

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 86/2

9092 HOUSE COMMUNITY & REGIONAL AFFAIRS

TABLE 1

CHAPTER 69, 31 U.S. CODE
 PAYMENTS IN LIEU OF TAXES
 FEDERAL LAND PAYMENTS (SECTION 6903(a)(1))

<u>Provisions of Law</u>	<u>Agency Making Payment</u>	<u>Types of Receipts</u>	<u>Disposition of Receipts</u>
(1) Act of 5/23/08; Dept. of Agriculture Appropriation Act; 35 Stat. 251; 16 U.S.C. 500	U.S. Forest Service	Monies received from each National forest	65% to U.S. Treasury 25% of gross to State for counties 10% to Forest Roads Appropriation
(2) Act of 6/20/10; Enabling Act of Arizona and New Mexico; 36 Stat. 557	U.S. Forest Service	Proceeds from all Nat'l forests as area of land for schools bears to area of all Nat'l forests in State	100% to States for schools
(3) Act of 2/25/20 (Sec 35); Mineral Lands Leasing Act; 41 Stat. 450; 30 U.S.C. 191.	Bu. of Land Management	Monies received from mineral leasing	50% to States 40% to Bur. of Reclamation 10% to U.S. Treasury
(4) Federal Power Act (Section 17); 41 Stat. 1072; 16 U.S.C. 810	Federal Energy Regulatory Commission	Occupancy and use of National Forests and Public Lands	50% to Bur. of Reclamation 37.5% to States 12.5% U.S. Treasury
(5) Taylor Grazing Act (Sec 10); 43 U.S.C. 3151	Bu. of Land Management	Proceeds from section 3 grazing receipts	50% to Range Improvement fund 37.5% to U.S. Treasury 12.5% to States for counties
		Proceeds from section 15 grazing receipts	50% to States for counties 50% to Range Improvement fund
(6) Bankhead-Jones Farm Tenant Act (Section 33); 50 Stat. 526; 7 U.S.C. 1012	Bu. of Land Management	Revenues from use of the lands	50% to Range Improvement Fund 25% to counties 25% to U.S. Treasury
(7) Act of 6/22/48; Superior Nat'l Forest State of Minn.; 62 Stat. 570; 16 U.S.C. 577g	U.S. Forest Service	Percentage of fair appraised value	.75% of appraised value paid in addition to Act of 5/23/08 ((1) above)
(8) Act of 6/22/56 to amend Act of 6/22/48; 70 Stat. 328; 16 U.S.C. 577g-1	U.S. Forest Service	Same as (7) above	Same as (7) above
(9) Mineral Leasing Act for Acquired Lands (Sect. 6); 61 Stat. 915; 30 U.S.C. 355	Bu. of Land Management U.S. Forest Service	Monies received from mineral leasing	50% to States 40% to Bureau of Reclamation 10% to U.S. Treasury
(10) Material Disposal Act (Section 3); 61 Stat. 681;	Bu. of Land Management U.S. Forest Service	Net revenues from sale of land and materials	varies depending upon type of receipt and agency
(11) Refuge Revenue Sharing Act, as amended; 92 Stat. 1321; 16 U.S.C. 715a(c)(2)	U.S. Fish and Wildlife Service	Revenues from sale of timber, grazing and minerals on reserve area lands and sale of carcasses of certain animals	25% of net receipts to counties 75% to Revenue Sharing fund

purposes of this section are

ADVISORY COUNCIL.

Secretary, acting through the National Park Service, shall establish an Advisory Council on the Boston Harbor Islands with interests in the recreation and development and resource management plan for the Boston Harbor Islands. The Advisory Council is encouraging to specific recreation area (but not limited to) education, resources, cultural and historic activities. Participation on any level is invited to members of the Advisory Council.

The Advisory Council shall consist of not more than three individuals from each of the following categories of entities: municipal, State, Federal, environmental, educational, and other non-Federal entities, including those in the maritime industry, and the American interests.

The Advisory Council shall advise the Secretary of the National Park Service on matters relating to the public.

The provisions of section 14 of the Federal Acquisition Regulation (41 C.F.R. 101-11.6) are hereby waived.

Amounts appropriated in this section may only be expended for at least three non-Federal services, or in-kind contributions.

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of a structure to be partially used by the Secretary as an administrative headquarters, administrative site, and visitors' center for Natchez National Historical Park.

(2) USE FOR SATISFACTION OF MATCHING REQUIREMENTS.—The amount of payment under paragraph (1) may be available for matching Federal grants authorized under other law notwithstanding any limitations in any such law.

(3) AGREEMENT.—Prior to the execution of an agreement under paragraph (1), and subject to the appropriation of necessary funds in advance, the Secretary may enter into a contract, lease, cooperative agreement, or other appropriate form of agreement with the City of Natchez providing for the use and occupancy of a portion of the structure constructed under paragraph (1) (including appropriate use of the land on which it is situated) at no cost to the Secretary (except maintenance, utility, and other operational costs), for a period of 50 years, with an option for renewal by the Secretary for an additional 50 years.

(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$3,000,000 to carry out this section.

SEC. 1031. SUBSTITUTION OF TIMBER FOR CANCELED TIMBER SALE.

(a) IN GENERAL.—Notwithstanding the provisions of the Act of July 31, 1947 (30 U.S.C. 801 et seq.) and the requirements of section 5402.0-6 of title 43, Code of Federal Regulations, the Secretary of the Interior, acting through the Bureau of Land Management, is authorized to substitute, without competition, a contract for timber identified for harvest located on public lands administered by the Bureau of Land Management in the State of California of comparable value for the following terminated timber contract: Elkhorn Ridge Timber Sale, Contract No. CA-050-TS-88-01.

(b) DISCLAIMER.—Nothing in this section shall be construed as changing any law or policy of the Federal Government beyond the timber sale substitution specified in this section.

SEC. 1032. RURAL ELECTRIC AND TELEPHONE FACILITIES.

(a) IN GENERAL.—Section 504(g) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764(g)) is amended by striking "financed pursuant to the Rural Electrification Act of 1936, as amended," in the last sentence and inserting "eligible for financing pursuant to the Rural Electrification Act of 1936, as amended, determined without regard to any application requirement under that Act."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to rights-of-way leases held on or after the date of enactment of this Act.

SEC. 1033. FEDERAL BOROUGH RECOGNITION.

(a) Section 8901(2) of title 31, United States Code, is amended to read as follows:

- (2)(A)** 'unit of general local government' means—
 - (i) a county (or parish), township, borough, or city where the city is independent of any other unit of general local government, that—
 - (I) is within the class or classes of such political subdivision in a State that the Secretary of the Interior,

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in his discretion, determines to be the principal provider or providers of governmental services within the State; and

"(II) is a unit of general government, as determined by the Secretary of the Interior on the basis of the same principles as were used by the Secretary of Commerce on January 1, 1983, for general statistical purposes;

(ii) any area in Alaska that is within the boundaries of a census area used by the Secretary of Commerce in the decennial census, but that is not included within the boundary of a governmental entity described under clause (i);

"(iii) the District of Columbia;

"(iv) the Commonwealth of Puerto Rico;

"(v) Guam; and

"(vi) the Virgin Islands.

"(B) the term 'governmental services' includes, but is not limited to, those services that relate to public safety, the environment, housing, social services, transportation, and governmental administration."

(b) PAYMENT IN LIEU OF TAXES.—Section 6902(a) of title 31, United States Code, is amended to read as follows:

"(a)(1) Except as provided in paragraph (2), the Secretary of the Interior shall make a payment for each fiscal year to each unit of general local government in which entitlement land is located as set forth in this chapter. A unit of general local government may use the payment for any governmental purpose.

"(2) For each unit of general local government described in section 6901(2)(A)(ii), the Secretary of the Interior shall make a payment for each fiscal year to the State of Alaska for entitlement land located within such unit as set forth in this chapter. The State of Alaska shall distribute such payment to home rule cities and general law cities (as such cities are defined by the State) located within the boundaries of the unit of general local government for which the payment was received. Such cities may use monies received under this paragraph for any governmental purpose."

SEC. 1034. EXTENSION OF STATUTE OF LIMITATIONS.

Notwithstanding any other provision of law, any of the Alaska Native Village Corporations of Tyonek Native Corporation, Ninilchik Native Association, Inc., Knikatu Inc., Seldovia Native Association, Inc., Chikaloon Moose Creek Native Association, Inc., and the Alaska Native Regional Corporation, Cook Inlet Region, Inc. may commence litigation at any time within 12 months of enactment of this Act in Federal District Court for Alaska to challenge any determination by the Department of the Interior that such native corporations will not receive conveyance of lands described in "Appendix C" of the Deficiency Agreement dated August 31, 1976.

SEC. 1035. REGULATIONS OF FISHING IN CERTAIN WATERS OF ALASKA.

"(a) IN GENERAL.—Local residents who are descendants of Katmai residents who lived in the Naknek Lake and River Drainage shall be permitted, subject to reasonable regulations established by the Secretary of the Interior, to continue their traditional fishery for red fish within Katmai National Park (the national park and

national preserve re section 202(2) of the Act (16 U.S.C. 410hh-

(b) RED FISH D the term "red fish" no significant commo;

(c) TITLE.—No p invalidate or validat the State of Alaska shall any actions te Act operate under t the State of Alaska, to any or all of the su;

(2) JURISDICTION taken pursuant to (or diminishing Fe interests, or rights waters of the State c sion of Federal or Sta

SEC. 1036. CREDIT FOR

Within 24 mon Act, the Cape Fox right, title, and inter that includes Beave United States as part

SEC. 1037. RADIO SITE

The Secretary d days from the date o of Inspiration Point, mination whether th on the site is in the with the reasons the Resources, United St House of Representa period which causes of the antenna from (

TITLE XI— ENVIRON

SEC. 1101. PROGRAM

(a) AUTHORIZATI years 1998, 1999, an - an additional \$143,3

(1) the initi implementing t the Bay Delta,

and the Federal ment on Bay-De

(2) the initi implementing t term CALFED sharing agree

Sec. 29.10.200. Limitation of home rule powers.

Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise than as provided. These provisions supersede existing and prohibit future home rule enactments that provide otherwise:

- (1) AS 29.05.140 (transition);
- (2) AS 29.06.010 (change of municipal name);
- (3) AS 29.06.040 - 29.06.060 (annexation and detachment);
- (4) AS 29.06.090 - 29.06.170 (merger and consolidation);
- (5) AS 29.06.190 - 29.06.420 (unification of municipalities);
- (6) AS 29.06.450 - 29.06.530 (dissolution);
- (7) AS 29.10.100 (charter amendment);
- (8) AS 29.20.010 (conflict of interest);
- (9) AS 29.20.020 (meetings public);
- (10) AS 29.20.050 (legislative power);
- (11) AS 29.20.060 - 29.20.120 (assembly composition and apportionment);
- (12) AS 29.20.140 (qualifications of members of governing bodies);
- (13) AS 29.20.150 (term of office);
- (14) AS 29.20.220 (executive power);
- (15) AS 29.20.270(e) (ordinance veto by mayor);
- (16) AS 29.20.630 (prohibited discrimination);
- (17) AS 29.20.640 (reports);
- (18) AS 29.25.010(a)(10) (municipal exemption on contractor bond requirements);
- (19) AS 29.25.050 (codification);
- (20) AS 29.25.060 (resolutions);
- (21) AS 29.26.030 (notice of elections);
- (22) AS 29.26.050 (voter qualification);
- (23) AS 29.26.250 - 29.26.360 (recall);
- (24) AS 29.35.020 (extraterritorial jurisdiction);
- (25) AS 29.35.030 (eminent domain);
- (26) AS 29.35.050 (garbage and solid waste services);
- (27) AS 29.35.055 (local air quality control program);
- (28) AS 29.35.060 (franchises and permits);
- (29) AS 29.35.070 (public utilities);
- (30) AS 29.35.080 (alcoholic beverages);
- (31) AS 29.35.120 (post audit);
- (32) AS 29.35.131 (enhanced 911 system);
- (33) AS 29.35.145 (regulation of firearms);
- (34) AS 29.35.160 (education);
- (35) AS 29.35.170(b) (assessment and collection of taxes);
- (36) AS 29.35.180(b) (land use regulation);
- (37) AS 29.35.250 (cities inside boroughs);
- (38) AS 29.35.260 (cities outside boroughs);
- (39) AS 29.35.340 (acquisition of areawide power);
- (40) AS 29.35.500 - 29.35.590 (hazardous materials and wastes);
- (41) AS 29.40.160(a) - (c) (title to vacated areas);
- (42) AS 29.40.200 (subdivisions of state land);

- (43) AS 29.45.010 - 29.45.570 (property taxes);
- (44) AS 29.45.650(c), (d), (e), and (f) (sales and use tax);
- (45) AS 29.45.700(d) (sales and use tax);
- (46) AS 29.47.200(b) (security for bonds);
- (47) AS 29.47.260 (construction);
- (48) AS 29.47.470 (air carriers);
- (49) AS 29.60.050(a) (limitation on computation and use of payment);
- (50) AS 29.60.120(a) and (c) (state aid for health facilities and hospitals);
- (51) AS 29.65 (general grant land);
- (52) AS 29.71.040 (procurement preference for state agricultural and fisheries products);
- (53) AS 29.71.050 (procurement preference for recycled Alaska products).

History -

(sec. 6 ch 74 SLA 1985; am sec. 1, 2 ch 38 SLA 1986; am sec. 6 ch 70 SLA 1986; am sec. 12 ch 80 SLA 1986; am sec. 3 ch 108 SLA 1986; am sec. 49 ch 14 SLA 1987; am sec. 1 ch 30 SLA 1988; am sec. 2 ch 63 SLA 1988; am sec. 1 ch 64 SLA 1988; am sec. 3 ch 57 SLA 1993; am sec. 5 ch 74 SLA 1993; am sec. 1 ch 29 SLA 1994)

Revisors Notes -

Reorganized in 1986 to restore numerical order to the referenced provisions. Paragraph (53) was enacted as (49) and renumbered as (50) in 1988, (52) in 1993, and again in 1994. Paragraphs (27) and (32) were each enacted as (51) and renumbered in 1993. Paragraph (48) was enacted as (53) and renumbered in 1994.

Amendment Notes -

- The first 1993 amendment, effective June 9, 1993, added paragraph (32).
- The second 1993 amendment, effective June 26, 1993, added paragraph (27).
- The 1994 amendment, effective May 8, 1994, added present paragraph (48).

Decisions -

For discussion of constitutional limitation on home-rule powers, - see *Jefferson v. State*, 527 P.2d 37 (Alaska 1974), decided under former, similar law.

Eligibility of city officeholder for appointment to salaried position. - Home rule charter section which prohibited a person who holds or has held an elective city office from being eligible for appointment to an office or for employment for which a salary is paid by the city until one year has elapsed following the term for which he was elected or appointed, unless an exception is made with the approval of four or more members of the city council, was not preempted by former AS 29.23.555 (now see AS 29.20.010) since the charter also contained a section prohibiting members of the city council from voting on matters in which they have a pecuniary interest. *Acevedo v. City of N. Pole*, 672 P.2d 130 (Alaska 1983), decided under former, similar law.

Applicability of former AS 29.48.130. - Former AS 29.48.130, which required municipalities to perform certain actions by ordinance - including the making of appropriations - was not one of the provisions designated applicable to home rule municipalities in this section. *Municipality of Anchorage v. Frohne*, 568 P.2d 3 (Alaska 1977), decided under former, similar law.

Application to franchise agreements. - This section applies only to home rule enactments; it does not apply to franchise agreements, even though the agreements may have originated in the form of municipal ordinances, since once they are granted such agreements are contracts binding

on both parties. B-C Cable Co. v. City & Borough of Juneau, 613 P.2d 616 (Alaska 1980),
decided under former, similar law.

Stated in Keane v. Local Boundary Comm'n, 893 P.2d 1239 (Alaska 1995).

Sec. 29.25.050. Codification.

(a) Each ordinance shall be codified after it is adopted.

(b) Within three years after incorporation of a municipality, the municipal clerk or the clerk's designee shall have prepared a general codification of all municipal ordinances of general applicability having the force and effect of law. The municipal code shall be revised and printed at least every five years, unless the code is kept current by regular supplements.

(c) In (a) of this section, "codified" means

(1) the ordinance has been given a serial number or other permanent identifying number, and, bearing a notation of the date of adoption and the adopting authority, it has been entered by the municipal clerk in a properly indexed book maintained for the purposes of organizing and recording the ordinances; or

(2) the ordinance is a provision that establishes a rule of conduct or behavior and that is included, or to be included, in a code of ordinances or other complete system of law enacted and kept current at reasonable intervals.

(d) This section applies to home rule and general law municipalities.

History -

(sec. 8 ch 74 SLA 1985)

AG Opinions -

To have met the minimum codification requirements of a former, similar provision municipal ordinances should have been topically arranged under a logical and systematic set of chapters and subchapters. There should have been a table of contents, an index, and a system of cross-referencing. The code, to have been useful, must have had a current supplement which indicated all additions, amendments, and repeals. Periodically the additions and changes noted in the supplement should have been incorporated into the main body of the code. These were minimum requirements. Nothing prevented a municipality from developing a more elaborate and sophisticated code. 1966 Op. Att'y Gen. No. 6.

Sec. 29.03.010. Establishment.

Areas of the state that are not within the boundaries of an organized borough constitute a single unorganized borough.

History -

(sec. 2 ch 118 SLA 1972)

Cross References -

For studies of the feasibility of establishing boroughs in the unorganized borough, see AS 44.47.700 - 44.47.730.

Decisions -

Quoted in *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

Stated in *United States v. Pleier*, 849 F. Supp. 1321 (D. Alaska 1994).

Sec. 01.10.070. Time statutes become law and take effect.

(a) All bills passed by the legislature become law upon the governor's signature or upon the governor's veto being overridden or, when the governor allows a bill to become law without signature, on the day after expiration of the period allowed for gubernatorial action by art. II, sec. 17 of the Alaska Constitution. Acts become effective 90 days after becoming law, unless the legislature, by concurrence of two-thirds of the membership of each house, provides for another effective date.

(b) The actual effective date of an Act having no effective-date provision is determined by starting with the day after it is signed by the governor or the day after the governor's veto is overridden or the day after expiration of the period allowed for gubernatorial action by art. II, sec. 17 of the Alaska Constitution, and counting 90 calendar days, the Act becoming effective at 12:01 a.m., Alaska Standard Time on the 90th day.

(c) The actual effective date and time of an Act having an immediate-effective-date provision is 12:01 a.m., Alaska Standard Time, on the day after it is signed by the governor or on the day after the governor's veto is overridden or on the day after expiration of the period allowed for gubernatorial action by art. II, sec. 17 of the Alaska Constitution.

(d) An Act which specifies a definite effective date becomes effective at 12:01 a.m., Alaska Standard Time on the date specified.

(e) When the governor allows a bill to become law without signature, the governor shall give written notice of that fact to the legislature. The date of this notice does not affect the date the bill becomes law or the date the Act takes effect.

(f) In this section

(1) "Act" means a bill which has become law;

(2) "bill" means a legislative document proposing an Act;

(3) "becomes effective" means becomes applicable; "effective date" does not mean date of enactment (or date of becoming law), although the two will coincide when a bill which has an immediate-effective-date provision is allowed to become law without the governor's signature;

(4) "becomes law" means is enacted; "enactment" occurs when any one of the following takes place:

(A) a bill which is passed by the legislature is signed by the governor;

(B) the period specified in art. II, sec. 17 of the Alaska Constitution expires without gubernatorial action;

(C) the legislature overrides the governor's veto of a bill;

(5) "passed by the legislature" means that the required majority of each house of the legislature has taken final action in approving the same version of a bill.

History -

(sec. 5 ch 62 SLA 1962; am sec. 8 ch 126 SLA 1966; am sec. 1 ch 115 SLA 1974; am sec. 1 - 3 ch 6 SLA 1984)

History Reports -

For an analysis of the amendment of this section by ch. 115, SLA 1974 (HB 758 am), see 1974 House Journal, 562-565.

Decisions -

Applied in *Atlantic Richfield Co. v. State*, 705 P.2d 418 (Alaska 1985).

Stated in *Rowe v. Burton*, 884 F. Supp. 1372 (D. Alaska 1994).

Cited in *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534 (Alaska 1978).

Article Notes -

Collateral References - 73 An. Jur. 2d, Statutes, sec. 342-373.

82 C.J.S., Statutes, sec. 399-440.

Sec. 29.04.010. Home rule.

A home rule municipality is a municipal corporation and political subdivision. It is a city or a borough that has adopted a home rule charter, or it is a unified municipality. A home rule municipality has all legislative powers not prohibited by law or charter.

History -

(sec. 3 ch 74 SLA 1985)

Decisions -

"Local activity rule". - Under a former, similar provision, the "local activity rule" was found to be an expedient method for resolving an impasse between state statutes which seek to further a specific policy and municipal ordinances which either directly or collaterally impede this implementation. Conflicts between state statutes and municipal ordinances generally were modulated by ruling in favor of the statutes. *Chugach Elec. Ass'n v. City of Anchorage*, 476 P.2d 115 (Alaska 1970).

A parallel provision - to Alaska Const., art. X, sec. 11, was found in former AS 29.05.020, a similar provision. *City of Fairbanks v. Schrock*, 457 P.2d 242 (Alaska 1969).

Cited in *Keane v. Local Boundary Comm'n*, 893 P.2d 1239 (Alaska 1995).

Collateral Refs -

56 Am. Jur. 2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, sec. 98-138.

62 C.J.S., *Municipal Corporations*, sec. 3, 4, 13, 187.

Sec. 29.04.020. General law.

A general law municipality is a municipal corporation and political subdivision and is an unchartered borough or city. It has legislative powers conferred by law.

History -

(sec. 3 ch 74 SLA 1985)

Decisions -

Cited in *Kenai Peninsula Borough v. State, Dep't of Community & Regional Affairs*, 751 P.2d 14 (Alaska 1988).

Sec. 29.04.030. Classes of general law.

General law municipalities are of five classes:

- (1) first class boroughs;
- (2) second class boroughs;
- (3) third class boroughs;
- (4) first class cities;
- (5) second class cities.

History -

(sec. 3 ch 74 SLA 1985)

Decisions -

The statutory term "town" - has no technical meaning since under this title, which treats municipal government, incorporated municipalities may be either boroughs or cities, but not towns. *Dalton v. Interior Credit Bureau, Inc.*, 615 P.2d 631 (Alaska 1980), decided under former, similar law.

Cited in *Kenai Peninsula Borough v. State, Dep't of Community & Regional Affairs*, 751 P.2d 14 (Alaska 1988).

HB

89



SPONSOR STATEMENT

HB 89 Shuyak Island State Park

House Bill 89, and companion Senate Bill 64 have been introduced by the Kodiak delegation at the request of the Kodiak Island Borough Assembly. The bills represent the outcome of a long and complex effort by state and federal authorities along with locally affected entities to compensate for the effects of the Exxon Valdez oil spill. The bill adds specific land and water areas to the Shuyak State Park. Shuyak Island was heavily impacted by pollution streaming westward from the 1989 accident.

In 1984, the Shuyak State Park was established from part of the state's holdings to protect the area's fish and wildlife habitat and public recreation opportunities, while maintaining customary hunting and fishing uses. The two largest land owners on Shuyak Island are the State of Alaska and the Kodiak Island Borough.

One provision of the oil spill settlement was the establishment of a joint federal and state council to manage remediation and recovery efforts. Previous litigation imposed management restrictions that required the state to maintain wildlife habitat and public recreation values while the borough was partially prohibited from commercial or industrial uses on its lands.

It is for this purpose that the Oil Spill Trustee Council, on which I serve, selected the Borough's Shuyak Island lands and purchased them in 1996. Responsibilities of the group include the replacement of lost fish and wildlife habitat with the acquisition and protection of other high value habitat. The final effort is the consolidation of the lands under the protective management of the Shuyak State Park.

HB 89 completes the transaction by formally incorporating all state lands on the island into the Shuyak Island State Park. The expanded park retains the management goals, purposes, and allows uses of the original park.



Alaska State Legislature

House of Representatives
Special Committee on Fisheries

Memorandum

TO: Representative Ivan Ivan, Chairman
House Community and Regional Affairs Committee

FROM: Representative Alan Austerman *Alan*

DATE: January 30, 1997

RE: HB 89 - Relating to the Shuyak Island State Park

I respectfully request that a hearing for my bill, HB 89, be scheduled in House Community and Regional Affairs Committee at your earliest possible convenience.

My staff will be providing the referral file which includes backup. Your assistance with this matter is appreciated.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB89

Revision Date: _____ Dept Affected: Natural Resources
 Title: An Act relating to the Shuyak Island BRU: Parks & Recreation Management
State Park Component: Parks Management
 Sponsor: Austerman
 Requestor: (H)CRA Component Serial No. 452

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	5.0	7.0				
TRAVEL	5.0	3.0				
CONTRACTUAL						
SUPPLIES	5.0	3.0	4.0	5.0	5.0	6.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	15.0	13.0	4.0	5.0	5.0	6.0

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	15.0	13.0	4.0	5.0	5.0	6.0
1037 GF/Mental Health						
Other						
TOTAL	15.0	13.0	4.0	5.0	5.0	6.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Day-to-day management of the expanded park can be handled by existing staff and volunteer levels with some additional supply monies to pay for boat gas and other supplies. Those costs are necessary for expanded patrol areas. A new park brochure would need to be designed and printed in FY98.

\$10.0 is needed in FY98 and FY99 to revise the Shuyak Island State Park Master Plan. The first year is \$5.0 each for personnel and travel to gather baseline information on use patterns in the new park area. Second year is \$7.0 for personnel and \$3.0 for travel to prepare the written update and hold the requisite public meetings and public comment period leading to adoption of a revised park plan.

Prepared by: Jim Stratton, Director Phone: 269-8700
 Division: Parks Date: 28-Jan-97
 Approved by Commissioner: Jim Stratton for Peter Blais Date: 1-28-97
 Agency: Natural Resources

Kodiak Audubon Society
P.O. Box 1756
Kodiak AK 99615

RECEIVED
FEB 04 1997
Ans'd.....

A

Representative Alan Austerman
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

January 30, 1997

Dear Representative Austerman,

On behalf of the Kodiak Audubon Society, I would like to thank you for introducing HB 89, adding approximately 36,000 acres of land to Shuyak Island State Park. Preserving all of Shuyak Island has strong broad based support in the Kodiak Island community and your introduction of this legislation is greatly appreciated.

This legislation benefits citizens of the Kodiak Island Borough as well as the State of Alaska in several ways. Preserving Shuyak Island in it's natural state will provide hunting, fishing and other recreational opportunities for the people of Alaska and tourists. It will replace habitat that was damaged by the Exxon Valdez Oil Spill. Park designation also satisfies the conditions of the 1981 consent decree requiring the State of Alaska to manage their Shuyak Island lands for wildlife habitat and public recreation purposes.

Once again, thank you for introducing this legislation. Please contact me if there is any way we can help ensure HB 89's passage.

Sincerely,

Mary Forbes

Mary Forbes
President, Kodiak Audubon Society
907-486-2685

WAVETAMER KAYAKING
KAYAK KODIAK ADVENTURES
POB 228, KODIAK, ALASKA 99615
PH/FAX: 907-486-2614
e-mail: wavtamer@ptialaska.net

January 29, 1997

Alan
Willie Hensley, Commissioner,
Department of Commerce and Economic Development
Ninth Floor, State Office Building
POB 110800
Juneau, AK 99811-0800

Dear Commissioner Hensley,

In the process of reviewing the State of Alaska *Executive Budget Summary for FY98*, I read the comments about tourism in Alaska. The statement I wish to draw to your attention is: "...and a push for greater access to Alaska's public lands so the effects of tourism can be dispersed."

I encourage you to carefully consider the scope of that "push" and the affects it can have on areas that may not be capable or suitable for expanded or mass tourism efforts. Clearly there are many more opportunities to open areas for increased visitation. However, even those areas may have zones or sub-areas more suitable for mass tourism activities than others.

Currently there are issues in Katmai National Park *and Kodiak* directly related to the ever-increasing desire by visitors to view bears in the wild. Some of the issues that are related to this desire are: closing of hunting areas; issuance of mooring buoys in bays to allow for larger ships to anchor; and caps on concession permits in these areas.

Some operators in the state, for many reasons, prefer to be small, eco-sensitive operators who do not want, (nor do a percentage of their clientele want,) mass or developed tourism across the board in these resource areas. Clearly there are access issues that preclude too much mass intrusion. However in those areas where access can be enhanced, I hope the planning effort is particularly sensitive to those areas that may not be compatible with extensive increases in visitations that negatively impact the quality of the experience for other user groups.

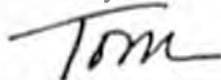
There has been discussions over that past several years to consider zonation as a possible way to sectionalize parks and other resource attraction areas. These zones could provide particular activities only in particular zones. These zones protect the resources and provide levels of activity in stages of impacts that can be more easily contained or mitigated at that level.

Other areas targeted for increased tourism must be review and, if necessary, broken out into different degrees of use. Operators, and the various factions of visitors with different levels of expectation and experiential interests, can all be reasonably assured of a quality experience in Alaska.

I have not seen the most current plans for tourism development in Alaska but know that ATMC, AVA and AWRTA all have agendas, many of which overlap, some of which conflict. Zonation has been discussed in tourism circles for some time now. Hopefully the state will see the need to continue funding at even higher levels so we can attract the visitor, but can also provide all levels of experiences to be enjoyed at optimum levels when and wherever possible.

Thank you for your considerations.

Sincerely,



Tom Watson, Owner
WAVETAMER KAYAKING

cc: Governor Knowles
Sen. Mackie
Rep. Austerman ✓
AWTRA
ATMC
AVA

Y Knot Charter *Port William Lodge*

P.O. Box 670556
Chugiak, Alaska 99567
(907) 688-2253

January 30, 1997

Rep. Alan Austerman
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Letter of Support

Dear Sir:

This letter is re SB HB 89 which would add approximately 36,000 acres of land to Shuyak Island State Park.

I, along with all partner landowners of Port William on Shuyak Island, support the addition of the rest of Shuyak Island to the Shuyak Island State Park.

Thank you.

Sincerely,


H. Bruce Cooper

cc: Barbara Rudio

cc: file



RECEIVED

FEB 03 1997

Ans'd.....

January 29, 1997

Representative Alan Austerman
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Alan:

On behalf of the Kodiak Island Convention & Visitors Bureau (KICVB) Board of Directors and membership I am writing in support of SB/HB 89 which provides for the addition of 36,000 acres of land to Shuyak Island State Park. By adding these lands to the Park, the State of Alaska will reaffirm its past efforts and ensure the conservation of these lands for wildlife habitat and mixed-use recreational purposes.

Shuyak Island is an increasingly important destination for visitors to the Kodiak area. Expansion of Shuyak Island State Park will ensure the ongoing viability of small-scale, appropriate tourism and recreation in this area. In turn, this demand will necessitate protecting Shuyak's view shed, unique ecosystems and wildlife habitat. The addition of these lands, in a sense, makes Shuyak whole. It will be a coveted, uncrowded wilderness destination.

The best advocates for the Park may be the many Alaskans and visitors from around the world who have had the privilege to experience Shuyak (from the Management Plan for Shuyak Island State Park):

"Shuyak is a gem well worth preserving for its pristine-ness. A place that should be left ultimately wild as there are fewer and fewer places that offer just that."

"The beauty of Shuyak is in its remoteness and wild-ness. It is a natural area for kayakers and small boaters. The outer coast should be declared a critical habitat area on the Shelikof side."

"We came to watch sea otters and other animals, we saw more than we had expected."

"Keep this place natural forever!"

"This is the greatest place. Please continue your effort to maintain this nature."

"This is a very wild and beautiful place . . . I loved being here."

"Like all of Kodiak this park is an undiscovered paradise."

Kodiak Island Convention & Visitors Bureau
100 Marine Way, Kodiak, Alaska 99615 907-486-4782 Fax 907-486-6545

"This was my first visit. It is a very beautiful and wild place . . . I hope it stays a wonderful place to visit."

Preservation and protection of our area's natural resources are critical to our long term viability as a visitor destination. The Kodiak Island Convention & Visitors Bureau and our more than 130 member businesses support SB/HB 89, providing for the addition of 36,000 acres to Shuyak Island State Park.

Thank you for considering these comments during your upcoming deliberations. Should you require any further information or comments, please contact the KICVB at 486-4782.

Sincerely,

KODIAK ISLAND
CONVENTION & VISITORS BUREAU


Dan Busch
President

WHEREAS, the Kodiak Island Borough Assembly has enacted an ordinance to establish a Facilities Fund in which the proceeds from the sale of these Lands are to be deposited. As part of this ordinance, funding was authorized by the Assembly for the Kodiak Fishery Industrial Technology Center; and

WHEREAS, the Trustee Council adopted a resolution on December 2, 1994 to provide the funds for the State of Alaska to offer to purchase the Land in accordance with the Agreement for Sale and Purchase of Interests in Lands on Shuyak Island (hereinafter "Purchase Agreement") for a price equal to the final approved appraised fair market value of the land plus 20% of the final approved appraised fair market value, except that the price may not exceed \$42 million; and

WHEREAS, the Kodiak Island Borough Assembly, having reviewed the pertinent facts relating to this land disposal, approves the disposal of the Land for the price of \$42 million in accordance with the Purchase Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH THAT:

Section 1: The disposal of all Kodiak Island Borough lands on Shuyak Island to the State of Alaska for the purchase price of \$42 million is hereby approved on the terms and conditions of the Purchase Agreement.

Section 2: The mayor is authorized to execute the Purchase Agreement and all other documents required for the completion of this transfer.

ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
THIS EIGHTH DAY OF DECEMBER, 1994



ATTEST:

Donna F. Smith
Donna F. Smith, CMC, Borough Clerk

KODIAK ISLAND BOROUGH

Jerome M. Selby
Jerome M. Selby, Borough Mayor

Mary A. Monroe
Mary A. Monroe, Presiding Officer

Exxon Valdez Oil Spill Trustee Council

Restoration Office

645 G Street, Suite 401, Anchorage, Alaska 99501-3451

Phone: (907) 278-8012 Fax: (907) 276-7178



MEMORANDUM

L.B.A. Request

TO: Nancy Slagle
Director
Division of Budget Review
Office of Management and Budget

FROM: Molly McCammon
Executive Director

DATE: December 20, 1995

RE: Exxon Valdez Oil Spill RPL ¹⁰⁻⁶⁴⁰¹¹~~11-6-8993~~

In accordance with Chapter 1, FSSLA 1992, the Department of Natural Resources requests authority to receive and expend \$42,000,000 from Exxon Valdez oil spill settlement trust funds to purchase 26,665.62 acres of surface estate on Shuyak Island from the Kodiak Island Borough.

This parcel of land was evaluated as part of the Trustee Council's Comprehensive Habitat Protection Process - Large Parcel Evaluation and Ranking (November, 1993) and found to be among the highest ranked parcels in the spill area.

This land provides important habitat for several species of fish and wildlife for which significant injury has been documented. These include harlequin ducks, black oystercatchers, marbled murrelets, pigeon guillemots, river and sea otters, harbor seals, Pacific herring, pink salmon, and Dolly Varden. Restoration of these injured species will benefit from acquisition of this important habitat through protection from activities and disturbances which may adversely affect their recovery. The area has exceptional scenic qualities and supports wilderness-based recreation activities including sport hunting and fishing. The area also possesses significant cultural resource values with fifteen documented historical/archaeological sites.

These lands will be managed by the Alaska Department of Natural Resources, with protection of fish and wildlife habitat and populations as the highest management

Trustee Agencies

State of Alaska: Departments of Fish & Game, Law, and Environmental Conservation
United States: National Oceanic and Atmospheric Administration, Departments of Agriculture and Interior

priority. Under the terms of the agreement, public use of these lands must be allowed and must include sport, personal use, and subsistence hunting, fishing, trapping and recreational uses, consistent with public safety and permitted under law or regulations of the Board of Fisheries and Board of Game. Limited commercial use may be allowed if consistent with state and federal laws and the goals of restoration.

As reflected in the Trustee Council resolution, the Trustee Council's appraisal process resulted in a finding that the Shuyak parcel has a fair market value in the range of \$27 million to \$33.32 million. Taking into account the basis for the various appraisal numbers, the position of the landowner as to its minimum selling price, and given the exceptional restoration values of the Shuyak lands, the Council felt an offer at the upper end of that range was appropriate. The appraised value is based upon a single cash payment of \$33.32 million. Because the payments will be over a period of eight years, in lieu of interest, the purchase price has been adjusted to a total purchase price of \$42 million. It should be noted here that the Kodiak Island Borough commissioned three separate appraisals on their own, and these ranged in value from \$36 million to \$54 million.

There has been widespread support for this acquisition. The Kodiak Island Borough has committed \$6 million to be received through this sale to expand the existing Fisheries Technology Center. This expansion, referred to as the Near Island Research Facility, will provide for the consolidation of federal and state fisheries agencies in Kodiak, which will greatly increase their ability to respond to fisheries management and research needs. Borough Mayor Jerome Selby has provided additional information on this facility in his enclosed letter of endorsement.

Additional documentation supporting this request is also being provided:

- Trustee Council Resolution dated December 11, 1995
- Restoration Benefits Report
- Map
- Appraisal Information (selections)
- Endorsement from Kodiak Island Borough
- Photos
- Letters of support

Since this is a capital project, authority to receive and expend subject to AS 37.25.020 is requested. If you have any questions about this RPL, please do not hesitate to contact me at 278-8012.

Department of Natural Resources

OL - NO 08 312-1-43

RPL # 10-6-4011

CIP

Exxon Valdez Trustee Council Projects

\$42,000,000 Exxon Valdez Oil Spill Settlement Trust Funds

Statutory Authority: AS 37.14.405

The Department of Natural Resources requests authority to receive and expend \$42,000,000 in EVOSS trust funds for purchase of approximately 26,665.6 acres of surface estate on Shuyak Island from the Kodiak Island Borough.

The Exxon Valdez Trustee Council adopted a resolution in December, 1995 finding that purchase of the Shuyak Island land is consistent with its final restoration plan for natural resources injured by the Exxon Valdez oil spill. The land was found to include habitat for injured species that will benefit from protection from activities that might adversely impact habitat and water quality. In addition, the Trustee Council found that the land has significant scenic, cultural resource, and recreational values.

An appraisal of the land prepared for the Trustee Council determined that the present fair market value was from \$27,000,000 to \$33,320,000. Appraisals prepared for the Kodiak Island Borough determined the fair market value to range from \$36,000,000 to \$54,000,000. The lowest price the Borough will accept is \$33,320,000, based on a single cash payment. A purchase price of \$42,000,000 has been agreed upon which is to be paid over a seven year period, as follows: \$8,000,000 at closing; \$2,194,266 on October 1, 1996; \$4,000,000 on October 1, 1997; \$4,000,000 on October 1, 1998; \$4,000,000 on October 1, 1999; \$4,000,000 on October 1, 2000; \$4,000,000 on October 1, 2001; and \$11,805,734 on October 1, 2002. This payment schedule is predicated on a rate of approximately 6.45% on the unpaid balance due, assuming a closing date of October 1, 1995. The payment schedule will conform with the cash flow requirements of the EVOSS trust fund, which cannot provide a single cash payment of \$33,320,000.

If the sale is completed, the Kodiak Island Borough will use at least \$6,000,000 of the sale proceeds for construction of its proposed Near Island Research Facility. Remaining sale proceeds will be deposited in the Borough's facilities fund, the earnings on which will provide funding for maintenance of Borough facilities.

Legislative Fiscal Analyst's recommendation: Approval of the request.

Post-It brand fax transmittal memo 7671 # of pages 4

To: <i>DeVelo</i>	From: <i>Larkin</i>
Co: <i>1</i>	Co: <i>Leg. Aff.</i>
Dept:	Phone #:
Fax # <i>3517</i>	Fax #:

The meeting that evening

at 5:00 p.m.

ke
car

Chairman Terry Martin RECONVENED the January 8, 1996 meeting of the Legislative Budget and Audit Committee at approximately 5:02 p.m.

REVISED PROGRAMS

10-6-4011 Natural Resources Requesting \$42,000,000 of EVOS Trust Funds to Purchase Shuyak Island. Approved

Sen. Adams MOVED to approve the action and discussion ensued.

Sen. Zharoff explained that the project would entail one month and that the EVOS Trustee Counsel had completed a number of appraisals and approved of the investment for the State. Sen. Zharoff described the area as rich in fish and wildlife. Chairman Martin requested clarification regarding the agreement with the Trustee Counsel, in view that a number of special interest groups in the past have requested State monies to purchase land, and then have subsequently resold the land to another special interest group. Sen. Zharoff expressed his concern that the agreement would also allow for public use to continue.

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JEROME SELBY, Mayor of the Kodiak Island Borough, expressed his view that the land acquisition is the best land purchase that the Exxon Valdez Trustee Counsel will consider, and the best investment that the State of Alaska could make with the \$900 million settlement. He further explained that the State of Alaska owns the rest of Shuyiak Island, with the exception of the parcel in question; with the acquisition of the parcel, the State of Alaska will own the entire island, enabling the implementation of a comprehensive land management plan.

In terms of land restoration, Mr. Selby described the parcel as a prime habitat in terms of impact on species damaged by the Exxon Valdez oil spill, thereby maximizing the opportunity for recovery. The parcel is also a heavily used recreational property for the State of Alaska, with a great deal of hunting and fishing activity on Shuyiak Island from residents of Anchorage, the Kenai Peninsula, and Kodiak. Therefore, the acquisition presented a unique opportunity whereby the State may forward the recovery of fish and wildlife species, while encouraging public activities, and implement land management. One third of the island is a state park; one quarter of the island is a state wildlife refuge. The parcel is situated to the southwest of those two parcels and completes the island.

Mr. Selby expressed his view that the acquisition is in full keeping with the Municipal Lands Act as a means to convert a capital asset. He further explained that \$6 million of the funds will be used to develop the Near Island Research Facility, which is a part of a \$16 million dollar facility planned to provide fisheries research in the Gulf of Alaska. Scientists from Federal National Fisheries, Alaska Fish and Game, and the University of Alaska will be co-located into the facility, where they will share research efforts to produce "world class" fisheries data to be used to managed fisheries in the Gulf of Alaska. Mr. Selby expressed his concern that if a research project was not implemented, fisheries in Alaska would face long-term jeopardy. The Near Island facility would be completed at no additional cost to the State. The balance of the funds would then be placed in a Facilities Fund by the Kodiak Island Borough, in order to maintain school facilities, thereby preventing future appropriation requests for the purpose. Mr. Selby reiterated that the acquisition would convert a capital asset, an island parcel worth \$42 million, into programs which would benefit the State in many areas.

Sen. Frank recalled an earlier purchase of property of the Exxon Valdez Trustee Counsel that required its conversion into a State Park, and questioned if there were any such restrictions placed on the State in the current acquisition agreement.

MOLLY MC CAMMON, Executive Director of the Exxon Valdez Oil Spill Trustee Counsel, explained that the current acquisition proposal contained no such language as was put forth in the Seal Bay Acquisition, to which Sen. Frank referred. Ms. McCammon explained the intent of the Department of Natural Resources to manage the Shuyak Island parcel as State land for recreation and wildlife habitat, with no "blackmail clause" stating that if is not placed in a State Park that it will be reverted to the Nature Conservancy or the Federal Government. In response to a question by Sen. Phillips, Ms. McCammon explained that the current acquisition proposal takes into account the legislature's response to language in the prior agreement.

Sen. Davis requested clarification as to whether there was written agreement guaranteeing that the balance of the funds, minus \$6 million for fisheries research, will be placed in a facilities fund, and whether annual earnings on the fund will be known to the public. Mr. Selby explained that the fund has already been established to manage the \$36 million, and that an ordinance restricted spending to interest only for the following uses: maintaining existing facilities, renovating existing facilities, and repaying bonded debt on existing facilities. In addition, he explained that 15% of the interest would return to the principal each year to keep the fund up with inflation. Responding to a question by Sen. Phillips, Mr. Selby explained that the ordinance required a public bill in order to be changed.

In response to a question by Sen. Phillips, Ms. McCammon pointed out that the Counsel was currently committed to spend approximately \$450 million, roughly half of the total settlement. Of that expenditure, close to \$200 million was spent on land acquisition. She further noted that in September, during her presentation on the Counsel's overall work plan, it was discovered that many people desired to spend the entire \$900 million on land acquisition, while others wanted to spend the entire amount on research projects. The Counsel adopted a plan three years ago committing approximately one third of the funds toward habitat protection. Following the commitment, they met with Federal counterparts to determine the priorities for Federal and State acquisitions. She explained that the Counsel continues to proceed according to the restoration plan.

Providing further clarification for Sen. Phillips, Ms. McCammon explained that approximately 60% of the settlement funds would be placed in research efforts. The Counsel has adopted a restoration reserve, in anticipation of further development over the next 15 to 20 years; currently \$36 million are placed in the restoration reserve earning interest, with a commitment of to place \$12 million in the reserve. By the year 2000, this amount would reach a total of \$150 million, and, if inflation-proofed, could provide \$5 to \$6 million a year of revenue for the Counsel.

Addressing Sen. Phillips' concern that the Counsel would once again approach the Legislature to request funding for land acquisition, Ms. McCammon confirmed the Counsel's intention to request a state, joint venture acquisition of a large parcel on Frog Neck Island. In addition, she explained that there are smaller, discreet areas which the Department of Natural Resources would like to use for marine parks and recreation. She also referenced the small parcel program for lands under one thousand acres, through which the Counsel has authorized agencies to make offers on approximately \$16 million's worth of small properties, in areas such as Seward, Palmer, and other locations along the Kenai River, which are key habitat areas. As the transaction progress, the Counsel intends to approach the Legislature for approval.

In response to a question by Sen. Bunde, Ms. McCammon explained the restrictions on the use of the land acquisition. Since the main purpose for the acquisition was to ensure protection of habitation, commercial timber harvest is restricted. Other activities on State Lands, such as hunting and fishing, would still be allowed.

CRAIG TILLERY, Assistant Attorney General, Civil Division, Environmental Section, Alaska Department of Law, responded to Sen. Halford's question about the language of these restrictions by referring to the Conservation Easement, on page 9 of Exhibit B. He also referenced the Warranty Deeds themselves, containing a covenant which states that "public use of land shall

be so guaranteed: hunting, fishing, trapping etc. Mr. Tillery explained that all the language was subject to existing rights.

In response to a concern voiced by Sen. Phillips regarding restriction of motorized vehicles, Ms. McCammon clarified the use of motorized boats or planes was not prohibited. Mr. Tillery explained that the tide lands are not part of the acquisition, and therefore airplanes or boats would not be able to reach the acquired parcel. All access to the island is salt water borne; no ATV's or snow machines have ever gained access to the area.

Sen. Rieger raised a question as to how heavily the Near Island fisheries research project figured into the Trustees justification for the \$42 million acquisition. Mr. Tillery confirmed that the \$6 million for fisheries technology was a consideration in deciding to proceed with the current acquisition, since the State trustees viewed the research as a valid restoration benefit. Regarding the Federal Trustees, Ms. McCammon explained that they considered the fisheries facility as an added benefit, and not a driving factor in the acquisition. Mr. Tiller noted that the resolution adopted by all EVOS Trustees contains a statement that the Near Island Research Facility will have a positive benefit on natural resources injured by the Exxon Valdez oil spill.

Rep. Bunde expressed his concern regarding inflated appraisals which occurred in the past, and their reflection on future land acquisitions proposals. Rep. Bunde questioned whether the Conservation Easements applied to other state land already in the state park, and Mr. Tiller explained that it the defined terms applied only to the land transferred from the Kodiak Islands.

Chairman Martin raised a concern regarding the cost of managing these lands, and requested a list of long range and immediate cost to the State of land management. Ms. McCammon explained that the majority of current land acquisitions exist within Federal or State land holdings, thereby facilitating better quality and ease of land management. State Trustees believe that the proposed acquisition should be managed by personnel currently managing adjacent state lands, and would not increase management costs.

In response to Chairman Martin's suggestion that a portion of settlement funds be set aside for land management costs, it was pointed out that during 1995 such a motion was made regarding Seal Bay State Park, and was defeated; Federal Trustees did not agree to allocating such funds. The Department of Natural Resources do not believe that there will be any additional management costs with the proposed acquisition. Mr. Tiller agreed to inquire about language which would guarantee that, in the case that management costs did increase in the future, these monies would come from the settlement fund and not from the state.

In response to a question by Sen. Frank, Jerome Selby clarified that it was a unanimous decision by the Kodiak Island Assembly to approve the acquisition plan. He went on to explain that they did not consider a local designation of the land, because Shuyak is

JAN 31 '97 RECEIVED FROM THE DIV OF LEGAL COUNSEL

not located near enough to Kodiak Island in order to adequately manage the land, making it more effective to delegate the management to state park personnel. Sen. Adams questioned whether current cash flow necessitated the payment plan proposed in the RPL, and it was explained that it was difficult to ascertain cash flow demands over the next eight years, and payment over time appears to be a more conservative course. Funds are currently earning interest, and there are plans to move them to a higher interest bearing account.

Rep. Kohring expressed concern over the intent behind the proposed acquisition, whether that be to assist programs for Kodiak Island or for the benefit of the entire State, and questioned whether there was an impending threat to the land or resources of the island that necessitated the proposed purchase. Mayor Selby pointed out that some of the greatest bird losses resulting from the oil spill occurred on the Barons Island to the north of Shuyak Island, making it critical habitat for these bird species, as well as for sea mammals in that area which were hard hit by the spill. From the standpoint of restoration of species damage, the area is a priority.

Regarding the fishing industry, it was pointed out that the area contains excellent salmon streams for preservation. Mayor Selby conceded that while Kodiak Island stood to benefit from the acquisition, the benefits clearly impact the entire state of Alaska. He also pointed out the opportunity for tourism development in the Kodiak archeopleglio, which would benefit the economy of Kodiak and the State. In addition, Mayor Selby reiterated the benefit of adequate facilities to fisheries researchers in the State and University. Molly McCammon pointed out that the Seward research facility would be used predominantly for marine mammals, sea bird and fisheries genetics, while the facility in Kodiak is oriented toward commercial fisheries technology, byproducts, processing techniques, etc. Rep. Zharoff pointed out that the research facility in Kodiak is one of only five of its kind in the nation.

Molly McCammon explained that the Trustees have examined the expenditure of funds in order not only to address restoration needs, but to leave lasting benefit to communities within the spill area. Therefore, any major acquisitions and research projects implement not only restoration benefits, but also community benefits.

CARL ROBIER, retired Trustee Member and member of the Alaska Outdoor Council, explained that the Council believes there to be many benefits from the land acquisition. The benefits include state management of lands, hunting and fishing resources, restoration of wildlife species, and conservation of habitat. The Council believes that the benefits will be clarified during the years to come and strongly supports passage of the RPL.

Sen. Adam's MOTION on RPL 10-6-4011 to approve appropriation of \$42 million for the purchase of Shuyak Island was continued. No

objections being raised, the motion was APPROVED by unanimous consent.

Discussion Regarding Anchorage Data Center

Motion to Conduct Special Audit of Department of Information Systems, Amended to include Statewide Analysis of customer service.

Approved.

MARK BOYER, Commissioner, Department of Administration, supported by KAREN MORGAN, Deputy Director of Division of Information Services, and RON HENSLING, addressed concern over the decision to realign data processing in the State of Alaska. He explained that the realignment was a business decision, based on economics, and referenced two studies conducted relating to state data processing, pointing to the direction of consolidating into one center that utilized a client/server format for accessing data.

Mr. Boyer referred to a study reportedly done by an earlier administration, which indicated that a shift away from Anchorage to Juneau would cost millions of dollars; he and his staff have been unable to locate such a study in their research. Rep. Bunde requested that the search for the study be continued and offered the assistance of an outside auditor, questioning the long term operating expense involved in the realignment.

Mr. Boyer pointed out cost savings in the near term, stating that the long term situation was difficult to determine due to the nature of change in the computer industry. In the next fiscal year, the Department of Administration (DOE) anticipates cost savings of nearly \$1 million, manifested through a combination of factors -- not purchasing duplicate licenses, nor additional software caused by redundant operations in Anchorage, in addition to reducing four vacant PCNs in the 1997 budget. A total \$925,000 in anticipated savings would be reflected in the budget introduced by the Governor.

In addition to direct savings, Mr. Boyer noted costs avoided by a change in business methods, such as adding additional disc drive space which would cost \$250,000, and adding uninterrupted power supply to the Anchorage facility which would cost \$150,000, as well as ongoing hardware maintenance costs of \$21,000 per month, and \$48,000 per month of software expenses.

Rep. Bunde expressed concern over the Governor's increase in the budget of \$5.8 million for telecommunications. Chairman Martin clarified that the figure refers to the Department of Administration's increase of software and enhancement of telecommunication.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE AUSTERMAN

TO: HB 89

- 1 Page 1, line 10, following "fishing.":
- 2 Insert "commercial fishing."

HB

94

Alaska State Legislature

WHILE IN SESSION
CAPITOL BUILDING
NORTH ALASKA WING 1100
1007 485 4881
1007 485 4831
1007 485 4818 FAX

INTERNATIONAL
110 WEST 4TH AVENUE
ANCHORAGE ALASKA 99501
1007 258 8100
1007 258 8174 FAX



CO-CHAIR, RESOURCES COMMITTEE
VICE CHAIR, JUDICIAL COMMITTEE
MEMBER, STATE AFFAIRS COMMITTEE

FINANCE SUBCOMMITTEE
DEPT. OF NATURAL RESOURCES
DEPT. OF COMMERCE & ECONOMIC DEVELOPMENT
DEPT. OF ENVIRONMENTAL CONSERVATION

Representative Joe Green

District 10

Sectional Description

HB 94 - Confidentiality of Tax Information Submitted to a Municipality

Section 1

(c) Requires that proprietary financial information acquired by a municipal assessor be held confidentially by all employees and officers of the municipality. Further, if such information is inspected by the state assessor under the provisions of AS 29.45.103 the assessor or a designee is also prohibited from releasing the information.

(d) Allows the information collected to be obtained by the courts, other agencies of state government, federal government, or other states, if the request is made in writing, and is for a sufficient reason. However, even after the information is transferred, it remains confidential. Also provides that the municipality will notify the taxpayer when a request is made for information contained in their return.

(e) Provides for liquidated damages of \$500 or actual damages as a civil penalty for an unauthorized disclosure. In addition, a person convicted of such a disclosure would be subject to criminal penalties under AS 11.56.860, which states "Misuse of confidential information is a class A misdemeanor."



Official Business

Alaska State Legislature

Representative Joe Green
District 10

While in Session
State Capitol
Juneau, AK 99801-1182
(907)465-4931
(907)465-4316 Fax

Interim Address
716 West 4th Avenue
Anchorage, AK 99501
(907)258-8198
(907)258-8171 Fax

MEMORANDUM

Date: February 5, 1997

To: Representative Ivan Ivan, Chairman
Community & Regional Affairs Committee

From: Representative Joe Green *JG*

Re: Request for hearing on HB 94

I respectfully request a hearing for HB 94 "An Act relating to confidentiality of certain municipal tax records."

I have sponsored this legislation to provide confidentiality for personal tax assessment information, allowing disclosures only upon written request from proper government official(s). This has been a problem brought to my attention by a group of people who pay property taxes in Alaska and whose personal information was not kept confidential.

Thank you for your consideration.

Alaska State Legislature

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FINANCE SUBCOMMITTEES
DEPT. OF NATURAL RESOURCES
DEPT. OF COMMERCE & ECONOMIC DEVELOPMENT
DEPT. OF ENVIRONMENTAL CONSERVATION

Representative Joe Green

District 10

Sponsor Statement

HB 94 - Confidentiality of Tax Information Submitted to a Municipality

HB 94 classifies certain financial information submitted to local governments as confidential.

Under state law, income information submitted to the state by a taxpayer as part of a tax return or report is held confidential. AS 43.05.230 prohibits officers or agents of the state from disclosing "the amount of income or the particulars" listed in a return. However, when the same, or similar information is submitted to a local government for the purposes of a tax assessment there is no such protection. HB 94 extends the protection for income information submitted to the state, to also protect information submitted to local governments.

HB 94 does not change, alter, amend, or in any way restrict any aspect of the authority a local government has to assess a tax. It simply says that once the financial information is provided to the local taxing authority, it must be held confidentially.

Several states, including Arizona, California, Indiana, Kentucky, Utah, West Virginia, and Wyoming currently have similar restrictions. HB 94 is based on a similar law in Colorado.

Under certain circumstances, general financial information about public companies is required to be made public by federal law. However, information on specific properties or projects is generally restricted as it could be used against a company by competitors. It is for this reason that Alaska should join the other "resource extraction" states in offering these same protections.

AMENDMENT

#2

OFFERED IN THE HOUSE

TO: HB 94

1 Page 2, lines 8 - 9:

2 Delete all material.

3 Insert "the person may have, the person may recover from the municipality liquidated
4 damages in the amount of \$1,000 or actual damages resulting from the disclosure, whichever
5 is greater. The person may recover liquidated damages under this subsection even if the
6 person does not request actual damages or does not offer evidence of the amount of actual
7 damages."

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH 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

February 12, 1997

SUBJECT: Confidentiality of municipal tax records (HB 94)
TO: Representative Joe Green
FROM: Tamara Brandt Cook
Director *TBC*

In connection with HB 94 you have asked what the difference is between actual and liquidated damages. Actual damages is compensation for actual injuries or loss. Liquidated damages is the sum that has been specifically stipulated, by the parties in the case of a contract, or, by statute in the case of HB 94, to be the amount of recovery. (See Black's Law Dictionary, 6th edition, "damages") The amount of actual damages must be proved through the offering of evidence of the amount of loss suffered, while liquidated damages is, essentially, an estimate arrived at before the damages actually occur of what a fair compensation for those damages is.

You have informed me that an amendment to HB 94 is under consideration that would change the last two lines of the bill, after the comma, to read: "the person may recover from the official or employee liquidated damages in the amount of \$1000 or actual damages, whichever is greater, resulting from the disclosure." As I understand it, there is some concern that this may be viewed as requiring a person to present proof on the question of actual damages when that person does not want to do so.

To address this concern I would recommend the following language "the person may recover from the official or employee liquidated damages in the amount of \$1000 or actual damages resulting from the disclosure, whichever is greater. The person may recover liquidated damages under this subsection even if the person does not request actual damages or does not offer evidence of the amount of actual damages."

TBC:jdr:pl
97-101 jdr

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: An Act relating to confidentiality of BRU: none
certain municipal tax records Component none
 Sponsor: Rep. Green
 Requestor: House CRA Committee **COMPONENT SERIAL NO.** _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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
---------	-----	-----	-----	-----	-----	-----

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 CTR 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 (FY97) impact \$ none

ANALYSIS: (Attach a separate page if necessary)
 This legislation provides for confidentiality for certain municipal financial information. This legislation would have no fiscal impact on the department.

Prepared by Remond Henderson Director *Remond Henderson* Phone 465-4708
 Division Division of Administrative Services Date 2/5/97
 Approved by Commissioner *Mark Dur* Date 2/5/97
 Agency Community & Regional Affairs

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1 subsection, the municipality shall promptly provide to the person

2 (1) notice of the request;

3 (2) an identification of the governmental entity making the request; and

4 (3) a description of the information requested.

5 (c) If an official or employee of the municipality discloses information of a
6 person made confidential under (c) of this section and that disclosure is not made at
7 the direction of a court or authorized under this section, in addition to other remedies
8 the person may have, the person may recover from the official or employee liquidated
9 damages in the amount of \$500 or actual damages resulting from the disclosure.

which is a greater

NORTH SLOPE BOROUGH
DEPT. OF ADMINISTRATION AND FINANCE
ASSESSING DIVISION
PO Box 69
Barrow, AK 99723



Phone: (907) 852-2611, Ext. 355

Gary Lewis, Borough Assessor

TELEFAX COVER PAGE

DATE/ TIME SENT: _____ (AM) (PM)

TO: House C&RA

FIRM: Legislature

PHONE: _____

FAX: 907-465-4589

FROM: Gary Lewis

FIRM: North Slope Borough Assessing Division

PHONE: (907) 852-0355

FAX: (907) 852-0356

Number of pages (Includes Cover Page): _____

Special

Instructions: Greetings to Scott the representative I vote for

Fred who was once a GIS Ghost
writer for me.

Rossie who represents my
employer

And All whom I do not
know.

NORTH SLOPE BOROUGH

DEPT. OF ADMINISTRATION AND FINANCE

Assessing Division
P.O. Box 69
Barrow, Alaska 99723

Phone: (907) 852-2611, Ext. 355
Fax: (907) 852-0356



February 14, 1997

Gary A Lewis, Borough Assessor

Dear Ivan, Dyson, Ogan, Ryan, Sanders, Jolie, Kookesh:

I have just learned of a scheduled CRA committee hearing on House bill 94. My request is that action be delayed on this measure until it can be thoroughly analyzed by municipalities.

The bill as it stands raises questions of the open meetings act, defense available in cases of false accusation, how to keep volunteer NDF members who would be subject to great liability over which they would have no control etc.

I would suggest that the board of directors of the Alaska Association of Assessing Officers be asked to address concerns about the bill in teleconference and suggest the Alaska Association of Municipal Attorneys be asked for comment on the liability issues.

The intent of the bill is admirable but there are ways to do it without punitive laws.

I would like to talk to who originated the idea. I had a similar situation when I was a the Mat-Su Borough, which was handled very smoothly.

Alaska State Legislature



Representative Joe Green

District 13

TO: Tam Cook, Director
Legal Services
Legislative Affairs Agency

FR: Representative Joe Green *JG*

RE: HB 94 - Confidentiality of Municipal Tax Records

DATE: February 11, 1997

I would appreciate your advice on a question raised today during a hearing on HB 94 in the Community and Regional Affairs Committee.

An amendment was proposed at Page 2, Line 9 that includes two separate provisions. The first is to increase the amount of liquidated damages from \$500 to \$1,000. The second would insert the phrase "whichever is greater" after "actual damages" to read: "...in the amount of \$1000 [\$500] or actual damages, whichever is greater...".

Please comment on the advisability of adopting such an amendment. The sponsor of the amendment expressed concern that the language granting actual damages places a cap on the award amount. Do you share this concern? Could you explain the differences between liquidated and actual damages? Finally, could you offer language that would increase the liquidated damages to \$1,000, but allow the plaintiff the option of taking the higher of either the liquidated damages amount or the award for actual damages.

Thank you.

cc: Representative Ivan Ivan, Chairman
House Community & Regional Affairs Committee

Members, House Community & Regional Affairs Committee

(Alaska 1995).

Promulgation of regulations. — Although the tax-limitation statutes do not require that the Department of Community and Regional Affairs promulgate regulations, the department should have promulgated its approach to 1983 tax-limitation population counts as an administrative regulation. *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166 (Alaska 1986)

ment of Community and Regional Affairs 1983 determinations of the "population" of municipalities for state revenue-sharing and tax-limitation purposes, including its method of counting remote site workers on the North Slope, were a rational exercise of its discretion. *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166 (Alaska 1986) (decided under former similar law).

Sec. 29.45.100. No limitations on taxes to pay bonds. The limitations provided for in AS 29.45.080 — 29.45.090 do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default. (§ 12 ch 74 SLA 1985)

NOTES TO DECISIONS

Prohibition on people, acting through initiative. — Since a municipality, in its legislative capacity, is prohibited from enacting a limitation on taxes to pay bonds, then the people, acting through the initia-

tive, in their legislative capacity, are similarly precluded. *Whitson v. Anchorage*, 608 P.2d 759 (Alaska 1980), decided under former, similar law.

Sec. 29.45.103. Taxation records. (a) Municipal records dealing with assessment, valuation, or taxation may be inspected by the state assessor or a designee.

(b) If a municipality's assessment and valuation has been done by a private contractor, records concerning the municipality's valuation and assessment shall be made available to the state assessor or a designee on request. (§ 12 ch 74 SLA 1985)

Sec. 29.45.105. Errors in taxation procedures. (a) If a municipality receives a notice from the state assessor that major errors have been found in its assessment, valuation, or taxation procedures, the municipality shall correct its procedures before the beginning of the next fiscal year or file an appeal under (b) of this section.

(b) A municipality may appeal a notice from the state assessor that it has made a major error in assessment, valuation or taxation procedures by filing an appeal with the commissioner within 30 days after receipt of notice of error.

(c) The commissioner, after consulting with the Alaska Association of Assessing Officers, shall render a decision within 60 days after the receipt of a request under (b) of this section. If the commissioner determines that a major error has been made in assessment, valuation or taxation procedures the commissioner shall notify the muni-

HB

132

Alaska State Legislature

Interim:

145 Main Street Loop #223
Kenai, Alaska 99611
(907) 283-7095
(907) 283-3075 (fax)
(907) 262-7574 (h)



Session:

State Capitol
Juneau, Alaska 99801
(907) 465-2693
(fax) (907) 465-3835

Representative Gary L. Davis

SPONSOR STATEMENT

HB 132

"An Act relating to municipal taxation of alcoholic beverages."

HB 132 removes the restrictions on municipalities related to the sales tax imposed on alcoholic beverages. Current statutes are interpreted to allow municipalities to impose only the general sales tax amount on alcohol. This bill allows municipalities to impose a sales tax which may be equal to, lower, or higher than the general sales tax.

State laws are continually passed that have a direct financial impact on municipalities. Municipalities are required by state law to care for and protect public inebriates. Currently, the State does not provide sufficient funding for such activities. This is not a new tax. HB 132 merely allows municipalities to tax alcohol according to their local alcohol related costs.

This legislation will enable municipalities to address budgeting problems created through the consumption of alcoholic beverages. HB 132 will enable municipalities to address their local expenses. Such costly services include public safety, care for inebriates, and alcohol related social and health problems.

Representing House District 8

Soldotna, Sterling, Funny River, Cooper Landing, Hope, Moose Pass, Seward



Alaska Conference of Mayors

Support HB 132

**Remove Special Restrictions and
Allow Local Voters to Decide on Alcohol Sales Tax**

Here's why. . .

1. Under state statutes adopted years ago, a special exemption on alcohol sales was granted which prohibited local voters from establishing a higher level of sales tax on alcohol in their community. It is time to remove the exemption and let local voters decide for their own community.
2. This is **not a new state tax**. It is an optional tool for municipalities to balance local tax burdens and provide critical public services.
3. Instead of creating a new municipal taxing power, HB 132 removes an inappropriate restriction on an existing municipal tax.
4. Alcohol abuse is the number one health and public safety problem in Alaska. Alcohol sales should not receive a special exemption. Municipalities must be able to defray some of the costs they incur coping with alcohol-related problems.
5. With growing pressure on property taxpayers, local voters should be allowed to vote on whether or not to tax alcohol to pay a larger share of the costs directly related to alcohol use in their community. Alcohol related costs to local taxpayers include:

- ➔ Unfunded state mandated police costs to transport public inebriates
- ➔ Unfunded state mandated emergency medical services
- ➔ Unfunded state mandated hospital emergency care costs
- ➔ Police costs for alcohol related felonies and misdemeanors
- ➔ Unfunded prosecutions
- ➔ Unfunded direct treatment and rehabilitation of alcohol abusers
- ➔ Increase in costs of youth and family services related to alcohol use, provided by schools and local governments
- ➔ Unfunded local medical services and hospitalization
- ➔ Unfunded repair of property damage to public facilities
- ➔ Health insurance costs paid by local governments and school districts to treat alcohol and alcohol-related health problems.

For more information, call the Alaska Municipal League at 586-1325.

Alaska State Legislature

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Session:

State Capitol
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Representative Gary L. Davis

SECTIONAL ANALYSIS OF HB 132 A BILL FOR AN ACT ENTITLED

"An Act relating to a municipal taxation of alcoholic beverages."

Section 1 AS 04.21.010(c) (2). Is an addition the current exceptions regulating the municipalities ability to tax alcohol. It states that municipalities will have the ability to impose a sales tax on alcohol that is equal to, higher, or lower than an existing sales tax. This section removes the existing requirement that a general sales tax be in place before a sales tax can be placed on alcohol.

Section 1 AS 04.21.010 (c) (3) Was a "grandfather" clause that allowed municipalities that had an existing sales tax in effect prior to July 1, 1985 to tax alcohol. This section will be deleted, as this legislation will allow all municipalities to place a sales tax on alcohol.

Section 2 AS 29.45.650 (a) This section states that a borough may levy and collect taxes within the borough's jurisdiction with three exceptions, AS 04.21.010 (c) and AS 29.45.650 (f) and (h). Since AS 04.21.010 (c) This bill no longer restricts municipalities ability to place a sales tax on alcohol, the presence of AS 04.21.010 (c) will be deleted.

Representing House District 8
Soldotna, Stirling, Funny River, Cooper Landing, Hope, Moose Pass, Seward

- Sectional Analysis -



Alaska Municipal League &
Alaska Conference of Mayors
1997 Legislative Platform

1. Approval of the "Safe Communities" bill and maintain current funding for municipal revenue sharing to avoid further state generated local property tax increases. The "four legs" of the Safe Communities bill are:
 - Directs the funds to be used primarily for public safety and health services
 - Establishes a minimum sharing of \$40,000 for small municipalities
 - Removes the "hold harmless" to allow equal treatment to all municipalities
 - Distributes municipal funds on July 31 each year
2. Provide for the long term construction, operation, and maintenance of state and municipal airports, roads, and harbors, including revenue sharing programs for maintenance. Bring state harbors up to an adequate maintenance level through a statewide bond issue, or other funds, to prepare them for possible negotiated transfer to municipalities.
3. Approval of a Long Range Financial Plan that prohibits unfunded mandates and unfunded service responsibilities, adequately funds schools and maintenance of public infrastructure, reasonably reduces state expenses, protects the Permanent Fund, and phases in new tax revenue sources.
4. Actively encourage the construction of a natural gas pipeline with an emphasis on jobs for Alaskans.
5. Restore funding for Municipal Capital Matching Grant Program to \$20 million because local communities can most efficiently determine and meet local capital needs.
6. Create a permanent State/Local Government Partnership Council to negotiate methods to most efficiently provide public services at the lowest possible cost to taxpayers.
7. Provide long term funding of public safety and health services through the equitable sharing of increased statewide alcohol and tobacco taxes, and removing the current prohibition against municipalities voting for local special taxes on the sale or use of alcohol.
8. Reduce the state unfunded mandate for the Senior Citizen Property Tax exemption.
9. Adequately fund a program to construct efficient sanitation systems throughout Alaska.
10. Give communities more tools to reduce youth crime by limiting confidentiality of youth crime information to protect the community, allow municipalities the option of assuming greater jurisdiction over juvenile justice, and limit liability for providing recreational opportunities for youth, such as skateboard parks.

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

February 14, 1997

Representative Gary Davis
Room 513, Capitol Building
Juneau, Ak 99801-1182

Dear Representative Davis:

Members of the Alaska State Hospital & Nursing Home Association strongly support House Bill 132 "An Act relating to municipal taxation of alcoholic beverages."

The challenge of caring for the public inebriate, along with the cost of providing that care is of serious concern to community hospital administrators throughout Alaska. Attached is a "discussion paper" on this issue written by Ed Myers, former Administrator of Kodiak Island Hospital. Ed is also a former chairman of the board of directors of ASHNHA. His paper is about Kodiak but the problems apply to nearly every community in Alaska, if not all of them.

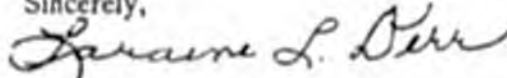
State statutes require that police protect public inebriates from harm by bringing them to the hospital for a medical screening required by state law. The costs of those services to public inebriates go unpaid and, as with other costs that are shifted to communities in Alaska, property tax payers foot the bill. If this problem needs to be taken care of locally (and we believe it does) then the state should stop prohibiting the communities from raising money to pay for it.

Under state statutes adopted many years ago, alcohol is granted a special exemption intended to prohibit local voters from voting on a special sales tax on alcohol sales in their community. House Bill 132 would provide a tool for municipalities to use to pay for the costs of local police departments, hospitals and other impacts related to alcohol abuse.

This is not a new state tax. It is a needed optional tool for municipalities to balance local tax burdens.

Thank you for introducing House Bill 132. ASHNHA will be working hard this session to seek passage of this important legislation.

Sincerely,



Laraine L. Derr
President / CEO

- Support Letters -

March 19, 1995

DISCUSSION PAPER HOSPITAL EXAMINATION OF PUBLIC INEBRIATES

By:

Edmon Myers, Administrator
Kodiak Island Hospital / Care Center

Examination of public inebriates in the Emergency Room at Kodiak Island Hospital and Care Center has been an ongoing problem for several years, and to date, there has been no resolution to this problem. The basic problem in Kodiak lies in the fact that the Police Department believes that under the current law, they are required to pick up and transport any public inebriate to the Hospital for examination prior to incarceration or other disposition. An often cited case is several years ago in Anchorage, where an individual died without being examined for other injuries.

The following facts and issues characterize the situation at Kodiak Island Hospital and Care Center.

1. Police either bring public inebriates or call an ambulance to transport public inebriates to the Hospital for examination. The use of the public ambulance service has arisen because of the legal issues for payment surrounding protective custody. KIH/CC has sought legal determination regarding responsibility for payment when police bring inebriates to the Hospital. The legal determination received was that the Police Department is acting in the same capacity as a guardian of a minor in those cases, and therefore, would be responsible for payment. To circumvent this, the Police Department has resorted to calling an ambulance to bring public inebriates to the Hospital on the theory that the Hospital must then take care of examining the inebriates, the same as any other patient arriving by ambulance, and the protective custody issue is thereby avoided.
2. In other cases when the Police pick up inebriates and bring them to the Hospital, the Police usually release them "on their own recognizance" at the Emergency Room door and after examination, rearrest them as they leave the Hospital. Again, the City has indicated this then removes the protective custody issue, and does not have to pay for the examination of the patient.
3. In those cases where prisoners are brought in from the jail, the Police again usually release prisoners on their own recognizance and rearrest them after they are released from the Hospital, requiring the Hospital to call them prior to release so they may await them at the door when they leave. This has occurred, even in the case of "dangerous" patients, in which the Hospital is required to provide its own security to protect the staff.
4. KIH/CC has written off several hundred thousand dollars over the past few years in providing care and treatment of patients brought to the Hospital as a result of inebriation. In most of these cases, treatment is not required, but merely an evaluation of whether there is any medical condition which would prohibit incarceration or other disposition by the Police Department.

This is a serious financial problem to the Hospital, and I suspect it is in other communities, based upon my discussion with other Hospitals. I have offered on several occasions to enter into a contract with the City for examinations providing "deep discounts". This is an area which I would like to see improved, as I believe it is unreasonable to expect Hospitals to provide examinations which are not requested by the patient without reimbursement.



Alaska Native Health Board

4201 Tudor Centre Dr., Suite 105
Anchorage, Alaska 99508

Phone: (907) 562-6006
FAX: (907) 563-2001

February 21, 1997

Representative Gary Davis
Alaska Legislature
State Capitol
Juneau, AK 99801

Dear Representative Davis:

I am writing to let you know how much we appreciated the chance to meet with you in Juneau this week and hear of your commitment to provide communities with another tool to reduce alcohol abuse.

I want to let you know that the Alaska Native Health Board voted to support HB 132. At the same time, I also want to take this opportunity to ask again for your support of HB 1, the tobacco tax increase, which will be heard in House Finance Committee next week.

You mentioned that you think local governments should have the opportunity to levy alcohol and tobacco taxes. We agree, but we don't think this should preclude the state from doing so as well. If the Alaska Legislature acts this year to pass a major tobacco tax increase, every community in the state will benefit and thousands of lives will ultimately be saved.

Representative Davis, we feel that your support of the tobacco tax legislation is as critical as our mutual goal to reduce alcohol abuse. The tobacco industry is making an all-out effort to stop the tax, and we are counting on you not to let this happen. From our conversation, I believe you do care about the health and well-being of all Alaskans. We look forward to working with you to address the two biggest health problems in our state—tobacco and alcohol abuse.

I would welcome the chance to discuss this with you further.

Sincerely,

Anne M. Walker
Executive Director

ALEUTIAN ISLANDS ASSOCIATION
BESSIE BAY AREA HEALTH CORPORATION
CHULIACHMUT
COOPERATIVE ASSOCIATION
EASTERN ALEUTIAN TRIBES
KODIAK AREA NATIVE ASSOCIATION
KUSILIAZ ASSOCIATION

METLAKATLA INDIAN COMMUNITY
OF SANFORD TRIBAL GOVERNMENT
NATIVE VILLAGE OF ELLIOTTA
NATIVE VILLAGE OF TITAN
NUPURIK TRADITIONAL COUNCIL
NORTH SLOPE COUNCIL

NORTON SOUND HEALTH CORPORATION
SALDOVA VILLAGE TRIBE
SOUTHCENTRAL FOUNDATION
SOUTHEAST ALASKA REGIONAL HEALTH CORPORATION
TANANA CHIEFS CONFERENCE
TUPON RUSHOKATIM HEALTH CORPORATION
VALDEZ NATIVE TRIBE

III. TITLE 47 REIMBURSEMENT FOR HEALTH CARE FACILITIES

Alaska Native health organizations that operate hospitals and health centers throughout rural Alaska have been inappropriately bearing a heavy financial burden for services provided to intoxicated persons.

Title 47 of Alaska State Statutes provides financial support to local governments for public safety services provided to intoxicated and incapacitated individuals. Under certain circumstances such individuals are referred to local health care facilities for medical screening prior to being released, returned to police custody, or transferred to treatment facilities.

Even though local protocols may be developed to limit the number of such referrals, as many as one-third of the individuals entering the public safety system in some areas are screened by medical professionals at a significant cost in terms of time and resources.

The problem faced by the Alaska Native Health Board's member organizations throughout rural Alaska is that their hospitals and health centers are not reimbursed for these services. Very few of these individuals have Medicaid coverage or other private insurance. Local city governments have disclaimed responsibility for payment for these services, and have made provisions in some locations to release those in custody at the hospital door and then re-arrest upon discharge to avoid liability.

Kanakanak Hospital in Dillingham estimates that the uncompensated care provided for such individuals is valued at least \$100,000 per year. Other hospitals are reporting similar losses.

It is our understanding that this problem is significant for other hospitals outside of the Alaska Native health care system as well. The Alaska State Hospitals and Nursing Homes Association has raised this as a legislative concern as well, recommending that state law concerning municipal taxation of alcoholic beverages be revised to generate a revenue stream.

The Alaska Native Health Board urges the Alaska State Legislature to recognize the financial hardship being faced by small rural hospitals due to the demands of medical screening for intoxicated persons, to work with the Department of Health and Social Services and local governments to develop a strategy to address these concerns, and to ensure that sufficient financial support is provided to meet governmental obligations to provide these services.

LEGAL SERVICES

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STATE OF ALASKA

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

MEMORANDUM

February 25, 1997

SUBJECT: Dedication of funds by a municipality (Work Order No. 20-LS0681)

TO: Representative Gary Lee Davis
Attn: Andy Peterson

FROM: Tamara Brandt Cook *TBC*
Director

You have asked whether a municipality may dedicate funds. There is no statute that prohibits a municipality from dedicating funds, although an initiative may not be used to propose an ordinance that would create a dedication. Article XI, sec. 7 of the state constitution does not allow an initiative to be used to dedicate revenues, and that prohibition has been applied to municipalities under AS 29.10.030(c) and AS 29.26.100.

It is unclear whether the constitutional prohibition against dedicated state funds contained in Art. IX, sec. 7 applies also to municipalities. Attorney general opinions have not been consistent on this point. I have found two opinions that conclude that Art. IX, sec. 7 applies only to state and not to municipal funds. (1960 Inf. Op. Att'y Gen., December 5, Havelock; Att'y Gen. Op. No. 660-88-0525, July 29, 1988, Odland) On the other hand, another opinion warns that receipts of a municipal liquor tax could not be dedicated to "costs created by abuse of alcohol" without violating Art. IX, sec. 7. (Memorandum to the Honorable Jay S. Hammond, Oct. 8, 1976, Peter) At this point the Alaska Supreme Court has noted that the issue exists and has declined to express an opinion on it. (Fairbanks v. Convention and Visitors Bureau, 818 P.2d 1153 (Alaska 1991) footnote 7)

TBC:glc
97-121.glc

Legal Clarification

LEGAL SERVICES

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FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

February 21, 1997

SUBJECT: Municipal taxation of alcohol - (SSHB 132)

TO: Representative Gary Davis
Attn: Andy

FROM: Michael F. Ford *M. F.*
Legislative Counsel

You have asked if the above referenced bill will have any effect on the existing ability of a damp or dry municipality to impose a sales and use tax on alcoholic beverages. As explained in this memo, I do not believe that SSHB 132 will change existing law as to this issue.

A damp or dry municipality has the ability to impose a sales and use tax on alcoholic beverages under AS 04.21.010(c)(4). This provision of law is unchanged under SSHB 132. As a practical matter, the ability to impose a sales and use tax would only seem of value in a damp municipality or one that prohibits sale under AS 04.11.491(a)(1), but not importation or possession of alcohol. In dry municipalities, or a place that prohibits sale and importation, or sale, importation and possession, there would be no legal activities to tax. Therefore the ability to impose a use tax would seem of questionable value in a dry community. Regardless of the value of the taxing authority granted under AS 04.21.010(c)(4), SSHB 132 does not change this provision of law.

If you have further questions please contact me.

MFF:jdr
97-113.jdr

Section
60. Warehousing of alcoholic beverages
65. Posting of warning signs

Section
70. Enforcement
80. Definitions

Sec. 04.21.010. Municipal regulation. (a) A municipality may adopt ordinances governing the importation, barter, sale, and consumption of alcoholic beverages within the municipality and may ban possession of alcoholic beverages under AS 04.11.491(a)(5). An ordinance adopted under this section may not be inconsistent with this title or regulations adopted under this title. In a municipality that has adopted a local option under AS 04.11.491(a)(1), (2), or (3), an ordinance is not inconsistent with this title if it limits

(1) the monthly amounts of alcoholic beverages a person may import into the municipality;

(2) the percent of alcohol by volume that an alcoholic beverage may contain; a limit imposed under this paragraph may not be less than 40 nor more than 76 percent alcohol by volume; or

(3) the type of alcoholic beverage container that may be possessed in the municipality.

(b) After the adoption of a local option under AS 04.11.491(a), a municipality may adopt an ordinance making the sale, importation, or possession of alcoholic beverages a misdemeanor to the extent prohibited under the local option. The ordinance may not be inconsistent with this title or the regulations adopted under this title.

(c) A municipality may not impose taxes on alcoholic beverages except a

(1) property tax on alcoholic beverage inventories;

(2) sales tax on alcoholic beverage sales if sales taxes are imposed on other sales within the municipality;

(3) sales tax on alcoholic beverage sales that was in effect before July 1, 1985; and

(4) sales and use tax on alcoholic beverages if the sale of alcoholic beverages within the municipality has been prohibited under AS 04.11.491(a)(1), (4), or (5).

(d) At least 10 days before the date set for municipal action on an application for the issuance, renewal, relocation, or transfer of ownership of a proposed license, the municipality shall provide written notice of the proposed action and the time and place for a hearing to a community council that

(1) is established by municipal charter or ordinance to advise the municipal governing body; and

(2) has jurisdiction over the area affected by the proposed action. (§ 4 ch 131 SLA 1980; am § 20 ch 74 SLA 1985; am § 19 ch 93 SLA 1985; am § 9 ch 80 SLA 1986; am §§ 11, 12 ch 156 SLA 1988; am §§ 50 — 52 ch 101 SLA 1995)

Effect of amendments. — The 1995 amendment, effective July 1, 1995, made section reference substitutions in subsections (a) and (c); in subsection (a), added the last sentence in the introductory language and added paragraphs (1)-(3); and rewrote subsection (b).

Legislative history reports. — For sectional analysis of CS SSSB 239, the predecessor of FCCSSB 239 (ch. 131, SLA 1980), see 1980 Senate Journal Supplement No. 23, April 1, 1980.

For Senate letter of intent relating to the amendments to (a) and (c) of this section by secs. 11 and 12,

ch. 156, SLA 1988 (HCS CSSB 371 (Jud) am H), see 1988 Senate Journal 2939.

Opinions of attorney general. — Anchorage Municipal Code 10.50.030 and 10.50.035, which established guidelines for when the Assembly will exercise its protest authority under AS 04.11.480, are not inconsistent with this title, are not in excess of the municipality's authority, and are not unreasonable. February 25, 1986, Op. Att'y Gen.

Ordinance regulating where licenses may be located did not exceed the borough's authority. October 23, 1991, Op. Att'y Gen.

NOTES TO DECISIONS

Sales tax. — Paragraphs (c)(2) and (c)(3) of this section, when read together, bar a municipality from taxing only the sale of alcoholic beverages and further require that if sales taxes are imposed on other commodities, then the rate of taxation on the sale of alcoholic beverages may not exceed the rate of taxa-

tion imposed upon such other commodities sales. *Lagoe v. City & Borough of Sitka*, 823 P.2d 641 (Alaska 1991).

A Sitka ordinance which taxed the sales of alcoholic beverages at a four percent higher rate than sales made on other commodities within the city and bor-

ough of Sitka violated this section. *Lagos v. City & Borough of Sitka*, 823 P.2d 641 (Alaska 1991).

Collateral references. — 45 Am. Jur. 2d, Intoxicating Liquors, § 27.

48 C.J.S., Intoxicating Liquors, § 213.

Provision as to sale of liquor to women as affecting validity of regulatory statute. 9 ALR2d 541.

Validity and construction of measure prohibiting retail alcoholic beverage seller from furnishing free food or drink. 66 ALR2d 758.

Validity and construction of statute or ordinance requiring or prohibiting posting or other publication of price by liquor dealer. 89 ALR2d 901.

Validity and construction of statute or ordinance

respecting employment of women in places where intoxicating liquors are sold. 46 ALR3d 369.

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 ALR3d 1061.

Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 20 ALR4th 600.

Validity and construction of statute or ordinance making it offense to have possession of open or unsealed alcoholic beverage in public place. 39 ALR4th 668.

Sec. 04.21.015. Private manufacture of alcoholic beverages. (a) Except as provided in (b) of this section, the provisions of this title do not apply to the private manufacture of alcoholic beverages.

(b) This section does not apply to AS 04.16.050, 04.16.051, 04.16.080; AS 04.21.010, 04.21.020; alcoholic beverages manufactured in a quantity that exceeds the limit imposed on private manufacture under federal law; or an area that has adopted a local option law under AS 04.11.491. (§ 1 ch 88 SLA 1989; am § 53 ch 101 SLA 1995)

Effect of amendments. — The 1995 amendment, effective July 1, 1995, made a section reference substitution in subsection (b).

Sec. 04.21.020. Civil liability of persons providing alcoholic beverages. A person who provides alcoholic beverages to another person may not be held civilly liable for injuries resulting from the intoxication of that person unless the person who provides the alcoholic beverages holds a license authorized under AS 04.11.080 — 04.11.220, or is an agent or employee of such a licensee and

(1) the alcoholic beverages are provided to a person under the age of 21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures in good faith from the person a signed statement, liquor identification card, or driver's license meeting the requirements of AS 04.21.050(a) and (b), that indicates that the person is 21 years of age or older; or

(2) the alcoholic beverages are provided to a drunken person in violation of AS 04.16.030. (§ 5 ch 131 SLA 1980; am § 14 ch 109 SLA 1983)

Revisor's notes. — In 1980, this section was rearranged for clarity.

Cross references. — For responsibility of licensee

for violations, see AS 04.16.150, for responsibility of licensees, agents and employees, see AS 04.21.030.

NOTES TO DECISIONS

Editor's notes. — Many of the cases cited in the notes below were decided under former AS 04.10.150 and 04.15.020.

Constitutionality. — This section is not so completely lacking in rationality or legitimacy of purpose as to be unconstitutional. Immunizing social hosts from liability caused by their guests' conduct can rationally be based on a view that it is an undesirable interference with normal hospitality to require a social host to monitor guests' alcohol consumption. Further, the primary actor responsible for harm caused by a drunken person is the drunken person. *Chokwah v. Worley*, 912 P.2d 1248 (Alaska 1996).

Legislative intent. — The intent of the legislature

in enacting this section was to limit vendor liability in cases where the vendor has provided alcohol in a statutorily permissible manner. *Williford v. L.J. Carr Inv., Inc.*, 783 P.2d 235 (Alaska 1989).

"Provide" alcohol. — A vendor may "provide" alcohol even unwittingly to third parties. *Williford v. L.J. Carr Inv., Inc.*, 783 P.2d 235 (Alaska 1989).

This section does not immunize vendors who violate AS 04.16.030, which prohibits certain conduct relating to drunken persons. *Williford v. L.J. Carr Inv., Inc.*, 783 P.2d 235 (Alaska 1989).

Proximate cause. — AS 04.16.030 and this section require for purposes of liability only that the defendant's intoxication, and not the particular sale of

Effect of amendments. — The 1996 amendment, effective July 1, 1996, rewrote subsection (a).

NOTES TO DECISIONS

Protest upheld. — City's protest that a proposed liquor store location was too close to a senior citizens housing complex and was in an area which already contained a high concentration of bars was not arbitrary, capricious, and unreasonable. *Stoltz v. City of Fairbanks*, 703 P2d 1155 (Alaska 1986).

Former law construed. — See *In re Alaska Labor Trades Ass'n*, 10 Alaska 472 (1945); *In re Wakefield*, 10 Alaska 599 (1945); *In re Kaye*, 11 Alaska 556 (1948); *In re Martin's Retail Liquor License No. 1517*, 15 Alaska 225 (1964).

Sec. 04.11.490. Prohibition of the sale of alcoholic beverages. [Repealed, § 69 ch 101 SLA 1995.]

Sec. 04.11.491. Local options. (a) If a majority of the persons voting on the question vote to approve the option, a municipality shall adopt a local option to prohibit

(1) the sale of alcoholic beverages;
 (2) the sale of alcoholic beverages except by one or more of the following listed on the ballot:

(A) a restaurant or eating place licensee;
 (B) a beverage dispensary licensee;
 (C) a package store licensee; or
 (D) a caterer holding a permit under AS 04.11.230 to sell alcoholic beverages at a site within the municipality who is also licensed under a beverage dispensary license for premises outside of the municipality;

(3) the sale of alcoholic beverages except on premises operated by the municipality and under a type of licensed premises listed on the ballot, that may include one or more of the following:

(A) a restaurant or eating place license;
 (B) a beverage dispensary license; or
 (C) a package store license;
 (4) the sale and importation of alcoholic beverages; or
 (5) the sale, importation, and possession of alcoholic beverages.

(b) If a majority of the persons voting on the question vote to approve the option, an established village shall exercise a local option to prohibit

(1) the sale of alcoholic beverages;
 (2) the sale of alcoholic beverages except by one or more of the following listed on the ballot:

(A) a restaurant or eating place licensee;
 (B) a beverage dispensary licensee;
 (C) a package store licensee; or
 (D) a caterer holding a permit under AS 04.11.230 to sell alcoholic beverages at a site within the established village who is also licensed under a beverage dispensary license for premises outside of the established village;

(3) the sale and importation of alcoholic beverages; or
 (4) the sale, importation, and possession of alcoholic beverages.

(c) A ballot question to adopt a local option under this section must at least contain language substantially similar to: "Shall (name of municipality or village) adopt a local option to prohibit (local option under (a) or (b) of this section)? (yes or no)."

(d) The ballot for an election on the option set out in (a)(2)(A), (a)(3)(A), or (b)(2)(A) of this section must include a summary explanation of the authority to sell alcoholic beverages given to a restaurant or eating place under AS 04.11.100(a). The ballot for an election on the option set out in (a)(2)(B) or (D), (a)(3)(B), or (b)(2)(B) or (D) of this section must include a statement that a beverage dispensary license is commonly known as a

"bar" and a summary explanation of the authority to sell alcoholic beverages given to a beverage dispensary licensee under AS 04.11.090(a). The ballot for an election on the option set out in (a)(2)(C), (a)(3)(C), or (b)(2)(C) of this section must include a statement that a package store license is commonly known as a "liquor store" and a summary explanation of the authority to sell alcoholic beverages given to a package store licensee under AS 04.11.150(a).

(e) If a municipality dissolves under AS 29.06.450(a) or (b), a local option adopted by the municipality under (a) of this section shall continue in effect as the corresponding local option under (b) of this section for an established village having the same perimeter as the previous boundaries of the municipality. A license for premises operated by the municipality under AS 04.11.506 expires when the municipality dissolves.

(f) A municipality or established village that has adopted a local option under (a)(1), (2), or (3) or (b)(1) or (2) of this section may designate a site for the delivery of alcoholic beverages to individuals in the area or a site for a person to bring alcoholic beverages if the alcoholic beverages are imported into the area. This subsection does not apply to the delivery or importation of

(1) one liter or less of distilled spirits, two liters or less of wine, or one gallon or less of malt beverages; or

(2) alcoholic beverages to a premises licensed under (a)(2) — (3) or (b)(2) of this section. (§ 21 ch 101 SLA 1995)

Cross references. — For provisions relating to the continuation of local options adopted under former AS 04.11.490, 04.11.492, 04.11.496, 04.11.498, and 04.11.500, see § 70, ch 101, SLA 1995 in the Temporary and Special Acts; for provisions relating to local

option petitions on file on July 1, 1995, see § 71, ch 101, SLA 1995 in the Temporary and Special Acts.

Effective dates. — Section 79, ch. 101, SLA 1995 makes this section effective July 1, 1995.

Sec. 04.11.492. Community liquor license; complete prohibition on sales. [Repealed. § 69 ch 101 SLA 1995.]

Sec. 04.11.493. Change of local option. (a) If a majority of persons voting on the question vote to approve a different local option, a municipality or established village shall change a local option previously adopted under AS 04.11.491 to the different approved option.

(b) A ballot question to change a local option under this section must at least contain language substantially similar to: "Shall (name of municipality or village) change the local option currently in effect, that prohibits (current local option under AS 04.11.491), and adopt in its place a local option to prohibit (proposed local option under AS 04.11.491)? (yes or no)." (§ 22 ch 101 SLA 1995)

Effective dates. — Section 79, ch. 101, SLA 1995 makes this section effective July 1, 1995.

Sec. 04.11.496. Removal of local option. (a) If a majority of the persons voting on the question vote to remove the option, a municipality or established village shall remove a local option previously adopted under AS 04.11.491. The option is repealed effective the first day of the month following certification of the results of the election.

(b) A ballot question to remove a local option under this section must at least contain language substantially similar to: "Shall (name of municipality or village) remove the local option currently in effect, that prohibits (current local option under AS 04.11.491), so that there is no longer any local option in effect? (yes or no)."

(c) When issuing a license in the area that has removed a local option, the board shall give priority to an applicant who was formerly licensed and whose license was not renewed because of the results of the previous local option election. However, an

Article 4. Borough Sales and Use Tax.

Section
 650. Sales and use tax
 660. Notice of sales and use tax
 670. Referendum, adoption, and modification

Section
 680. Combining sales and use tax with incorporation
 of a borough

Sec. 29.45.650. Sales and use tax. (a) Except as provided in AS 04.21.010(c) and in (f) and (h) of this section, a borough may levy and collect a sales tax on sales, rents, and on services provided in the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use, or consumption of tangible personal property in the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only on buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that the person has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether inside or outside the state.

(d) If the assembly charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year on the delinquent taxes and shall be charged from the due date until paid in full. This subsection applies to home rule and general law municipalities.

(e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales and use tax, and the interest, penalties, and administration costs in the event of delinquency. When recorded, the sales tax lien has priority over all other liens except (1) liens for property taxes and special assessments; (2) liens that were perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien; (3) mechanics' and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the sales tax lien. This subsection applies to home rule and general law municipalities.

(f) A borough may not levy and collect a sales tax on a purchase made with (1) food coupons, food stamps, or other type of certificate issued under 7 U.S.C. 2011 — 2025 (Food Stamp Act); or (2) food instruments, food vouchers, or other type of certificate issued under 42 U.S.C. 1786 (Special Supplemental Food Program for Women, Infants, and Children). This subsection applies to home rule and general law municipalities.

(g) *[Repealed, § 2 ch 159 SLA 1990.]*

(h) A borough may not levy or collect a sales tax on sales, rents, and services, or a use tax on the storage, use, or consumption of personal property on the following activities:

(1) the sale, lease, rental, storage, consumption, or distribution in this state of or the provision of services relating to an orbital space facility, space propulsion system, or space vehicle, satellite, or station of any kind possessing space flight capacity, including the components of them;

(2) the sale, lease, rental, storage, consumption, or use of tangible personal property placed on or used aboard an orbital space facility, space propulsion system, or space vehicle, satellite, or station of any kind, regardless of whether the tangible personal property is returned to this state for subsequent use, storage, or consumption; an exemption under this paragraph is not affected by the failure of a launch to occur, or the destruction of a launch vehicle or a component of a launch vehicle. (§ 12 ch 74 SLA 1985; am §§ 3, 4 ch 38 SLA 1986; am § 1 ch 20 SLA 1987; am § 2 ch 30 SLA 1988; am §§ 1, 2 ch 96 SLA 1989; am §§ 1, 2 ch 159 SLA 1990; am §§ 4, 5 ch 88 SLA 1991)

NOTES TO DECISIONS

Annotator's notes. — The cases cited in the note below were decided under former, similar provisions.

Evolutionary development of present language of subsection (a). — See *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

Subsection (a) of this section permits a selective sales tax. *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

This section states no limits on what may be exempted. *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

And there is nothing in the statute which expressly requires a general tax. *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

The term "sales tax" carries no connotation of generality. *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

The city of Homer bed tax, based upon the actual

rental of a room, and imposed, computed and collected according to traditional sales tax methods, is a sales tax within the meaning of this section. *City of Homer v. Gangl*, 650 P.2d 396 (Alaska 1982).

A real property lien is beyond the scope of what may be "necessary" or fairly implied in or incident to" the authority to collect a sales tax. *Fairbanks N. Star Borough v. Howard*, 608 P.2d 32 (Alaska 1980).

Successor liability. — Subsection (e) of this section does not provide for successor liability, unless done through a lien on the real and personal property of a "seller," i.e. the business; municipalities' attempt by ordinance to hold successor owners personally liable for delinquent sales taxes would effectively eliminate paragraph (e)(2) of this section lien priority and was, therefore, invalid. *Kenai Peninsula Borough v. Associated Grocers*, 689 P.2d 604 (Alaska 1995).

Collateral references. — 68 Am. Jur. 2d, Sales and Use Taxes, § 1 et seq.

Sec. 29.45.680. Notice of sales and use tax. (a) If the borough levies and collects only a sales tax and use tax, the assembly shall provide a notice substantially in the form set out in AS 29.45.020. In providing notice under this subsection, the assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in AS 29.45.020. Notice shall be provided

(1) by publishing in a newspaper of general circulation in the borough a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the borough's budget; or

(2) if there is no newspaper of general circulation in the borough, by posting a copy of the notice for at least 20 days in at least two public places in the borough, with posting to occur not later than 45 days after the final adoption of the borough's budget.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.60.010 — 29.60.080 and state aid for miscellaneous municipal services under AS 29.60.100 — 29.60.180. The department shall withhold annual allocations under those sections until municipal officials demonstrate that the requirements of this section have been met. (§ 12 ch 74 SLA 1985)

Sec. 29.45.670. Referendum, adoption, and modification. A new sales and use tax or an increase in the rate of levy of a sales tax approved by ordinance does not take effect until ratified by a majority of the voters at an election. (§ 12 ch 74 SLA 1985)

Sec. 29.45.680. Combining sales and use tax with incorporation of a borough. A petition for incorporation of a borough may request that a sales and use tax proposition be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent on the passage of the tax proposition; if so, the incorporation proposition fails if the tax proposition fails. (§ 1 ch 3 SLA 1989)

Editor's notes. — Section 2, ch. 3, SLA 1989 provides that this section is retroactive to January 1, 1987.

Legislative history reports. — For governor's transmittal letter, see 1989 Senate Journal 46.

FISCAL NOTE

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: An Act relating to municipal taxation BRU: none
of alcoholic beverages Component none
 Sponsor: Rep. Davis
 Requestor: House C&RA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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

REVENUE FUND SOURCE: _____

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 (FY97) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would have no fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Division of Administrative Services Date: 3/4/97
 Approved by Commissioner: *Mike Pura* Date: 3/4/97
 Agency: Community & Regional Affairs

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Revision Date: _____ Dept. Affected: Revenue
 Title: Municipal Taxation of Alcohol BRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: Rep. Davis
 Requestor: (H) CRA COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
CHANGE IN REVENUE (decrease)	(850.0 - 8200.0)	(850.0 - 8200.0)	(850.0 - 8200.0)	(850.0 - 8200.0)	(850.0 - 8200.0)	(850.0 - 8200.0)

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY97) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Department of Revenue determined the proposed legislation may cause the state to lose a small amount of state alcohol tax revenues. This revenue loss would be due to a factor called "elasticity". Elasticity means that when price of a commodity goes up the consumption goes down. If we assume that some municipalities that currently have no sales tax on alcohol enact one, prices would go up. Our economist located two sources for elasticity of alcohol which indicated that for every 1% increase in price, consumption would decrease 1/3 of 1%. There are numerous variables to consider in estimating the potential revenue loss. We reviewed the consumption factors for Anchorage, Kenai and the Aleutians. A three or five percent sales tax in these locations would result in a \$90,000 to \$150,000 loss in revenue. These cities have no current sales tax, others do. Our overall potential loss is a rough estimate assuming that on a statewide basis some municipalities would enact or raise sales taxes on alcohol.

Prepared by: Brett Field, Economist
 Division: Income & Excise Audit
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 465-3682
 Date: March 3, 1997
 Date: March 3, 1997

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March 4, 1997

Representative Gary Davis
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Davis,

Thank you for introducing House Bill 132. This is a top legislative priority of the Alaska Municipal League and the Alaska Conference of Mayors.

As pressure increases on local sales and property taxes, municipalities must have more tools to make sure that local taxes are fair and do not hinder the growth of the local economy. It is important to note that this bill does not create a new state tax. HB 132 creates an optional revenue tool for municipalities by removing a state restriction on an existing local tax.

The costs to taxpayers related to the use of alcohol are stunning. A significant portion of alcohol costs are for the unfunded state mandate to treat public inebriates. Other local costs related to alcohol use include police services, hospital services, emergency medical services, repair of property damage, fire services, health insurance premiums, youth and family services, school services, etc. The voters of a community should be free to decide if they wish to re-allocate the tax burden, or improve local services, through an increase in sales or use taxes on alcohol.

Alaska can no longer afford to prohibit local voters from deciding on an appropriate level of alcohol sales and use taxes for their community. If there is any additional information we can provide, we will be happy to do so.

Sincerely,

Kevin Ritchie
Executive Director

cc: AML Board of Directors and Legislative Committee
Alaska Conference of Mayors

C:\legis\mml\297HR132alcohol

HB

162



House District 36
 Adena
 Adnat
 Adnatuk
 Aniak
 Anvik
 Arctic Village
 Beaver
 Bettus
 Birch Creek
 Canyon Village
 Central
 Chalkyok
 Chalkyok
 Chitochina
 Chitina
 Chusitbaluk
 Circle
 Circle Hot Springs
 Cowfoot
 Cooper Center
 Copperville
 Crooked Creek
 Doe Lake
 Dry Creek
 Eagle
 Eagle Village
 Eganville
 Fort Yukon
 Gakona
 Galena
 Granting
 Gulkana
 Herby Lake
 Hoonah
 Hughton
 Huslia
 Kaktovik
 Kaktovik
 Lake Village
 Livengood
 Lake Minnerumna
 Lower Kalsag
 Marsden
 Marshall
 McGrath
 McGrath
 Meads
 Menasha
 Minco
 Napaena
 Nemana
 Niadai
 Northway
 Nulato
 Pilot Station
 Rampart
 Red Devil
 Ruby
 Russian Mission
 Shageluk
 Slana
 Sternumut
 Stevens Village
 Stony River
 Takona
 Tanacross
 Tanana
 Teda
 Tetlin
 Toa
 Tuluksat
 Tronka
 Upper Kalsag
 Venetie
 Wasilla

Representative Irene K. Nicholia

State Capitol • Juneau, Alaska 99801
 Phone: +65-4527 FAX: +65-1197
 Toll Free: 1-800-491-4527
 E-Mail: Representative_Irene_Nicholia@Legis.state.ak.us

Reports:
 RIA:
 Military and Veterans Affairs
 World Trade and State-Federal Relations

Memorandum

TO: House C&RA Members
 FROM: Representative Irene Nicholia *Irene Nicholia*
 DATE: April 25, 1997
 RE: CS HB 162

The following changes were made in the work draft CSHB 162:

- Restricts sale, purchase or offer in liquor stores. [Sec. 1]
- Language is expanded to restrict "other handicrafts" in addition to native handicrafts. [Sec. 1]
- "Other handicrafts" is defined. [Sec. 1 (f) (3)]
- Language is added to clarify that special events, such as the Fur Rondy, are not unintentionally affected. [Sec. 1 (e)]
- Removes language that exempted arenas or convention centers owned by the state or a political subdivision of the state.
- Leg. legal determined that it would be best to add language to clarify that a person may not "knowingly" buy, sell, offer, etc. This word helps clarify that a bar owner or employee who was not involved in the transaction will not be held liable for actions beyond the realm of his/her knowledge.

0-LS0434E
Bannister
4/24/97

CS FOR HOUSE BILL NO. 162()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE NICHOLIA

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the sale or purchase of handicrafts on certain premises; and
2 providing for an effective date."

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

4 * Section 1. AS 04.16 is amended by adding a new section to read:

5 Sec. 04.16.095. Sale or purchase of handicrafts on licensed premises. (a)
6 A person may not knowingly sell, offer to sell, purchase, or offer to purchase authentic
7 Native handicrafts or other handicrafts if the sale, purchase, or offer is made on
8 premises that are licensed to sell alcoholic beverages under AS 04.11.090 or 04.11.150.

9 (b) An individual who violates (a) of this section is subject to

10 (1) a fine of \$300 and up to 90 days in jail for the first offense; and
11 (2) a fine of \$600 and up to one year in jail for each offense after the
12 first offense.

13 (c) A person who is not an individual and who violates (a) of this section is
14 subject to a fine of \$1,000 for the first offense and \$2,000 for each offense after the

1 first offense.

2 (d) In addition to the penalties under (b) and (c) of this section, and
3 notwithstanding AS 04.11.370, the board shall suspend a license issued under
4 AS 04.11.090 or 04.11.150 for 45 days for a first violation of (a) of this section, and
5 shall revoke the license for a second violation of (a) of this section, if

6 (1) the licensee violates (a) of this section on the licensed premises; or

7 (2) a person who is employed to work on the licensed premises violates
8 (a) of this section while working on the licensed premises.

9 (e) This section does not apply to sales, offers to sell, purchases, or offers to
10 purchase made on premises where beer or wine is sold under a special events permit
11 issued under AS 04.11.240.

12 (f) In this section,

13 (1) "authentic Native handicraft" has the meaning given in
14 AS 45.65.070;

15 (2) "knowingly" has the meaning given in AS 11.81.900;

16 (3) "other handicrafts" means items that are produced, decorated, or
17 fashioned by an individual.

18 * Sec. 2. AS 04.16.180(a) is amended to read:

19 (a) Except as provided in AS 04.11.015, AS 04.16.025, 04.16.050(b)
20 [~~AS 04.16.050(b)~~], 04.16.051, 04.16.095, 04.16.200 - 04.16.210, and AS 04.21.065, a
21 person who violates a provision of this title or a regulation adopted by the board is
22 guilty, upon conviction, of a class A misdemeanor. Each violation is a separate
23 offense.

24 * Sec. 3. AS 04.21.065 is amended by adding a new subsection to read:

25 (m) A licensee under AS 04.11.090 or 04.11.150 who is subject to the
26 prohibition in AS 04.16.095(a) shall post on the licensed premises a warning sign that
27 reads "WARNING: THE SALE OR PURCHASE OF AUTHENTIC NATIVE
28 HANDICRAFTS OR OTHER HANDICRAFTS IS PROHIBITED BY LAW ON
29 THESE PREMISES. A person who violates this prohibition is subject to criminal
30 penalties. A violation may result in the suspension or revocation of this
31 establishment's liquor license." The warning sign must be at least 11 inches by 14

1 inches, and the lettering must be at least one-half inch high and in a color that
2 contrasts with the background of the sign. The licensee shall display the sign in a
3 conspicuous manner.

4 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

Revision Date: _____ Dept. Affected: Revenue
 Title: Bar Craft Buying on Liquor Premises BRU: Alcoholic Beverage Control Board
 Component: Alcoholic Beverage Control Board
 Sponsor: Rep. Nicholas
 Requestor: (H) CRA COMPONENT SERIAL NO. 100

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	4.0	3.0	3.0	3.0	3.0	3.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	4.0	3.0	3.0	3.0	3.0	3.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	4.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	4.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost \$ 0.0

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

Section 3 of the bill requires a bar or cocktail lounge licensee to post a warning sign on his or her premises. Uniform and legible signs would need to be printed and distributed to 644 licensees by the ABC Board. The fiscal note reflects the one-time cost of the printing of a significant number of signs to comply with the law for the next five to ten years and includes postage to distribute these signs. This one-time sign cost is estimated at \$1,000.

Increased regulation increases the likelihood of increased costs associated with enforcement and administrative action. It is determined that \$3,000 per year is needed to cover the cost of legal support for the ABC Board for likely administrative actions. This \$3,000 would be transferred to the Department of Law by reimbursable services agreement.

Prepared by: Douglas B. Griffin Phone: 277-8638
 Division: Alcoholic Beverage Control Board Date: April 22, 1997
 Approved by Commissioner: Wilson L. Condon *[Signature]* Date: April 22, 1997
 Agency: Revenue

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Alaska State Legislature

Please enter into the record my testimony to the Community & Regional Affairs
committed name

committee on HB 162, dated April 23, 1997.
bill/subject

I support HB 162 because production + sales of arts + crafts is the primary employment in the communities of Bering Straits Region. Artists + crafts people are producing ivory + whalebone carvings, fur mukluks + slippers. Sales of these kinds of authentic arts + crafts on these premises degrades the work, both monetarily and respectfully.

As Welfare Reform begins to impact our area we need to increase the value of Alaska Native art. Especially, because Alaska Native art is already being devalued through production + sales of fraudulent Alaska Native art. This counterfeit work is the reason that "Silver Hands" program, tried to address. It's hard for that program to be effective with a small budget of \$10,000.

Authentic Alaska Native artwork belongs in galleries and shops. By nat. doing anything to discourage sales of artwork on certain licensed premises we encourage the sweatshop mentality, where artists receive small compensation for authentic, valuable work.

Signed: Agas Atuk Adook
Testifier

self
Representing (Optional)

Box 1485 Nome, Ak
Address

443-5231 (wk) 5305 (hm)
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DEPARTMENT OF HEALTH AND
SOCIAL SERVICES

ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE

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April 9, 1997


The Honorable Irene Nicholia
House of Representatives
State of Alaska
Room 501
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Nicholia:

The Citizen's Advisory Board on Alcoholism and Drug Abuse continues our support of your legislation that would prohibit the sale or purchase of Native handicrafts in bars. House Bill No. 162 is legislation that will assist in the correction of a long-standing problem in Alaska and will assist Alaskans in their understanding of the insidious nature of alcoholism and how it interferes with the life and livelihood of Alaskan Natives.

I hope that we will be able to act as a resource for you to forward your agenda to reduce the devastation that alcohol and other drug abuse brings to Alaskans and their communities.

Sincerely,



Banarsi Lal
Chair