

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8969 SENATE RESOURCES

A M E N D M E N T

Sealed 1-4
(Signature)

OFFERED IN THE SENATE

BY SENATOR LEMAN

TO: CSSB 130(RES); Version "K" dated 4/11/95

1 Page 2, line 18:

2 Delete "a license or"

3 Insert "[A LICENSE OR]"

4 Page 2, lines 19 - 20:

5 Delete "more than one pilotage region under AS 08.62.080(b)"

6 Insert "a specific port or waterway that is located outside of the pilotage region
7 in which the pilot is licensed [MORE THAN ONE PILOTAGE REGION]"

8 Page 2, line 30, through page 3, line 9:

9 Delete "[.] unless the commissioner [BOARD] determines that an actual or
10 imminent shortage of licensed pilots exists in a [IT IS IN THE BEST INTERESTS OF
11 THE STATE TO LICENSE PILOTS FOR PARTS OF MORE THAN ONE] pilotage region.
12 If the commissioner makes the determination described in this subsection, the board
13 may, after consultation with the recognized pilot organizations in the affected pilotage
14 region, issue temporary licenses for the affected pilotage region to pilots who already
15 hold a license for another pilotage region. The board shall ensure that sufficient pilots
16 are available to provide pilotage services in the affected pilotage region to all vessels
17 required to employ a pilot under this chapter. A temporary license issued under this
18 subsection is valid for a period of not more than one year."

19 Insert "; however, the board may issue an endorsement to a license authorizing
20 a pilot to pilot vessels in a specific port or waterway that is located outside of the
21 pilotage region in which the pilot is licensed [. UNLESS THE BOARD DETERMINES
22 THAT IT IS IN THE BEST INTERESTS OF THE STATE TO LICENSE PILOTS FOR
23 PARTS OF MORE THAN ONE PILOTAGE REGION]."

9-LS0851VK ✓
Utermohle
4/11/95

CS FOR SENATE BILL NO. 130(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR PEARCE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to marine pilots and the Board of Marine Pilots; extending the
2 termination date of the Board of Marine Pilots; and providing for an effective
3 date."

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

5 • Section 1. AS 08.03.010(c)(13) is amended to read:

6 (13) Board of Marine Pilots (AS 08.62.010) -- June 30, 1999 [1994];

7 • Sec. 2. AS 08.62.010 is amended to read:

8 Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. There is
9 created the Board of Marine Pilots. It consists of two pilots licensed under this
10 chapter who have been actively engaged in piloting on vessels subject to this chapter,
11 two registered agents or managers of vessels subject to this chapter who are actively
12 engaged in the procurement of pilotage services, two public members in accordance
13 with AS 08.01.025, and the commissioner or the commissioner's designee. Not more
14 than one pilot and one registered agent or manager may [SHALL] be from any one

1 pilotage region established by the board. Not more than one registered agent or
2 manager may be employed by, be a contractor for, or hold a financial interest in
3 the same marine industry business entity, including commonly owned, affiliated,
4 or subsidiary business entities [JUDICIAL DISTRICT]. All members of the board
5 shall be residents of the state.

6 * Sec. 3. AS 08.62.040(b) is amended to read:

7 (b) The board may, by regulation, make any other provision for proper and
8 safe pilotage upon the inland and coastal water of and adjacent to the state and for the
9 efficient administration of this chapter, including establishing

10 (1) different licensing criteria for a pilotage region if justified by
11 regional differences in piloting:

12 (2) a mandatory [RANDOM] drug and alcohol testing program,
13 including random tests, post-incident tests, and tests based upon reasonable cause,
14 for pilots licensed under this chapter; the board may delegate responsibility for
15 administration of all or a portion of a testing program to pilot organizations;

16 (3) criteria for trainee selection and for training programs conducted by
17 pilot organizations; and

18 (4) standards under which a pilot may receive a license or an
19 endorsement to a license to pilot vessels in more than one pilotage region under
20 AS 08.62.080(b).

21 * Sec. 4. AS 08.62.040 is amended by adding a new subsection to read:

22 (e) The board may delegate duties to the marine pilot coordinator as necessary
23 to assist the board in administering and enforcing this chapter.

24 * Sec. 5. AS 08.62.050 is amended by adding a new subsection to read:

25 (c) In addition to other duties as may be assigned by the board, the marine
26 pilot coordinator may review applications for examination and licensure to ascertain
27 whether the applicant satisfies the applicable requirements.

28 * Sec. 6. AS 08.62.080(b) is amended to read:

29 (b) A pilot may not be licensed in more than one pilotage region at one time
30 [.] unless the commissioner [BOARD] determines that an actual or imminent
31 shortage of licensed pilots exists in a [IT IS IN THE BEST INTERESTS OF THE

1 STATE TO LICENSE PILOTS FOR PARTS OF MORE THAN ONE] pilotage region.
2 If the commissioner makes the determination described in this subsection, the
3 board may, after consultation with the recognized pilot organizations in the
4 affected pilotage region, issue temporary licenses for the affected pilotage region
5 to pilots who already hold a license for another pilotage region. The board shall
6 ensure that sufficient pilots are available to provide pilotage services in the
7 affected pilotage region to all vessels required to employ a pilot under this
8 chapter. A temporary license issued under this subsection is valid for a period
9 of not more than one year.

10 * Sec. 7. AS 08.62.090(b) is amended to read:

11 (b) The application shall provide the information and be made on a form
12 prescribed by the department [BOARD].

13 * Sec. 8. AS 08.62.093(b) is amended to read:

14 (b) A person who applies for a deputy marine pilot license under this chapter
15 shall provide proof satisfactory to the board of the following experience:

16 (1) one year of service as a master on ocean or coastwise vessels while
17 holding a United States Coast Guard license as master of ocean steam or motor
18 vessels of any gross tons;

19 (2) two years of service as a master on United States Coast Guard
20 inspected vessels of not less than 1,000 gross tons or tug and tow of not less than
21 1,600 combined gross tons while holding at least a United States Coast Guard [A]
22 license as master of ~~steam or motor~~ vessels of not more [LESS] than 1,600 gross
23 tons;

24 (3) two years of service as a chief officer on ocean or coastwise vessels
25 of not less than 1,600 gross tons while holding a United States Coast Guard license
26 as master of ocean steam or motor vessels of any gross tons;

27 (4) two years of service as commanding officer of United States
28 commissioned vessels of not less than 1,600 gross tons and hold a United States
29 Coast Guard [WHILE HOLDING A] license as master of ocean steam or motor
30 vessels of any gross tons; [OR]

31 (5) three years of experience as a member of a professional pilot's

1 organization, during which the person actively engaged in piloting while holding at
2 least a United States Coast Guard license as a master of steam or motor vessels
3 [FREIGHT OR TOWING VESSEL] of not more than 1,600 gross tons; or

4 (6) five years of experience gained in a board approved deputy
5 marine pilot apprenticeship program in the pilotage region for which the deputy
6 marine pilot license is sought and hold at least a United States Coast Guard
7 license as master of steam or motor vessels of not more than 1,600 gross tons.

8 * Sec. 9. AS 08.62.093(d) is amended to read:

9 (d) A person licensed as a deputy marine pilot under this section may, except
10 as otherwise provided by the board, pilot vessels of 25,000 [20,000] gross tons or less
11 in a marine pilotage region for which the license is issued.

12 * Sec. 10. AS 08.62.097(b) is amended to read:

13 (b) A person who supervises the training of persons who are seeking a deputy
14 marine pilot license under this chapter shall

15 (1) hold a marine pilot license issued under AS 08.62.100; however,
16 if the board finds that there are no marine pilots licensed in a pilotage region who
17 are available to supervise training under this section, the board may authorize a
18 person who is licensed in that pilotage region as a deputy marine pilot to
19 supervise the training of persons who are seeking a deputy marine pilot license
20 in that pilotage region;

21 (2) receive prior authorization from the board to supervise the training
22 of those persons;

23 (3) maintain a written log and evaluation on a form provided by the
24 board of the training and progress of the person being supervised.

25 * Sec. 11. AS 08.62.120(a) is amended to read:

26 (a) In order to renew a marine pilot license, a person who is licensed under
27 AS 08.62.100 shall

28 (1) submit an application for renewal of the license on a form provided
29 by the department [BOARD];

30 (2) submit proof of continued qualification under AS 08.62.100 to
31 receive a marine pilot license.

1 (3) provide evidence of satisfactory completion of a physical
2 examination by a licensed physician within 60 days before the date of renewal of the
3 license;

4 (4) submit proof satisfactory to the board that the person has

5 (A) engaged in piloting vessels subject to this chapter in the
6 marine pilotage region for which the license is to be renewed during at least
7 120 days [60 DAYS OF EACH CALENDAR YEAR] in the licensing period
8 immediately preceding the licensing period for which renewal is sought; or

9 (B) completed the minimum number of familiarization trips
10 required by the board for renewal of a marine pilot license for a marine
11 pilotage region for which the license is to be renewed.

12 * Sec. 12. AS 08.62.150(a) is amended to read:

13 (a) The board shall impose a disciplinary sanction on a person licensed under
14 this chapter when the board finds that the person

15 (1) is incompetent in the performance of pilotage duties;

16 (2) is chemically impaired;

17 (3) illegally possesses, uses, or sells narcotic or hallucinogenic drugs;

18 (4) makes a false statement to obtain a license;

19 (5) violates a provision of this chapter or a regulation adopted under

20 this chapter [IT];

21 (6) is guilty of misconduct during the course of employment;

22 (7) has had the person's United States Coast Guard pilot license
23 conditioned, suspended, or revoked; or

24 (8) charges, collects, or receives an amount for pilotage services that
25 is [IN EXCESS OF THE MAXIMUM TARIFF ESTABLISHED BY THE BOARD
26 OR] different from the amount set [TARIFF ADOPTED] by the pilot organization of
27 which the person is a member.

28 * Sec. 13. AS 08.62.155(b) is amended to read:

29 (b) The board [DEPARTMENT] may impose a civil fine not to exceed \$5,000
30 on a marine pilot organization recognized by the board [.] if the organization violates
31 this chapter or a regulation adopted under this chapter. The board may also suspend

1 or revoke the recognition of a pilot organization that fails to comply with its
2 articles, bylaws, and rules, so as to no longer satisfy the minimum standards for
3 recognition by the board.

4 * Sec. 14. AS 08.62.165(a) is amended to read:

5 (a) A pilot licensed under this chapter is not liable for damages in excess of
6 \$250,000 per incident for damages or loss occurring as a result of the error, omission,
7 fault, or neglect of the pilot in performing pilotage services, except that the limitation
8 does not apply in a case where

9 (1) the pilot is either grossly negligent or guilty of wilful misconduct;

10 or

11 (2) the error, omission, fault, or neglect of the pilot constitutes an act
12 for which the board shall impose a disciplinary sanction under AS 08.62.150(a)(2) or
13 (3) [AS 08.62.150(a)(1), (2), (3), (5), (6), OR (7)].

14 * Sec. 15. AS 08.62.175(c) is amended to read:

15 (c) A pilot organization recognized by the board shall

16 (1) promote a safe and reliable system of marine pilotage for the region
17 in which the organization is recognized;

18 (2) provide for the dispatch of pilots who are members of the
19 organization;

20 (3) subject to the membership application and approval provisions
21 contained in the articles and bylaws of the organization. [ADOPT AND REVISE
22 TARIFFS FOR THE PROVISION OF PILOTAGE SERVICES BY THE MEMBERS
23 OF THE ORGANIZATION:

24 (4) be open to membership by all persons licensed under this chapter
25 to pilot vessels in the pilotage region in which the organization is recognized;

26 (4) [(5)] operate or participate in a training program for pilots and
27 deputy pilots that is approved by the board; a training program for deputy pilots
28 may include a deputy marine pilot apprenticeship program approved by the
29 board;

30 (5) [(6)] cooperate with and assist the board in implementing this
31 chapter.

1 * Sec. 16. AS 08.62.175 is amended by adding a new subsection to read:

2 (e) A pilot organization recognized by the board may enter into agreements
3 with the master, owner, operator, or agent of a master, owner, or operator, of a vessel
4 concerning the terms and conditions under which the pilot organization will provide
5 pilotage services.

6 * Sec. 17. AS 08.62.180 is amended to read:

7 Sec. 08.62.180. EXEMPTIONS. This chapter does not apply to

8 (1) vessels subject to federal pilot requirements under 46 U.S.C. 8502
9 except as provided in AS 08.62.185;

10 (2) fishing vessels, including fish processing and fish tender vessels,
11 registered in the United States or in British Columbia, Canada;

12 (3) vessels propelled by machinery and not more than 65 feet in length
13 over deck, except tugboats and towboats propelled by steam;

14 (4) vessels of United States registry of less than 300 gross tons and
15 towboats of United States registry and vessels owned by the State of Alaska, engaged
16 exclusively

17 (A) on the rivers of Alaska; [.] or

18 (B) in the coastwise trade on the west or north coast of the
19 United States including Alaska and [.] Hawaii, and including British
20 Columbia, Yukon Territory, and Northwest Territories, Canada;

21 (5) vessels of Canada, built in Canada and manned by Canadian
22 citizens [INCLUDING CANADIAN CRUISE SHIPS], engaged in frequent trade
23 between

24 (A) British Columbia and Southeastern Alaska south of 58
25 degrees, 10 minutes North latitude, if reciprocal exemptions are granted by
26 Canada to vessels owned by the State of Alaska and those of United States
27 registry; or

28 (B) northern Alaska north of 68 degrees, 7 minutes North
29 latitude and Yukon Territory or Northwest Territories; [AND]

30 (6) pleasure craft of United States registry; and

31 (7) pleasure craft of foreign registry of less than 300 gross tons as

1 measured under 46 C.F.R. 69.51 - 69.75.

2 * Sec. 18. TRANSITION. (a) Notwithstanding AS 08.62.010, as amended by sec. 2 of
3 this Act, the current members of the Board of Marine Pilots shall continue to serve for the
4 term to which they were appointed.

5 (b) As the terms of the current marine pilot members and current agent or manager
6 members of the Board of Marine Pilots expire, the governor shall appoint marine pilot
7 members and agent or manager members to the board in accordance with the qualifications
8 set out in AS 08.62.010, amended by sec. 2 of this Act.

9 (c) In this section, the current members of the board are those persons serving on the
10 Board of Marine Pilots on the day before the effective date of this Act.

11 * Sec. 19. AS 08.62.093(e) is repealed.

12 * Sec. 20. This Act takes effect July 1, 1995.



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

MEMO

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

TO: George Utermohle, Attorney
Legal Services
via fax: 2029

FROM: Annette Kreitzer
Senate Resources Committee Aide

DATE: April 10, 1995

RE: CS for SB 130

Please draft a Committee Substitute for SB 130 incorporating the LS0851NG.1 amendment dated 4/6/95 you prepared for Senator Hoffman.

I need this CS to distribute to committee members by Tuesday evening. It should be delivered to Senator Leman's office, Capitol Room 115.

Thanks.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 130(); Version "G"

BY SENATOR
HOFFMAN

1 Page 7, line 18, after "west":

2 Insert "or north"

~~ADOPTED~~

3 Page 7, line 19:

4 Delete ", Hawaii, and British Columbia, Canada"

5 Insert "and [,] Hawaii, and including British Columbia, Yukon Territory, and
6 Northwest Territories, Canada"

7 Page 7, lines 20 - 23:

8 Delete

9 "(5) vessels of Canada, built in Canada and manned by Canadian
10 citizens including Canadian cruise ships, engaged in frequent trade between British
11 Columbia and Alaska, if reciprocal exemptions are granted by Canada to vessels
12 owned by the State of Alaska and those of United States registry; [AND]"

13 Insert

14 "(5) vessels of Canada, built in Canada and manned by Canadian
15 citizens [INCLUDING CANADIAN CRUISE SHIPS], engaged in frequent trade
16 between

17 (A) British Columbia and Southeastern Alaska south of 58
18 degrees, 10 minutes North latitude, if reciprocal exemptions are granted by
19 Canada to vessels owned by the State of Alaska and those of United States
20 registry; or

21 (B) northern Alaska north of 68 degrees, 7 minutes North
22 latitude and Yukon Territory or Northwest Territories; [AND]"

9-LS0851AG
Utermohle
4/6/95

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NINETEENTH LEGISLATURE - FIRST SESSION

BY

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10 chapter who have been actively engaged in piloting on vessels subject to this chapter,
11 two registered agents or managers of vessels subject to this chapter who are actively
12 engaged in the procurement of pilotage services, two public members in accordance
13 with AS 08.01.025, and the commissioner or the commissioner's designee. Not more
14 than one pilot and one registered agent or manager may [SHALL] be from any one

1 pilotage region established by the board. Not more than one registered agent or
2 manager may be employed by, be a contractor for, or hold a financial interest in
3 the same marine industry business entity, including commonly owned, affiliated,
4 or subsidiary business entities [JUDICIAL DISTRICT]. All members of the board
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11 regional differences in piloting;

12 (2) a mandatory [RANDOM] drug and alcohol testing program,
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12 prescribed by the department [BOARD].

13 * Sec. 8. AS 08.62.093(b) is amended to read:

14 (b) A person who applies for a deputy marine pilot license under this chapter
15 shall provide proof satisfactory to the board of the following experience:

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17 holding a United States Coast Guard license as master of ocean steam or motor
18 vessels of any gross tons;

19 (2) two years of service as a master on United States Coast Guard
20 inspected vessels of not less than 1,000 gross tons or tug and tow of not less than
21 1,600 combined gross tons while holding at least a United States Coast Guard [A]
22 license as master of steam or motor vessels of not more [LESS] than 1,600 gross
23 tons;

24 (3) two years of service as a chief officer on ocean or coastwise vessels
25 of not less than 1,600 gross tons while holding a United States Coast Guard license
26 as master of ocean steam or motor vessels of any gross tons;

27 (4) two years of service as commanding officer of United States
28 commissioned vessels of not less than 1,600 gross tons and hold a United States
29 Coast Guard [WHILE HOLDING A] license as master of ocean steam or motor
30 vessels of any gross tons; [OR]

31 (5) three years of experience as a member of a professional pilot's

1 organization, during which the person actively engaged in piloting while holding at
2 least a United States Coast Guard license as a master of steam or motor vessels
3 [FREIGHT OR TOWING VESSEL] of not more than 1,600 gross tons; or

4 (6) five years of experience gained in a board approved deputy
5 marine pilot apprenticeship program in the pilotage region for which the deputy
6 marine pilot license is sought and hold at least a United States Coast Guard
7 license as master of steam or motor vessels of not more than 1,600 gross tons.

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16 if the board finds that there are no marine pilots licensed in a pilotage region who
17 are available to supervise training under this section, the board may authorize a
18 person who is licensed in that pilotage region as a deputy marine pilot to
19 supervise the training of persons who are seeking a deputy marine pilot license
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2 examination by a licensed physician within 60 days before the date of renewal of the
3 license;

4 (4) submit proof satisfactory to the board that the person has

5 (A) engaged in piloting vessels subject to this chapter in the
6 marine pilotage region for which the license is to be renewed during at least
7 120 days [60 DAYS OF EACH CALENDAR YEAR] in the licensing period
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9 (B) completed the minimum number of familiarization trips
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19 (5) violates a provision of this chapter or a regulation adopted under
20 this chapter [IT];

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11 (2) the error, omission, fault, or neglect of the pilot constitutes an act
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7 Sec. 08.62.180. EXEMPTIONS. This chapter does not apply to

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13 over deck, except tugboats and towboats propelled by steam;

14 (4) vessels of United States registry of less than 300 gross tons and
15 towboats of United States registry and vessels owned by the State of Alaska, engaged
16 exclusively

17 (A) on the rivers of Alaska; [,] or

18 (B) in the coastwise trade on the west coast of the United States
19 including Alaska, Hawaii, and British Columbia, Canada;

20 (5) vessels of Canada, built in Canada and manned by Canadian
21 citizens including Canadian cruise ships, engaged in frequent trade between British
22 Columbia and Alaska, if reciprocal exemptions are granted by Canada to vessels
23 owned by the State of Alaska and those of United States registry; [AND]

24 (6) pleasure craft of United States registry; and

25 (7) pleasure craft of foreign registry of less than 300 gross tons as
26 measured under 46 C.F.R. 69.51 - 69.75.

27 * Sec. 18. TRANSITION. (a) Notwithstanding AS 08.62.010, as amended by sec. 2 of
28 this Act, the current members of the Board of Marine Pilots shall continue to serve for the
29 term to which they were appointed.

30 (b) As the terms of the current marine pilot members and current agent or manager
31 members of the Board of Marine Pilots expire, the governor shall appoint marine pilot

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FROM
SEC. 154

1 members and agent or manager members to the board in accordance with the qualifications
2 set out in AS 08.62.010, amended by sec. 2 of this Act.

3 (c) In this section, the current members of the board are those persons serving on the
4 Board of Marine Pilots on the day before the effective date of this Act.

5 * Sec. 19. AS 08.62.093(e) is repealed.

6 * Sec. 20. This Act takes effect July 1, 1995.

Paul Julius
790-36 Julius
FAX 790-1970

Alaska State Pilots Alliance



TO: Alaska State Legislators
The Knowles Administration
Pilot and Industry Associations

FROM: Eric Eliassen, Chairman
Alaska State Pilots Alliance

March 8, 1995

STATUS REPORT

For over a year now, pilot organizations have been meeting to seek common ground on marine pilotage legislation and have formed the Alaska State Pilots Alliance to promote this cooperation. We have then met with cruise ship and cargo shipping industry representatives in an attempt to find agreement with them. We have also maintained close contact with the administration in the Department of Commerce.

This effort is taken in recognition of the level of contention and litigation within the marine pilotage regulatory framework, of the level of strife the legislature has gone through the last couple times this issue has been addressed, and in recognition of the need this industry has for some stability which will maintain public safety and keep commerce moving. Fortunately, we have made some progress in our efforts.

In this status report I will attempt to lay out as honestly as I can what we can all agree on and what issues are still out there. First, here are the legislative provisions agreed to by ASPA. One pilot group did not endorse this core legislation but 5 pilot associations did, representing 94% of marine pilots in Alaska. Specific legislative language is attached as addendum #1.

CORE LEGISLATIVE PROVISIONS:

- 1) ASPA will not attempt to change the competitive system structure established in 1991 by the legislature. This was very important to some of the pilot groups in the areas that have more than 1 pilot association in their region and it was very important to the shipping and cruise ship industry. Some pilot groups continue to believe that a fully state regulated monopoly within each region best serves the state's interests.
- 2) The Board of Marine Pilots will be re-authorized until June 30, 2000.
- 3) A pilot's liability for their actions will be limited to \$250,000 except in the case of gross negligence, willfull action, or being under the influence of alcohol or drugs. Under current law, Pilot's could lose their limitation of liability for any disciplinary action taken by the board - technically even if a letter of reprimand is issued.
- 4) This provision allows a pilot to be registered in 1 region only. This provision was strongly supported by all the pilot associations with the exception of WAPA. One region licensure is essentially the current situation, except that the existing law is not sufficiently clear to prevent lawsuits over this issue.

Litigation has gotten very expensive overall for the Marine Pilot board and although we pay for it through fees (\$3200 for a license last year) it also increases the State budget since no distinction is made between program receipt and general fund monies. To just hold overall state expenditures level, you must cut the budget elsewhere just to make up for what the State is paying to defend the board and itself from these lawsuits.

It would be an unworkable situation to have pilots licensed in more than 1 region. Most importantly, the regions are very large and pilots must know the best tiding and anchoring conditions in the whole region to

ensure safe pilotage and to protect Alaska's shoreline from pollution which could result from an incident.

Region 3 covers the entire Southwest and Northwest coast from Chignik, out the Aleutians, up the West coast past Barrow and all the way to the Canadian border. This is a huge area to know and also provides great logistical challenges in moving pilots around the region to do the work.

Here is how the logistics work: the Pilot's Association provides a central point of dispatch to ensure that there are enough pilots to cover the entire region and are in the proper location at the proper time to provide pilotage services which are required by State law. Some ports have only a few ships call - say Chignik has 2 foreign cargo ships a month. A pilot will have to fly in 1 day early, move the ship, leave a day later, then weather permitting fly on to the next port of assignment.

Meanwhile in Dutch Harbor, the pilots have been moving 12 ships a day for which they would be paid much more than the pilot who went to Chignik. Under these circumstances who would you ever get to go to Chignik? As a practical matter, what the associations have to do is divide the income between all the Association pilots who are working so that reliable service can be provided as required by law throughout the entire region.

5) Provides for legislation which enables Industry and Pilot associations to negotiate to reach agreements on tariffs without violating State anti-trust laws. This is necessary since the tariff setting powers of the Board have sunsetted.

These are the issues agreed to by ASPA as core legislation necessary as a minimum to efficiently operate marine pilotage in Alaska. Industry representatives did not object to these provisions but felt that other issues should also be included. There are a number of other issues out there and I will attempt to fairly characterize them.

OTHER ISSUES:

1) Alaska Coastwise Pilots feels that the Board should be changed to allow greater representation for marine pilots as part of the core legislation. Other pilot groups don't see it as critically important but would be supportive of the concept if it is adopted. Industry representatives felt that if the number of pilots were increased, then the number of industry board members should also be increased.

2) Industry feels that some method of conflict resolution to resolve disputes over tariffs should be included as part of the core legislation. Some of the pilots groups support this concept but some of the pilot groups in regions where more than 1 pilot association exists, strongly objected to introducing arbitration into a competitive situation. So ASPA did not take an official position on this issue. Individual pilot groups may make individual comments on this issue during legislative hearings. Individual pilot groups may also include such conflict resolution language in their private contracts with industry.

3) The industry also wants to add a provision which would require the industry board member seats to be held by someone actually working in the industry. ASPA supports this provision as a matter of fairness since Marine Pilot board members are required to be active as pilots in the State.

4) The administration has also put forward legislative "housekeeping" language which appears to be acceptable to pilots with the exception of the language on reducing the requirements for Deputy Marine pilots. If anything, we are all under a microscope more than ever before since the Exxon Valdez spill. We are a profession in which the public, the Legislature and the administration expect us to operate with zero defects.

We feel that liberalizing Deputy Marine Pilot requirements could weaken the standards for training and experience which we require and create an additional grey legal area which will lead to more litigation.

Knowing local conditions is important, but just as important is knowing how to control these large vessels, some of which can take up to miles to stop and can damage dock facilities if not handled correctly. Our pilots on cruise ships also have thousands of passenger's lives in their hands.

We feel it would be more appropriate for us to establish voluntary recruitment and training systems within our associations to address the issues raised by the administration. We would be willing to work with them in developing a program.

CONCLUSION:

I hope this status report is useful to you in defining the issues. We were not able to reach total agreement on all issues but we did make significant headway on the core legislative proposals which we would

urge you to adopt in legislation. In addition, I feel that because of this effort, the lines of communication between pilot groups, industry and the Alaska Department of Commerce are working better now than they have in a long time.

On behalf of the Alaska State Pilots Alliance, I would like to thank you for your attention to these matters during this legislative session. I will be available to provide additional information or participate in legislative committee hearings.

Sincerely,

Eric Eliassen

addendum #1

Alaska State Pilots Alliance



2/22/95

To: Senator Drue Pearce, President of the Senate
Representative Gary Davis, Chairman House Transportation Committee

From: Captain Eric Eliassen
Chairman, Alaska State Pilots Alliance

Re: 1995 Marine Pilotage Legislative Proposal

A.S.P.A. respectively submits the following to reauthorize the Marine Pilot Board and to address several inconsistencies in the Pilot Act of 1991.

- A. Amend AS 09.03.010(c)(13) to read:
(13) Board of Marine Pilots (AS 08.62.010)--June 30, 2000;
- B. Amend AS 08.62.165(a)(2) to read:
(2) the error, omission, fault or neglect of the pilot constitutes an act for which the board shall impose a disciplinary sanction under AS 08.62.150(a)(2) or (3).
- C.. Amend AS 08.62.080(b) to read as follows.
- (b) A pilot may not be licensed in more than one pilotage region at one time. If the pilot board determines that a chronic shortage of pilots is either actual or imminent they may, after consultation and agreement with the association(s) in the affected region(s) implement temporary, (maximum of one year duration) measures to ensure that masters and owners of vessels satisfy their obligations under AS 08.62.190.
- D. Amend AS 08.62.175(c) (3) to read
(3) negotiate and enter into agreements with masters, owners and operators of vessels, and with agents acting on behalf of masters, owners and operators of vessels, with respect to the terms and conditions pursuant to which pilotage services will be provided by members of the organization;

Alaska State Pilots Alliance

- E. Amend AS 45.50.572 by adding a new subsection (j) to read;
(j) AS 45.50.562---45.50.596 do not forbid agreements for the providing of pilotage services entered into between marine pilot organizations and masters or owners of vessels or agents or other persons acting on behalf of such masters or owners.

Respectfully yours,

Eric Eliassen

Captain Eric Eliassen
Chairman, A.S.P.A.

⑦



Alaska Steamship Association

234 Gold Street

Juneau, Alaska 99801

(907) 586-3107

FAX 586-1001

March 8, 1995

To: Representative Gary Davis
From: Joe Kyle
Re: Marine Pilot's Legislation

The following information is a synthesis of the memos provided to you on March 6 and March 4 by Ray Gillespie and Joe Kyle respectively, and they represent the views of the Alaska Steamship Association (ASA). This synopsis is offered to assist you and the House Transportation Committee when you consider revisions to the Marine Pilot Act.

- Binding arbitration is a "fail-safe" provision, and will be invoked when ship owners and pilots have failed to agree. It is in the state's best interest as it ensures that tariff disputes will not disrupt the flow of important and economically critical commerce such as crude oil, cruise ships, fishery products, and other general cargo. Without some mechanism in the Act to resolve tariff disputes, the courts will be the sole recourse for the parties.

- Binding arbitration is a sensible and reasonable manner to resolve money disputes. It has a long and successful history for use in those areas where essential services are provided for the public benefit. Precedent is found for fire fighters, state troopers, and police. It is necessary in areas where work stoppages would result in serious risk to public health, safety, and property. Where the risks involved are deemed unacceptable by policy makers, binding arbitration is often required to protect the public interest.

- We believe that marine pilots serve a vital public safety function, while also assisting the smooth and safe flow of commerce. Indeed, the current Act's POLICY, FINDINGS, AND INTENT state that "It is the policy of the state to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage on the inland and coastal water of and adjacent to the state."

- It will be invoked when a contract between a pilot association and a ship owner has lapsed, and for some reason, over a protracted period of time, they cannot agree on a new contract price; or, a new service is being introduced into Alaska, and the ship owner and existing pilot association/s in the affected area cannot fix a price.

- The primary purpose, and benefit, of this provision is to ensure that piloting services, which protect the state's interest in protecting lives, property, and the environment, continue without interruption when pilots and owners may be arguing over price.

- It might be said that, given a competitive environment in piloting, why not let owners and pilots argue until they agree on price, and piloting services will simply not be provided in the interim?

— Piloting services are compulsory, when reasonably available; if the pilots refuse to provide the service while they and owners argue over price, two things will happen, and neither is in the state's best interest. One, ships will move into and out of state waters without state licensed pilots; or two, waterborne commerce will cease where disputed.

- Without a binding arbitration/conflict resolution provision, an uneven playing field will exist. Pilots will be in a position to create a crisis environment to resolve their monetary disputes. The state will be forced to declare an "emergency" and take pre-emptive action in a politically charged and highly publicized environment. Owners will face the dilemma of moving ships less safely (no pilots aboard), or suffer the severe economic consequences of leaving cargo at the dock, or at sea.

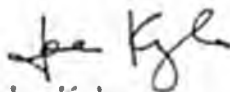
- The state requires that owners utilize the services of a state licensed profession — a profession with significant, formal and informal, barriers to entry. Since the state allowed the maximum tariff to sunset, it now has a duty to provide an alternative mechanism to resolve monetary disputes between service providers and users in a rational and methodical manner.

- Naturally, such a mechanism serves the state's need to protect people, property, and the environment; it offers pilots and owners a secure, predictable, and stable work environment; and it enhances the business climate in the state.

Finally, it is significant to note that the shipping industry (or, in the "labor & management" arena — management) supports binding arbitration. Generally we find labor supporting binding arbitration as a dispute resolution mechanism because work stoppages generally invoke the public's wrath, and weaken labor's bargaining position.

Our offer to submit to binding arbitration is truly a compromise position. It represents our best effort to avoid the controversy surrounding the maximum tariff provision of the Act, which sunsetted on June 30, 1994, and yet still ensure commerce flows smoothly and the states interests are protected.

Sincerely,



Joe Kyle



MEMORANDUM

March 8, 1995

To: Representative Gary Davis
From: Joe Kyle
Subj: Additional Info re Arbitration/Conflict Resolution

You asked if our desire for an arbitration/conflict resolution provision in the Marine Pilot Act is based on actual, or theoretical, concerns. For us, the threat of pilots refusing to move vessels into or out of state waters without a written, contractual agreement in place is very real.

During the spring of 1993, the Alaska Marine Pilots (AMP) threatened the three steamship agencies operating in the Unalaska/Dutch Harbor and Bering Sea area with a work stoppage unless they received written contracts, guaranteeing a certain percentage of the work available. Primarily for legal, anti-trust considerations; the three agencies could not guarantee — in writing — AMP a percentage of the overall workload in the Bering Sea pilot region.

AMP then notified the agencies that they would no longer respond to requests for piloting services unless a written contract was in place. AMP then began a work stoppage. The Board of Marine Pilots, through the Lieutenant Governor, declared an emergency in the western pilot region. The board imposed emergency regulations to correct the situation. AMP's competitor in the region filed for a temporary restraining order, alleging the board's remedy for the emergency was anti-competitive since the practical effect of the state's remedy was to allow a hostile takeover of their association by AMP.

Three days of hearings before a Superior Court judge in Anchorage ensued. After hearing oral arguments from both pilot associations, the state, and the shipping industry, the judge invalidated the state's action. Among other things, he found the state acted improperly in finding an emergency (since the smooth flow of commerce was never disrupted — the competing pilot association was able to cover for the vessels AMP refused to pilot) and that its remedy was anti-competitive.

It is our belief that AMP's philosophical opposition to the statute's mandate for a competitive environment in marine piloting dominates their behavior. In past Board of Marine Pilot meetings, they threatened the board and industry with "breaking the system" so that it can be fixed — shorthand for doing anything they can to ensure competition does not work, and that a regulated monopoly is instituted.

For this session, we compromised our support for the maximum tariff to binding

Representative Gary Davis
March 8, 1995
Page 2

arbitration in an effort to elicit their support. They verbally gave us their support before our meeting with you, Representative Phillips, and Senator Pearce and Kelly — the quid pro quo being a signed contract with the largest of the three steamship agencies operating in the western region. They now have that contract, and have reneged on supporting binding arbitration.

Given AMP's strong, ideological bent for obtaining "regulated monopoly" status for pilot associations in Alaska, and our past experiences with them; we have absolutely no confidence that they will not continue to create problems for competitive piloting. The ability to withhold services during a contractual dispute is an ideal, and already used, device to create a crisis for the state . . . since state licensed pilots provide the state with a safety net to protect people, property, and the environment from the hazards presented by waterborne commerce.

If you need any additional information, please call me at 907 - 586 - 3107.

Sincerely,


Joe Kyle

Western Alaska Pilots Association P.O. Box 792 Unalaska, Alaska 99685

March 20, 1995

An Open Letter to Senators and Representatives of the Nineteenth Legislature:

I am writing to you regarding changes to the Marine Pilotage Act which is currently being considered for amendment via Senate Bill 130 and House Bill 260.

The present law and regulations divide the state's waters into regions. A pilot may not be licensed in more than one region. While the law allows exceptions if "it is in the state's interest" there are those who would make the prohibition absolute. The typical argument for singular regional licenses is that it is a matter of safety.

Their argument is that Alaska's waters are so vast and unique that an individual pilot can not be qualified to pilot under so many diverse situations. The argument is flawed for several reasons:

1. A ship traveling through two regions on the same trip currently must employ two different pilots. If unsafe weather conditions prevents one of the pilots from boarding the ship, the ship can, after a brief wait, move on into port without a pilot. If a pilot were licensed (after qualifying) to work in both regions he/she could ride the vessel to the next port. Thus, licensing across current regional lines would enhance safety.
2. Piloting the entire state is not impossible. The U.S. licenses pilots through the Coast Guard for all registered vessels. Such licenses cover any waters for which the individual qualifies. This is the case with SeaLand, TOTE and any other registered vessels. A pilot thereon may pilot from Ketchikan to Anchorage to Dutch Harbor-across three regions. Pilots on these vessels have as good a (if not better) safety record as do state regional pilots.
3. The safety argument to justify a pilot working only in a confined region falls apart in that the current law will also

not allow a pilot to work one port, thus becoming a "local expert". This one port license is criticized on the grounds that it is "cherry picking" - and will leave less lucrative ports without an available pilot.

In short, the regional license is designed to allow a pilot group to have a monopoly in a region and forever eliminate new competition. This is especially true when coupled with the law that prevents a pilot working unless affiliated with a board recognized association.

As you consider the pilotage legislation that will soon face your committee, I urge you to eliminate all references to regions and the requirement that a pilot be a member of a pilot organization as a condition of working. I also urge you to increase the number of pilots on the board to broaden the representation of pilot interests. While this will take effort in drafting the bill, it will provide a way to a more effective piece of legislation and a safer and less litigious era of pilotage.

I would be delighted to discuss this further with you. I can be reached at 272-3365. You can also expect to see me at public hearings on the pilotage act. Thank you for your time and consideration.

Sincerely,



Benée S. Braden
Business Manager
Western Alaska Pilots Association



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
SEATTLE REGIONAL OFFICE

915 Second Ave., Suite 2806
Seattle, Washington 98174
(206) 222 6350

January 6, 1995

The Honorable Fran Ulmer
Alaska State Legislature
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Ms. Ulmer:

The staff of the Federal Trade Commission¹ is pleased to offer this comment on the issues raised by H.B. No. 237, a proposal in the last legislative session to regulate competition among marine pilots in Alaska. We understand that a similar bill is likely to be introduced in the next legislative session. We believe that legislation limiting the number of pilots and regulating their rates is likely to lead to poorer service or higher prices than would appear in a competitive market, and that the public interest in safety might be promoted more effectively by laws addressing safety matters directly.

I. Interest and Experience of the Staff of the Federal Trade Commission.

The Federal Trade Commission is empowered to prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.² Consistent with this statutory mandate, the Commission and its staff work to identify restrictions that hinder competition and increase costs without providing countervailing benefits to consumers. The FTC and its staff have investigated and studied the competitive effects of restrictions on the business practices of state-licensed professionals.³ In addition, the staff has submitted comments about

¹ These comments are the views of the staff of the Seattle Regional Office and the Bureau of Economics of the Federal Trade Commission, and do not necessarily represent the views of the Commission or any individual Commissioner.

² 15 U.S.C. § 41 *et seq.*

³ See, e.g., *American Medical Ass'n*, 94 F.T.C. 701 (1979); *Iowa Chapter of American Physical Therapy Ass'n*, 111 F.T.C. 199 (1988) (consent order); *Wyoming State Board of Chiropractic Examiners*, 110 F.T.C. 145 (1988) (consent order); *Connecticut Chiropractic Ass'n*, 114 F.T.C. 708 (1991) (consent order); *American Psychological Ass'n*, C-3406 (consent order issued December 16, 1992, 58 Fed. Reg. 557 (January 6, 1993)); *Texas Board of* (continued...)

these issues to state legislatures and administrative agencies and others.⁴ These have included comments to state government bodies about regulation of harbor pilotage.⁵

II. Description of the Current Law and Proposed Amendments.

A bill, H.B. No. 237, in the last legislative session would have authorized the state Public Utilities Commission to set pilotage tariffs (not just a maximum tariff ceiling) and required pilots to adhere to those tariffs. In addition, it would have required the Alaska Board of Marine Pilots (the "Board") to establish, by regulation, limits on the number of pilots in each region. It is anticipated that a similar bill will be introduced in the next session in 1995.

Alaska law requires a ship navigating Alaska's inland or coastal waters to use a pilot licensed by the state.⁶ The pilot must be an independent contractor, not an employee of the

¹(...continued)

Chiropractic Examiners, C-3379 (consent order issued April 21, 1992, 57 Fed. Reg. 20279 (May 12, 1992)); *National Ass'n of Social Workers*, C-3416 (consent order issued March 3, 1992, 58 Fed. Reg. 17411 (April 2, 1993)); *California Dental Ass'n*, D-9259 (administrative complaint issued July 9, 1993); *McLean County Chiropractic Ass'n*, C-3491, 59 Fed. Reg. 22163 (April 29, 1994) (consent order), and C. Cox and S. Foster, *The Costs and Benefits of Occupational Regulation* (1990) (FTC Bureau of Economics, Economic Issues paper).

⁴ See, e.g., Comments to The Honorable Marlin D. Schneider, Wisconsin State Assembly, (September 13, 1993) (funeral and cemetery regulation); Katharine M. Carroll, New Jersey Board of Medical Examiners (September 7, 1993); Kay E. Gunter, Montana Board of Chiropractic Examiners (December 11, 1992); South Carolina Legislative Audit Council (February 26, 1992) (Boards of Pharmacy, Medical Examiners, Veterinary Medical Examiners, Nursing, and Chiropractic Examiners); Jeffrey W. Moran, Commerce and Regulated Professions Committee, General Assembly of New Jersey (April 11, 1991) (dispensing and sale of prescription drugs by physicians); see also testimony to the Washington legislature's Joint Administrative Rules Review Committee, December 15, 1992 (opticians and optometrists) and to the Maine House of Representatives, January 8, 1992 (optometry) and May 3, 1993 (optometry).

⁵ See Comments to Martha G. Wellman, Office of the Auditor General, State of Florida (November 28, 1990); and George L. Schroeder, Director, Legislative Audit Council, State of South Carolina (November 7, 1989).

⁶ Alaska Statutes §08.62.160. Some vessels are exempted from this requirement: those that are required by federal law to use a federally licensed pilot, fishing vessels registered in the United States or Canada, certain vessels shorter than 65 feet, certain other vessels registered in
(continued...)

shipowner.⁷ The Board regulates pilotage, "to assure the protection of shipping, the safety of human life and property, and the protection of the marine environment."⁸ The Board licenses pilots, sets criteria for training and licensing, defines the regions for which licenses are issued, and establishes other regulations. The Board had been authorized to establish maximum pilotage tariffs; however, that authority has recently sunsetted.⁹

The Board supervises the regional pilots' organizations through which pilots offer their (individual) services. These organizations, which coordinate dispatch and billing, must be open to any qualified pilot and must also offer programs to train new pilots.¹⁰ As of 1993, a pilot must belong to such an organization.¹¹ Board recognition of a pilots' organization is conditioned on the organization's uniform and nondiscriminatory application of its own rules, its compliance with applicable laws, and its effectiveness in promoting efficient, reliable, and professional services, maintaining sufficient qualified pilots, and promoting approved training programs.¹²

Board-recognized pilot organizations are granted a limited exemption from state antitrust law. Recognized pilot organizations are classed with labor unions and agricultural cooperatives created for "mutual help" and "not conducted for profit"; the state antitrust law does not forbid their existence or operation or forbid or restrain their members from "lawfully carrying out the legitimate objectives" of the organizations, and the organizations are not to be considered

⁸(...continued)

the United States engaged in river or coastal service (those of less than 300 gross tons or owned by the state of Alaska itself), certain Canadian vessels to the extent Canada grants a reciprocal exemption, and pleasure craft. Alaska Statutes §08.62.180. The penalties for failing to use a pilot where one is required and available, which were substantially strengthened in 1991, are a fine of \$5,000-\$15,000 for a first offense and \$10,000-\$30,000 for repeat offenses. Alaska Statutes §08.62.190(a). The Board of Marine Pilots may determine by regulation when a pilot is "available."

⁷ Alaska Statutes §08.62.163. This requirement was added in 1991; previously, the pilot could be an employee. Pilots serving under Coast Guard licenses, in situations that require federal, not state, licensing, may be employees. The federally-licensed pilots on Alaska's state-run ferry system are employees.

⁸ Alaska Statutes §08.62.040.

⁹ Alaska Statutes §08.62.045.

¹⁰ Alaska Statutes §08.62.175(c)(4), (5). These requirements were added to the law in 1991.

¹¹ Alaska Statutes §08.62.80n.

¹² Alaska Statutes §08.62.175(d).

conspiracies in restraint of trade.¹³ Except for this exemption, the law contemplates competition, for the Board may not adopt regulations or take actions that would result in anticompetitive activities.¹⁴ The legislature in 1991 apparently rejected recommendations that the Board be authorized to regulate more strictly;¹⁵ instead, the Board was given authority only to set maximum tariffs and was denied authority to limit the number of licensed pilots for the purpose of controlling competition.

III. Competition in Pilotage Services in Alaska.

Alaska's original piloting law, enacted in 1970, established the Board to license pilots but otherwise did not set out detailed requirements.¹⁶ In each region an association of pilots provided services, facing no competition in its own area. Conditions changed during the 1980's when the cruise ship industry boomed in the southeast part of the state and the bottomfishing industry expanded in the southwest. The new demand created niches for new groups and configurations. Some pilots broke with the established associations to operate independently or form new groups. There are now four recognized pilotage regions in Alaska, and in two of them, the southeast and southwest, two organizations compete head to head for business.¹⁸ This competition has brought increased responsiveness in provision of pilot services. In the southwest,

¹³ Alaska Statutes §45.50.572(a). This 1991 addition to the law may be in part a response to a ruling in a private antitrust suit that pilot associations were not exempted as labor organizations. *Spence v. Southeastern Alaska Pilots' Association*, 798 F.Supp. 1007 (D.Alaska 1990). The 1991 revisions also granted pilots a limitation on their personal liability, of \$250,000; this limitation does not apply in cases of gross negligence.

¹⁴ Alaska Statutes §08.62.040(d). Implicitly recognizing that limiting the number of pilots would be anticompetitive, H.B. 237 would have added a proviso to this section of the law to make clear that the Board would nonetheless issue regulations and take "other actions" to restrict the number of pilot licenses issued.

¹⁵ See Office of the Governor, Division of Policy, *Improving Alaska's Marine Pilotage System* (1990) ("Governor's Report"), Appendix B, for such recommendations from pilots themselves.

¹⁶ See *Governor's Report*; for other background on conditions in the Alaska piloting industry, see Division of Legislative Audit, *Audit Report: Department of Commerce and Economic Development, Board of Marine Pilots* (November 4, 1993) ("*Audit Report*"); and Alaska Board of Marine Pilots, *Fiscal Year 1994 Annual Report* ("*Board Report*").

¹⁷ *Governor's Report* at i-ii, 11-12.

¹⁸ *Audit Report* at 5.

for example, the new organization, Alaska Marine Pilots, has adopted a different business format (a proprietorship, rather than a joint venture partnership) and has set up new dispatch points closer to fishing grounds in the Aleutian Islands than the traditional dispatch point, which is said to be more convenient for the oil tanker business.¹⁹

Efforts to meet the increased demand through new ways to provide piloting services have been accompanied by contention and litigation, among the pilots and their associations and between pilots (and would-be pilots) and the Board.²⁰ Self-regulation broke down as newer pilots questioned the "old-boy" networks of the traditional pilot associations.²¹ Legal challenges by would-be pilots and ship operators seeking more or lower-cost piloting services threatened the associations with liability over denial of access to membership, training opportunities and dispatching services, and over internal discipline of those encouraging dissent or competition.²² Board decisions denying licenses or license upgrades have also been challenged.²³

Increased competition has also raised questions about whether the public interest in safety and environmental protection would be adequately served in a more competitive setting.²⁴ Critics contend that competition will undermine the pilots' primary duty to the public interest.²⁵ According to the Governor's Report, the issue is "directly related" to the number of pilots licensed in each region: if there are "too many" licensees, the association cannot accept them all, and they will compete by cutting rates and following steamship company orders that compromise safety requirements.²⁶

¹⁹ Governor's Report at 14.

²⁰ Governor's Report at i-ii, 1, 11-13; Board Report at 3-4, 13.

²¹ Governor's Report at ii, 11.

²² The types of legal claims are summarized in the *Governor's Report*, Appendix D at 6-7. See also *Audit Report* at 36, for description of refusal to provide training trips in the southeast because of concern about the economic consequences of increased competition.

²³ The Division of Legislative Audit found that, because the Board had granted licenses to unqualified applicants, other unqualified applicants could not legally be denied them. *Audit Report* at 36.

²⁴ Governor's Report at 11-12.

²⁵ On the other hand, critics of the established system complained that it led to coverups of pilot incompetence. See *Governor's Report* at 12-13.

²⁶ Governor's Report at 18-19.

IV. Effects of Proposals to Eliminate Competition.

Requiring pilots to adhere to tariffs fixed by regulation and limiting by law the number of pilots permitted to offer services would eliminate competition in pilotage and replace it with a regulated cartel.²⁷ Pilotage has only a limited history of competitively provided service.²⁸ Still, the economic effects of price and entry restrictions on pilotage are likely to be similar to those in other markets. Restricting output, by limiting the number of pilots, is likely to lead to higher prices and poorer service. Fixing prices reinforces the effects of restricting output, inhibiting responses to changes in supply and demand and leading to inefficient allocation of resources. These economic considerations are distinguishable from safety concerns. Regulation to promote safety may well be necessary to protect vessels, harbors, waterways, the environment and the public from the damage that navigational mishaps can cause. These comments do not extend to regulation aimed specifically at navigation safety. But they do examine whether eliminating competition would necessarily improve safety.

Alaska's recent experience with entry by new pilot organizations suggests that the well-understood processes of a competitive market could be expected to work in piloting as they generally work in other industries. Absent barriers or impediments to entry,²⁹ markets ordinarily tend to adjust supply to meet changing demand. In a market setting, an increase in traffic could increase demand for pilotage services. This happened in Alaska, as increasing demand for cruise ship and fishing traffic led to efforts to increase the supply of pilots, which sparked the recent controversies as incumbent pilots resisted the prospect of competition.³⁰ Normally, incumbent pilots could be expected to respond to the increased demand by raising their prices, and, as a result of higher prices, new pilots would be attracted into the business. As more pilots entered, upward pressure on the price of piloting services would diminish and prices would be expected to stabilize at a new, competitive level. For example, in the Alaska piloting markets, increased demand for piloting services apparently was not adequately met by the existing pilot organizations and thus led to efforts to set up new pilot service arrangements.

²⁷ See *Bain's Report* at 10, encouraging "reform" of statute to "eliminate competition within regions" and establish fixed tariffs.

²⁸ Some degree of competition between different pilot organizations has been reported in Oregon, Connecticut, Hawaii, some ports in California, and some ports in Florida. See *Audit Report* at 10. In the ports of Los Angeles and Long Beach, California, piloting services are provided by a public agency, rather than by a private cartel.

²⁹ Barriers to entry are long-run costs that an entrant into a business must incur, but that are not incurred by incumbent firms. Impediments to entry are conditions that necessarily delay entry into a market for a significant period. See *B.F. Goodrich Co.*, 110 F.T.C. 207, 295-97 (1988).

³⁰ See *Governor's Report* at 11.

potentially at lower prices than the incumbent pilots were charging.³¹ Conversely, a decline in demand would tend to result in a decrease in the price and the exit of some pilots from the business.

Under regulatory programs such as that proposed in H.B. 237, limits on the number of pilots have been accompanied by regulation of their rates. If the number of suppliers is capped by regulation, opportunities for new suppliers to enter the market may be curtailed and incumbents may be able to charge higher prices than would prevail in a competitive market.³² Harbor pilotage does not appear to be a "natural monopoly," that is, an industry in which it would always be most efficient for a single firm to supply all of the demand in the market.³³ In the absence of the cost conditions that lead to natural monopoly, price regulation can exacerbate problems of resource misallocation produced by limiting entry.³⁴

In Alaska to date, neither entry nor rates have been completely controlled by regulation. Alaska law provided only for fixing maximum prices (before even that authority recently sunsetted), and thus has permitted pilots to compete by offering to cut their rates. As long as

³¹ One difficulty reportedly encountered in this process has been the reluctance of incumbent pilots to afford potential competitors the training opportunities they need to become qualified under state law. See *Board Report* at 12, 14-15. Alaska law now requires pilot associations to establish or participate in Board-approved training programs. Alaska Statutes §08.62.175(b)(5). Even without that legal requirement, ships' agents and operators, which have a direct interest in promoting competition, might protect that interest by permitting or even requiring that the pilots they hire help train new ones.

³² A study by the Commission's Bureau of Economics concerning restrictions on entry into the taxi market, which appear to be in many ways analogous to regulations restricting entry into the pilotage market, is particularly instructive. Among other things, the study concluded that entry restrictions enable incumbent firms to exercise market power and thus to charge higher than competitive fares. See M. Frankena & P. Pautler, *An Economic Analysis of Taxicab Regulations* (FTC Bureau of Economics, 1984).

³³ Normally, one reason for price regulation is to prevent industries that are "natural monopolies" from exploiting their market power. See S. Breyer, *Regulation and Its Reform* 15-18 (1984); Jarrell, *The Demand for State Regulation of the Electric Utility Industry*, 21 *J.L. & Econ.* 269, 272-76 (1978). Some studies have questioned whether regulation of public utilities, which are often thought to be natural monopolies, has actually resulted in lower prices than would have prevailed without regulation. See, e.g., R. Braeutigam, *Optimal Policies for Natural Monopolies*, in 2 *Handbook of Industrial Organization* 1289-1346 (R. Schmalensee and R.D. Willig, eds., 1989).

³⁴ Because associations in Alaska are now required by law to admit any qualified pilot, entry can be prevented only by Board decisions about issuing licenses.

entry and rates are not artificially constrained by law or by other means, pilots in Alaska should have the usual market-based incentives to compete for customers through lower prices, innovation, and increased efficiency.

The possibility that such competition would compromise safety standards has sometimes been cited as a reason to permit, or even require, pilots to form a cartel insulated from competitive pressure, as well as to prohibit ships from hiring pilots as employees.³⁵ It has been feared that pilots would compete along the margin of risk-taking and shipowners would hire any pilot willing to take risks.³⁶ Our knowledge of actual safety records in Alaska is limited to what appears in the reports that are cited in this comment. This comment takes no position about whether safety standards and requirements are adequately defined, observed, or enforced in Alaska. The Board and others more familiar with Alaska's particular experiences are obviously in a better position to make that determination. Rather, this comment reviews studies of experiences in other piloting areas and other industries in examining whether the incentives of a competitive market are necessarily inconsistent with safety concerns.

We have found no systematic studies of the differences in safety between pilots in monopoly-like cartels and those subject to greater "commercial" pressures. Studies have compared the safety records of pilots with state licenses and pilots with federal licenses.³⁷ The basic data used in these studies show that the safety records of pilots with both kinds of licenses appear to be essentially equivalent.³⁸ Pilots who are supposedly insulated by their cartel

³⁵ See *Board Report* at 12; *Governor's Report* at 18.

³⁶ *Id.*

³⁷ R. D. Leis, *A Comparative Assessment of State Pilot Safety* (1989) (report prepared by Battelle under contract for the American Pilots Association, Inc.); Booz-Allen & Hamilton, *A Comparative Safety Assessment of State and Federal Pilots* (1991) (response to the Battelle report, prepared under contract for the American Institute of Merchant Shipping); R. D. Leis, *A Critique of Two State Pilot Safety Studies* (1992) (response to the Booz-Allen & Hamilton report). All of these studies relied on the same set of Coast Guard data about ship movements and accidents.

³⁸ The basic accident rate over the period studied was about one "dynamic vessel casualty" per 1700 ship movements, or per 10.5 million tons of cargo moved. Booz-Allen report, p. I-4. Unsurprisingly, in view of their sponsors' interests, the two reports do not reach the same conclusions about which pilots are safer. The report for the pilots' association, which advocates preserving their regulated monopoly status, claims that state-licensed pilots are much safer. The report for the merchant shippers, which prefer greater competition and lower costs, claims that federally licensed pilots are at least as safe as state-licensed ones, and maybe more so. To reach these widely divergent conclusions from the same basic facts, the two reports differ in their assumptions and assignments of weights to differing conditions and types of ship movements.

membership from commercial pressure to take excessive risk have occasionally caused serious accidents.¹⁹ On the other hand, there may also have been accidents caused by inexperienced pilots called into service by competitive demands. It is difficult to identify any trends or to correlate the accidents with differing commercial or competitive situations.

Regardless of the regulatory scheme, the parties involved have incentives not to ignore safety concerns. Pilots under all regulatory schemes are still subject to professional discipline and loss of license for incompetence. Agents may be able to exercise some choice over which pilots they use even from a monopoly pilots' association; thus, an individual pilot might be concerned to avoid a reputation for unsafe conduct, or might be thought to benefit from reputation for taking chances. The ships' agents that hire pilots may well want to complete voyages quickly, but at the same time they would want to avoid loss or delay because of accidents or lawsuits for damages to harbors and waterways. Private parties concerned about profits will also be concerned about safety; the policy question is whether they will be as concerned as the public interest requires.

Policies designed to promote competition should not compromise legitimate safety concerns, but safety is not necessarily inconsistent with a competitive market setting. In other transportation industries, it was also feared that permitting competition would lead to unsafe operations, as firms interested in cost-cutting would take chances to improve productivity. Those fears have not been borne out. Interstate trucking and airlines have been economically deregulated for many years now, and during the deregulated period safety has improved, not deteriorated.²⁰ In piloting ships, as in piloting airplanes, safety concerns need not be addressed only indirectly, through economic regulation. Rather, it might be more effective to address them directly. If safety concerns justify requiring all ships to use pilots of proven qualifications, those concerns can be vindicated through discipline against unsafe practices, application of competency-based pilot licensing standards, and sanctions against shipowners that fail to obey mandatory piloting requirements.

¹⁹ Two incidents of pilot error in Florida in 1980 led to sinking a Coast Guard cutter in a collision, killing 12 people, and destroying one span of the Tampa Bay bridge in the fog, killing 35. Yet Florida has extremely stringent qualification requirements for obtaining a pilot's license and has tried to eliminate competition by fixing the number of individuals granted licenses.

²⁰ See N. Rose, *Fear of Flying? Economic Analyses of Airline Safety*, 6 *J. Econ. Perspectives* 75-94 (1992); and Office of Economics, Interstate Commerce Commission, *The U.S. Motor Carrier Industry Long After Deregulation* 60-67 (1992).

V. Marine Pilotage and the Antitrust Laws.

Pilots in Alaska and elsewhere may offer their services through joint ventures. Some have expressed concern that the antitrust laws may be applied to inhibit joint activities among pilots.⁴¹

The antitrust laws preserve competition in the market place by preventing restraints on competition imposed by competitors. The antitrust laws do not prohibit all joint activities among competitors, only those that restrain competition unreasonably. For example, even though they may restrict some aspects of competition, joint ventures or other cooperative efforts that enable an industry to function efficiently or to produce new services or products may not violate the antitrust laws. Some joint activity among competitors would appear to pose little risk of restraining competition. For example, a centralized billing service that does not facilitate price fixing or allocate customers among competitors may pose little threat to competition.

But actions taken by groups of competitors that unreasonably restrain competition may be unlawful. For example, a joint refusal by competitors to deal with others may be unlawful.⁴² Agreements among competitors to fix prices or allocate customers traditionally have been considered unlawful. Exclusive contracts between a seller and its customers may promote competition by ensuring the availability and continuity of supply, but exclusive contracts used by a dominant firm to exclude its competitors may be unreasonable and unlawful.⁴³

We do not intend here to offer any opinion about the legality of specific practices of associations or joint ventures in the marine piloting industry. The application of the antitrust

⁴¹ See *Board Report* at 3.

⁴² For examples of situations in which antitrust law has been applied to refusals to deal and "boycotts," see *FTC v. Indiana Federation of Dentists*, 476 U.S. 447, 458 (1986) (refusal to supply x-rays for insurers' cost-control review); *Klor's, Inc. v. Broadway-Hale Stores*, 359 U.S. 207 (1959) (refusal to supply competing discounter); *Radiant Burners, Inc. v. Peoples Gas Light & Coke Co.*, 364 U.S. 656 (1961) (refusal to sell gas for use in competitor's burners); *Medlin v. Professional Rodeo Cowboys Ass'n*, 1992-1 Trade Cas. [CCH] ¶69,787 (D.Colo. 1991) (barring cowboys who had competed in non-sanctioned events).

⁴³ See *Beltone Electronics Corp.*, 100 F.T.C. 68, 204 (1982); see also *United States v. Dairyman, Inc.*, 1985-1 Trade Cas. [CCH] ¶66,638, at 66, 156 (6th Cir.), cert. denied, 474 U.S. 822 (1985); *Kohler Co. v. Briggs & Stratton Corp.*, 1986-1 Trade Cas. [CCH] ¶67,047 (E.D.Wis. 1986).

laws will depend on an analysis of the likely competitive effects of particular conduct in the context in which it occurred.⁴⁴

VI. Conclusion.

Alaska has promoted competition in piloting by permitting pilots to offer lower prices and by allowing as many pilots to offer their services as can obtain certification of their competence. The difficulties, animosities, and litigation that have attended the promotion of competition are not necessarily evidence that competition cannot work in this market; rather, they may be evidence of an established cartel's efforts to prevent or avoid it. Agreements to prevent competition through boycotts, price fixing, and market division may run afoul of the antitrust laws. But cooperation and coordination among pilots about dispatching and training could be permissible under the antitrust laws, and indeed might even be procompetitive. Establishing a monopoly in piloting, by limiting the number of pilots and setting their rates by regulation, is

⁴⁴ In the Commission's analysis, a practice is considered "inherently suspect" if it appears likely, absent an efficiency justification, to restrict competition and decrease output. When such a practice is identified, the Commission then asks whether there is a plausible efficiency justification for it; if not, it will be found illegal. If there appears to be a plausible efficiency justification, that is, a claim that the practice might actually enhance competition by reducing costs, creating a new product, or improving the operation of a market, then the Commission will examine that claim in more detail to determine whether it is valid. If it is not, then the practice will be found illegal. If the efficiency claim is found to be valid, the Commission will undertake a complete "rule of reason" analysis to identify and compare the practice's likely anticompetitive and procompetitive effects. See *Massachusetts Board of Registration in Optometry*, 110 FTC 549, 604 (1988).

The Honorable Fran Ulmer
Page 12

likely to result in higher prices or poorer service, but does not appear necessary to promote the public interest in safety.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles A. Harwood".

Charles A. Harwood
Director, Seattle Regional Office


MEMORANDUM

State of Alaska

Office of the Governor
Office of Management and Budget
Office of the Director

January 27, 1995

TO: Annalee McConriell
Director

FROM: Brad Pierce 
Senior Policy Analyst

SUBJECT: Marine Pilots Contract

You asked for an explanation of some contract work I performed for Southeast Alaska Marine Pilots (SEAPA) in 1991 and whether it involved a conflict of interest with my duties as a policy analyst or in any way influenced my work for the Governor's Office.

My involvement with marine pilots began in the Spring of 1990 when Marilou Madden (another policy analyst employed by OMB at the time) and I were assigned by Director of the Division of Policy, Mary Halloran, to conduct a study of the state's marine pilotage system and make recommendations on how it might be improved. Our report entitled *Improving Alaska's Marine Pilotage System* was published in November 1990. Legislation incorporating many of the recommendations in the study was introduced in the 1991 Legislature and passed the same year.

In the course of our study, we surveyed all of the pilots in Alaska and uncovered significant problems in the internal operations of the existing pilot associations, particularly in SEAPA. Problems included charges of nepotism, favoritism, access barriers to entry and training, substance abuse, and financial mismanagement. As recommended in our study, provisions in the Marine Pilot Act of 1991 required pilot associations to have their "articles bylaws and rules" approved by the Board of Marine Pilots. The intent was to clean up the internal operations of the associations by exposing them to Board scrutiny and approval.

In the Fall of 1991, the SEAPA leadership attempted to rewrite the association's bylaws to conform with state law. Because of dissension within their membership, the SEAPA Board of Directors could not reach agreement on what their bylaws and operating rules should contain. They asked Marilou and I to help them rewrite their bylaws. We discussed at great length whether it was appropriate for us to contract with SEAPA to do this work. Finally, we decided that writing a set of bylaws for SEAPA could serve as a model for other associations and close the final chapter in our attempts to improve the state's marine pilotage system. We discussed the situation with OMB Director Shelby

Stastny, and he didn't have any problem with us doing the contract on our own time. A copy of the ethics disclosure form I filed at the time of the contract is attached.

After briefly working with the SEAPA Board, it became obvious that the changes we proposed to their bylaws and operating rules were too radical of a departure from the status quo for them to accept and we terminated the contract. I don't recall exactly how much we were paid but it was only for a few weeks work on our own time and amounted to between \$2,000 and \$4,000 each.

In hindsight it was naive of me to think that I could divorce myself from marine pilot issues so easily and I now regret having been associated with SEAPA. Although I did nothing illegal or unethical, I understand that my having contracted with SEAPA, however briefly, does give the appearance of conflict of interest. The only defense I can offer at this late date is that at the time I thought I would never deal with marine pilot issues again, since the study we conducted was a one-time effort and very different from our normal duties. Also the internal problems of SEAPA we uncovered and publicized in our study certainly did not help the organization in any material way.

As you know, in June 1994 Department of Commerce Commissioner, Paul Fuhs, asked me to conduct another study of the problems within the marine pilotage system. I was very reluctant to do so, having suffered through the viscous politics and personal attacks from pilots, shippers, lobbyists and attorneys involved in the Marine Pilot Act of 1991. I expressed my concerns to Shelby Stastny and reluctantly agreed to the project. I did so for three reasons:

- 1) DCED needed the help and wanted an independent look at the issues;
- 2) My supervisor wanted me to do it, though I probably could have gotten out of it if I would have insisted that I didn't want to or could have even claimed conflict of interest; and
- 3) I felt a sense of responsibility to exercise whatever policy influence I have to avoid another *Exxon Valdez* accident or cruise ship disaster. I believe strongly that the individual competence of the state's marine pilots and a well run profession are critical factors in preventing marine accidents.

After discussions with the Deputy Commissioner, Director of Occupational Licensing and Marine Pilot Coordinator, it was decided to write the report as a briefing document for the new DCED Commissioner. The resulting paper was entitled *Alaska's Marine Pilotage System Revisited* and Commissioner Hensley decided to release it publicly last week. My contract work for SEAPA in 1991 had no influence what so ever on any of the conclusions reached in preparing this document or on my effectiveness as a policy analyst. I had nothing to gain personally from writing this paper - quite the contrary. After my experience with the legislative process in 1991, I anticipated nothing but grief from trying to articulate the situation in the pilotage profession for the new commissioner.

I apologize if my actions in the past have caused you or the Knowles administration any embarrassment.

Ethics Disclosure Form

Outside Employment or Services Notification

To: Designated Supervisor

Subject: Certification of Outside Employment or Services (AS 39.52.170)

In accordance with AS 39.52.170(b), I hereby officially report my employment or pr of services outside the Department of Office of Management & Budget

These outside duties will in no way affect my usual State duties or duty hours in this Department. This employment or service consists of the following:

Rewrite examination manuals for the Southern Pilots Association.

Hours and days of the week < \$2,500 total @ \$40/hr.

I understand that for any employment outside State service, no State owned/operat facilities, supplies, equipment and/or vehicles (Including personnel time and effort) shall be utilized in any manner whatsoever.

Bradley S Pierce

(Signature)

9/24/91

(Date)

Bradley S Pierce

(Printed Name)

013037

(PCN)

Senior Policy Analyst

(Job Title)

Tuneau

(Location)

Designated Supervisor's Acknowledgement

Your notification of engagement in outside employment or service has been received.

Acknowledgement of your outside employment or service is made with the understanding that your outside work will not in any way detract from or be in conflict with the proper discharge of your official duties as an employee of this Department.

Please note that any change in your outside service or employment must be reported as it occurs.

[Signature]
(Signature-Designated Supervisor)

9

Alaska State Legislature



During Interim:

716 West 4th Avenue, Suite 500
Anchorage, Alaska 99501-2133
(907) 258-8185
Fax (907) 258-0226

During Session:

State Capitol
Juneau, Alaska 99801-1182
(907) 465-4993
Fax (907) 465-3872

Drue Pearce
President of the Senate

Sponsor Statement for Senate Bill 130

Senate Bill 130 is designed to extend the Board of Marine Pilots and to provide housekeeping changes to the Marine Pilotage Act of 1991 aimed at reducing the level of litigation surrounding the marine pilotage industry and providing a stable regulatory environment for determining rate for pilotage services.

This legislation is the result of extensive negotiations and compromises between pilots, the shipping industry and the administration

This legislation is supported in its current form by all of these groups.

The passage of Senate Bill 130 will ensure that the health, safety, and welfare of the Alaska people are met through the state's regulation and oversight of marine pilotage.

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

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

MEMORANDUM

May 1, 1995

SUBJECT: Sectional Summary of CSSB 130(RLS); An Act relating to marine pilots and the Board of Marine Pilots and extending the termination date of the Board of Marine Pilots.

TO: Senator Drue Pearce, President
Alaska State Senate

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of CSSB 130(RLS); An Act relating to marine pilots and the Board of Marine Pilots and extending the termination date of the Board of Marine Pilots.

A sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends AS 08.03.010(c)(13) in order to extend the termination date of the Board of Marine Pilots until 1999.

Section 2 of the bill amends AS 08.62.010 by changing some of the qualifications for certain members of the Board of Marine Pilots.

Section 3 of the bill amends AS 08.62.040(a) by requiring the board to approve rates for pilotage services.

Section 4 of the bill amends AS 08.62.040(b) by modifying provisions of the drug and alcohol testing program for marine pilots and authorizing the board to establish regulations governing the procedures for the review of rates for pilotage services.

Section 5 of the bill adds a new subsection to AS 08.62.040 providing that the board may delegate duties to the marine pilot coordinator.

Senator Drue Pearce

May 1, 1995

Page 2

Section 6 of the bill adds a new section (AS 08.62.046) establishing the procedures for adoption of new and revised rates for pilotage services and for review and approval or disapproval of rates that are subject to objections from the maritime industry. The board shall provide copies of a schedule of rates to registered agents in the state.

Section 7 of the bill adds a new subsection to AS 08.62.050 to authorize the marine pilot coordinator to review applications for examination and licensure.

Section 8 of the bill amends AS 08.62.080(b) to allow marine pilots to be temporarily licensed for more than one pilotage region under certain limited situations when there is an actual or imminent shortage of pilots in a pilotage region.

Section 9 of the bill amends AS 08.62.090(b) to require the Department of Commerce and Economic Development to prescribe the form of, and information required in, applications for marine pilot licenses.

Section 10 of the bill amends AS 08.62.093(b) makes clarifying amendments to the requirements for a deputy marine pilot license and authorizes a person to obtain a deputy marine pilot license through four years of experience in an apprentice program.

Section 11 of the bill amends AS 08.62.093(d) to allow a deputy marine pilot to pilot vessels of up to 25,000 gross tons.

Section 12 of the bill amends AS 08.62.097(b) to allow, under certain limited situations, a deputy marine pilot to supervise the training of persons seeking a deputy marine pilot license.

Section 13 of the bill amends AS 08.62.120(a) to require that a licensed marine pilot be engaged in the provision of pilotage services during at least 120 days in a year in order to renew the license.

Section 14 of the bill amends AS 08.62.150(a) in order to conform with provisions relating to rates that were added by secs. 6 and 18 of the bill.

Section 15 of the bill amends AS 08.62.155(b) in order to provide that the board may fine a pilot organization for violating AS 08.62 and may suspend or revoke recognition of a pilot organization that no longer satisfies the requirements for recognition by the board.

Section 16 of the bill amends AS 08.62.165(a) to reduce the of situations in which the limitation on liability for damages caused by a marine pilot would not apply.

Section 17 of the bill amends AS 08.62.175(c) by amending the duties of pilot organizations.

Senator Drue Pearce
May 1, 1995
Page 3

Section 18 of the bill adds new subsections to AS 08.62.175 in order to allow pilot organizations to enter into agreements for the provision of pilotage services with representatives of a vessel and to require a pilot organization to dispatch a licensed pilot when requested by the representative of a vessel.

Section 19 of the bill amends AS 08.62.180 by changing provisions that exempt certain vessels from the mandatory pilotage requirements under AS 08.62.

Section 20 of the bill provides for the transition from the current eligibility requirements for members of the Board of Marine Pilots to the new eligibility requirements established by sec. 2 of the bill.

Section 21 of the bill provides for the transition from the current process for setting rates for pilotage services to the new procedures established by sec. 6 of the bill.

Section 22 of the bill repeals AS 08.62.093(e), relating to the definition of "years of service", which is not needed.

Section 23 of the bill provides that the bill takes effect immediately under AS 01.10.070(c).

GU:klb
95-314.klb

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110800
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500
FAX: (907) 465-5442

May 1, 1995

The Honorable Drue Pearce
President of the Senate
State Capitol
Juneau, AK 99801-1182

Dear Madam President:

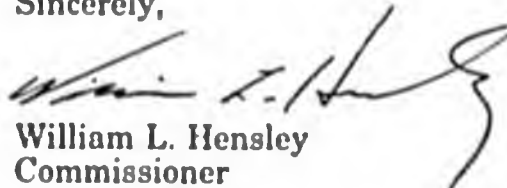
Marine pilotage continues to be a controversial subject. Senate Bill (SB) 130 is a bill which extends the Board of Marine Pilots and contains numerous housekeeping changes to the Marine Pilotage Act of 1991. In addition, this bill creates a pilot apprenticeship program that allows entry into the pilotage profession to otherwise qualified persons who may not have had access to the prerequisite maritime career opportunities.

After exhaustive negotiations among representatives of pilot groups, the shipping industry, the Department of Commerce and Economic Development, and the Department of Law, all parties have agreed to the rate setting and dispute resolution mechanism as written in Section 6 of the CS for SB 130 (RULES).

These changes should reduce the litigation surrounding the administration and enforcement of the marine pilotage system, and further the state's interest in preventing the loss of lives and property and the protection of the marine environment.

The Department of Commerce and Economic Development fully supports the CS for SB 130 (RULES) as written.

Sincerely,



William L. Hensley
Commissioner

WLH/sh059.co
050195a

cc: Pat Pourchot, Legislative Director
Representative Gary Davis

FISCAL NOTE

CS for
BILL NO. SB 130 (Rules)

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: May 1, 1995

Department: Commerce and Economic Development

Title: An Act relating to marine pilots and the

BRU: Occupational Licensing

Board of Marine Pilots;....

Component: Operations

Sponsor: Senator Pearce

Requestor: Senator Pearce

COMPONENT SERIAL #: 1844

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	74.1	74.1	74.1	74.1	74.1	74.1
TRAVEL	24.7	24.7	24.7	24.7	24.7	24.7
CONTRACTUAL	62.7	137.7	62.7	62.7	62.7	62.7
SUPPLIES	0.6	0.6	0.6	0.6	0.6	0.6
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	162.1	237.1	162.1	162.1	162.1	162.1

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	6.6	382.2	6.6	307.2	6.6	307.2
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	162.1	137.7	162.1	162.1	162.1	162.1
1008 GF/MHTIA						
Other						
TOTAL	162.1	137.7	162.1	162.1	162.1	162.1

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SB 130 extends the Board of Marine Pilots to June 30, 1999 and make other amendments to the marine pilot act, AS 08.62. The costs and anticipated revenue shown above are included in the division's FY 96 operating budget request. A one time increment in the operating budget is reflected in the FY 97 column above. Fees would have to be reviewed prior to the next renewal in FY 97 to ensure full costs of the program are covered by licensing fees. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Admin. Officer
 Division: Occupational Licensing
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: May 1, 1995
 Date: May 1, 1995

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MEMORANDUM

April 30, 1995

SUBJECT: CSSB 130(FIN); Prohibiting Alaska marine pilots from holding marine pilot licenses in another state or country

TO: Senator Drue Pearce

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to the query of Stephanie Szymanski, of your staff, as to whether sec. 9, CSSB 130(FIN) is constitutional.

Section 9, CSSB 130(FIN) states: In addition to the prohibition against being licensed in more than one pilot region at one time under (b) of this section, a pilot licensed under this chapter may not hold a marine pilot license issued in another state or country.

In the time available, I have not found a case that addresses a statute similar to that proposed by section 9 of the bill. However, the section does implicate several provisions of the state and/or federal constitutions which may serve as a basis for challenging the section.

EQUAL PROTECTION

The equal protection provisions of the state and federal constitutions are implicated by section 9 of the bill because it distinguishes between persons who are otherwise qualified to receive a marine pilot license in this state based on whether they possess a marine pilot license issued in another state or country. Under the state constitution (article I, sec. 1), which is more rigorous than the federal constitution (State v. Anthony, 810 P.2d 155 (Alaska 1991)), as the importance of the personal interest impaired by the governmental classification scheme increases so does the burden on the government to demonstrate that an equally important or more important governmental purpose is being served by the classification. State v. Ostrosky, 667, P.2d 1184 (Alaska 1983). Also as the importance of the individual interest at risk increases, the better the fit between the state's purpose and the means chosen to achieve that purpose must be in order to survive an equal protection challenge. Id.

Generally economic interests such as the right to engage in an occupation is accorded a relatively low level of protection under equal protection analysis. Anthony, 810 P.2d at 158. On the other hand, a state goal to protect human life and property and protect shipping is an

Senator Drue Pearce

April 30, 1995

Page 2

important state purpose. Thus the state's purpose in imposing restrictions on who may be licensed as a marine pilot in the state may survive initial review under equal protection analysis. The final element under equal protection analysis is whether the means to the end is appropriately tailored. Under a case such as this, the means must bear a fair and substantial relationship to the state's purpose. Though the "fair and substantial relationship" standard is rather deferential to the state, it is not altogether clear that sec. 9 of the bill would survive review under that standard. If safety is the state's goal, there are means available to achieve that goal which are more closely tailored to promoting safety than an outright ban on state pilots being licensed in other states or countries. Unless the state can present evidence that the mere licensure in another state or country makes an Alaska pilot less safe, the ban on out of state and foreign licenses may be too crude to survive judicial scrutiny under the "fair and substantial relationship" standard."

RIGHT TO TRAVEL

By prohibiting a person who has a marine pilot license in another state or country from holding an Alaska marine pilot license, the state places a burden on that person by requiring that person to surrender an important property right in the out-of-state license before the person could obtain an Alaska marine pilot license. Such burdens on the right to travel, a fundamental constitutional right under the federal constitution, must be shown to promote a compelling governmental interest in order to be valid. Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed.2d 600 (1969). The "compelling interest" test is a very rigorous though not impossible test to satisfy. The state's important interest in providing for the safe pilotage of vessels in the state may not be sufficient to satisfy this test.

PRIVILEGES AND IMMUNITIES CLAUSE

On its face, sec. 9 appears to be residency-neutral and equally applicable to residents and nonresidents who currently hold an Alaska marine pilot license or who may seek an Alaska marine pilot license in the future. However, to the extent that sec. 9 can be shown to be a bar to licensing of nonresidents as marine pilots in the state (nonresidents would probably be disproportionately burdened by the prohibition against out-of-state marine pilot licenses), the federal privileges and immunity clause could bar application of that section.

The federal privileges and immunities clause (article IV, sec. 2, Constitution of the United States) protects the right of citizens of the United States to engage in an occupation or profession in any state on the same basis as the residents of that state. Any restriction on the practice or occupation or profession based on residency is prohibited by the privileges and immunities clause unless there is a substantial reason for the different treatment of nonresidents and there is a substantial relationship between the discrimination against

¹¹ The burden on the state to justify the degree of fit between the means and state purpose could be significantly increased, if the individual interest at stake involves rights guaranteed under the federal constitution, such as the right to travel. Alaska Pacific Assurance Co. v. State, 653 P.2d 201 (Alaska 1984).

Senator Drue Pearce

April 30, 1995

Page 3

nonresidents and the state's reason for the discrimination. Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 84 L.Ed.2d 205 (1985). This is a difficult test for a state to satisfy. The state's interest in safe pilotage may not be sufficient to justify discrimination against nonresidents merely because they hold marine pilot licenses in another state or country.

In conclusion, there are a number of constitutional issues raised by sec. 9 of CSSB 130 (FIN). Based on the limited scope of the research conducted on the issues presented by sec. 9, it is not clear whether sec. 9 would be struck down as exceeding the permissible extent of state authority to regulate marine pilots, however the risk of invalidity is real and substantial.

If I may be of further assistance, please advise.

GU:imb

95-184.lmb

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 1, 1995

The Honorable Drue Pearco
President, Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

Re: CSSB 130(RLS)
An Act relating to Marine Pilots

Dear President Pearco:

You have asked this office to comment upon CSSB 130(RLS), an Act relating to marine pilots and the Alaska Board of Marine Pilots. The sole change to the bill made in the Rules Committee yesterday was the deletion of Section 9 of CSSB 130(FIN).

At its meeting of April 29, 1995 the Senate Finance Committee passed out CSSB 130(FIN). The Finance Committee CS contains numerous specific amendments to the Resources Committee CS of the bill. These amendments embody the consensus reached among representatives of the pilots and industry regarding the best way to establish pilotage rates and to resolve disputes. In addition, just before the bill passed out, the committee adopted a "conceptual amendment" proposed by Senator Donley that was intended to prohibit a state-licensed marine pilot in Alaska from holding a marine pilot license in any other jurisdiction.

The conceptual amendment adopted by the Finance Committee was drafted as a new subsection (d) to be added to AS 08.62.080, regarding marine pilot license requirements and restrictions. The new language, contained in Section 9 of CSSB 130(FIN) read: "In addition to the prohibition against being licensed in more than one pilot region at one time under (b) of this section, a pilot licensed under this chapter may not also hold a marine pilot license issued in any other state or country."

We support the change made to SB 130 in the Rules Committee. We are concerned about the constitutionality of a license limitation such as that in Section 9 of CSSB 130(FIN) under the equal protection and due process clauses of both the United States and Alaska Constitutions. As you know, a state may not unfairly discriminate against the citizens of other states in the country. We question the defensibility of a provision that conditions licensure in Alaska upon a pilot's willingness to give up state licenses for which he or she has qualified in other states or jurisdictions.

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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ANCHORAGE, ALASKA 99501-1994
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- P.O. BOX 110300-DIMOND COURT HOU.
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

The Honorable Drue Pearce
President, Alaska State Senate

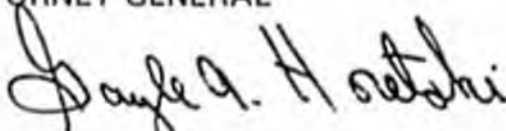
May 1, 1995
Page 2

As you know, license holders have a cognizable property interest in a professional license. The state has a right to regulate the manner in which pilotage services are provided within the state, including the establishment of reasonable licensure requirements. But if an individual is qualified for licensure as a marine pilot in a pilotage region in Alaska, it will be difficult to defend the denial of licensure (or the denial of renewal of a presently-held Alaska license) solely because the person also holds a marine pilot license somewhere else in the world.

For all of these reasons, the Department of Law supports the change made to CSSB 130(FIN) in the Rules Committee.

Sincerely yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 

Gayle A. Horetski
Assistant Attorney General

GAH/jp

cc: Bruce Botelho, Attorney General
Department of Law

Barbara Ritchie, Deputy Attorney General
Department of Law

Deborah Behr, Legislation/Reg Attorney
Department of Law

Pat Pourchot, Legislative Liaison
Office of the Governor

Jeff Bush, Deputy Commissioner
Department Commerce & Economic Development

Daniel C. Twohig, Marine Pilot Coordinator
Department Commerce & Economic Development

Senate Bill 130 - Marine Pilots
Summary of changes in CS (9-LS0851AK)

Page 1 Section 2

This section addresses the creation and membership of the board of marine pilots. There were some concerns that the agent representatives who sit on the board were not necessarily active agents. This section clarifies that a person being considered for an agent seat on the board must be currently active in the procurement of pilotage services and registered with the state.

It further clarifies that the two agents appointed to the board may not be employed by, be a contractor for, or hold a financial interest in the same or related marine industry business entity.

Page 2 Section 6

In the original bill the word "chronic" was used to help describe the situation that must occur before the commissioner of commerce could issue temporary licenses to pilots from different regions. The Department of Commerce was concerned the word chronic would cause interpretive problems when trying to assess pilot shortage situations.

Page 3 Section 8

The addition of the words "United States Coast Guard inspected" better defines vessels that qualify for entry level experience and hold applicants to a higher safety level in documenting their experience.

Page 6 Section 14

Additional language in this section is a conforming amendment to the establishment of apprenticeship programs found in section 8 of this bill.

Page 7 Section 16

This is a new section added to allow pilot organizations to enter into agreements with industry. The original bill mandated this practice.

Page 7 Section 17

Adds an exemption from state pilotage requirements for Canadian vessels operating out of the Canadian Arctic and servicing Alaska north slope communities.

TONY KNOWLES, GOVERNOR

**DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT**

OFFICE OF THE COMMISSIONER

P.O. BOX 110800
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500
FAX: (907) 465-5442

April 12, 1995

The Honorable Drue Pearce
President of the Senate
State Capitol
Juneau, AK 99801-1182

Dear Madame President:

Marine pilotage continues to be a controversial subject. Senate Bill (SB) 130 is a bill which extends the Board of Marine Pilots, and contains numerous housekeeping changes to the Marine Pilotage Act of 1991. These changes should reduce the litigation surrounding the administration and enforcement of the marine pilotage system. Therefore, SB 130 will further the state's interest in preventing the loss of lives and property, and the protection of the marine environment.

The Department of Commerce and Economic Development fully supports SB 130.

Sincerely,


Jeffrey W. Bush
Deputy Commissioner

JWB/DT/t624.01
041295a

cc: Pat Pourchot, Legislative Director
Office of the Governor

The Honorable Gary L. Davis
House of Representatives

SB-130

Sectional Analysis

Section 1 amends AS 08.03.010(c)(13) to extend the existence of the Alaska Board of Marine Pilots four years from the effective date of this bill.

Section 2 amends AS 08.62.010, Creation and Membership of the Board, to tie the residence of members of the Board to state pilotage regions, rather than judicial districts. The use of judicial districts in existing law was probably chosen for administrative convenience, but the boundaries of the state's judicial districts bear no relationship to the state's pilotage regions. If the goal is diversified and representative membership on the Board, it makes more sense to tie membership to pilotage regions. At present there are four such regions; the boundaries of the regions are established by regulation (12 AAC 56.021).

Section 3 amends AS 08.62.040, Powers and Duties of the Board, in two ways. Subsection (b)(2) is amended to clarify the Board's existing authority to require licensed marine pilots to participate in a drug and alcohol testing program, to clarify the scope of the required program, and to make it clear that the Board may delegate the administration of all or part of the program to pilot organizations. AS 08.62.040(b)(4) is amended to cross reference changes to AS 08.62.080(b).

Section 4 amends AS 08.62.040, Powers and Duties of the Board, to add a new subsection (e) to explicitly authorize the Board to delegate duties to the marine pilot coordinator as necessary to carry out the Board's functions under AS 08.62. This ability to delegate tasks to its staff is essential for the Board's efficient operation, and is implicit in existing law; the addition of this language is a clarification, not a change.

Section 5 amends AS 08.62.050, Marine Pilot Coordinator, to add a new subsection (c), which clarifies the authority of the marine pilot coordinator to perform administrative tasks, including the review of applications for marine pilot examination and licensure. The requirements to qualify for examination and licensure are established by statute and by Board regulations, and this language would not change that.

Section 6 amends AS 08.62.080(b) to better define under what circumstances the board may grant a marine pilot license for parts of more than one pilotage region.

Section 7 amends AS 08.62.090, Applications, to clarify that the Department of Commerce and Economic Development (Department) may revise application forms (to comply with revised Board regulations, for example) without being required to convene a Board meeting to obtain formal Board approval of the revised form. The actual requirements for licensure are set by statute and by the Board, and this amendment would have no effect on that.

Section 8 amends AS 08.62.093, Qualifications for Deputy Marine Pilot License, in several ways. Subsection (b) contains numerous technical amendments intended to clarify the types of marine

Sectional Analysis

licenses that an applicant must hold to meet the requirements for licensure as a state deputy marine pilot. These changes would conform state law to the language used on U.S. Coast Guard licenses. New paragraph (b)(6) establishes an additional method of qualifying for licensure as a deputy marine pilot, a five-year "apprenticeship" program. This change would allow entry into the pilot profession by otherwise qualified mariners who may not have had the opportunity to gain the "sea time" needed under current law. Due to the continuing decline in the number of U.S. flagged and crewed vessels in the maritime industry in recent years, opportunities to gain sea time as the master or chief mate of a vessel have substantially decreased. Most pilotage systems in the world have such apprenticeship programs, and they are recommended by the American Pilots Association, The International Organization of Masters, Mates and Pilots, and the National Research Council in its recent national pilotage study Minding the Helm. The requirements of the new program would be established by the Board through regulation.

Section 9 amends AS 08.62.093(d), Qualification for Deputy Marine Pilot License, to increase the size of vessels that a deputy marine pilot may pilot from 20,000 to 25,000 gross tons. This is a "housekeeping" amendment which recognizes the increasing size of newer vessels and the removal of smaller aging vessels from service.

Section 10 amends AS 08.62.097, Training Programs for Deputy Marine Pilot License, to address a problem in current law as it applies to the Kuskokwim River pilotage region (Region 4). Under AS 08.62.097(b), a pilot authorized to train deputy marine pilot candidates must hold an unlimited pilot's license under AS 08.62.100. There is no marine pilot in the Kuskokwim River Region who meets this requirement, in part because of a lack of sufficient larger tonnage vessel traffic in that region. So, technically, there is no one qualified to train deputy pilots in that region. This is obviously an unacceptable situation, as no new pilots can be developed in that region if no training can occur. This problem arose as the result of the creation of Region 4 in 1993, after the 1991 Marine Pilotage Act was adopted. The problem is addressed by the addition of language allowing a qualified, experienced deputy marine pilot to train other deputy marine pilots in a region where no qualified marine pilots exist.

Section 11 amends AS 08.62.120, Renewal of Licenses, to allow license renewal forms to be revised by the Department without the necessity of formal Board approval. This change mirrors that made in AS 08.62.090; see section 7, above. AS 08.62.120(a)(4)(A) is amended to allow a marine pilot to renew his license if he has piloted a total of 120 days in the preceding license period (two years). Present law requires that a pilot have piloted vessels for at least "60 days of each calendar year", and allows no flexibility for the renewal of the license of a pilot who may have piloted vessels for less than 60 days in one year, but more than that in the next calendar year. The current statute seems to be unnecessarily restrictive.

Section 12 amends AS 08.62.150, Denial, Revocation, or Suspension, to delete a reference in paragraph (a)(8) to the maximum tariff established by the Board. The Board's authority to establish maximum tariffs expired on June 30, 1994 (former AS 08.62.045), so this is a necessary conforming amendment.

Section 13 amends AS 08.62.155, Disciplinary Sanctions, to eliminate an error in the language of

the existing law, and make it clear that it is the Board, not the Department, that may impose a civil fine on a marine pilot organization for violations of the law. A new sentence is added to subsection (b) to make it clear that, in addition to a fine, the Board may (under certain serious conditions) also revoke its recognition of a pilot organization. This language mirrors an existing Board regulation: 12 AAC 56.320. Thus, this is not a change to existing law, but a clarification to it.

Section 14 amends AS 08.62.165, Limitation of Liability, to protect pilots from the loss of their liability cap for relatively minor infractions of the pilotage statutes or regulations.

Section 15 amends AS 08.62.175(c) 3), Regional Marine Pilot Organizations, to clarify the pilot association's ability to enter into agreements with shippers for the provision of pilotage services. Subsection (c)(4) is amended to allow pilot association to establish membership application and approval criteria in their board approved articles and bylaws.

Section 16 amends AS 08.62.180, Exemptions, to clarify the types and size of foreign flagged "pleasure craft" that are exempt from pilotage requirements under existing law. This is a technical amendment that would help to clear up questions regarding which foreign vessels registered in their flag state as pleasure craft are required to obtain the services of a state marine pilot and which are not. The new language cross-references to international measurement standards established in federal law.

Section 17 Transition. This section is added to provide a smooth transition to the membership of the Board of Marine Pilots in light of changes made to board composition in section 2.

Section 18 repeals AS 08.62.093(e). The term "years of service" is not defined in 46 C.F.R 10; it does not make sense to "cross-reference" to a definition that does not exist. The Board has adopted regulations clarifying how creditable service under AS 08.62.093 is to be calculated.

Section 19. Effective date. This section provides for an effective date of this bill. This special effective date is needed to ensure that there is no interruption in the existence of the Board of Marine Pilots.

FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 130

1995 LEGISLATIVE SESSION

Revision Date: <u>March 17, 1995</u>	Department: <u>Commerce and Economic Development</u>
Title: <u>An Act relating to marine pilots and the</u>	BRU: <u>Occupational Licensing</u>
Board of Marine Pilots;....	Component: <u>Operations</u>
Sponsor: <u>Senator Pearce</u>	
Requestor: <u>Senator Pearce</u>	COMPONENT SERIAL #: <u>1844</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	74.1	74.1	74.1	74.1	74.1	74.1
TRAVEL	24.7	24.7	24.7	24.7	24.7	24.7
CONTRACTUAL	62.7	137.7	62.7	62.7	62.7	62.7
SUPPLIES	0.6	0.6	0.6	0.6	0.6	0.6
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	162.1	237.1	162.1	162.1	162.1	162.1
CAPITAL EXPENDITURES						
CHANGE IN REVENUES	6.6	382.2	6.6	307.2	6.6	307.2

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	162.1	137.7	162.1	162.1	162.1	162.1
1006 GF/MHTIA						
Other						
TOTAL	162.1	137.7	162.1	162.1	162.1	162.1

Estimate of any current year (FY 95) cost: \$ 00

POSITIONS

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SB 130 extends the Board of Marine Pilots to June 30, 1999 and make other amendments to the marine pilot act, AS 08.62. The costs and anticipated revenue shown above are included in the division's FY 96 operating budget request. A one time increment in the operating budget is reflected in the FY 97 column above. Fees would have to be reviewed prior to the next renewal in FY 97 to ensure full costs of the program are covered by licensing fees. New funds are not required to implement this bill.

Prepared by:	Jennifer Strickler, Admin. Officer <i>J Strickler</i>	Phone: 465-2144
Division:	Occupational Licensing <i>J Strickler</i>	Date: 3/18/95
Approved by Commissioner:	William L. Hensley <i>W L Hensley</i>	Date: 3/17/95
Agency:	Commerce and Economic Development	

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SB

147

DEPARTMENT OF FISH AND GAME POSITION PAPER

BILL No: SB147

SPONSOR: Senator Torgerson

DIVISION: Habitat and Restoration

DEPARTMENT POSITION: Support SB147 with sponsor clarification of Sec. 2. AS 29.45.046(d) intent.

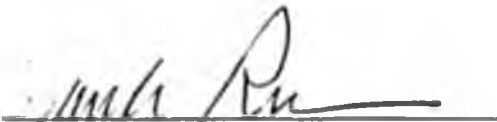
SB147 deletes the existing AS 29.45.046(b) requirement that the ADF&G prepare and adopt regulations for a fish habitat protection and restoration tax credit program for the Kenai River. It also eliminates the requirement that the department review each application and inspect and certify each project to determine if the project qualifies for a tax credit under the regulations. These are positive changes. Although a higher level of habitat protection would have been provided if the department could have developed regulations with criteria for projects which restore or protect fish habitat, and department habitat biologists had been able to review each project application, and inspect each completed project to insure that the project met the criteria for a tax credit, the department was never provided with staff or funding for either of these tasks.

SB147 adds a new section (d) which requires the Commissioner of ADF&G to review and approve draft Kenai River tax credit ordinances prepared by the Kenai Peninsula Borough Assembly within 60 days of receipt of the ordinance. It further requires the ADF&G to approve the ordinance "if the improvements for which a credit is authorized aid in protecting or restoring habitat as required under this section without regard to the scope of the protection or restoration that would be achieved by the improvements." The requirement that ADF&G review and approve a draft ordinance to ensure that projects that receive tax credits will truly provide a commensurate level of habitat protection and restoration seems like a reasonable cost-effective compromise between writing the tax credit regulations and inspecting each project, versus no participation. This amendment would provide department habitat and fisheries specialists with an opportunity to review the draft ordinance and determine if the taxes foregone by the borough as credits for habitat protection and restoration would actually buy a commensurate amount of habitat protection or restoration.

DEPARTMENT OF FISH AND GAME
POSITION PAPER
CONTINUATION PAGE FOR SB147

The intent of the section that requires the department to approve the ordinance "without regard to the scope of the protection or restoration that would be achieved by the improvement," is not clear. One interpretation would be that the department would be expected to approve the ordinance even if it believed that a type of very costly tax incentive project would only provide a small amount of habitat protection or restoration. Because it seems unlikely that this is what the bill sponsors intended, they may want to rewrite this section to clarify its intent.

COMMISSIONER'S SIGNATURE



DATE

7.6.95

DEPARTMENT OF FISH AND GAME

POSITION PAPER

BILL No: SB147

SPONSOR: Senator Torgerson

DIVISION: Habitat and Restoration

DEPARTMENT POSITION: Support SB147 with sponsor clarification of Sec. 2. AS 29.45.046(d) intent.

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DEPARTMENT OF FISH AND GAME
POSITION PAPER
CONTINUATION PAGE FOR SB147

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COMMISSIONER'S SIGNATURE



DATE

4.6.95

FISCAL NOTE

Revision Date: April 6, 1995 Dept. Affected: Community & Regional Affairs
 Title: An Act relating to a municipal river BRU: none
habitat protection tax credit Component none
 Sponsor: Senator Torgerson
 Requestor: Senate Resource COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

This legislation amends legislation passed last year which provides for tax credits for municipalities which have provisions for river habitat protection. The law applies only to the Kenai River. The amendment would relieve the Department of Fish and Game from the requirement of certifying the habitat improvement. Under the proposed legislation, ADFG would also have to approve ordinances passed by a municipality in this regard. These changes have no effect on DCRA and, consequently, no fiscal impact.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Division of Administrative Services Date: 4/6/95
 Approved by Commissioner: *Mike Shura* Date: 4/6/95
 Agency: Community & Regional Affairs

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 Page 1 of 1

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB147

Revision Date: _____ Dept. Affected: Fish and Game
 Title: An Act relating to a municipal river habitat BRU: Habitat and Restoration
protection tax credit Component: Habitat
 Sponsor: Senator Torgerson
 Requester: Resources COMPONENT SERIAL NO. 486

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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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 (FY95) cost: \$ _____

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SB147 amends AS 29.45.046(b) to eliminate existing requirements that the Alaska Department of Fish and Game prepare habitat tax credit regulation for the Kenai River, and that the department inspect projects to make sure that they meet the criteria. SB147 adds a new requirement that the department review and approve the Kenai Peninsula Borough's tax credit ordinance within 60 days of receipt.

The department does not believe that review of the borough's tax credit ordinance will entail substantial cost to the department. Therefore a zero fiscal note is recommended.

Prepared by: Ellen Fritts, Acting Director
 Division: Habitat and Restoration
 Approved by Commissioner: *Frankie...*
 Agency: Department of Fish and Game

Phone: 465-4105
 Date: _____
 Date: 4.6.91

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/30/95

FURTHER:

Date of 5-Day Notice: 3-30-95
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-7-95

Resources Committee considered SB 147

Municipal river habitat protection tax credit.

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR* _____

SIGNING TO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Irue Pearce</i>	✓	<i>James Hoffman</i>	✓		
		<i>James Hoffman</i>	✓		
<i>Christ Taylor</i>	✓				
<i>Rick Helford</i>	✓				
CHAIR: <i>John A. Linn</i>	✓				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
C+RA	4-6	✓	
F+G	4-6	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill



KENAI PENINSULA BOROUGH

144 N. BINKLEY • SOLDOTNA, ALASKA • 99669-7590
BUSINESS (907) 262-4441 FAX (907) 262-1892

SBI47

DON GILMAN
MAYOR

April 6, 1995

APR 11 1995

The Honorable Loren Leman, Chairman
Senate Resources Committee
State Capitol
Juneau, AK 99801

Re: HB 279: Municipal River Habitat Tax Credit
SB 147: Municipal River Habitat Tax Credit

Dear Sir:

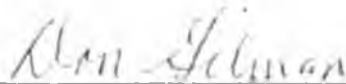
The Kenai Peninsula Borough supports the enactment of HB 279, and its companion Senate Bill 147. The Legislature in its last session enacted a provision for an optional tax credit for improvements that protected or restored habitat in the Kenai River. However, in order to implement the tax credit program protecting the Kenai River, regulations had to be adopted by the Alaska Department of Fish & Game defining improvements that qualified as being protective or restorative. This requirement for the adoption of regulations has delayed the process and complicated the matter. The intent of having the Alaska Department of Fish & Game adopt regulations was to bring expertise into the matter so that the credit would be granted only for protective or restorative improvements. Cities and boroughs generally do not have staff who can address those issues. At the same time, the legislation sought to insure that municipalities did not choose to grant credits under the guise of the improvement being a protective measure. We think the proposed change in these bills will accomplish the original objective of allowing municipalities to provide an incentive for protection of the Kenai River without the cumbersome process of the Alaska Department of Fish & Game having to adopt regulations.

The proposed changes would eliminate the regulations and allow a local government to define improvements and measures which it deems would be protective or restorative. The ordinance defining these eligible activities would be subject to review by the Commissioner of Alaska Department of Fish & Game. The Commissioner's review would be to determine that the eligible improvements in an ordinance were protective or restorative. It would allow the municipality to define the eligible improvements in its ordinance with oversight to insure that the program is limited to protective and restorative improvements. This allows the expertise of the Alaska Department of Fish & Game to be utilized by the municipality in crafting the ordinance and a final review by the Commissioner before the ordinance goes into

The Honorable Loren Leman
April 6, 1995
Page 2

effect. The Commissioner's involvement would not look at the extent of the credit or the choice of activities to be granted the credit other than to determine whether they were truly protective measures or not.

KENAI PENINSULA BOROUGH



Don Gilman, Mayor

DG:bl

cc: Senator J. Torgerson

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

Tom B. see me about this
WALTER J. HICKEL, GOVERNOR

P.O. BOX 25526
JUNEAU, ALASKA 99802-5526
PHONE: (907) 465-4100

August 8, 1994

The Honorable Don Gilman
Mayor
Kenai Peninsula Borough
144 North Binkley
Soldotna, AK 99669-7599



Dear Mayor Gilman:

Thank you for your leadership in getting HB 306 passed by the legislature. This statute will provide an important tax incentive for private property owners to protect and restore valuable habitat that produces our Kenai River fisheries, which are so important to the economy of the Kenai Peninsula and the state.

As you know, the Kenai Peninsula Borough will have to develop a local ordinance, and the Alaska Department of Fish and Game (ADF&G) will need to develop regulations to implement this statute. The department would like to coordinate the development of these regulations with the borough. This will require that department staff work closely with borough staff to formulate criteria, forms, and procedures for this process. We will need to hold public workshops to get the landowners' perspective and acceptance and public hearings will be required to adopt the regulations. I anticipate that the development of good regulations will require considerable staff time.

Because of the downsizing of state government, ADF&G does not have funds for the senior staff person needed to begin development of these regulations at this time, however we are actively looking for funding to provide the necessary support for the HB 306 regulations and hope to begin full scale work soon. In the interim, the Habitat and Restoration Division, which has responsibility for the regulations plans to contact the borough in the near future to begin the scoping and background work for the project. Please let me know who in the borough we should contact to begin developing a coordinated approach to implementing HB 306.

Thank you for all your help on this and other Kenai River issues. We look forward to working with you on the successful implementation of the tax incentive program.

Sincerely,

A handwritten signature in cursive script that reads 'Carl L. Rosier'.

Carl L. Rosier
Commissioner

Alaska State Legislature

SENATOR
JOHN TORGERSON
DISTRICT D



Senate

SESSION ADDRESS
STATE CAPITOL, ROOM 427
JUNEAU, ALASKA 99801-1182
(907) 465-2828
FAX (907) 465-4770

S.B. 147 - Municipal River Habitat Tax Credit Sponsor Statement

HB 306 was enacted in 1994. That legislation provided the authority for a municipality to establish, by ordinance, a Kenai river habitat protection credit against property taxes. The current statute requires the Department of Fish and Game to develop criteria for accomplishing the tax credits and the department is also responsible for reviewing and certifying land owner applications.

This bill, SB 147, revises the review and certification process. The bill provides for the Commissioner of the Department to approve criteria set forth in an ordinance developed by the municipality. Also, the Department would no longer be required to review and then certify the land owner applications. The municipality will be responsible for the process, based on the criteria established in the ordinance.

Alaska State Legislature

SENATOR
JOHN TORGERSON
DISTRICT D



Senate

SESSION ADDRESS
STATE CAPITOL, ROOM 427
JUNEAU, ALASKA 99801-1182
(907) 465-2828
FAX (907) 465-4770

S.B. 147 - Municipal River Habitat Tax Credit Sectional Analysis

Sec. 1: Amends subsection (b) by deletion of language requiring credits to be certified by the Department of Fish and Game.

Sec. 2: Adds new subsection (d), establishing that the municipal ordinance is the vehicle for certification of the credits, subject to the approval of the Commissioner of Fish and Game.

Sec. 3: Repeals subsection (c), language which requires the Department of Fish and Game to certify, and the criteria under which it is would be certified.

SB

162

SB 162 Sectional Analysis
9-LS0121\c

Section 1

States the intent of the legislature is to convey fee simple title to agricultural land subject to an agricultural only covenant. Section 9 of this bill establishes this requirement.

This language would make it easier for owners of agricultural parcels to obtain financing from other than the state. Currently we convey only the agricultural interest and retain all other interests to the state. If adopted section 12 of this bill would require us to issue new conveyance documents for all patents issued since August 15, 1976 to comply with this requirement. We should also point out that if the state wants to use the land for another use (pipeline, telephone, etc.) we would have to buy those rights back as the fee simple title would be transferred.

Section 2

Removes survey requirements for agricultural land sales.

We oppose. All disposals of state land (sales or leases) are presently required to be surveyed. We have had numerous problems with unsurveyed land and paper plats to a point that legislation (HB 80) to make DNR the platting authority within the unorganized borough is likely to pass this legislature. This provision would not be supported by any municipal platting authority.

Section 3

Removes the requirement that agricultural land be part of an area plan and classified prior to disposal.

We oppose excluding agricultural land from the land use planning and classification process. The planning and classification statutes (AS 38.04) are the result of a 1986 Supreme Court case Alaska Survival v. State where it was found that disposals of state land cannot occur unless the land has been classified as a result of an area or regional planning process. There is no reason to exempt just agricultural land from this requirement.

Section 4

Takes away the authority to do pre-qualification of agricultural land buyers and allows the commissioner to waive, postpone or modify contract development requirements based on economics.

We oppose the loss of all control of how the land will be used and ensuring that only viable people obtain agricultural land for that purpose. We support the ability of the commissioner to waive, postpone or modify contract terms based on economic considerations.

Section 5

Restricts the lottery application process on land sales that involve land from former project disposals such as Delta I - II and Pt. MacKenzie.

We do not see the need for this provision but do not oppose it.

Section 6

Allows the sale of agricultural tracts by aliquot parts.

Oppose. See comments for Section 2.

Section 7

Adds a reference dealing with moratorium payments to the contract terms explanation.

We support this language that will clarify contract terms.

Section 8

Sets agricultural land sale interest rate at 8% and makes interest payments also subject to a moratorium. We assume that no refinancings are allowed. There is no reason to provide lower rates just to agricultural land.

We do not support lowering of the interest rate to 8% for only agricultural interests. HB 191, which is likely to pass, establishes an interest rate for all land loans at the prime rate plus 4% (this is currently 12.2%) and not to exceed 13.5%. We support the change that would insure that interest changes are to be considered as part of any payment moratorium.

Section 9

Establishes a requirement for conveyance document wording:

- 1) requires fee simple title be used to convey land subject to an agricultural only covenant.
- 2) provides a covenant permitting subdivision down to 40 acres.
- 3) establishes remedies for breach of covenants.

Number 1 - See comments in Section 1. Number 2 - this is already allowed by regulation (11 AAC 67.188) on a limited basis. The agricultural industry will be concerned on allowing unlimited subdivisions which this bill allows. Number 3 - is already covered by 11 AAC 67.165.

Section 10

Provides that land classified for agriculture may be conveyed to municipalities without any restrictions. Currently only the agricultural interest in the land may be conveyed to municipalities.

This is consistent with AS 29.65(Municipal Land Act) where land classified agriculture may already be conveyed to municipalities.

Section 11

- 1) Allows the commissioner to require a buyer to cooperate with a conservation district on agricultural sales.
- 2) Allows changes in development plans based on cases of economic hardship or other extenuating circumstances.
- 3) Removes restrictions on building improvements, allows incidental uses, sale of timber and use of gravel.

These are major issues to the agricultural industry. We support these concepts.

Sections 12 and 13

Requires the commissioner to issue new conveyance documents on all agricultural parcels sold since August 15, 1976 to individuals and municipalities to comply with section 9 of this act.

We oppose. This is a major work load and not fair to those who chose not to purchase agricultural property because of the deed restrictions. There is also a very good chance of title problems as "wild deeds" will result because of dual title interests being conveyed by the state.

Section 14

Repeals current regulations affecting agricultural land disposals since August 1978.

We oppose any attempt by the legislature to repeal the executive branch's regulations.

FISCAL NOTE

STATE OF ALASKA

BILL NO. SB162

1995 LEGISLATIVE SESSION

Revisor Date: 10-May-95 Dept Affected: Natural Resources
 Title: An Act relating to land used for agricultural BRU: Resource Development
purposes and to state land classified for agricultural purposes ... Component: Land Development
 Sponsor: Senator Green
 Requestor: _____ Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES	117.0					
TRAVEL						
CONTRACTUAL	110.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	227.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	(20.3)	(40.6)	(60.9)	(81.2)	(101.5)	(121.8)
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	227.0					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	227.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

POSITIONS

FULL-TIME	3	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Section 12 & 13 of the bill are estimated to cost \$227.0 to implement.

The loss of revenue, which assumes no refinancing will be allowed, is a result of reducing the current interest rate from 12.5% to 8%.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 10-May-95
 Approved by Commissioner: [Signature] Date: 5-10-95
 Agency: Natural Resources

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JUN 29 1995

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Juneau, Alaska 99801-2105

MEMORANDUM

June 29, 1995

SUBJECT: Senate Bill 162, relating to agriculture, to state land used for agriculture and to state land classified for agricultural purposes, to state agricultural programs, and to related matters -- sectional analysis (Work Order No. 9-LS1021\C)

TO: Senator Lyda Green
ATTN: Brett Huber

FROM: Jack Chenoweth
Legislative Counsel

This bill generally addresses state policy with respect to agriculture. It proposes to make both technical and substantive changes in laws bearing on state land used for agriculture, to state land classified for agricultural use purposes, to laws under which the state conducts its agricultural program, and to statutes addressing closely related matters.

The measure's principal thrust is to change the interests in land classified for agricultural purposes that the state has conveyed or may convey. If the measure becomes law, it contemplates that the state would convey fee simple title, subject only to certain restrictive covenants that would underpin use of the land for agricultural purposes. Action based on alleged breach of the conditions of the covenants would be the sole enforcement mechanism available to the commissioner of natural resources, on behalf of the state, to protect the land used or classified for agriculture against inconsistent or non-authorized uses.

The measure's provisions may be roughly grouped into seven areas:

- (1) Substitution of conveyance or transfer of fee simple title for conveyance or transfer of only the rights in the land for agricultural purposes.
- (2) Land classification issues relating to agricultural land.
- (3) Survey issues relating to agricultural land.
- (4) Installment sale issues relating to agricultural land.

(5) Amendments eliminating limitations and similar prequalification requirements that may be imposed by the commissioner with respect to agricultural land.

(6) Technical changes.

(7) Transitional provisions.

Because of the wide-ranging nature of the bill, let me present the discussion of these provisions topically rather than sequentially.

Substitution of conveyance or transfer of fee simple title:

Bill section 1: This "statement of legislative intent" makes clear the objective of the measure's principal operative provision, the amendment of AS 38.05.321(a) by bill section 9, that

for state land classified as agricultural land, the state [shall] convey fee title subject to a covenant running with the land that limits use of the land for agricultural purposes.

Bill section 9: Under existing AS 38.05.321(a), disposal of state land that has been classified for agricultural purposes disposes only of "rights for agricultural purposes," the state retaining all other rights. This bill section eliminates that limitation and substitutes for it a general conveyance, coupled with the requirement that the instrument of conveyance contain certain covenants respecting the subsequent use of that land. The measure contemplates that the commissioner of natural resources would have use of "remedies for a breach of the covenants" as the sole enforcement mechanism in the event of breach of either requirement.

Bill section 10 modifies AS 38.05.321(b) by eliminating from current law the limitation that, for land classified as agricultural land that is later selected by a municipality in the exercise of land selection rights set out in AS 29.18, only "rights in the land for agricultural purposes may be transferred" to the municipality, with all other interests in the land retained by the state.

Land classification issues:

AS 38.04.065(h) currently permits the commissioner of natural resources to make land classifications on the basis of site-specific plans for many purposes when a regional plan has not yet been adopted. However, under that subsection, use of a site-specific plan will not

Generally, breach of a valid covenant will support a cause of action. While the usual remedy is an action at law for damages, equitable relief, typically injunctive relief, may be ordered.

support a land classification for "a new commercial agricultural project." **Bill section 3** amends AS 38.04.065(h) to eliminate the current exception against use of a site-specific plan to support a land classification for a new commercial agricultural project in that subsection.

Land survey issues:

Bill section 2 amends AS 38.04.045(b) to eliminate the requirement that state land classified for agricultural uses must first be surveyed before it may be leased, and makes corrective language changes to conform the subsection to technical provisions of the Legislative Drafting Manual.

Bill section 6 authorizes sale of state land classified for agricultural uses in parcels or tracts described by aliquot parts.

Installment sale issues relating to agricultural land:

In light of the change proposed to the rate of interest charged on installment sales contracts by bill section 8, **bill section 7** makes a conforming change to AS 38.05.065(c) to require that certain information be incorporated into land sale contracts involving the sale of state land classified for agricultural uses.

AS 38.05.065(a) and (b) prescribe requirements generally applicable to sale of state land on installment specifying, among other things, the manner of determining the rate of interest on the outstanding loan payments. Those provisions notwithstanding, the amendment made in proposed AS 38.05.065(h)(1), set out in **bill section 8**, fixes the rate of interest on sales of state land classified for agricultural uses at eight percent.

Amendments eliminating limitations and similar prequalification requirements that bear on agricultural land:

Bill section 4 modifies the authority of the commissioner of natural resources set out in AS 38.05.020(b)(6) to classify tracts of state land for agricultural use. It would eliminate all "prequalification" requirements that are incidental to the commissioner's exercise of that authority, thereby obviating requirements of preliminary submissions of agricultural plans by persons who sought to participate under the former agricultural development project statute (AS 44.33.375, repealed in 1979). **Bill section 4** also operates to amend the condition under which development requirements under state agricultural land sale contracts may be modified under AS 38.05.020(b)(7) to allow modification if either one of the two expressed conditions is met (rather than, under current law, both conditions).

Bill section 11, adding new subsections (d) and (e) to AS 38.05.321, enumerates certain things that the commissioner of natural resources may and may not do or require as to land classified as agricultural land that is conveyed to third parties, and supplies a definition for the phrase "agricultural purposes."