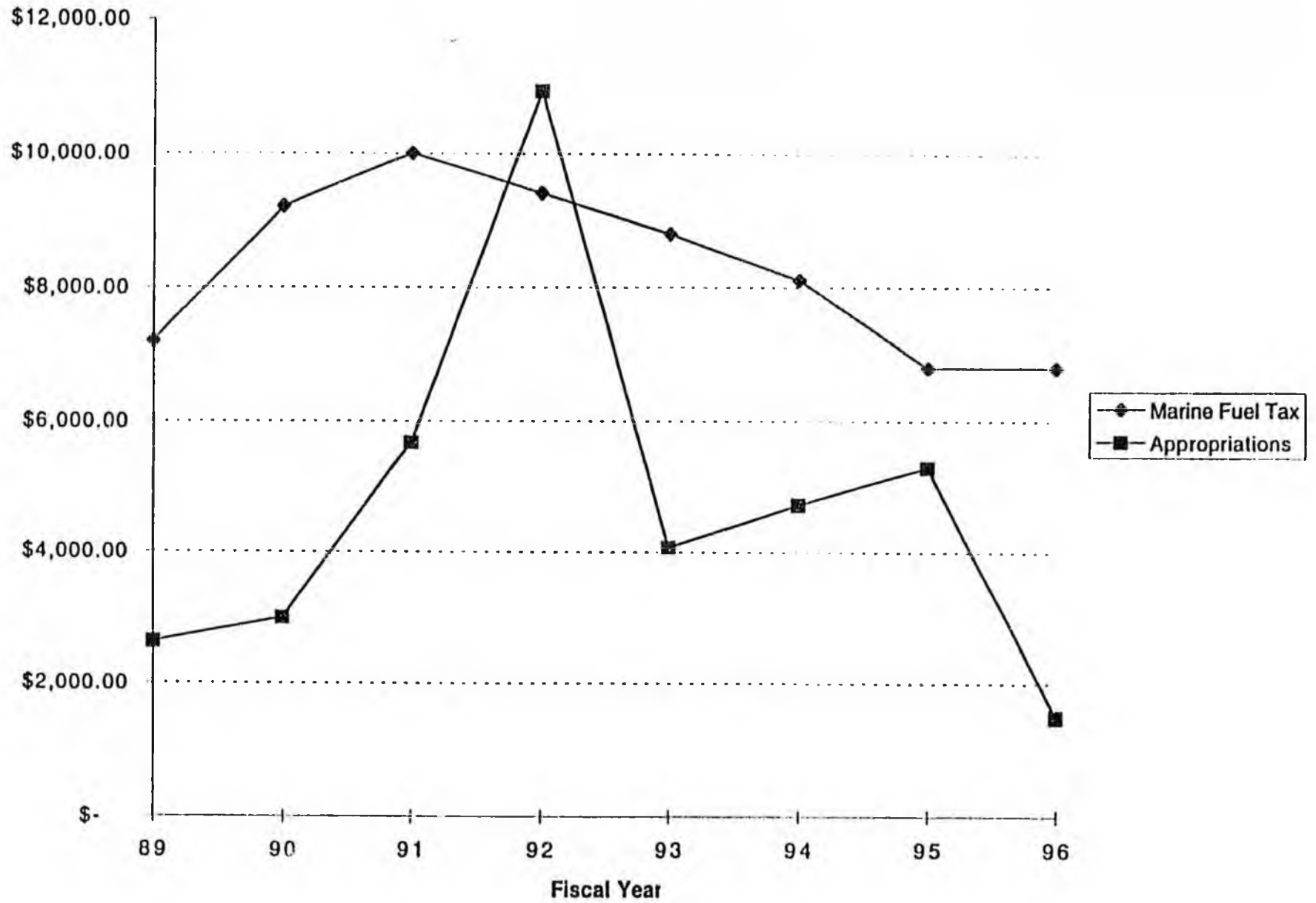
- ◆ 11,000 slips and 16 million square feet of float system.
- ◆ Inventoried replacement value is \$175 million for assets including gangways, approaches and grids and small docks in 60 coastal communities or remote locations.
- ◆ Given current condition of harbors, the annualized repair and replacement cost is approximately \$4.8 million per year.
- ◆ Users are paying to local harbor departments \$13 million per year for harbor services.
- ◆ That means:
 - ▼ the average user is paying approximately \$1,200 per year for harbor services.
 - ▼ Fee increases to an annual average of at least \$1640 is needed to cover all costs, including major repair and replacement.
- ◆ Users are also paying \$7 million in marine fuel taxes annually.
 - ▼ That is an average of \$636 per slip in fuel taxes.







(\$ in millions)

WCFT REVENUE HISTORY





Some Facts about Public Harbor's in Alaska (Continued)

- ◆ Fuel tax increase to 8 cents would generate approximately \$10.9 million
 - ◆ Legislature appropriated \$1.5 million in FY 96 for harbor facilities.
 - ◆ In 8 years, \$66.3 million has been collected, 57% (\$37.8 million) has been appropriated to harbor facilities.
 - ◆ This tax was probably paid by as few as 15,000 vessel owner/operators.
 - ◆ 105,000 residents live in coastal communities with public harbor facilities.
 - ◆ 95 harbor facilities have been constructed with State assistance.
 - ◆ 80 facilities are owned by the State, 54 are operated under agreement.
 - ◆ \$ 8 million in failed or poor condition (5%).
 - ◆ \$ 56 million in failed, poor or fair condition.(32.4%).
 - ◆ \$117 million in good or new condition (67.6%).
 - ◆ The backlog of work needed is \$26 million in deferred maintenance, \$122 million in expansion projects. The approximately 3500 names on waiting lists.
- 

Transfer Priority Worksheet

Rank	Estimated Cost To Good or Better	Target Estimate To Transfer	Cumm. Cost	Community	Facility Count	Cumm.
1	\$1,894.9	\$947.5	\$947.5	HOMER	1	1
2	\$270.6	\$135.3	\$1,082.8	CRAIG	1	2
3	\$4,401.3	\$2,200.6	\$3,283.4	SITKA	3	5
4	\$750.7	\$375.3	\$3,658.7	PETERSBURG	4	9
5	\$1,681.2	\$840.6	\$4,499.4	SEWARD	1	10
6	\$1,719.2	\$1,859.6	\$6,359.0	JUNEAU	5	15
7	\$1,175.6	\$587.8	\$6,946.8	VALDEZ	1	16
8	\$603.7	\$301.8	\$7,248.6	WRANGELL	5	21
9	\$2,985.0	\$1,492.5	\$8,741.1	KETCHIKAN	7	28
10	\$6,203.8	\$3,101.9	\$11,843.0	KODIAK	3	31
11	\$21.3	\$10.7	\$11,853.7	ANGOON	2	33
12	\$40.4	\$20.2	\$11,873.9	TENAKEE	1	34
13	\$32.8	\$16.4	\$11,890.3	YAKUTAT	1	35
14	\$111.5	\$55.8	\$11,946.0	SELDOVIA	1	36
15	\$149.6	\$74.8	\$12,020.8	METLAKATIA	2	38
16	\$560.7	\$280.4	\$12,301.2	HOONAH	2	40
17	\$193.6	\$96.8	\$12,398.0	BETHEL	1	41
18	\$278.4	\$139.2	\$12,537.2	PELICAN	1	42
19	\$288.1	\$144.1	\$12,681.3	SKAGWAY	1	43
20	\$234.0	\$117.0	\$12,798.3	KLAWOCK	1	44
20	\$218.3	\$109.4	\$12,907.7	HYDABURG	1	45
21	\$0.0	\$0.0	\$12,907.7	ALEKNAGIK	1	46
21	\$22.4	\$11.2	\$12,918.9	KASAAN	1	47
24	\$2,386.3	\$1,193.1	\$14,112.0	CORDOVA	1	48
25	\$650.2	\$325.1	\$14,437.1	KAKE	2	50
26	\$6,427.9	\$3,214.0	\$17,651.0	WHITTIER	1	51
27	\$3,196.1	\$1,598.0	\$19,249.1	PORT LIONS	1	52
28	\$465.3	\$232.7	\$19,481.8	HAINES	2	54
29	\$306.4	\$153.2	\$19,634.9	PORT ALEXANDER	2	56
30	\$7.7	\$3.9	\$19,638.8	COFFMAN COVE	1	57
31	\$7.0	\$3.5	\$19,642.3	KUPRANOF	1	58
	\$39,284.6	\$19,642.3			58	

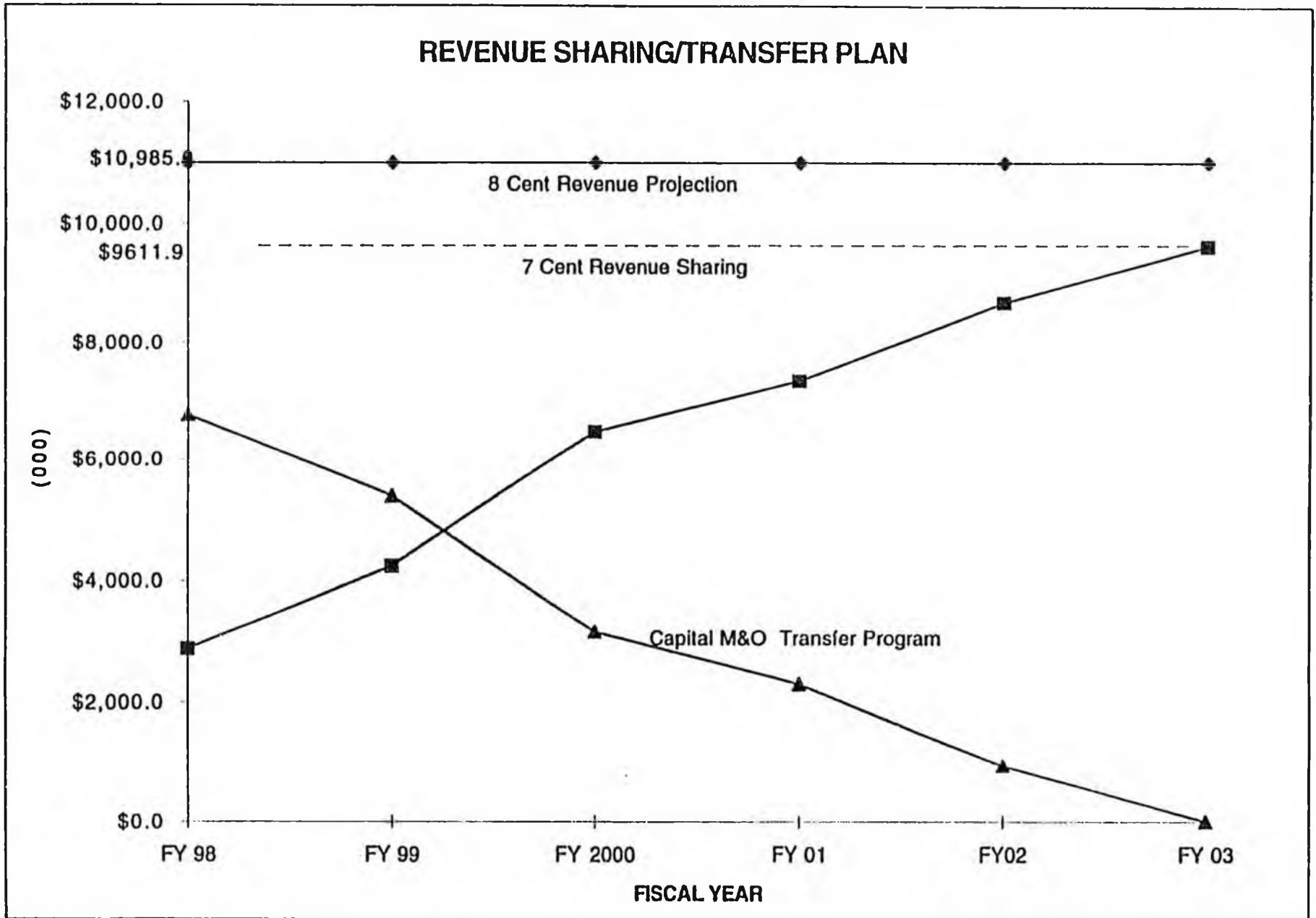
Figure 1

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Rn.	Population	Status	Borough	Location	Count	Cumm.
S	REFUGE FLOAT	Unorganized		BARANOF	1	1
S	REFUGE FLOAT	Unorganized	(In Juneau Bor.)	TAKU HARBOR	1	2
S	REFUGE FLOAT	Unorganized		LORING	1	3
S	REFUGE FLOAT	Unorganized		FUNTER BAY	2	5
S	REFUGE FLOAT	Unorganized		SWANSON HARBOR	1	6
S	REFUGE FLOAT	Unorganized		ENTRANCE ISLAND	1	7
S	REFUGE FLOAT	Unorganized		HELM BAY	1	8
C	485	Unorganized	(In Kenai Bor.)	NINILCHIK	1	9
S	280	Unorganized		GUSTAVIS	1	10
S	151	Unorganized		HOLLIS	1	11
C	119	Unorganized		TATTILEK	1	12
C	94	Unorganized		CHENEGA	1	13
S	91	Unorganized		HYDER	1	14
S	91	Unorganized		EDNA BAY	1	15
C	68	Unorganized		HALIBUT COVE	1	16
S	57	Unorganized		ELFIN COVE	2	18
S	51	Unorganized		POINT BAKER	1	19
S	51	Unorganized		PORT PROTECTION	1	20
S	39	Unorganized		MEYERS CHUCK	1	21
C	29	Unorganized		JAKOLOF	1	22
					22	

Figure 2

DRAFT



Program C rview 98-03

HARBOR CONSTRUCTION FUND	FY 98	FY 99	FY 2000	FY 01	FY02	FY 03	6 YEAR TOTALS
8 cent Revenue Projection	\$10,985.0	\$10,985.0	\$10,985.0	\$10,985.0	\$10,985.0	\$10,985.0	\$65,910.0
Revenue Sharing	\$2,865.4	\$4,240.8	\$6,462.0	\$7,333.5	\$8,664.6	\$9,611.9	\$39,178.2
Capital M&O/Deferred Maintenance Transfer Program	\$6,746.5	\$5,371.1	\$3,149.9	\$2,278.4	\$947.3	\$0.0	\$18,493.2
7 cent Revenue Share/Transfer Program	\$9,611.9	\$9,611.9	\$9,611.9	\$9,611.9	\$9,611.9	\$9,611.9	\$57,671.4
1 cent State Program	\$1,373.1	\$1,373.1	\$1,373.1	\$1,373.1	\$1,373.1	\$1,373.1	\$8,238.6

Figure 4

DRAFT

Proposed Transfer Plan Detail

Community/Location	Harbor Facility Name	Inventoryed Replacement Value (IRV)	AVR	Annual Rebate Proportions to Share at 65% of Tax	Allocation for Local Ownership Year 1	Allocation for Local Ownership Year 2	Allocation for Local Ownership Year 3	Allocation for Local Ownership Year 4	Allocation for Local Ownership Year 5	Allocation for Local Ownership Year 6	Annualized Repairs and Replacement (ARR) Estimate	Alloc. less ARR
ALEXIADIN	ALEXIADIN DOCK	\$390	0.23%	\$22.3					\$22.3	\$22.3	\$8.5	\$13.7
ALEXIADIN Total		\$390		\$22.3								\$13.7
AJGOON	AJGOON DOCK	\$261	0.15%	\$14.9				\$14.9	\$14.9	\$14.9	\$6.9	\$8.0
AJGOON	AJGOON HARBOR	\$1,137	0.60%	\$64.9				\$64.9	\$64.9	\$64.9	\$34.4	\$10.5
AJGOON Total		\$1,398		\$79.8								\$18.5
BETHEL	BETHEL BOAT HARBOR	\$411	0.24%	\$23.5					\$23.5	\$23.5	\$12.1	\$11.2
BETHEL Total		\$411		\$23.5								\$11.2
COFFMAN COVE	COFFMAN COVE FLOAT	\$216	0.14%	\$13.5	\$13.5	\$13.5	\$13.5	\$13.5	\$13.5	\$13.5	\$7.0	\$6.5
COFFMAN COVE Total		\$216		\$13.5								\$6.5
COLD BAY	COLD BAY DOCK	\$2,155	1.20%	\$121.0	\$121.0	\$121.0	\$121.0	\$121.0	\$121.0	\$121.0	\$58.4	\$64.4
COLD BAY Total		\$2,155		\$121.0								\$64.4
CORDOVA	CORNOVA BOAT HARBOR	\$10,159	6.03%	\$579.8					\$579.8	\$579.8	\$123.4	\$256.4
CORDOVA Total		\$10,159		\$579.8								\$256.4
CRAIG	CRAIG CITY FLOAT	\$578	0.34%	\$33.0		\$33.0	\$33.0	\$33.0	\$33.0	\$33.0	\$17.7	\$15.3
CRAIG	CRAIG NORTH HARBOR	\$1,326	0.79%	\$75.7	\$75.7	\$75.7	\$75.7	\$75.7	\$75.7	\$75.7	\$39.4	\$36.2
CRAIG	CRAIG SOUTH HARBOR	\$2,433	1.44%	\$138.9	\$138.9	\$138.9	\$138.9	\$138.9	\$138.9	\$138.9	\$25.3	\$113.6
CRAIG Total		\$4,337		\$247.5								\$145.1
DILLINGHAM	DILLINGHAM HARBOR	\$250	0.15%	\$14.3	\$14.3	\$14.3	\$14.3	\$14.3	\$14.3	\$14.3	\$11.1	\$1.2
DILLINGHAM Total		\$250		\$14.3								\$1.2
HAINES	HAINES HARBOR	\$1,373	0.82%	\$78.4						\$78.4	\$44.7	\$33.6
HAINES	HAINES LETHROP COVE	\$216	0.13%	\$12.3						\$12.3	\$8.1	\$4.2
HAINES Total		\$1,589		\$90.7								\$37.8
HOMER	HOMER BOAT HARBOR	\$10,248	6.08%	\$584.9	\$497.1	\$584.9	\$584.9	\$584.9	\$584.9	\$584.9	\$220.4	\$144.5
HOMER Total		\$10,248		\$584.9								\$144.5
IKKAIH	IKKAIH CITY PILOT	\$475	0.28%	\$27.1					\$27.1	\$27.1	\$18.9	\$8.2
IKKAIH	IKKAIH HARBOR	\$2,167	1.29%	\$123.7					\$123.7	\$123.7	\$64.4	\$57.1
IKKAIH Total		\$2,642		\$150.8								\$65.3
HYDABURG	HYDABURG HARBOR	\$1,077	0.64%	\$61.5					\$61.5	\$61.5	\$40.3	\$21.2
HYDABURG Total		\$1,077		\$61.5								\$21.2
JUNEAU	AURORA HARBOR	\$3,969	2.36%	\$226.5			\$226.5	\$226.5	\$226.5	\$226.5	\$104.9	\$119.7
JUNEAU	AURORA HARBOR	\$9,027	5.36%	\$515.2			\$515.2	\$515.2	\$515.2	\$515.2	\$154.1	\$141.1
JUNEAU	DOUGLAS DOCK	\$607	0.36%	\$34.4			\$34.4	\$34.4	\$34.4	\$34.4	\$20.7	\$13.9
JUNEAU	DONNIE HARBOR	\$844	0.50%	\$48.3			\$48.3	\$48.3	\$48.3	\$48.3	\$25.6	\$12.7
JUNEAU	HARRIS HARBOR	\$2,292	1.36%	\$130.8			\$130.8	\$130.8	\$130.8	\$130.8	\$299.7	\$148.9
JUNEAU Total		\$16,741		\$955.4								\$338.5
KAKE	KAKE DOCK AND FLOAT	\$562	0.33%	\$32.1					\$32.1	\$32.1	\$19.8	\$12.2
KAKE	KAKE PORTAGE COVE HARBOR	\$2,032	1.21%	\$116.0					\$116.0	\$116.0	\$69.2	\$46.8
KAKE Total		\$2,594		\$148.0								\$59.0
KASAH	KASAH HARBOR	\$328	0.19%	\$18.7					\$18.7	\$18.7	\$10.7	\$8.0
KASAH Total		\$328		\$18.7								\$8.0
KETCHIKAN	BAR HARBOR NORTH	\$2,244	1.33%	\$128.1		\$128.1	\$128.1	\$128.1	\$128.1	\$128.1	\$68.5	\$59.5
KETCHIKAN	BAR HARBOR SOUTH	\$2,407	1.59%	\$148.8		\$148.8	\$148.8	\$148.8	\$148.8	\$148.8	\$99.8	\$49.0
KETCHIKAN	CITY FLOAT	\$459	0.27%	\$26.2			\$26.2	\$26.2	\$26.2	\$26.2	\$15.1	\$11.1
KETCHIKAN	IRBE IN THE WALL	\$581	0.34%	\$33.2			\$33.2	\$33.2	\$33.2	\$33.2	\$76.9	\$63.7
KETCHIKAN	KIMSON COVE FLOAT	\$530	0.31%	\$30.2			\$30.2	\$30.2	\$30.2	\$30.2	\$19.4	\$10.8
KETCHIKAN	RYUS FLOAT	\$95	0.06%	\$5.4			\$5.4	\$5.4	\$5.4	\$5.4	\$2.6	\$2.8
KETCHIKAN	THOMAS BASIN	\$1,762	1.05%	\$100.6		\$100.6	\$100.6	\$100.6	\$100.6	\$100.6	\$79.4	\$21.2
KETCHIKAN Total		\$8,278		\$472.4								\$110.7
RING COVE	RING COVE SHALL BOAT HARBOR	\$2,651	1.57%	\$151.3	\$151.3	\$151.3	\$151.3	\$151.3	\$151.3	\$151.3	\$82.4	\$68.9
RING COVE Total		\$2,651		\$151.3								\$68.9
KLAMOCK	KLAMOCK DOCK	\$709	0.42%	\$40.5	\$40.5	\$40.5	\$40.5	\$40.5	\$40.5	\$40.5	\$16.5	\$24.0
KLAMOCK	KLAMOCK HARBOR	\$545	0.32%	\$31.1					\$31.1	\$31.1	\$20.3	\$10.8
KLAMOCK Total		\$1,254		\$71.6								\$34.8

Figure 5

DRAFT

Proposed Tier Plan Detail

Community/Location	Harbor Facility Name	Investoried Replacement Value (IRV)	NYR)	Annual Rebate Proportions to Share at 85% of Tax	Allocation for Local Ownership Year 1	Allocation for Local Ownership Year 2	Allocation for Local Ownership Year 3	Allocation for Local Ownership Year 4	Allocation for Local Ownership Year 5	Allocation for Local Ownership Year 6	Annualized Repair and Replacement (ANRR) Estimate	Alloc. lease ANRR
KODIAK	CITY FLOAT	\$927	0.55%	\$52.9				\$52.9	\$52.9	\$52.9	\$28.2	\$28.1
KODIAK	SAINT HERMAN HARBOR	\$4,685	2.78%	\$267.4				\$267.4	\$267.4	\$267.4	\$216.8	\$50.4
KODIAK	SAINT PAUL BOAT HARBOR	\$4,204	2.50%	\$239.9				\$239.9	\$239.9	\$239.9	\$174.2	\$65.8
KODIAK Total		\$9,816		\$560.2								\$141.1
LORING	LORING FLOAT	\$94	0.05%	\$4.8						\$4.8	\$4.8	\$0.0
LORING Total		\$94		\$4.8								\$0.0
METLAKATLA	METLAKATLA CITY FLOAT	\$408	0.24%	\$23.3					\$23.3	\$23.3	\$11.2	\$12.1
METLAKATLA	METLAKATLA HARBOR	\$1,316	0.78%	\$75.1					\$75.1	\$75.1	\$43.5	\$11.7
METLAKATLA Total		\$1,724		\$98.4								\$41.8
NOME	NOME /DOCK	\$5,407	3.21%	\$308.6	\$308.6	\$308.6	\$308.6	\$308.6	\$308.6	\$308.6	\$227.6	\$81.0
NOME Total		\$5,407		\$308.6								\$81.0
OLD HARBOR	OLD HARBOR DOCK	\$499	0.30%	\$28.5	\$28.5	\$28.5	\$28.5	\$28.5	\$28.5	\$28.5	\$13.4	\$15.1
OLD HARBOR	OLD HARBOR FLOAT	\$426	0.25%	\$24.3	\$24.3	\$24.3	\$24.3	\$24.3	\$24.3	\$24.3	\$17.3	\$7.1
OLD HARBOR Total		\$925		\$52.8								\$22.2
PELICAN	PELICAN HARBOR	\$1,731	1.03%	\$98.8					\$98.8	\$98.8	\$60.6	\$38.2
PELICAN Total		\$1,731		\$98.8								\$38.2
PETERSBURG	MIDDLE HARBOR	\$825	0.49%	\$47.1		\$47.1	\$47.1	\$47.1	\$47.1	\$47.1	\$29.4	\$17.6
PETERSBURG	NORTH HARBOR	\$1,973	1.17%	\$112.6		\$112.6	\$112.6	\$112.6	\$112.6	\$112.6	\$74.9	\$74.9
PETERSBURG	PAPRES LANDING FLOAT	\$181	0.11%	\$10.3		\$10.3	\$10.3	\$10.3	\$10.3	\$10.3	\$5.3	\$5.3
PETERSBURG	SOUTH HARBOR	\$2,933	1.75%	\$168.5		\$168.5	\$168.5	\$168.5	\$168.5	\$168.5	\$95.7	\$73.9
PETERSBURG Total		\$5,932		\$338.5								\$170.5
PORT ALEXANDER	PORT ALEXANDER INNER HARBOR	\$172	0.10%	\$9.8						\$9.8	\$7.1	\$2.5
PORT ALEXANDER	PORT ALEXANDER OUTER HARBOR	\$291	0.17%	\$16.6						\$16.6	\$13.0	\$3.6
PORT ALEXANDER Total		\$463		\$26.4								\$4.1
PORT LIONS	PORT LIONS SMALL BOAT HARBOR	\$4,350	2.58%	\$268.3						\$268.3	\$61.8	\$180.4
PORT LIONS Total		\$4,350		\$268.3								\$180.4
SAJID POINT	SAJID POINT SMALL BOAT HARBOR	\$2,899	1.72%	\$165.5	\$165.5	\$165.5	\$165.5	\$165.5	\$165.5	\$165.5	\$90.9	\$74.5
SAJID POINT Total		\$2,899		\$165.5								\$74.5
SELDOVIA	SELDOVIA SMALL BOAT HARBOR	\$1,872	1.11%	\$106.8				\$106.8	\$106.8	\$106.8	\$65.9	\$40.9
SELDOVIA Total		\$1,872		\$106.8								\$40.9
SEWARD	SEWARD BOAT HARBOR	\$7,821	4.64%	\$466.4		\$466.4	\$466.4	\$466.4	\$466.4	\$466.4	\$264.7	\$181.7
SEWARD Total		\$7,821		\$466.4								\$181.7
SITKA	CITY (AMB) HARBOR	\$1,015	0.60%	\$57.9	\$57.9	\$57.9	\$57.9	\$57.9	\$57.9	\$57.9	\$38.9	\$19.0
SITKA	CRESCENT HARBOR	\$3,187	1.89%	\$181.9		\$181.9	\$181.9	\$181.9	\$181.9	\$181.9	\$119.4	\$62.5
SITKA	SPALING COVE	\$1,848	1.11%	\$106.6		\$106.6	\$106.6	\$106.6	\$106.6	\$106.6	\$68.8	\$47.8
SITKA	THOMSEN HARBOR	\$3,174	1.89%	\$181.3		\$181.3	\$181.3	\$181.3	\$181.3	\$181.3	\$117.5	\$63.8
SITKA Total		\$9,246		\$527.7								\$213.1
SKAGWAY	SKAGWAY SMALL BOAT HARBOR	\$1,723	1.02%	\$98.3					\$98.3	\$98.3	\$59.0	\$39.4
SKAGWAY Total		\$1,723		\$98.3								\$39.4
ST. GEORGE	SAINT GEORGE HARBOR	\$11,670	6.93%	\$666.0	\$666.0	\$666.0	\$666.0	\$666.0	\$666.0	\$666.0	\$7.8	\$658.2
ST. GEORGE Total		\$11,670		\$666.0								\$658.2
ST. PAUL	ST. PAUL HARBOR	\$7,782	4.62%	\$464.1	\$464.1	\$464.1	\$464.1	\$464.1	\$464.1	\$464.1	\$14.9	\$429.3
ST. PAUL Total		\$7,782		\$464.1								\$429.3
THORNE BAY	DAVIDSON LANDING AND DOCK	\$73	0.04%	\$4.2	\$4.2	\$4.2	\$4.2	\$4.2	\$4.2	\$4.2	\$2.5	\$1.7
THORNE BAY	THORNE BAY CITY HARBOR	\$1,265	0.75%	\$72.2	\$72.2	\$72.2	\$72.2	\$72.2	\$72.2	\$72.2	\$13.2	\$59.0
THORNE BAY Total		\$1,338		\$76.4								\$60.6
UNALASKA	UNALASKA BOAT HARBOR	\$700	0.42%	\$40.0	\$40.0	\$40.0	\$40.0	\$40.0	\$40.0	\$40.0	\$22.5	\$17.4
UNALASKA	UNALASKA MARINE CENTER	\$0	0.00%	\$0.0	tbd	tbd	tbd	tbd	tbd	\$0.0	tbd	tbd
UNALASKA Total		\$700		\$40.0								\$17.4
VALDEZ	SMALL BOAT HARBOR	\$5,114	3.04%	\$291.9			\$291.9	\$291.9	\$291.9	\$291.9	\$181.2	\$110.6
VALDEZ Total		\$5,114		\$291.9								\$110.6
WHITTIER	WHITTIER BOAT HARBOR	\$10,112	6.00%	\$577.1						\$577.1	\$162.4	\$414.7
WHITTIER Total		\$10,112		\$577.1								\$414.7

Figure 6

DRAFT

Proposed Title or Plan Detail

Community/Location	Harbor Facility Name	Inventoried Replacement Value (IRV)	%IRV	Annual Rebate Proportionate Share at 85% of Tax	Allocation for Local Ownership Year 1	Allocation for Local Ownership Year 2	Allocation for Local Ownership Year 3	Allocation for Local Ownership Year 4	Allocation for Local Ownership Year 5	Allocation for Local Ownership Year 6	Annualized Repair and Replacement (ARR) Estimate	Alloc. less ARR
WRANGELL	FISH AND DAME FLOAT	\$1,825	1.08%	\$104.2			\$104.2	\$104.2	\$104.2	\$104.2	\$20.8	\$83.4
WRANGELL	INNER HARBOR	\$564	0.33%	\$32.2			\$32.2	\$32.2	\$32.2	\$32.2	\$19.8	\$12.4
WRANGELL	RELIANCE HARBOR	\$1,474	1.00%	\$95.7			\$95.7	\$95.7	\$95.7	\$95.7	\$54.0	\$41.7
WRANGELL	SHOEMAKER BAY HARBOR	\$4,477	2.66%	\$255.5			\$255.5	\$255.5	\$255.5	\$255.5	\$50.2	\$205.3
WRANGELL	STANDARD OIL FLOAT	\$245	0.15%	\$14.0			\$14.0	\$14.0	\$14.0	\$14.0	\$8.8	\$5.2
WRANGELL Total		\$8,787		\$501.5								\$368.1
YAKUTAT	YAKUTAT HARBOR	\$668	0.52%	\$49.5				\$49.5	\$49.5	\$49.5	\$26.1	\$23.3
YAKUTAT Total		\$668		\$49.5								\$23.3
TEHAKEE	TEHAKEE HARBOR	\$1,314	0.78%	\$75.1				\$75.1	\$75.1	\$75.1	\$37.1	\$37.8
TEHAKEE Total		\$1,314		\$75.1								\$37.8
Grand Total		\$168,418		\$9,611.9								\$4,998.8
1		\$168,418	100.00%	\$9,611.9	\$2,865.4	\$4,240.8	\$6,462.0	\$7,333.5	\$8,464.6	\$9,611.9	\$4,613.1	\$4,998.8
CHEWEGA	CHEWEGA HARBOR	\$493	0.28%	\$0.0							\$18.5	(\$18.5)
BARANOF	BARANOF FLOAT	\$241	0.14%	\$0.0							\$18.6	(\$18.6)
ELMA BAY	ELMA BAY FLOAT AND GRID	\$181	0.10%	\$0.0							\$5.6	(\$5.6)
ELFIN COVE	ELFIN COVE INNER HARBOR	\$360	0.21%	\$0.0							\$12.1	(\$12.1)
ENTRANCE ISLAND	ENTRANCE ISLAND FLOAT	\$43	0.02%	\$0.0							\$2.1	(\$2.1)
PUNTER BAY	PUNTER BAY FLOAT	\$52	0.03%	\$0.0							\$2.5	(\$2.5)
GUSTAVIS	GUSTAVIS DOCK AND FLOAT	\$1,055	0.63%	\$0.0							\$37.6	(\$37.6)
HALIBUT COVE	HALIBUT COVE FLOAT	\$244	0.14%	\$0.0							\$0.0	\$0.0
HELM BAY	HELM BAY REFUGE FLOAT	\$34	0.02%	\$0.0							\$1.0	(\$1.0)
HOLLIS	HOLLIS HARBOR	\$243	0.14%	\$0.0							\$7.1	(\$7.1)
HYDER	HYDER HARBOR	\$991	0.57%	\$0.0							\$28.9	(\$28.9)
JAROLOP	JAROLOP BAY FLOAT	\$102	0.06%	\$0.0							\$0.0	\$0.0
KUPREANOF	KUPREANOF FLOAT	\$224	0.13%	\$0.0							\$6.2	(\$6.2)
MEYERS CHUCK	MEYER CHUCK HARBOR	\$245	0.14%	\$0.0							\$8.2	(\$8.2)
NINIICHIK	NINIICHIK HARBOR	\$81	0.05%	\$0.0							\$4.6	(\$4.6)
POINT BAKER	POINT BAKER FLOAT	\$201	0.12%	\$0.0							\$6.8	(\$6.8)
PORT PROTECTION	PORT PROTECTION FLOAT	\$114	0.07%	\$0.0							\$0.6	(\$0.6)
SWANSON HARBOR	SWANSON HARBOR FLOAT	\$51	0.03%	\$0.0							\$6.3	(\$6.3)
TAKU HARBOR	TAKU HARBOR	\$160	0.09%	\$0.0							\$12.8	(\$12.8)
TATITLER	TATITLER DOCK	\$337	0.19%	\$0.0							\$9.0	(\$9.0)
ELFIN COVE	ELFIN COVE OUTER HARBOR	\$231	0.13%	\$0.0							\$7.2	(\$7.2)

DRAFT

Figure 7

HB

446

Date of Committee Action: 2/7/96

The JUDICIARY Committee considered:

HB 446

HOUSE BILL NO. 446

NUISANCE INJUNCTIONS BY HOME RULE MUNIS

"An Act requiring home rule municipalities to bring actions for certain injunctive relief relating to nuisances."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) Law

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>			<input checked="" type="checkbox"/>	

CHAIR'S SIGNATURE *[Signature]*
for Rep Porter

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 446

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act requiring home rule municipalities to bring BRU: Civil Division
action for certain injunctive relief relating to nuisances." Component: General Legal Services
 Sponsor: Representative Rokeberg
 Requester: Representative Rokeberg COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (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

Estimate of any current year (FY96) cost: * 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 09.50.180 to provide that a home rule municipality shall bring an action to enjoin a nuisance, as defined under AS 09.50.170 - 09.50.240 (lewd houses), if the nuisance is located in the home rule municipality. Currently, only the state or a citizen are allowed to bring such an action. The bill has the effect of giving local government authority to act in an area that is of local concern. There will not be a fiscal impact for the Department of Law.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 2/4/96
 Date: 2/4/96

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ALASKA STATE LEGISLATURE
House of Representatives

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Representative Norman Rokeberg

MEMORANDUM

TO: Representative Brian Porter, Chairman
House Judiciary Committee

FROM: Representative Norman Rokeberg 

DATE: February 5, 1996

SUBJECT: HB 446- "An Act requiring home rule municipalities to bring actions for certain injunctive relief relating to nuisances."

Attached is the packet for HB 446. If you have any questions please contact myself or my staff person, Shirley Armstrong at 465-4968.

ALASKA STATE LEGISLATURE

House of Representatives

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Representative Norman Rokeberg

SPONSOR STATEMENT

HB- 446 "An Act requiring home rule municipalities to bring actions for certain injunctive relief relating to nuisances."

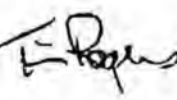
HB 446 adds municipalities to the list of entities that are required to enjoin nuisances within their jurisdiction. The Municipality of Anchorage has requested this authority in order to prevent and suppress nuisances and provide a mechanism for abatement of the premises being utilized.

MUNICIPALITY OF ANCHORAGE

MEMORANDUM

DATE: February 5, 1996

TO: Rep. Norm Rokeberg

FROM: Tim Rogers, Legislative Program Coordinator 

SUBJECT: H. B. 446

AS 09.50.180 grants the State of Alaska attorney general the ability to perpetually enjoin the owner, lessee, or agent of a building which is being used for certain illegal activities such as prostitution, gambling, use of controlled substances, etc.

There are numerous cases within the Municipality of Anchorage in which this statute could be used to stop illegal activity. Several of these sites are often the scenes of violence and there is concern for the safety of the neighborhoods. The State attorney general's office has been unable to undertake any cases on behalf of the Municipality.

The existing statute also enables a citizen to bring civil action. However, the financial resources and time commitment prohibit all but a few citizens from taking such action.

The Municipality of Anchorage would like AS 09.50.180 amended to allow it to pursue these actions. This would enable the Municipality to use this important enforcement tool while relieving its citizens and/or the State of the associated burdens.

If additional information is needed, please advise. Thank you for your assistance.



Rick Mynstrom,
Mayor

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599
Telephone (907) 786-8500



Service since 1931

February 5, 1996

Representative Norman Rokeberg
Alaska State Legislature
State Capitol (MS3100)
Juneau, Alaska 99801-1182

Re: House Bill 446—Civil Abatement

Dear Representative Rokeberg:

The Anchorage Police Department fully supports passage of House Bill 446, which would allow municipalities to present cases for abatement to civil court. The State of Alaska has neither the funds nor the personnel to adequately bring these actions. Therefore, we would recommend approval for enforcement on a local level.

Sincerely,

Duane S. Udland
Deputy Chief of Police



Anchorage - Start the North
Chamber of Commerce

Anchorage Chamber of Commerce
Criminal Justice System Reform
Resolution 95/96 5

WHEREAS the public is unsafe due to the Catch and Release of drug offenders who continue to operate after arrest, and

WHEREAS Civil Abatement is a useful tool in preventing illegal activities and is available only to the State and not local municipalities; and

WHEREAS juvenile offenders are becoming more dangerous and are exempt from public censure because of confidentiality laws, and

WHEREAS the sealing of the records of juvenile offenders obscures the fact after their 18th birthday that they have a criminal history; and

WHEREAS the State has sole jurisdiction over juvenile crime and municipalities are barred from addressing juvenile crime; and

WHEREAS the "best interest of the juvenile" standard conflicts with society's expectation of accountability to and protection of the public; and

WHEREAS the Municipality of Anchorage has assumed costs of criminal justice services in excess of \$5,535,000 those costs normally reserved to the state, and yet is burdened with inadequate numbers of correctional facilities and magistrates;

NOW THEREFORE BE IT RESOLVED that the Anchorage Chamber of Commerce does hereby support the Criminal Justice Proposals brought forward by the Municipality of Anchorage that propose more stringent conditions for bail for repeat drug offenders, allow municipalities to utilize Civil Abatement procedures, revise the confidentiality laws concerning juvenile offenders, give municipalities jurisdiction over less serious juvenile crimes, and provide for at least equal consideration of the best interest of the Public and the victims in bail and sentencing procedures for juveniles; and

BE IT FURTHER RESOLVED that the Anchorage Chamber of Commerce supports the Municipality of Anchorage's initiative to call upon the state to recognize the importance of increasing the number of correctional facilities and magistrates serving Anchorage by raising their priority within the state budget; and

BE IT FURTHER RESOLVED that the Anchorage Chamber of Commerce urges all of its members to actively support these proposals by encouraging their Senators and Representatives to support these measures.

Approved December 15, 1995

Sue Lirford, Chair

Carol Heyman, President

cc: LARRY
MARY
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I. GENERAL CONSIDERATION.

This section is potentially open-ended. *Johansen v. State*, 491 P.2d 750 (Alaska 1971).

Strict limitation on imprisonment. — Imprisonment for civil coercive contempt must be strictly limited in its application lest it intrude upon those constitutionally guaranteed liberties which the courts are sworn to protect. *In re Elder*, 763 P.2d 219 (Alaska 1988).

Distinction between criminal and civil contempt is generally phrased in terms of whether the character and purpose of the contempt is "remedial" or "punitive." *L.A.M. v. State*, 547 P.2d 827 (Alaska 1976).

Where the contempt power is invoked to punish the alleged contemnor for "past, willful, flouting of the court's authority" pursuant to AS 09.50.010(5), contempt is criminal, but where the contempt proceeding is instituted to "coerce future conduct" pursuant to this section, the contempt is civil. *L.A.M. v. State*, 547 P.2d 827 (Alaska 1976).

Willfulness is a prerequisite to imprisonment for civil contempt, but only in the sense that the act ordered must be within the power of the defendant to perform. *State, Dep't of Revenue v. Oliver*, 636 P.2d 1156 (Alaska 1981).

Inability to comply with an order to produce allegedly misappropriated funds is established as a matter of law where the undisputed evidence shows either that the funds or property ordered produced are in the hands of third parties over whom the alleged contemnor has no legal control, or that such funds or property have been converted into some form of asset which the court refuses to accept upon immediate tender. *In re Elder*, 763 P.2d 219 (Alaska 1988).

Coercive confinement of recalcitrant grand jury witness must end when grand jury is discharged since after that point the witness has no further opportunity to purge himself of contempt. *E.L.I. v. State*, 572 P.2d 786 (Alaska 1977).

Jury trial not available where confinement is remedial and not punitive. — See *Gwynn v. Gwynn*, 530 P.2d 1311 (Alaska 1975).

Appellate review of contempt order. — Court of appeals had jurisdiction to review a contempt order which arose out of a search warrant which the state obtained to advance a criminal prosecution, where

defendant had a related appeal pending in the court and the imprisonment which arose out of the contempt had a clear effect on his sentence. *Martin v. State*, 797 P.2d 1209 (Alaska Ct. App. 1990).

II. NONSUPPORT.

Contempt for nonsupport has criminal aspects. — Although contempt for nonsupport has traditionally been characterized as a civil action, certain aspects of that action, in particular, the threat of incarceration, more closely approximate penal proceedings. *Otton v. Zaborac*, 525 P.2d 537 (Alaska 1974).

Right to attorney. — Indigent in a contempt for nonsupport proceeding has a right to a court-appointed attorney. *Otton v. Zaborac*, 525 P.2d 537 (Alaska 1974).

The burden of proof of inability to comply with the court order, which is the central issue in contempt proceedings for nonpayment of child support, is with the defendant. *Otton v. Zaborac*, 525 P.2d 537 (Alaska 1974).

Ability to comply with support order. — The principal question in civil contempt proceedings involving child support orders is not whether the defendant once had the ability to comply with the support order but whether he presently has the ability to comply. *Ryfeul v. Ryfeul*, 650 P.2d 369 (Alaska 1982).

Motion for a directed verdict finding husband in contempt for failure to pay alimony and support pursuant to divorce decree was improperly granted where there was substantial evidence that the husband was in bad financial straits and fair minded jurors could have reached different conclusions on the issue of his ability to pay. *Ryfeul v. Ryfeul*, 650 P.2d 369 (Alaska 1982).

Discussion of sentencing procedures in nonsupport cases. — See notes to AS 09.50.010. *Diggs v. Diggs*, 663 P.2d 950 (Alaska 1983).

Nonsupport order vacated. — Superior court's order requiring defendant in nonsupport proceeding to serve 90 days with 45 days suspended on certain conditions was vacated since the court did not announce at the outset of the proceeding that it intended to impose a criminal sanction if the defendant was found guilty of contempt and the preponderance of the evidence burdens of proof were used by the superior court in its instructions to the jury rather than the criminal standard of beyond a reasonable doubt. *Diggs v. Diggs*, 663 P.2d 950 (Alaska 1983).

Sec. 09.50.060. Prosecution on nonappearance. If the defendant does not appear on the day ordered by the court, the court may order the undertaking to be prosecuted. If the undertaking is prosecuted, the measure of damages is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued and the costs of the proceeding. (§ 10.06 ch 101 SLA 1962)

Secs. 09.50.070, 09.50.080. Property subject to escheat; enforcement of rights by state. [Repealed, § 14 ch 133 SLA 1986.]

Sec. 09.50.090. Transmittal of personal property to state. [Repealed, § 5 ch 78 SLA 1972.]

Secs. 09.50.100 — 09.50.160. Escheat actions, claims, and reports. [Repealed, § 14 ch 133 SLA 1986.]

Article 2. Abatement of Lewd Houses.

Section	Section
170. Abatement of places used for certain acts	200. Contempt proceeding
175. Admissibility of evidence to prove nuisance	210. Order of abatement
180. Injunction	220. Proceeds of sale
190. Dismissal	230. Release of premises to owner
	240. Fine for contempt as lien on premises

Cross references. — For provisions governing nuisances in general, see AS 09.45.230 — 09.45.250.

Collateral references. — 24 Am. Jur. 2d, Disorderly Houses, §§ 23-36, 66 C.J.S., Nuisances, §§ 45, 77, 102-169.

Sec. 09.50.170. Abatement of places used for certain acts. (a) A person who erects, establishes, continues, maintains, uses, owns, or leases a building, structure, or other place used for one of the following activities is guilty of maintaining a nuisance, and the building, structure, or place, or the ground itself in or upon which or in any part of which the activity is conducted, permitted, carried on, continues, or exists, and its furniture, fixtures, and other contents, constitute a nuisance and may be enjoined and abated:

- (1) prostitution;
- (2) an illegal activity involving a place of prostitution; or
- (3) an illegal activity involving
 - (A) alcoholic beverages;
 - (B) a controlled substance;
 - (C) an imitation controlled substance; or
 - (D) gambling or promoting gambling.

(b) In this section, "illegal activity involving alcoholic beverages," "illegal activity involving a controlled substance," "illegal activity involving gambling or promoting gambling," "illegal activity involving an imitation controlled substance," "illegal activity involving a place of prostitution," and "prostitution" have the meanings given in AS 34.03.360. (§ 20.01 ch 101 SLA 1962; am §§ 8, 9 ch 121 SLA 1994)

Effect of amendments. — The 1994 amendment, effective September 26, 1994, in present subsection (a), in the introductory language, substituted "one of the following activities" for "the purposes of lewdness, assignation, or prostitution or any other immoral act," substituted "activity" for "lewdness, assignation, or prostitution," made minor stylistic changes, and added paragraphs (1)-(3); and added subsection (b).

NOTES TO DECISIONS

Bawdyhouse as nuisance. — A bawdyhouse is a nuisance per se, and it is also a public nuisance. *Snyder v. Kelter*, 4 Alaska 447 (1912).

A bawdyhouse is not a "house" within the meaning of the 4th amendment of the United States Constitution. *United States v. Ashworth*, 7 Alaska 64 (1923).

Legislative intent. — The intention of the legislature, as disclosed by this article, was to suppress houses of lewdness and prostitution, and to prevent persons from maintaining or conducting such houses, either at the place where they were being maintained or at any other place throughout the judicial division; also to abate the nuisance then existing, by closing up the same for the period of one year. *Territory of Alaska v. House No. 24*, 7 Alaska 611 (1927).

Injunction against maintaining nuisance and for abatement of building. — From a consideration of this article, it

is apparent that it has a twofold application, namely, a personal injunction against setting up, maintaining, or conducting a nuisance of the character described, the injunction operating in future, and the abatement of the building where the prescribed nuisance is being carried on. *Territory of Alaska v. House No. 24*, 7 Alaska 611 (1927).

Court has no discretion but to issue injunction and order abatement. — Where the evidence is clear that a house was maintained as a nuisance, there is no discretion in the court under this article but to issue the injunction, and also to order the abatement of the nuisance. *Territory of Alaska v. House No. 24*, 7 Alaska 611 (1927).

Testimony as to reputation of house. — Testimony that house had a reputation as a house of prostitution is not sufficient. *United States v. Rex Hotel*, 8 Alaska 21 (1928).

Sec. 09.50.175. Admissibility of evidence to prove nuisance. In an action brought under AS 09.50.170(a) to prove the existence of a nuisance, the court may consider

- (1) evidence of reputation within a community;
- (2) evidence derived from records of the courts of the state or of the United States that relate to previous complaints concerning alleged violations of, and to arrests for or convictions of violations of, laws based on activity set out in AS 09.50.170. (§ 10 ch 121 SLA 1994)

Sec. 09.50.180. Injunction. When there is reason to believe that a nuisance as defined in AS 09.50.170 — 09.50.240 exists, the attorney general shall, or a citizen may, bring an action to perpetually enjoin the nuisance, the person maintaining it, and the owner, lessee, or agent of the building or group upon which the nuisance exists. (§ 20.02 ch 101 SLA 1962)

Cross references. — For court rule on injunctions generally, see Civ. R. 6E.

NOTES TO DECISIONS

Legislative enjoining of nuisance violating criminal statute. — It is within the authority of the legislature to enlarge the powers of an equity court by empowering it to enjoin the maintenance of a nuisance, although the maintenance thereof may be a violation of a criminal statute. *Territory of Alaska v. House No. 24*, 7 Alaska 611 (1927).

Sec. 09.50.190. Dismissal. If the complaint is filed by a citizen, the action may be dismissed only upon approval of the attorney general and affidavit of the complainant and the complainant's attorney giving the reasons why the suit should be dismissed. The court may refuse to dismiss the suit and may direct the attorney general to prosecute the action. (§ 20.03 ch 101 SLA 1962)

Sec. 09.50.200. Contempt proceeding. If an injunction granted under the provisions of AS 09.50.170 — 09.50.240 is violated, the court may summarily try and punish the offender. A party found guilty of contempt under the provisions of AS 09.50.170 — 09.50.240 is punishable by a fine of not more than \$1,000, or by imprisonment for not less than three months nor more than six months, or by both. (§ 20.04 ch 101 SLA 1962)

Cross references. — For contempt procedures, see Civ. R. 90.

Sec. 09.50.210. Order of abatement. (a) If the court finds and enters judgment that a nuisance exists, the court shall enter an order of abatement. The order of abatement must direct

- (1) termination of the lease or rental agreement, if any, on the premises subject to the order of abatement, if the tenant who occupies under the lease or rental agreement has been given notice of the proceedings under AS 09.50.170 — 09.50.240;
- (2) the removal from the building or place of the fixtures, furniture, and movable property used in the nuisance and their sale in the manner provided for the sale of chattels under execution;
- (3) the closing of the building or place against its use for any purpose for a period of one year unless sooner released.

(b) A person who breaks and enters or uses a building, structure, or other place directed to be closed by an order entered under (a)(3) of this section is guilty of contempt and shall be punished for contempt as provided in AS 09.50.200. (§ 20.05 ch 101 SLA 1962; am § 11 ch 121 SLA 1994)

Effect of amendments. — The 1994 amendment, effective September 26, 1994, added the subsection and paragraph designations; added paragraph (a)(1); inserted "by an order entered under (a)(3) of this section" in subsection (b); and made minor stylistic changes.

Sec. 09.50.220. Proceeds of sale. (a) The proceeds of the sale of the contents shall be applied as follows:

- (1) to the payment of fees and costs of the removal and sale;
- (2) to payment of the allowances and costs of closing and keeping closed the buildings or places;
- (3) to the payment of plaintiff's costs;
- (4) to the payment of any balance remaining to the owner of the property sold.

(b) If the proceeds do not fully discharge all the costs, fees, and allowances, the premises may also be sold under execution issued upon the order of the court and the proceeds of the sale applied in like manner. However, the building or realty in which the nuisance is conducted or real estate on which it stands may not be subject to a lien, judgment, or costs unless the owner, or an agent or representative of the owner, has been duly served with process in the action and been given an opportunity to show good faith and to immediately abate the nuisance. (§ 20.06 ch 101 SLA 1962)

Sec. 09.50.230. Release of premises to owner. (a) The court may order premises abated under AS 09.50.210 delivered to the owner and cancel the order of abatement if the owner of the premises

- (1) has not been guilty of a contempt in the proceedings;
- (2) appears and pays all costs, fees, and allowances that are a lien on the premises; and
- (3) files a bond with sureties approved by the court in an amount determined by the court to the effect that the owner will abate the nuisance that exists at the building or place and prevent the nuisance from being established within a period of one year thereafter.

(b) The lease of the property does not release it from a judgment, lien, penalty, or liability to which it may be subject by law.

(c) A cancellation of the order of abatement does not affect a termination of a lease or rental agreement made under AS 09.50.210(a)(1). (§ 20.07 ch 101 SLA 1962; am § 12 ch 121 SLA 1994)

Effect of amendments. — The 1994 amendment, effective September 26, 1994, in subsection (a), added the subsection and paragraph designations, added the introductory language preceding "if," and made related and other minor stylistic changes; in paragraph (a)(3), substituted "an amount" for "the full value of the property as" and deleted ", the court may order the premises to be delivered to the owner and cancel the order of abatement" at the end; added the subsection (b) designation; and added subsection (c).

Sec. 09.50.240. Fine for contempt as lien on premises. A fine imposed as punishment for contempt against the owner is a lien upon the premises to the extent of the interest of that person in the premises and is enforceable and collectible by execution issued by the order of the court. (§ 20.08 ch 101 SLA 1962)

Article 3. Claims Against State.

<p>Section 260. Actionable claims against the state</p>	<p>Section 280. Judgment for plaintiff; punitive damages</p>
<p>270. Payment of judgment against the state</p>	<p>300. Compromise by attorney general</p>

NOTES TO DECISIONS

Cited in *University of Alaska v. Geislaute*, 666 P.2d 424 (Alaska 1983).

- Collateral references.** — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 87-89, 79-128.
- 81A C.J.S., States, §§ 174, 189, 194-202, 297-313.
- Applicability of entoppel doctrine against state, 1 ALR2d 344.
- Contributory negligence as defense to action by state, 1 ALR2d 827.
- Tortious breach of contract as within consent by state to suit on contract, 1 ALR2d 864.
- Denial of recovery for damage to property by negligence of governmental agents, on basis of immunity of state from suit without its consent, 2 ALR2d 694.
- Declaratory relief with respect to unemployment compensation as suit against state, 14 ALR2d 835.
- Liability for spread of fire purposely and lawfully kindled, 24 ALR2d 291.
- Recovery of interest on claim against a governmental unit in absence of provision in contract or express statutory provision, 24 ALR2d 928.
- Immunity of state or governmental unit or agency from liability for damages in tort in operating hospital, 25 ALR2d 203; 18 ALR4th 858.
- Tort liability for injury or damage resulting from insecticide and vermin eradication operations, 25 ALR2d 1067.
- Tort liability in connection with destruction of weeds, 34 ALR2d 1210.
- Governmental or proprietary nature of function, 40 ALR2d 927.
- Liability for injury to property inflicted by wild animal, 67 ALR2d 265.
- Maintainability of action where state owns an undivided interest in property, 69 ALR2d 937.
- Liability for vehicle accident occurring because of accumulation of water on streets, 61 ALR2d 425.
- Liability or indemnity insurance carried by governmental unit as affecting immunity from tort liability, 68 ALR2d 1437.
- Liability of state, or its agency or board, for costs in civil action to which it is a party, 72 ALR2d 1379.
- Liability of state for damages to successful plaintiff or relator in mandamus, 73 ALR2d 903; 34 ALR4th 457.
- "Motor vehicle" or the like within statute waiving governmental immunity as to operation of such vehicle, 77 ALR2d 945.

Snow removal operations as within doctrine of governmental immunity from tort liability, 92 ALR2d 796.

Right of contractor with federal, state, or local public body to latter's immunity from tort liability, 9 ALR3d 382.

Attorney's mistake or neglect as excuse for failing to file timely notice of tort claim against state or local governmental unit, 55 ALR3d 930.

Sovereign immunity doctrine as precluding suit against sister state for tort committed within forum state, 81 ALR3d 1239.

State or municipal liability for invasion of privacy, 87 ALR3d 145.

Liability of state or municipality in tort action for damages arising out of sale of intoxicating liquor by state or municipally operated liquor store or establishment, 95 ALR3d 1243.

Governmental tort liability for injuries caused by negligently released individual, 6 ALR4th 1155.

Actual notice or knowledge by governmental body or officer of injury or incident resulting in injury as constituting required claim or notice of claim for injury — modern status, 7 ALR4th 1063.

Liability of urban redevelopment authority or other state or municipal agency or entity for injuries occurring in vacant or abandoned property owned by governmental entity, 7 ALR4th 1129.

Construction and application, under state law, of doctrine of "executive privilege", 10 ALR4th 365.

Liability, in motor vehicle-related cases, of governmental entity for injury, death, or property damage resulting from defect or obstruction in shoulder of street or highway, 19 ALR4th 532.

Entoppel of state or local government tax matters, 21 ALR4th 573.

Legislative immunity of state officials from federal civil suit for injunctive relief brought pursuant to 42 USCS § 1983, 57 ALR Fed. 504.

Sec. 09.50.250. Actionable claims against the state. A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state. A person who may present the claim under AS 44.77 may not bring an action under this section except as set out in AS 44.77.040(c). A person who may bring an action under AS 36.30.560 — 36.30.695 may not bring an action under this section except as set out in AS 36.30.685. However, an action may not be brought under this section if the claim

(1) is an action for tort, and is based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation is valid; or is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused;

(2) is for damages caused by the imposition or establishment of a quarantine by the state;

(3) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(4) arises out of the use of an ignition interlock device certified under AS 33.05.020(c). (§ 26.01 ch 101 SLA 1962; am § 1 ch 30 SLA 1965; am § 5 ch 106 SLA 1986; am § 1 ch 57 SLA 1989; am § 1 ch 119 SLA 1992)

Cross references. — For presentation of claims against state, see AS 44.77.010; for state as party, see AS 44.80.010; for counterclaims against state, see Civ. R. 13(d).

Effect of amendments. — The 1992 amendment, effective September 20, 1992, deleted "in the superior court" from the end of the first sentence.

Opinions of attorney general. — By its waiver of immunity in this section, it must be concluded that the state may be sued for negligent torts which arise under the Jones Act. It is true that under the Alaska Workmen's Compensation Act, employers, including the state (AS 23.30.265), are excluded from admiralty liability. However, this exclusive liability provision cannot act as a limitation on suits against the state under the federal maritime law once the state has unqualifiedly waived its immunity for negligent torts. 1963 Op. Att'y Gen., No. 28.

Hence, all employees on the Alaska ferry system who meet the classification

of seamen or members of the crew within the scope of the Jones Act have an exclusive federal remedy within the terms of the Jones Act to the exclusion of the Alaska Workmen's Compensation Act, except as to those injuries that occur in a situation of only local concern or fall within the "twilight zone" between local and federal jurisdiction. 1963 Op. Att'y Gen., No. 28.

By waiving its immunity under this section, the state stands in the position of a private party and cannot limit its tort liability by a general provision in the Workmen's Compensation Act. So much of AS 23.30.055 as limits the liability of employers in admiralty must be considered an invalid infringement on the federal jurisdiction. 1963 Op. Att'y Gen., No. 28.

If it is the desire of the state to limit its tort liability to the Workmen's Compensation Act, it may do so by legislative enactment of an exception to the waiver of sovereign immunity contained in this section. 1963 Op. Att'y Gen., No. 28.

NOTES TO DECISIONS

- I. General Consideration.
- II. Liability.
 - A. Generally.
 - B. Specific Examples.

I. GENERAL CONSIDERATION.

History of sovereign immunity doctrine. — See *State v. Abbott*, 498 P.2d 712 (Alaska 1972); *State v. Zia, Inc.*, 556 P.2d 1257 (Alaska 1976).

The basic policy of the law should be that when there is negligence, the rule is liability; immunity is the exception. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

The reason for preserving sovereign immunity for certain acts of the state is the necessity for judicial abstention in certain policy-making areas that have been committed to other branches of government. *Carlson v. State*, 698 P.2d 969 (Alaska 1979).

The principal policy underlying tort immunity is to limit judicial reexamination of decisions properly entrusted to other branches of government; courts must not intrude into realms of policy exceeding their institutional competence. *Industrial Indem. Co. v. State*, 669 P.2d 561 (Alaska 1983).

This section applies only to claims against the state. It provides no immu-

nity for public officials. *Aspen Exploration Corp. v. Sheffield*, 739 P.2d 150 (Alaska 1987).

Critical language of this section is identical to that of federal act. — The critical language in Alaska's Tort Claims Act, which establishes the discretionary function or duty exception of the State of Alaska's waiver of immunity, is identical to that contained in the federal Tort Claims Act. *State v. Anson*, 529 P.2d 188 (Alaska 1974).

The federal analogue of this section is 28 U.S.C. § 2674. *Adams v. State*, 556 P.2d 235 (Alaska 1976).

This section is analogous to AS 09.85.070(d)(2). *Urethane Specialties, Inc. v. City of Valdez*, 620 P.2d 683 (Alaska 1980).

This section is not of the jurisdictional nature. *State v. Zia, Inc.*, 556 P.2d 1257 (Alaska 1976).

Right to sue state is conditional. — Under this section, which was promulgated by the legislature pursuant to Alaska Const., art. II, § 21, the right to

sue the state was made conditional upon compliance with certain provisions dealing with administrative remedies, i.e., AS 44.77. *State v. Zia, Inc.*, 656 P.2d 1257 (Alaska 1976).

With respect to cases which fall within this section, that statute establishes an administrative procedure which can be characterized as a condition precedent. *State v. Zia, Inc.*, 656 P.2d 1257 (Alaska 1976).

Actions first against affected state agency. — Actions against the state first should be considered by the affected administrative agency. *State v. Zia, Inc.*, 656 P.2d 1257 (Alaska 1976).

Section and AS 09.50.280 construed together. — This section and AS 09.50.280, being *in pari materia*, are to be construed together. *Stewart & Grindle, Inc. v. State*, 524 P.2d 1242 (Alaska 1974).

When right to prejudgment interest against state afforded. — Since this section and AS 09.50.280 were passed together and amended together by the same legislative act, it is clear that AS 09.50.280 was intended to afford a right to prejudgment interest against the state only where this section established a substantive cause of action. *Stewart & Grindle, Inc. v. State*, 524 P.2d 1242 (Alaska 1974).

Actions against state delineated. — This section delineates the kinds of actions which may be brought against the State of Alaska. *Corso v. Commissioner of Educ.*, 563 P.2d 246 (Alaska 1977).

Causes of action authorized against state. — This section authorizes causes of action against the state sounding in tort, contract or quasi-contract exclusively. *Stewart & Grindle, Inc. v. State*, 524 P.2d 1242 (Alaska 1974).

When the state fires an employee for an unconstitutional reason, this amounts to unfair dealing as a matter of law and gives rise to a contract claim which can be brought under this section. *State v. Haley*, 687 P.2d 305 (Alaska 1984).

Section includes all civil claims. — This section and the other sections of this article were intended by the legislature to include all civil claims and should not be limited to only tort claims. *Wright Truck & Tractor Serv., Inc. v. State*, 398 P.2d 216 (Alaska 1965).

Separation of powers considerations. — There is no separation of powers problem in making review of a claim against the legislature by the executive Department of Administration a

prerequisite to judicial review; no separation of powers problem is raised by the application of the claims procedure outlined in AS 44.77 and AS 09.50.250 — 09.50.300 to the legislative branch. *State v. Dupere*, 709 P.2d 493 (Alaska 1985), modified on other grounds, 721 P.2d 638 (Alaska 1986). See note under catchline "Applicability of claims procedure to legislative branch," analysis line II B.

Waiver of immunity to contract claim actions. — By enacting this section, the legislature exercised its authority, pursuant to art. II, § 21, of the state constitution, to waive the state's immunity to suits asserting contract claims against it. *State v. Haley*, 687 P.2d 305 (Alaska 1984).

Universality of Alaska falls within scope of section. — The University of Alaska constitutes in function and character such an arm or instrumentality of the state as to bring it within the scope of those statutes which govern the conditional waiver of sovereign immunity in this state. *University of Alaska v. National Aircraft Leasing, Ltd.*, 636 P.2d 121 (Alaska 1975).

The corporate status of the University of Alaska under the Alaska Constitution does not militate against the conclusion of the supreme court that the University falls within the ambit of the language of this section through AS 09.50.300 which governs suits against the State of Alaska. *University of Alaska v. National Aircraft Leasing, Ltd.*, 636 P.2d 121 (Alaska 1975).

There is no municipal immunity in Alaska. *State v. Jennings*, 656 P.2d 248 (Alaska 1976).

A city does not enjoy even the limited protection afforded the state by this section. *State v. Jennings*, 656 P.2d 248 (Alaska 1976).

Degree of immunity unrelated to whether defendant bonded or insured. — The immunity reflected in paragraph (1) has never been held to be related to whether or not the defendant is bonded or insured. *Integrated Resources Equity Corp. v. Fairbanks N. Star Borough*, 799 P.2d 295 (Alaska 1990).

Human rights violations. — The general exceptions to state tort liability that the legislature established in paragraph (1) have no control over the specific consent to state liability under the Alaska human rights statute (AS 18.80). An action brought under the human rights statute is not subject to the same rules as one brought under this section. *Johnson v.*

prerequisite to judicial review; no separation of powers problem is raised by the application of the claims procedure outlined in AS 44.77 and AS 09.50.250 — 09.50.300 to the legislative branch. State v. Dupere, 709 P.2d 493 (Alaska 1985), modified on other grounds, 721 P.2d 638 (Alaska 1986). See note under catchline "Applicability of claims procedure to legislative branch," analysis line II B.

State Dep't of Fish & Game, 836 P.2d 896 (Alaska 1991).

Applied in *Morrison v. State*, 516 P.2d 402 (Alaska 1973); *State, Dep't of Pub. Safety v. Brown*, 794 P.2d 108 (Alaska 1990).

Quoted in *Redman v. Department of Educ.*, 619 P.2d 700 (Alaska 1974); *Moloso v. State*, 644 P.2d 205 (Alaska 1982); *City of Kotzebue v. McLean*, 702 P.2d 1309 (Alaska 1985); *State v. Law Offices of Coleman & Iacopelli*, 716 P.2d 1 (Alaska 1986); *Owlichok v. State*, 783 P.2d 488 (Alaska 1988).

Stated in *Rapp v. State*, 648 P.2d 110 (Alaska 1982); *Bauman v. State*, 768 P.2d 1097 (Alaska 1989).

Cited in *Brown v. State*, 526 P.2d 1365 (Alaska 1974); *DeLong v. United States*, 600 F. Supp. 331 (D. Alaska 1984); *Vest v. Schafer*, 767 P.2d 588 (Alaska 1988).

II. LIABILITY.

A. Generally.

This section places a number of limitations on the state's liability. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

No lesser standard of care than private individuals. — This section contains no indication that the legislature intended that the state should be held to a lesser standard of care than private individuals. *State v. Abbott*, 498 P.2d 712 (Alaska 1972); *State v. l'Anson*, 629 P.2d 188 (Alaska 1974).

To impose a lesser standard of care upon the state for highway maintenance would substantially diminish the risk-spreading effects of this section and seriously undermine the sound policy consideration upon which it is based. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

Risk-spreading principle adopted. — The Alaska legislature, in enacting this section, adopted the risk-spreading principle. *State v. Abbott*, 498 P.2d 712 (Alaska 1972); *State v. l'Anson*, 629 P.2d 188 (Alaska 1974).

This section, in establishing a procedure for suits against the state in tort, represented the adoption in Alaska of the policy of risk-spreading: the policy that society, rather than the injured individual, should bear the cost of the state's negligence. *Adams v. State*, 666 P.2d 235 (Alaska 1978).

When losses caused by the negligence of the state are charged against the public treasury, they are in effect spread among all those who contribute financially to the

support of the state and the resulting burden on each taxpayer is relatively slight. But when the entire burden falls on the injured party it may leave him destitute or grievously harmed. This would be unfair when the public as a whole benefits from the services performed by state employees. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

This section prohibits recovery for various intentional torts. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

Discretionary immunity doctrine. — See *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

Discretionary function exception. — See *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

Although there are no Alaska cases interpreting the discretionary function exception to the waiver of sovereign immunity, the critical statutory language is identical to that contained in the Federal Tort Claims Act, 28 U.S.C. § 2680(a), and there exists an abundance of relevant federal case law. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

The discretionary function exception applies, and immunity therefore attaches, only where there is room for policy judgment and decision. *Japan Air Lines Co. v. State*, 628 P.2d 934 (Alaska 1981).

While the negligence standard satisfies the strong public policy favoring compensation of individuals injured by the tortious conduct of the state, it is an extremely flexible standard, and consequently will not inhibit the vigorous and effective performance by the state of its duties in the way that a more rigid standard might. Moreover, when the negligence standard is applied in conjunction with the policy-oriented interpretation of the discretionary function exception, the danger of excessive judicial interference with important decisions committed to the coordinate branches of government is avoided. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

Review of relevant federal and California state case law on the subject of the discretionary function exception. — See *State v. l'Anson*, 629 P.2d 188 (Alaska 1974).

The supreme court has declined to use a mechanical or semantic test in determining whether a particular function or duty is discretionary. *Adams v. State*, 666 P.2d 235 (Alaska 1978).

Court must weigh the policy considerations behind the labeling of a partic-

ular function or duty as discretionary. *Adams v. State*, 555 P.2d 235 (Alaska 1976).

Planning-operational test. — The adoption of planning-operational test, within analytical framework which is sensitive to the policies underlying discretionary function exception of this section was reaffirmed in *State v. P'Anson*, 629 P.2d 188 (Alaska 1974).

Under the planning-operational test for applying the discretionary act exception in paragraph (1) of this section, decisions that rise to the level of planning or policy-making are considered discretionary acts which do not give rise to tort liability, while decisions that are merely operational in nature are not considered to be discretionary acts and therefore are not immune from liability. *Carlson v. State*, 598 P.2d 969 (Alaska 1979); *Johnson v. State*, 636 P.2d 47 (Alaska 1981).

Decisions that rise to the level of planning or policy formulation will be considered discretionary acts which are immune from tort liability, whereas decisions that are merely operational in nature, thereby implementing policy decisions, will not be considered discretionary and therefore will not be shielded from liability. *Japan Air Lines Co. v. State*, 628 P.2d 934 (Alaska 1981).

The distinction between planning decisions and operational decisions does not depend merely on who made the decision. Rather the distinction is based on the type of decision that is being made, examined within an analytical framework which is sensitive to the policies underlying the discretionary function or duty exception. *Carlson v. State*, 598 P.2d 969 (Alaska 1979).

The proprietary-governmental distinction was abandoned by the supreme court with respect to suits involving the state or its agencies under this section through AS 09.50.300. *University of Alaska v. National Aircraft Leasing, Ltd.*, 536 P.2d 121 (Alaska 1975).

Duty of reasonable care in performance. — Once discretion is exercised to undertake an activity, a duty of reasonable care attaches in its performance. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

Once the basic decision to maintain highways in a safe condition throughout the winter is reached, the state should not be given discretion to do so negligently. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

Once the state decided to seize a crab vessel for possession of undersized king crab, the state should not be given discretion to do so negligently. *State v. Stanley*, 506 P.2d 1284 (Alaska 1973).

Failure to exercise proper care does not rise to the level of governmental policy decisions to which the discretionary function immunity from suit applies. *State v. Stanley*, 506 P.2d 1284 (Alaska 1973).

The elements of a cause of action for negligence are: (1) A duty requiring the actor to conform to a certain standard of conduct, for the protection of others against unreasonable risks; (2) a failure on his part to conform to the standard required; (3) a reasonable close causal connection between the conduct and the resulting injury (proximate cause); (4) actual loss or damage resulting to the interests of another. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

"But for" test. — See *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

"Substantial factor" test. — See *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

Concurrent causation. — See *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

Proof of exposure to unreasonable risk of harm. — In order for a plaintiff to show that the state exposed him to an unreasonable risk of harm, he would have to demonstrate that the likelihood and gravity of the harm threatened outweighed the utility of the state's conduct and the burden on the state for removing the danger. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

Officials entitled to immunity from libel claims. — The libel exception is not so limited that sovereign immunity exists only when libel is committed by high-level government officials. *McCutcheon v. State*, 746 P.2d 461 (Alaska 1987).

Acting district attorney fall within the category of government officials entitled to common-law immunity from defamation claims. *McCutcheon v. State*, 746 P.2d 461 (Alaska 1987).

Failure to aver the superior court's jurisdiction over the state was procedural and harmless in nature, since the complaint could be amended to include the citation of the jurisdictional statute. *A.R.C. Indus., Inc. v. State*, 551 P.2d 951 (Alaska 1976).

Suit not barred by false imprisonment exception. — Suit against the state, alleging that state employees were negligent in failing to properly inform a

judge of the dismissal of a complaint against plaintiff and that jail personnel were negligent in failing to allow plaintiff to make a phone call to obtain bail when he was arrested based on the dismissed complaint, was not barred by the false imprisonment exception to Alaska's government claims statute, but instead should have been treated in the same manner as any other negligence case against the state since it was negligent record keeping, rather than false imprisonment, which caused plaintiff's injuries. *Zerbe v. State*, 678 P.2d 697 (Alaska 1978), rehearing denied, 683 P.2d 845 (Alaska 1978), overruled on other grounds, *Stephens v. State*, Dep't of Revenue, 746 P.2d 908 (Alaska 1987).

Dismissals of state employees did not bar finding of state liability. — In a tort action where dismissals of all of the individual state employee defendants, with one exception, were by the express consent of the plaintiff and thus did not involve an adjudication on the merits as to their negligence or performance of discretionary functions, dismissal did not bar a finding of liability on the part of the State. *State v. Stanley*, 506 P.2d 1284 (1973).

Damages. — See *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

Attorney's fees. — See *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

Misinterpretation of law. — Governmental immunity applies to situations in which a state official misinterprets the law. *Earth Movers of Fairbanks, Inc. v. State*, 691 P.2d 281 (Alaska 1984).

B. Specific Examples.

Applicability of claims procedure to legislative branch. — AS 44.77 applies to actions for breach of contract against the Alaska Legislature, but the exhaustion of remedies requirement was waived with regard to a plaintiff who sought compensation for performing legislative consultation because AS 44.77 had not previously been construed to apply to non-executive branch claims; the plaintiff's one-year delay in filing the action was not unreasonable given his assumption that the six-year statute of limitations for contract actions was applicable; and the claimant had not ignored the administrative process entirely, but had requested payment from the Legislative Council and had sought reconsideration when that claim was denied. *State v. Dupere*, 709 P.2d 493

(Alaska 1985), modified on other grounds, 721 P.2d 638 (Alaska 1986).

Parolee supervision. — The state has a duty to supervise parolees carefully, this duty extends to anyone foreseeably endangered, and this section, the sovereign immunity statute, will not shield the state from the consequences of its breach of that duty. *Division of Cor. v. Neakok*, 721 P.2d 1121 (Alaska 1986).

Decisions regarding intersection located near school. — Decisions whether or not to build one or more overpasses in the area of an intersection located several hundred feet from a school, whether or not to designate the subject intersection area as a school zone, and whether or not to undertake any other safety measures at the intersection in question or at other areas of a road not located adjacent to the school, were governmental decisions which have rightly been characterized as planning level decisions, and thus within the ambit of the statutorily created discretionary function exception to the state's tort liability. *Jennings v. State*, 666 P.2d 1304 (Alaska 1977).

The decision whether to build a road or railroad crossing is a planning decision involving a basic policy decision entrusted to a coordinate branch of government. However, once the state has made the decision to construct a road and crossing, discretionary function immunity does not protect it from possible negligence liability in the operational carrying out of the basic policy-planning decision to build. *Johnson v. State*, 636 P.2d 47 (Alaska 1981).

The state is not an insurer of the safety of motorists. *State v. P'Anson*, 629 P.2d 188 (Alaska 1974).

Maintenance of highways. — Title 19 provides that the Department of Highway is responsible for highway maintenance. But it fails to specify what standard shall be used to measure performance of that duty. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

The scope of the state's duty to maintain highways should be defined by ordinary negligence principles. *State v. Abbott*, 498 P.2d 712 (Alaska 1972); *State v. P'Anson*, 629 P.2d 188 (Alaska 1974).

Highway authorities have a duty to exercise reasonable care to keep the highway in a safe condition. *State v. Abbott*, 498 P.2d 712 (Alaska 1972); *State v. P'Anson*, 629 P.2d 188 (Alaska 1974).

The appropriate standard of care required of the State of Alaska and its

agents was to use reasonable care to keep the highway in a safe condition for the reasonably prudent traveler. *State v. l'Anson*, 529 P.2d 188 (Alaska 1974).

Duty of care the state owes to persons using its highways in general. — See *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

The duty to maintain a highway safe for travel includes not only a duty to maintain the surface of the highway in a condition reasonably safe for travel, but also a duty of warning the travelling public of any other condition which endangers travel, whether caused by a force of nature, such as snow or ice, or by the act of third persons, such as a ditch dug in the sidewalk or roadway or an obstruction placed upon it. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

Where lower court found the state and its employees negligent in failing to exercise reasonable care to maintain the curve where the accident occurred, the supreme court concluded that the trial court was correct in holding that such maintenance was not within the discretionary function exception. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

Installation of guardrail at highway site. — The question of whether or not to install a guardrail at a highway site is one of policy, and an affirmative decision to go ahead with the installation has to be made at the discretionary level in order to advance the chain of events to the operational stage. *Industrial Indem. Co. v. State*, 669 P.2d 561 (Alaska 1983).

Liability of state for negligent winter highway maintenance. — See *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

In some circumstances the state will be held liable for dangerous highway conditions caused by ice and snow accumulation. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

To impose liability on the state for its negligent failure to maintain Alaska highways through the winter would not place an "impossible burden" on the state. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

In making a determination of negligence by the state in maintaining highways, all of the following factors would be relevant: Whether the state had notice of the dangerous condition, the length of time the ice and snow had been on the highway, the availability of men and equipment, and the amount of traffic on

the highway. *State v. Abbott*, 498 P.2d 712 (Alaska 1972).

Marking and striping a portion of a highway do not involve broad basic policy decisions which come within the "planning" category of decisions which are expressly entrusted to a coordinate branch of government. *State v. l'Anson*, 529 P.2d 188 (Alaska 1974).

No eroding of the separation of powers doctrine will result from a ruling that the functions of marking and striping a highway are not within the ambit of the discretionary function exception of Alaska's Tort Claims Act. *State v. l'Anson*, 529 P.2d 188 (Alaska 1974).

Approving reconstruction plans for road and railroad crossing. — Design decision made by the state in approving reconstruction plans of a road and railroad crossing were operational decisions which merely implemented the basic policy formulation decision to build an overlapping road and crossing at that location. *Johnson v. State*, 636 P.2d 47 (Alaska 1981).

Temporary reduction of speed limit by trooper. — Where a state trooper temporarily reduced speed limits in response to road hazards and subsequently ticketed a truck driver for exceeding the reduced limit, even if the trooper exceeded his authority, his mistake fit within the discretionary function exception and both he and the state were immune from liability. *Earth Movers of Fairbanks, Inc. v. State*, 691 P.2d 281 (Alaska 1984).

The design of an airplane taxiway is not within the discretionary function exception, and therefore the state may be held liable for negligence in the design of such a taxiway. *Japan Air Lines Co. v. State*, 628 P.2d 934 (Alaska 1981).

Negligent designs. — The state may be held liable for injuries which result from negligent designs. *Japan Air Lines Co. v. State*, 628 P.2d 934 (Alaska 1981).

Traffic signs. — The decision whether or not to provide a traffic warning sign is operational and hence not immune. *Johnson v. State*, 636 P.2d 47 (Alaska 1981).

Installation of flashing lights rather than traffic signal. — Decision by Department of Transportation to install flashing red and yellow lights in lieu of a sequential traffic signal constituted a planning level decision entitling the state to immunity from liability based on that decision. *Waincott v. State*, 642 P.2d 1355 (Alaska 1982).

Negligent performance of inspection. — Although the decision to inspect a site is a discretionary act, the negligent performance of that inspection is a ministerial function and thus not immune. *Wallace v. State*, 567 P.2d 1120 (Alaska 1976).

The state is liable for a failure to enforce safety regulations once it has undertaken an inspection and has discovered safety violations in the course of that investigation. *Wallace v. State*, 567 P.2d 1120 (Alaska 1976).

For case holding negligent performance of fire inspection of hotel operational or ministerial act, and not immune, see Adams v. State, 555 P.2d 235 (Alaska 1976).

Operation and maintenance of seaplane dock. — A decision concerning the manner in which a seaplane dock should be operated and maintained is clearly an operational decision; as such, it does not fall within the discretionary function exception to government tort liability. *Planchich v. State*, 693 P.2d 855 (Alaska 1985).

A city and the state were not immune from liability under AS 09.06.070(d)(2) and this section in an action alleging negligent breach of duty to keep a seaplane dock available to members of the public who wished to dock seaplanes. *Planchich v. State*, 693 P.2d 855 (Alaska 1985).

Negligent failure to institute dust control procedures. — The state was immune from tort liability, under the discretionary function immunity exception to the Tort Claims Act, in an action based on negligent failure to institute dust control procedures on the Dalton Highway. *Freeman v. State*, 705 P.2d 918 (Alaska 1985).

Seizure of crab vessel for possession of undersized king crab. — See *State v. Stanley*, 500 P.2d 1284 (Alaska 1973).

An action to enjoin a state officer from enforcing a statute or regulation which is alleged to be unconstitutional is not an action against the state for the purpose of sovereign immunity. *Etheredge v. Bradley*, 480 P.2d 414 (Alaska 1971).

State regulation of hunting. — The discretionary function exception of subsec-

tion (1) made the state immune from tort claim for compensatory damages based on the state's failure to adopt subsistence brown bear hunting regulations. *Morry v. State*, Sup. Ct. Op. No. 4076 (File No. S-4686), P.2d (1994).

Personal injuries inflicted by bear. — The State of Alaska is not immune from liability for personal injuries inflicted by a bear, when the bear is attracted to the site of the attack by garbage that had accumulated on State-owned property. *Carlson v. State*, 698 P.2d 889 (Alaska 1979).

Personal injury of state employee on state ferry. — The express entry of Alaska into the common carriage of passengers on navigable United States and international waters, its express submission to coast guard regulations and jurisdiction, its consent to suit for personal injury (regardless of how limited), taken together, evidenced waiver of 11th amendment immunity for a suit in federal court for the recovery of personal injuries suffered by a state employee on a state ferry, based on unseaworthiness. *Cole v. State, DOT & Pub. Facilities*, 621 F. Supp. 3 (D. Alaska 1984).

Firing state employee for unconstitutional reason. — When the state fires an employee for an unconstitutional reason, this amounts to unfair dealing as a matter of law and gives rise to a contract claim which can be brought under this section. *State v. Haley*, 687 P.2d 305 (Alaska 1984).

Negligent prosecution of civil action. — Plaintiff's claim that this statute creates an irrational distinction, in that it bars suits against the state for malicious prosecution while allowing suits for negligent prosecution, fails, since Alaska declines to recognize the tort of negligent prosecution of a civil action. *Stephens v. State, Dep't of Revenue*, 746 P.2d 908 (Alaska 1987).

Constructive discharge and intentional infliction of emotional distress upheld. — See *Cameron v. Beard*, 864 P.2d 538 (Alaska 1993).