

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9699 SENATE RULES

The Honorable Bert Sharp

3/24/97

Page 2

In discussions with the Department of Law, it came to our attention that this method of dealing with closures for public safety reasons potentially removes the state's discretionary function immunity and opens opportunities for litigation.

The following are the types of closures over 90 days that the legislature will be required to either approve or disapprove each year. In addition, in the second year all closures of any type will need to come before the legislature for approval even if less than 90 days.

Danger due to wildlife

Bishop Creek Campground (Captain Cook SRA) closed for the season-danger of bears

Annual closure of Troublesome Creek trail in Denali State Park due to a high incidence of grizzly bears feeding on salmon in a heavily forested area.

Disasters-while the disastrous event is usually over with quickly (oil spills, floods, landslides), it frequently takes Parks longer than 90 days to repair. If the closure is not adopted by the legislature, and Parks was unable to post the area closed, the state could be held liable for not signing a dangerous site as closed. Examples:

Perseverance Trail washed out last fall and has been closed since. Trail work is planned for this summer. Closure is longer than 90 days. A local high school runner ignored the trail closure signs and fell to his death.

Indian Oil Spill in 1993 (37,000 gallons of jet fuel) caused Parks to close 14 acres for the duration of the clean-up and mediation process. This is on-going

Fall 1995 flooding caused extensive damage to the Eklutna Lakeside Trail, including culvert and bridge wash-outs. It took 18 months to repair this damage, during which the trail was closed.

Damage to Bing's Landing on the Kenai River caused closure of much of the river bank pending work that is scheduled for this summer.

Lack of maintenance budgets

Parks has permanently closed park units for management reasons, usually a combination of declining budget and increasing expenses due to vandalism or location. In the past few years Moose Creek SRS, Tolsona Creek SRS, Centennial Lake SRS, and Anchor River SRS have been closed for these reasons. Each of these closures would need to come before the legislature in addition to any of the Parks that would be closed for budgetary reasons during FY 98. These closures for budgetary reasons will be very controversial and would require legislative approval or disapproval.

The Honorable Bert Sharp

3/24/97

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Parties and vandalism-Teenagers and vandalism have caused numerous parks near urban centers to be closed either in the evenings or for the season. These are beyond 90 days and would need legislative approval.

Upper Huffman Trailhead--open only in the winter for snowmobile use. Closed in the summer because of partying.

McHugh Creek closed at 10 PM in the summer and closed all winter to deter partying and vandalism.

Potter Creek Trailhead closed during the winter to prevent vandalism.

Bird Creek Valley closed one-half mile of access road to displace teen partying site.

All Sitka parks are closed at 11 PM in cooperation with local law authorities.

Over-use--areas that receive so much use that the resource is damaged and needs immediate response.

Streambank closures on fishing streams to protect salmon rearing habitat on the Kenai River and at Deep Creek.

Glenn Alps Trailhead in Chugach State Park due to erosion and vegetation damage.

Vegetation damage--in the spring when the snow cover shrinks snowmobiling is closed.

Winter Closures

75 campgrounds closed for the winter are longer than 90 days and would require annual legislative approval.

Day use areas in Chugach, Mat-Su, Kenai and Kodiak areas are similarly closed each season.

Conflicts between boating and swimmers causes us to close or restrict boating within swimming areas. Typically Parks defines a speed limit through creation of a no-wake zone. Examples are big Lake North and South, Nancy Lake, and Captain Cook.

Construction closures due to refurbishment of facilities, Parks will close a facility for longer than 90 days for public safety reasons to keep the public out of a construction zone.

The Honorable Bert Sharp

3/24/97

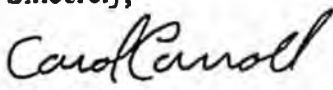
Page 4

The original SB35 had simply a restriction on administratively expanding park units without legislative approval (in response to Blair Lake) and an annual report of those areas where traditional recreational access was restricted and the reasons for closure. The overwhelming majority of such closures are for public safety and resource protection. The report would allow the legislature the opportunity to annually review the closures and take action against those they feel are inappropriate. This process would take far less of the legislature's time than taking affirmative action on routine public safety and resource protection closures.

Returning to the original intent of the bill would allow public safety or natural resource closures to remain active and would avoid any liability questions. We urge a return to the original intent of the bill.

Thank you for this opportunity to provide additional information.

Sincerely,


for John Shively
Commissioner

Distribution:

Senator Phillips
Senator Parnell
Senator Pearce
Senator Adams
Senator Donley
Senator Torgerson

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FISCAL NOTE

No. 5

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: CSSB 36(FIN)

(S) Publish Date: 3-10-98

Revision Date (Note if correction): _____
 Title: Public School Funding
 Sponsor: Senator Phillips
 Requestor: Senate Finance

Department Affected: Labor
 BRU: Office of the Commissioner
 Component: Commissioner's Office
 COMPONENT SERIAL NO. 340

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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CHANGE IN REVENUE FUND SOURCE #						
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY98) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

The Department of Labor does not anticipate any fiscal impact with the deletion of sections imposing a tax on wage and business income in the unorganized borough.

Prepared by: Arbe Williams, Director Phone: 465-2720
 Division: Administrative Services Division Date: 3/9/98
 Approved by Commissioner: Tom Cashen, Commissioner
 Agency: Department of Labor Date: 3/9/98

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Revision Date: March 9, 1998 Dept. Affected: Revenue
 Title: Public School Funding BRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: Senator Phillips
 Requestor: Senate Finance COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (GF)	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	0.0	0.0	0.0	0.0	0.0	0.0
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year cost \$ 0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

SB 36 has been amended to delete provisions related to an employment tax. The proposed bill, in it's current version, does not effect Department of Revenue tax programs or operating expenditures.

Prepared by: Brett Fried
 Division: Income and Excise Audit
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: (907) 465-3682
 Date: March 9, 1998
 Date: March 9, 1998

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FISCAL NOTE

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STATE OF ALASKA
 1998 LEGISLATIVE SESSION
 Revision Date: March 4, 1998
 Title: An Act relating to transportation of public school students: relating to school construction grants: etc.
 Sponsor: Senator Phillips
 Requester: Senate Finance

Bill Version: CSB 36 (FIN)
 (S) Publish Date: 3-10-98

Department Affected: Education
 BRU: K-12 Support
 Component: Pupil Transportation

COMPONENT SERIAL NO. 144

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	\$1,461.5	\$1,505.3	\$1,550.5	\$1,597.0	\$1,644.9	\$1,694.3
MISCELLANEOUS						
TOTAL OPERATING	\$1,461.5	\$1,505.3	\$1,550.5	\$1,597.0	\$1,644.9	\$1,694.3

CAPITAL EXPENDITURES	0.0					
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CHANGE IN REVENUES	0.0					
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	\$1,461.5	\$1,505.3	\$1,550.5	\$1,597.0	\$1,644.9	\$1,694.3
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	\$1,461.5	\$1,505.3	\$1,550.5	\$1,597.0	\$1,644.9	\$1,694.3

POSITIONS:

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

Estimate of current year (FY98) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary.)

The fiscal impact noted above is based on the assumption that Anchorage School District would be reimbursed for 90% of all costs associated with district-operated school transportation, including contract administration costs of approximately \$204,000, and 100% of costs associated with contracted to/from school transportation, but not including deducts from contracted transportation for hazardous or kindergarten routes. An inflation factor of 3% is assumed for FY00 through FY04.

Prepared by: Eddy Jeans, School Finance Director Phone: 465-8687
 Division: Education Support Services Date: 3/4/98
 Approved by Commissioner: Shirley J. Holloway, Ph. D.
 Agency: Department of Education Date: 3/4/98

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DEPARTMENT OF EDUCATION

Senate Bill 36. Sec. 1 (Amended to 90%)

Anchorage S.D.---FY97 Statement of Operations

90% Reimbursement under proposed method \$5,350,999
(90% of total costs as stated on the district's
transportation statement of operations for
district-operated services: \$5,945,555)

Less: Reimbursement under current method (3,973,414)
(66.83% of total costs: \$5,945,555)

Difference Between Current and Proposed Method \$1,377,585

FY98 3% increase	\$1,418,913
FY99 3% increase	\$1,461,480
FY00 3% increase	\$1,505,324
FY01 3% increase	\$1,550,484
FY02 3% increase	\$1,596,999
FY03 3% increase	\$1,644,909
FY04 3% increase	\$1,694,256

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STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 10
Bill Version: CS SSSB38(JUD)
NOT Published-Identical to: #1

Revision Date: _____
Title: Anatomical gifts, living wills and do not resuscitate orders
Sponsor: Taylor
Requestor: Senate Finance

Dept. Affected: Health and Social Services
BRU: State Health Services
Component: Community Health/EMS Services
COMPONENT SERIAL NO. 2078
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	2.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

This bill would require that the Division of Public Health contract for a graphic artist, \$2.0, to design the symbols to be used on bracelets, necklaces and ID cards to alert medical attendants of their choices.

Prepared by: Peter M. Nakamura, MD, MPH
Division: Public Health
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: (907) 465-3090
Date: 02/24/97

Date: 2/25/97

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CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 10
Bill Version: CS SSSB338(TUD)
NOT Published-Identical to: #1

Revision Date: _____
Title: Anatomical gifts, living wills and do not resuscitate orders
Sponsor: Taylor
Requestor: Senate Finance

Dept. Affected: Health and Social Services
BRU: State Health Services
Component: Community Health/EMS Services
COMPONENT SERIAL NO. 2078
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	2.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

This bill would require that the Division of Public Health contract for a graphic artist, \$2.0, to design the symbols to be used on bracelets, necklaces and ID cards to alert medical attendants of their choices.

Prepared by: Peter M. Nakamura, MD, MPH
Division: Public Health

Phone: (907) 465-3090
Date: 02/24/97

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Date: 2/25/97

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FISCAL NOTE

identical to SSSB 38 FN#2

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: CS SSSB 38(JUD) - NOT PUBLISHED

Revision Date: 2/18/97 Dept. Affected: Public Safety
 Title: An Act relating to anatomical gifts, living wills, and do not resuscitate orders. BRU: Motor Vehicles
 Component: Field Services
 Sponsor: Senator Taylor
 Requestor: Rules COMPONENT SERIAL NO. 0502

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will not fiscally impact the Division of Motor Vehicles

Prepared By: Juanita M. Hensley Phone: 465-2650
 Division: Motor Vehicles Date: 2/18/97
 Approved by Commissioner: *Dee Smith* Date: 2/19/97
 Agency: Ronald L. Otte, Dept. of Public Safety

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Identical to SSSB 38 FN#2 - NOT PUBLISHED THIS FN DPE 2/19/97

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 2
BILL NO: _____
 Bill Version: SSSB 38
 (S) Publish Date: 2-3-97

Revision Date: _____ Dept. Affected: Public Safety
 Title: An Act relating to anatomical gifts, living wills, BRU: Motor Vehicles
and do not resuscitate orders. Component: Field Services
 Sponsor: Senator Taylor
 Requestor: S. Hess COMPONENT SERIAL NO. 0502

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

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

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will not fiscally impact the Division of Motor Vehicles

Prepared By: Juanita M. Hensley Phone: 465-2650
 Division: Motor Vehicles Date: 1/24/97
 Approved by Commissioner: *Ronald L. Otte* Date: 1/29/97
 Agency: Ronald L. Otte, Dept. of Public Safety

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STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 1

Bill Version: SSSB 38

(S) Publish Date: 2-3-97

Revision Date: _____

Dept. Affected: Health and Social Services

Title: Anatomical gifts, living wills and do not

BRU: State Health Services

resuscitate orders

Component: Community Health/EMS Services

Sponsor: Taylor

COMPONENT SERIAL NO. 2078

Requestor: Senate HES

See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	2.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

This bill would require that the Division of Public Health contract for a graphic artist, \$2.0, to design the symbols to be used on bracelets, necklaces and ID cards to alert medical attendants of their choices.

Prepared by: Peter M. Nakamura, MD, MPH
Division: Public Health

Phone: (907) 465-3090
Date: 01/29/97

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Date: 1/30/97

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MEETING AGENDA

I. CALL TO ORDER: Senate Rules Committee on Wednesday, February 26th, 1997 in Room 203 of the Capitol Building at _____(time).

II. ROLL CALL:

Kelly.....Leman.....Taylor.....

Torgerson.....Duncan.....

III. AGENDA ITEMS:

- 1) SB 7 - Hunting, Fishing, and Trapping Fees
(Senator Donley)
- 2) SB 38 - Relating to Anatomical Gifts and Living Wills
(Senator Taylor)
- 3) SB 84 - Relating to Assets of the University of Alaska
(Senator Wilken)
- 4) HB 43 - Relating to Registration of Vehicles and Municipal Taxation
(Rp. Mulder)

IV. MOTION:

Move to pass SB 7, SB 38, SB 84, and HB 43 from committee with individual recommendations, and to calendar them for Senate floor votes at the discretion of the chairman.

Sponsor Statement

Senate Bill 38

This legislation modifies existing statute dealing with living wills and would add to that statute a provision by which those who execute living wills can choose to become organ or tissue donors. By adding this provision to the statutory language of a living will, loved ones and health professionals would be fully informed of the wishes of family members and patients.

We live in a technological age in which the need for tissue and organ donation has found a much greater demand than supply. While it is not a legitimate function of government to dictate whether or not a person should become an organ or tissue donor, it is certainly a wise practice for government to facilitate this process.

In addition to adding anatomical gifts to the language of a living will, Senate Bill 38 would also instruct the Division of Motor Vehicles to indicate on drivers' licenses not only the fact that the bearer has elected to become an organ donor, but also that the individual has a living will.

Other than nominal expenses, this legislation should cost little to enforce, but may become invaluable if it increases Alaskans' participation in organ and tissue donation. Certainly any one of us, our families and loved ones, could benefit by an organ or tissue donation made less complicated by this bill.

To get an idea of the scope of organ transplants involving Alaskans, we contacted the Center for Transplant Services at the University of Washington Hospital.

Sponsor Statement - SB 38

Page Two

Since 1989, 19 Alaskans have received kidney transplants through that facility. Twelve Alaskans have received liver transplants and one state resident received both a kidney and a pancreas.

To understand the need to make organ donation as uncomplicated as

possible, I would like to point out that as of January 24, 1997, this one facility had a waitlist of 20 Alaskans in need of kidney transplants, 11 seeking donor livers and one state resident waiting for a donated pancreas.

The Virginia-based United Network for Organ Sharing, the national clearing house for organ transplants, has 68 Alaskans on their waitlist.

Since 1988, the United Network for Organ Sharing documents 207 Alaskans who have received donor organs.

I ask your support for Senate Bill 38.

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39



SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189 Session: State Capitol, Juneau, AK 99801 (907) 465-2095

SPONSOR STATEMENT SB 39

"An Act relating to hazardous chemicals, hazardous materials, and hazardous waste."

As we downsize government, and make it more user friendly, we must assess the efficacy of current statutes and regulations. SB 39 consolidates reporting requirements and includes a section that protects the state from strict liability for oil spills or other environmental releases at the REAA schools. It is part of the state's response to the Toksook Bay lawsuit.

Many times state and federal governments ask businesses to report information without a lot of thought about how that information will be used when it is received. That is the case with the "Placarding Statute" under AS 18.70.310.

We need to stop asking business to provide unnecessary information and concentrate on what it is the state needs to know. If communities, businesses and the state are not benefiting from the reporting, the information may not be necessary.

Currently, businesses in Alaska must report virtually the same information about hazardous chemicals, materials and wastes, in four different formats to four different entities. This bill eliminates three formats and one entity.

The bill was crafted with input from industry, fire departments, and the departments of Environmental Conservation, Law and Public Safety, Division of Fire Prevention.

The information to be reported is streamlined to one form which satisfies federal, state and local reporting requirements.

FACT SHEET FOR SB 69

Hazardous Chemical Reporting

Reduces current requirements to no stricter than federal law.

What businesses face now:

Local Municipal placarding reporting requirements (currently Municipality of Anchorage, Fairbanks, and Kenai Borough)

State Fire Marshal placarding reporting requirements

Emergency Planning and Community Right to Know reporting requirements (EPCRA)

OSHA Hazard Communications Standard (MSDS sheets)

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)

Businesses, state agencies, etc., are required to report certain hazardous substances to local fire departments, local emergency planning committees, the state fire marshal's office, and to DEC on behalf of the State Emergency Response Commission.

The problem is that all of the above referenced laws have different substances and reporting thresholds. **What SB 39 does:**

a) delete the fire marshal's ineffective placarding program (Division of Fire Prevention supports; division doesn't have the personnel to do this program.) Deleting the program deletes the requirement for business to report to State Fire Marshal.

b) modify substances and amounts currently required to be reported to municipalities to be the same as those required under EPCRA and CERCLA. Leaves door open to municipalities with their own placarding program to add substances to be reported if the municipality feels it is a public safety issue. This is done through a public process. Also the State Emergency Response Commission may add substances, but only after notifying facilities (this is current federal law).

c) Creates one form sent out by DEC to cover:

1) Municipal placarding reporting requirements

2) EPCRA/CERCLA reporting requirements to:

local fire departments

local emergency planning committees (LEPCs)

DEC for the SERC

NOTE: DEC currently sends out Tier II form for the EPCRA/CERCLA reporting.

d) While the bill doesn't specifically state it, the thought is that businesses could move to electronic filing with this one form; those needing the information (usually fire departments and LEPCs (all of this info is public whether on paper format or electronic); could download the info into their computers. Most fire departments and LEPCs received from the state computers and plume modeling software several years ago.

Senator Leman has been a member of Anchorage's Hazardous Materials Commission and is a past member of Anchorage's Local Emergency Planning Committee. He recognizes the morass of reporting requirements and is seeking to streamline the process. Please feel free to call me with questions about this bill - with all of the separate, underlying, interrelated reporting requirements it can be frustrating and confusing.

Annette Kreitzer, Aide to
Senator Loren Leman

(907) 465-3844 PH
(907) 465-3810 Fax

(01/15/97)

SECTIONAL ANALYSIS
SB 39: Reporting of Hazardous Substances

Section 1:

This section adds an immunity to Title 9 protecting the state from strict liability for oil spills or other environmental releases at the REAA schools. Without this change, the state and school districts can each be liable for 100% of damages claimed from environmental problems on school sites, even if they are not at fault in any way or bear only a small portion of the fault. This section was added at the request of DEC, DOE, and the Department of Law and approved by the sponsor as part of the state's response to the Toksook Bay lawsuit.

Section 2:

Deletes reference to AS 18.70.310 - the placarding program within the state fire marshal's office.

Section 3:

Deletes reference to AS 18.70.310 - the placarding program within the state fire marshal's office.

Section 4:

Subsection (a) makes the State Emergency Response Commission the agency to approve a form to be used for the reporting of placarding information under a municipal placarding program. This ensures that if the form needs to be changed, this commission can coordinate with all agencies that receive such reports.

Section 5:

Subsection (c) refers to the existing MUNICIPAL placarding program. Currently under state or federal law, either a municipality or the SERC may add substances to those already required to be reported. This section ensures a public process for adding or removing substances required to be reported.

Subsection (c)(1) standardizes the substances and their threshold amounts to be reported under a municipal placarding program, and to fire departments and Local Emergency Planning Committees under Emergency Planning and Community Right-to-Know requirements. The "hazard classes" conform to the new classification system passed by Congress in 1993 recognizing the UN Identification system that enables the same classification to be used for national and international shipments of hazardous materials.

Subsection (c)(2) deletes from the municipal placarding program the requirement that businesses report consumer commodities of hazardous materials. These businesses are readily identified by fire departments in Alaska as handling large quantities of consumer commodities. Deleted also is requirement to report compressed gases, which exceeds federal reporting requirements.

Section 6:

Deletes reference to the state fire marshal's placarding program under AS 18.70.310.

Section 7:

Deletes reference to the Municipality having to obtain placards from the state fire marshal's office. Retains ability for the Municipality to charge fees to compensate for the costs of a Municipal placarding program.

Section 8:

Makes the Department of Environmental Conservation the one-stop agency to provide lists of reportable substances under the Municipal placarding, and the federal/state Emergency Planning and Community Right-to-Know laws. DEC would also provide the single form approved by the SERC for these reporting purposes.

Section 9:

Subsection (6) makes the Municipal placarding definition of hazardous chemical the same as the definition of hazardous chemical under the Emergency Planning and Community Right-to-Know Act, with the same exceptions as under federal law.

Section 10:

Subsection (7) allows the State Emergency Response Commission to add hazardous materials to the Emergency Planning reporting requirements. Removes the exceptions which are not mentioned in federal law, but which are probably covered by the reference in federal law to "substances capable of posing an unreasonable risk".

Section 11:

Subsection (8) adds in the DEC definition of hazardous waste and allows the SERC to define additional hazardous wastes to be reported under Emergency Planning and Community Right-to-Know requirements. This is to ensure continuity in definitions and reporting thresholds.

Section 12:

Applies strict statutory liability and liability for damages to the amendment in Section 1.

Section 13:

Deletes the fire marshal's placarding program (AS 18.70.310).

Deletes responsibilities of the fire marshal under the Municipal placarding program (AS 29.35.530(b)).

Deletes definition of consumer commodity from definitions section of Municipal placarding program (AS 29.35.590(2)).

Section 14:

The amendment in Section 1 applies only to future claims, not past claims.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 39(JUD)

Revision Date: 14-Feb-97
 Title: An act relating to hazardous chemicals,
hazardous materials, and hazardous waste
 Sponsor: Senator Leman
 Requestor: Senate Judiciary

Department Affected: Environmental
Conservation
 BRU: Spill Prevention and Response
 Component: Prevention and Emergency Response

COMPONENT SERIAL NO. 2064

Expenditures/Revenues:

(Thousands of Dollars)

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

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other (Response Fund)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS:


FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

This legislation will have no impact on the Department of Environmental Conservation

Prepared by: Kurt Fredriksson
 Division: Spill Prevention and Response

Phone: 465-5250
 Date: 2/14/97

Approved by Commissioner: 
 Agency: Department of Environmental Conservation

Date: 2/14/97

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FISCAL NOTE

No. 4

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO Bill Version: SB 39

(S) Publish Date: 2-6-97

Revision Date: _____
Title: An act relating to hazardous chemicals, hazardous materials, and hazardous waste
Sponsor: Senator Leman
Requestor: Senate Resources Judiciary

Department Affected: Environmental Conservation
BRU: Spill Prevention and Response
Component: Prevention and Emergency Response

COMPONENT SERIAL NO. 2064

Expenditures/Revenues:

(Thousands of Dollars)

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

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

100 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
100 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
100 GF	0.0	0.0	0.0	0.0	0.0	0.0
100 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
100 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other (Response Fund)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

SB 39 amends statutes which authorize local governments to establish a placarding program to require the use of a standard reporting form provided by the State Emergency Response Commission (SERC) and expand the substances that are to be reported.

SB 39 requires the Department of Environmental Conservation, at the request of a business or government agency subject to the reporting requirement, to distribute the SERC-approved reporting form and a descriptive summary of reportable chemicals. The Department proposes an amendment to this section of the bill making the municipality responsible for distribution of the reporting form and descriptive summary of reportable chemicals established by the municipality and approved by the SERC.

Fiscal Analysis
With the proposed amendment, this legislation will result in no additional cost to the State.

Prepared by: Kurt Fredriksson
Division: Spill Prevention and Response

Phone: 465-5250
Date: 2/3/97

Approved by Commissioner: [Signature]
Agency: Department of Environmental Conservation

Date: 2/3/97

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FISCAL NOTE

No. 3

STATE OF ALASKA
1997 LEGISLATIVE SESSION

E Bill Version: SB 39

(S) Publish Date: 2-6-97

Revision Date: _____ Dept. Affected: EDUCATION
 Title: An Act relating to hazardous chemicals, BRU: Educational Facilities Support
hazardous materials, and hazardous waste. Component: School Finance
 Sponsor: Sen. Leman
 Requester: (S)JUD COMPONENT SERIAL NO. 1957

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY98	FY99	FY00	FY01	FY02	FY03
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						
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CHANGES IN REVENUES						
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FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY97) cost: \$

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Mike Morgan, Special Projects Manager *mm*
 Division: School Facilities

Phone: 465-1858
 Date: 2/3/97

Approved by Commissioner: Shirley J. Holloway, Ph.D. *Shirley Holloway*

Date: 2/3/97

Agency: Department of Education

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FISCAL NOTE

No. 2

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill Version: SB.39

(S) Publish Date: 2-6-97

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to hazardous chemicals, hazardous materials, and hazardous waste." BRU: Civil Division
 Sponsor: Senator Leman Component: General Legal Services
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2087

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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson *Joan M. Kasson*
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho *Bruce M. Botelho*, Attorney General
 Agency: Department of Law

Phone: 465-5370
 Date: 2/3/97
 Date: 2/3/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 1
BILL NO: SB 39
 Bill Version: SB 39
 (S) Publish Date: 2-6-97

Revision Date: _____ Dept. Affected: Public Safety
 Title: Reporting of Hazardous Substances BRU: Fire Prevention
 Component: Fire Prevention Operations
 Sponsor: Senator Leman
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 0494

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () Revenue Code	(1.1)	(1.1)	(1.1)	(1.1)	(1.1)	(1.1)

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-

Estimate of current year (FY 97) impact: \$ _____

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.)

The average fees collected by the placarding program over the last 3 fiscal years was \$1500.00. The average cost of materials to conduct the program was \$400.00.

No economic impact on industry is anticipated in as much as the program is simply being transferred to others and changed to follow federal law.

Prepared By: Chester E Weger Phone: 907-269-5905
 Division: Fire Prevention Date: 1/21/97
 Approved by Commissioner: *Ronald L. Otte* Date: 1/31/97
 Agency: Ronald L. Otte, Dept. of Public Safety

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SB

41

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 41 (FIN)

Revision Date: _____	Dept. Affected: <u>Department of Law</u>
Title: <u>...relating to environmental audits to determine compliance with certain laws, permits...</u>	BRU: <u>Civil Division</u>
Sponsor: <u>Senator Leman</u>	Component: <u>Environmental Law</u>
Requester: <u>Senate Finance Committee</u>	COMPONENT SERIAL NO. <u>2092</u>

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	71.7	71.7	71.7	35.9	35.9	35.9
TRAVEL	4.3	4.3	4.3	2.1	2.1	2.1
CONTRACTUAL	44.0	44.0	44.0	25.3	25.3	25.3
SUPPLIES	1.4	1.4	1.4	0.7	0.7	0.7
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	121.3	121.3	121.3	64.0	64.0	64.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	121.3	121.3	121.3	64.0	64.0	64.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	121.3	121.3	121.3	64.0	64.0	64.0

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This bill creates a new evidentiary privilege that allows environmental audits to be kept confidential in civil and administrative (not criminal) cases. It also grants immunity from civil and administrative penalties for people who voluntarily disclose a violation of an environmental law or who disclose information that leads to the disclosure of a violation of an environmental law. "Environmental law" is defined to include federal, state, and municipal laws and is to be broadly construed.

Audit Privilege. To be privileged, the audits must be voluntary, confidential, internal, and retrospective. Information required to be reported under a law, permit, contract or lease, or information gathered independently of the audit are not covered. In addition, if the state can prove that one of the bill's exceptions apply, then a court may require disclosure.

Immunity. A person who voluntarily discloses a violation of an environmental law, or who discloses information

Prepared by: <u>Joan Kasson</u> <i>Joan M. Kasson</i>	Phone: <u>465-5370</u>
Division: <u>Administrative Services Division</u>	Date: <u>3/17/97</u>
Approved by Commissioner: <u>Bruce M. Botelho, Attorney General</u> <i>Bruce Botelho for</i>	Date: <u>3/17/97</u>
Agency: <u>Department of Law</u>	

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ANALYSIS CONTINUATION:

that leads to the discovery of a violation, would be immune from administrative or civil penalties. The violation must be corrected within 90 days, or pursuant to a compliance agreement that allows for correction within a reasonable time, for immunity to apply. Immunity is not available for violations that result in substantial personal injury on site, or substantial personal, property, or environmental injury offsite. The term "substantial" is not defined. This bill allows for the mitigation of penalties for people who do not qualify for immunity.

It is not possible to accurately quantify the increased costs to litigate the audit privilege and immunity provisions in this bill, in part because of the uncertainty about the types of proceedings to which the provisions would apply. Nevertheless, we have identified what we believe to be the minimum responsible level of resources necessary to contend with the anticipated assertions of privilege and immunity. These are the equivalent of two-thirds of a full-time attorney, and contractual funding for expert witnesses during the first three years of implementation. Once precedents are established, we expect these costs to be reduced.

General Legal Issues Resulting in Fiscal Impact

This is a new area of law, and there will be litigation and appeals related to the new privilege. An agency may have to defend the exercise of legitimate regulatory functions against a claim that the agency is improperly using privileged (confidential) information. Because the bill provides for some exceptions, there will also be litigation over what exceptions apply.

We also anticipate that additional legal assistance will be required for the affected agencies to negotiate, draft and review permits, contracts, leases, regulations and other documents to ensure that adequate compliance information is being gathered and maintained to meet the state's regulatory and proprietary responsibilities. The agencies will also require advice about what information is privileged and about public records requirements.

Section 2 of the bill in AS 09.25.460(a), deletes language that would have allowed the state to obtain objective facts even if they were contained in self audits. This change will result in a fiscal impact on the department due to the necessity for expert witnesses to gather and analyze factual information. Allowing objective facts to be withheld under the privilege will greatly complicate all cases involving self audits, and is a dramatic departure from current law. The Finance CS did remove language concerning the state's ability to obtain audit information in pipeline tariff cases. This change will decrease the department's cost estimate by \$75,000.

Agency-Specific Issues Resulting in Fiscal Impact

We have identified below some of the anticipated impacts on specific departments that lead us to conclude that our estimate of attorney resources is conservative. We noted in our original fiscal note on SB 41 that many of these impacts could be mitigated by limiting the number of departmental programs that are either explicitly or implicitly covered by the bill. With the elimination of the health and safety provisions from SB 41, the department's cost projections have declined by approximately one-third; however, other provisions referring to regulatory agencies remain ambiguous.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 41 (FIN)

ANALYSIS CONTINUATION:

Department of Environmental Conservation

The bill could impact state-run programs in DEC that require federal approval, for instance Drinking Water and Air Quality. Protecting the state's primacy in these programs will require increased attorney time. We will propose amendments to mitigate the impact (which stems from both the privilege and immunity sections of the bill).

Other Agencies (DNR, DOTPF, Alaska Oil and Gas Conservation Commission)

The bill could jeopardize federal approval of programs like the AOGCC's Underground Injection Control program (the UIC program in Texas has been threatened because of that state's audit law). Protecting the state's interest by retaining primacy in this program will require increased attorney time. Any agency involved in protecting the state's interest in contaminated sites cases require additional attorney and outside expert time.

SUMMARY OF COSTS

The full-time equivalent cost estimate is based on the department's standard attorney cost schedule (\$127,000) and includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. Case specific travel and expert witness costs are included separately.

FY98 - FY00

Approximately 973 hours @ \$87/hour (2/3 FTE attorney)	\$84.7
Direct case travel	\$3.3
Expert witnesses	\$33.3
Total Costs	<u>\$121.3</u>

FY01 - FY03

Approximately 487 hours @ \$87/hour	\$42.4
Direct case travel	\$1.7
Expert witnesses	\$20.0
Total Costs	<u>\$64.0</u>



ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

March 18, 1997

Honorable Tim Kelly
Chairman, Senate Rules Committee
Capitol Building
Juneau, AK 99801

RE: SB-41, Relating to Environmental Self-Audits

Dear Senator Kelly,

The Alaska Miners Association wishes to go on record in support of Senate Bill 41. This bill involving voluntary self audits is a positive step for the State, for industry and for the public.

For the State and industry, this bill will help foster an atmosphere that is conducive to open communication and help remove a structural impediment that now exists to open communication. It will allow the State and industry to better work together to solve the real problems. Too many laws, both federal and state, force the State to operate as a "police patrol" in its dealing with industry. When this is the case, industry will and must be constantly watching for the legal/suit/liability potential in everything it says and does. This bill will help to remove a portion of the built-in structural forces that cause this contentious relationship.

For the public, this bill will mean that problems will be handled better and if there are real problems these will become known. The energies of the people from both the State and industry working on an issue will be focused to solve actual problems, rather than guarding their respective legal options.

Thank you for this opportunity to comment. If there is any way we can help move this bill to passage and signing into law please contact me.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Senator Loren Leman



SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189 Session: State Capitol, Juneau, AK 99801 (907) 465-2095

Sponsor Statement -- SB 41

"An Act relating to environmental audits to determine compliance with certain laws, permits, and regulations."

Senate Bill 41 establishes two incentives for businesses and other regulated entities to conduct voluntary self-audits of internal operations, in an effort to secure full compliance with environmental laws and regulations.

The first incentive is limited immunity. Entities that conduct voluntary self-audits will be immune from civil and administrative penalties for violations discovered, provided several conditions are met. The instances of noncompliance must be discovered through a self-audit, and reported promptly to the appropriate regulatory agency. The regulated entity must take action to correct the identified problem and prevent its future recurrence. Immunity is not available for violations causing substantial off-site damage or serious on-site injury. In addition, no immunity is available for violations that are knowingly committed or that result from recklessness. Immunity can be denied to regulated entities with a history of similar violations, or a pattern of disregard for environmental laws.

The second incentive is qualified privilege. Certain portions of the reports generated from voluntary self-audits will be considered privileged and therefore not admissible as evidence or subject to discovery in civil or administrative proceedings. This provision recognizes that the evaluative portion of an audit report is, by its very nature, self-incriminating: it discovers problems, identifies what personnel or management deficiencies are responsible, and recommends corrective action. Studies show that many businesses opt not to perform audits out of fear that the resulting reports will be used by agencies or hostile third parties as a "road map to prosecution". As with the immunity benefit, the privilege has limitations. Privilege can be overcome if asserted for a fraudulent purpose, or if the regulated entity has failed to take required actions to correct areas of noncompliance.

As the budgets of regulatory agencies are reduced at both the federal and state level, the importance of encouraging self-policing becomes ever more important. Senate Bill 41 creates incentives for companies and individuals acting in good faith to police themselves and maintain full compliance with highly complex regulations. This in turn allows government regulators to focus increasingly scarce resources toward investigating and prosecuting the small minority of genuinely "bad actors".

Environmental auditing has become increasingly popular in the past two decades. More than 1,000 of the world's largest companies have self-audit programs in place. In the U.S., 20 states have enacted self-audit laws similar to SB 41, offering privilege and/or immunity benefits to participating businesses, individuals, and municipalities.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

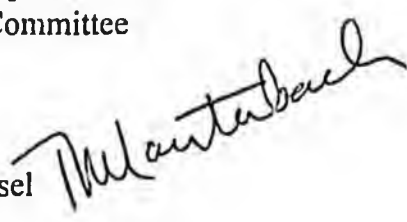
MEMORANDUM

March 14, 1997

SUBJECT: Environmental Audits (CSSB 41(FIN))

TO: Senator Bert Sharp, Co-Chair
Senate Finance Committee
Attn: Peggy

FROM: Terri Lauterbach
Legislative Counsel



Enclosed is the Finance CS for SB 41.

With regard to the instructions in amendment number 2, I did not delete the "or" on page 5, line 23, of the Judiciary CS because that "or" is needed to apply to the list of (A) - (E). I did, however, delete the "or" on page 5, line 21, of the Judiciary CS because it was no longer needed after the addition of (E).

I have made slight changes in the wording of amendment number 6 relating to the use of "shall be" and "shall not be deemed" in order to conform the amendment to the drafting style of the Alaska Statutes.

If any of these changes is not acceptable, please let me know, and I will gladly prepare a new CS.

TML:glc
97-178.glc

Enclosure

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

March 8, 1997

SUBJECT: Environmental Audits (Draft CSSB 41(JUD), "F" version)

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee
Attn: Laura Chase

FROM: Terri Lauterbach *TLauterbach*
Legislative Counsel

Enclosed is a draft CS for SB 41. As requested by your staff, the CS is in draft form so that you can review changes that may have been necessary in the large number of amendments passed by the committee.

Amendment #6: I have changed the word "disclosure" to "violation" for grammatical consistency. If you want to keep the word "disclosure", an alternative way to resolve the inconsistency would be to rewrite the amendment as follows:

(d) A party to a confidentiality agreement described in (b)(2) of this section who violates that agreement by **disclosing confidential material** is liable for damages caused by the disclosure and for. . . (etc.)

Amendment #9: I placed the language at a different place in the sentence so that I could avoid the use of "such" as a referent. Based on the description of the purpose of the amendment, I also added the past tense "posed" to language added at page 7, line 13 of the L&C CS.

Amendment #10: In light of this amendment, do you want to add "or administrative hearing officer" after "court" in Sec. 09.25.485?

Amendment #14: "Page 8, lines 20 - 22" appears to be the wrong location. I have, instead, deleted page 8, lines 27 - 31.

Senator Robin Taylor, Chair

March 8, 1997

Page 2

Amendment #16: For grammatical clarity, I reworded the amendment slightly.

Amendment #18: To provide for a complete thought, I have left in the phrase "contributed materially to the occurrence of the violation." The explanation of the amendment indicated to me that only "lack of prevention systems" should have been deleted.

Amendment #19: To clarify the ambiguity of "after," I have used the phrase "after taking into account the cost of" in two places. Otherwise, the word "after" could have been construed to mean that the savings had to have occurred after the point in time that the corrective measures were made. Wouldn't the savings have accrued during the time of noncompliance?

Amendment #20: I have placed this material as a new subsection (j) in AS 09.25.450 since it relates specifically to that section. I have also added a reference to this new material in AS 09.25.450(b). The use of the word "municipality" in this amendment makes me wonder if "the commissioner's office of the department" in (b) is proper. Are the notices always to be sent to DEC, not the municipality? If so, why should a municipality be able to approve electronic filing? If not, then there need to be additional changes to reflect the role of municipalities in receiving notices. There might also be other places in the bill where "department" is too narrow. For instance, how about AS 09.25.475(g), where inspections during the audit period are prohibited? This subsection currently refers only to DEC. What about municipal inspections? I recommend reviewing all uses of the word "department" in the bill to ensure that they are correct and do not inappropriately leave out municipalities.

Amendment #21: In light of Amendment #25, I have deleted "health or safety" twice in this amendment.

Amendment #24: The language at the end of paragraph (3) was garbled. I added what seemed to be missing by using language from AS 11.81.900(a)(3), which was cited as the source for the definitions in this amendment.

Amendment #25 and #26: To fully implement these two amendments, which narrow the scope of the bill to cover only environmental laws and define "department" to be the Department of Environmental Conservation, I have clarified the definition of "environmental law" in AS 09.25.490 so that the first part of the definition refers to laws implemented by the DEC. If you have in mind other "environmental" laws, such as those that may be enforced by DNR or Fish and Game, then this issue and the use of the word "department" throughout the bill may need further study.

Amendment #35: There is some redundancy added by this amendment, but I have not made any changes. If you want some, just let me know.

TML:glc
97-146.glc
Enclosure

SB

42

Alaska State Legislature

Senate

Rules Committee

State Capitol
Juneau, AK. 99801-1182



Official Business

MEMORANDUM

DATE: October 1, 1997

TO: Tamara B. Cook, Director
LAA Legal and Research Services

FROM: Senator Tim Kelly, Chairman
Senate Rules Committee *TDK*

SUBJ: Request For Legal Opinion

I would appreciate your review of questions I have regarding functions of the Alaska Railroad. Given that the railroad is not currently under the Executive Budget Act and its funding not appropriated by the legislature, is it constitutionally appropriate for railroad employees to spend money; ie. perform purchasing activities such as buying locomotives? What is the authority for this action?

In the same context, what is the authority for the sale of coal, for example, from lands owned by the University, the Department of Natural Resources, or the Mental Health Lands Trust, in the absence of constitutional or legislative authorization?

I would appreciate your opinion as soon as possible, and would like it sent to my Anchorage office. Thank you.

TDK/tb/m05

09/24/97
09:07:40

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)
TCN:70862 SCHEDULED FOR:09/24/97 09:00 TO 13:00
PUBLIC HEARING SENATE RULES

LTN1150
BY:ANC
FOR:ANC

LOCATION: ANCHORAGE

SB 42	REP	TERRY	MARTIN	TESTIFY
SB 42	REP	JOHN	COWDERY	TESTIFY
SB 42		KEVIN	BERGSRUD	UNITED TRANS UNITESTIFY

09/24/97
09:32:02

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)
TCN:70862 SCHEDULED FOR:09/24/97 09:00 TO 13:00
PUBLIC HEARING SENATE RULES

LTN1150
BY:ANC
FOR:ANC

LOCATION: ANCHORAGE

SB 42	REP	✓TERRY	MARTIN	TESTIFY
SB 42	REP	✓JOHN	COWDERY	TESTIFY
SB 42		✓KEVIN	BERGSRUD	UNITED TRANS UNITESTIFY
SB 42		THERESA	OBERMEYER	TESTIFY

09/24/97
09:08:16

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)
TCN:70862 SCHEDULED FOR:09/24/97 09:00 TO 13:00
PUBLIC HEARING SENATE RULES

LTN1150
BY:JNU
FOR:JNU

LOCATION: JUNEAU

ALL ITEMS	JERRY	BURNETTE		TESTIFY
ALL ITEMS	RANDY	WELKER	LEG. AUDIT	OBSERVE
ALL ITEMS	ANNETTE	KREITZER		OBSERVE

ITINERARY - SENATOR KELLY

(Fairbanks Rules Meeting / University Regents)

IN FAIRBANKS:

PRESIDENT JEROME KOMISAR - wk/474-7311
WENDY REDMAN - wk/474-7582 hm/479-6114
LEGISLATIVE INFO. OFFICE (Melba) - 452-4448
ALASKA AIRLINES - (800)-426-0333

Wednesday, September 24th

- 5:50 am - Go to Anc airport one hour ahead of flight
- 6:50 am - Depart for Fairbanks on Alaska Airlines flight #89
- 7:44 am - Arrive Fairbanks / Pickup by Tim B. or take cab to LIO
- 9:00 am - Public hearing on SB 42
- 11:00am - End of public hearing on SB 42
- 11:30am - Meeting with university regents / Pickup by Wendy R.
(Butrovich Bldg., ground level board conf. room)
(upper campus near Geophysical Institute)
- 3:30 pm - End of university meeting
- (OPEN TIME UNTIL DEPARTURE)
- 5:15 pm - Go to Fbks airport one hour ahead of flight
- 6:15 pm - Depart for Anchorage on Alaska Airlines #196
- 7:11 pm - Arrive Anchorage

BILL: SB 42

SHORT TITLE: ALASKA RR BUDGET AND LAND

BILL VERSION:

SPONSOR(S): RULES BY REQUEST OF LEGISLATIVE BUDGET AND AUDIT

CURRENT STATUS: (S) RLS

STATUS DATE: 5/02/97

HEARING: (S) RLS SEP 24 09:00 AM FAIRBANKS LIO

TELECONFERENCE

TITLE: "An Act relating to the fiscal operations of the Alaska Railroad Corporation and to land acquired by the State of Alaska under the Alaska Railroad Transfer Act of 1982 or otherwise acquired for railroad purposes; and providing for an effective date."

SB 42

Bill/Resolution Floor Action

Page 2 of 2

Current Status: (S) RLS

Jrn-Date	Jrn-Page	Action
1 01/13/97	25	(S) READ THE FIRST TIME - REFERRAL(S)
2 01/13/97	26	(S) TRA, STA, FIN
3 01/14/97	41	(S) RES REFERRAL ADDED
4 01/14/97	42	(S) TRA, STA, RES, FIN
5 02/21/97	447	(S) TRA RPT 1DP 2NR 1AM
6 02/21/97	447	(S) DP: WARD; NR: WILKEN, GREEN; AM: LINCOLN
7 02/21/97	447	(S) FISCAL NOTES (LAW, DNR-2)
8 04/01/97	914	(S) STA RPT CS 2DP 1NR NEW TITLE
9 04/01/97	914	(S) DP: GREEN, WARD; NR: DUNCAN
10 04/03/97	956	(S) ZERO FN TO CS (LAW)
11 04/11/97	1107	(S) RES REFERRAL WAIVED
12 05/02/97	1642	(S) FIN RPT CS 4DP 1NR NEW TITLE
13 05/02/97	1642	(S) DP: PEARCE, PHILLIPS, ADAMS, TORGERSON
14 05/02/97	1642	(S) NR: SHARP
15 05/02/97	1642	(S) ZERO FNS TO CS (DNR-2)
16 05/02/97	1642	(S) PREVIOUS ZERO FN APPLIES (LAW)
17 05/02/97	1642	(S) REFERRED TO RLS

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP	SUBJ	EXIT	MENU	TEXT	PRINT	BWD	FWD	CMT/JRNL FIRST LAST QUIT			

9-24-97

RLS FBKS

9:00 AM

SB 42

① RP. MARTIN

② JEFF COOK - MAPCO VP EXT. AFFAIRS
- will incr. R.R. shipments by 50%

③ RP. COWDERY - questions of Jeff Cook

④ RANDY WELKER, LBVA - audits
of the R.R. need to be more
complete. Budget process has
been a good forum for scrutiny.

- KELLY - how affect the state
budget?

- DUNCAN - capability for legis.
to go in and micromanage R.R.

⑤ GOV. SHEFFIELD - general review of
operations, and ethics stmt.

- RP. COWDERY

⑥ RP. JAMES - MAPCO, USABELLI, EILSON
all in her district

⑦ KEVIN BURKSHOES, UNITED TRANS. UNION

⑧ JOHN SIMMS, USABELLI

⑨ JERRY BURNETT - for SN. PHILLIPS

⑩ R.P. COWDERY - already

⑪ SN. TAYLOR - wants further discuss.
on constitut. authority, and
whether expenditures by
R.R. employees are approp.

⑫ contract amendment on James
M. Johnson.

Moved TDK

object. SN. DUN,

2nd

approved 4-1



Official Business

Alaska State Legislature

Senate

Rules Committee

State Capitol
Juneau, AK. 99801-1182

MEMORANDUM

DATE: September 22, 1997

TC: Senators Duncan, Leman, Taylor and Torgerson
Members, Senate Rules Committee

FROM: Senator Tim Kelly, Chairman *TDK*
Senate Rules Committee

SUBJ: Senate Rules Committee Hearing - Fairbanks

The Senate Rules Committee meeting will take place in the Fairbanks LIO Conference Room at 9:00am, Wednesday, September 24th. It is my understanding that you will all be there in person.

There is no van pickup service available, so you are encouraged to take cabs from the airport, or possibly share a rental car or cab if you can coordinate with other members.

We will take up Senate Bill 42, the bill proposing to bring the Alaska Railroad under provisions of the Executive Budget Act. Some material has gone out to you in advance, however, complete folders will be available at the meeting.

We will also take up a contract amendment for Mr. James Martin Johnson in the amount of \$3,258.36.

If you have questions, please contact Tim at 258-8180.

c: Sn. Phillips
Rp. Martin
Rp. Therriault
Rp. Cowdery
Spkr. Phillips

TDK/tb/m15

Alaska State Legislature

Sen. Tim Kelly, Chairman
Anchorage
Sen. Loren Leman, Vice-Chair
Anchorage
Sen. Robin Taylor
Wrangell
Sen. John Torgerson
Kasilof
Sen. Jim Duncan
Juneau



Official Business

Senate Rules Committee

State Capitol
Juneau, AK 99801-1182
(907) 465-3822
Fax: (907) 465-3756
1-800-770-3822
(JANUARY - MAY)
INTERNET: //http://www.state.ak.us

716 West 4th, Suite 400
Anchorage, AK 99501
(907) 258-8180
Fax: (907) 258-4524

MEMORANDUM

DATE: September 3, 1997

TO: Senators Duncan, Leman, Taylor and Torgerson
Members, Senate Rules Committee

FROM: Senator Tim Kelly, Chairman *TDK*
Senate Rules Committee

SUBJ: Senate Rules Committee Hearing

This confirms the Senate Rules Committee meeting in Fairbanks on September 24th, at the Legislative Information Office. The public hearing will be held from 9:00am to 11:00am, and will take up Senate Bill 42, bringing the Alaska Railroad under the Executive Budget Act.

Whether you're traveling to Fairbanks or participating by teleconference, please let Tim Benintendi in my Anchorage office know as soon as possible.

If you have questions, or need more information, please contact Tim.

FILE

Alaska State Legislature

Sen. Tim Kelly, Chairman
Anchorage
Sen. Loren Leman, Vice-Chair
Anchorage
Sen. Robin Taylor
Wrangell
Sen. John Torgerson
Kasilof
Sen. Jim Duncan
Juneau



Official Business

Senate Rules Committee

State Capitol
Juneau, AK 99801-1182
(907) 465-3822
Fax: (907) 465-3756
1-800-770-3822
(JANUARY - MAY)
INTERNET: //http://www.state.ak.us

716 West 4th, Suite 400
Anchorage, AK 99501
(907) 258-8180
Fax: (907) 258-4524

MEMORANDUM

DATE: September 3, 1997
TO: All Legislators
FROM: Senator Tim Kelly, Chairman
Senate Rules Committee *TDK*
SUBJ: Senate Rules Committee Hearing

This confirms the Senate Rules Committee meeting in Fairbanks on September 24th, at the Legislative Information Office. The public hearing will be held from 9:00am to 11:00am, and will take up Senate Bill 42, bringing the Alaska Railroad under the Executive Budget Act.

If you have questions, or need more information, please contact Tim Benintendi in my Anchorage office.

TDK/tb/m15

CONFIRMED RULES MTG.
9-24-97

- 9-3 Fx'd to : TAYLOR, TORGERTSON, DUNCAN
LEMAN
- 9-3 HANDED to : ^(RACHEL) LEMAN, TAYLOR (Chris)
MARTIN.
- 9-3 MAILED to : THERIAULT, DAVIES, BRICE,
G. DAVIS, GREEN (L.), HODGINS, JAMES,
KELLY, KOHRING, MASEK, OGAN, SHARP,
WILLIAMS.
(POUCH)
- 9-4 PUT IN BOXES : ADAMS, BARNES, BERKO,
BUNDE, COWDERY, CROFT, DONLEY,
DYSON, ELLIS, ELTON, FOSTER,
GREEN, GRUSSENDORF, HALFORD,
HANLEY, HOFFMAN, HUDSON,
IVAN, JOULE, KEMPLER, KOOKEST,
KOTT, KUBINA, MACKIE, MILLER,
MULDER, NICHOLIA, MOSES,
MOSES, PEARCE, PHILLIPS,
PHILLIPS, PORTER, ROKEBERG,
RYAN, SANDERS, VEZEY, WARD,
WILKEN.

ALASKA RAILROAD CORPORATION (ARRC)

Gov. Bill Sheffield President & CEO	265-2403 Fax 258-1456	PO Box 107500 Anchorage AK 99510-7500 327 Ship Creek Ave
James B. Blasingame Vice President, Corporate Affairs	265-2680 Fax 258-1456	
George Erickson Vice President, Transportation Svcs	265-2578 Fax 258-1456	
Phyllis C. Johnson Vice President, General Counsel	265-2461 Fax 258-1456	
David Eagle Vice President, Real Estate	265-2671 Fax 258-1456	
Jerry Anderson Vice President, Chief Financial Officer	265-2516 Fax 258-1456	

RULES

SN. TORGERSON - 235-0690 in FBKS
SN. TAYLOR - 225-8088 in FBKS
SN. LEMAN - 258-8189 in FBKS
SN. DUNCAN - 465-4766 in FBKS
SN. KELLY - 258-8180 in FBKS

TESTIMONY

BILL SHEFFIELD - 265-2403 (C.E.O. Alaska R.R.)
RANDY WELKER - 465-3830 (Legislative Audit)
JOHNE BINKLEY - 479-4006 (Alaska R.R. Board)
WESLEY ROGERS - 279-7117 (United Trans. Union)
TERRY MARTIN - 258-8169 (V-Chair, LB+A)
JERRY BURNETT - 465-4949 (Senator Phillips' aide)
R.P. COWDERY - 258 -

T/C - ANC, JNO

RULES - FAIRBANKS

- ~~1-~~
9-10 get supporters and opponents lined up to speak.
- ~~2-~~
9-4 lodging for TDK at Steve Frank's RIVER'S EDGE R.V. & RESORT (907) 474-0286 none for TDK (returning same day)
- 3-
9-5 make ~~John~~ Binkley aware of mtg. (907) 479-6006
- ~~4-~~
9-5 get ~~airlines~~ reservations for TDK & TB atsubo - 786-3270
- ~~5-~~
9-24 get ~~lodging~~ for TB "Molly" 23+24 FAIRBANKS EXPLORATION INN (888)-452-1920 (907)-451-1920
- ~~6-~~
9-4 make ~~Linda~~ Anderson aware of mtg. (907) 474-9463
- ~~7-~~
9-12 get ~~RANDY WELKER~~ to make a presentation
- ~~8-~~
9-12 get ~~United Transportation Union~~ to comment / be aware.

9:00-1:00 PM

RULES MTG: 9-24 (WED) FBKS

① CONTRACT AMENDM. - JAMES MARTIN JOHNSON
- final pmt of \$ 3,258.³⁶.

② SB 42 AK RR UNDER EXEC, BUDGET ACT
- public hearing

~~deleted~~

③ ~~SB 169 VOLUNTARY FLEX TIME FOR MINES~~
- public hearing

OK - P SN. KELLY - ✓ Tim ✗

OK - TC SN. LEMAN - ✓ Annette - 465-2095

in KETCH. ← SN. TAYLOR - ✓ Joe - 225-8088 ✓ MARY 874-2318
STATE CHAMBER CONV.

OK - P SN. TORGER - ✓ Mary - 283-2690 KRISTAL

OK - P SN. DUNCAN - ✓ Roxanne 465-4766

SB 42 SN. PHILLIPS - ✓ Jerry + ✓ Martin

SB 169 SN. LEMAN - (above) + Therriane ✓

- ✓ Sheffield + lobbyist
- ✓ RR union - Wes Rogers
- ✓ copy all legislators w/ (announcement)
relevant lobbyists
- ✓ Union,
- ✓ labor interests - Barbara Huff

Alaska State Legislature

Legislative Affairs Agency

Division of Administrative Services

130 Seward Street, Suite 313 Juneau, Alaska 99801-2197 (907)465-3852 or Fax (907)465-3234



DATE: July 29, 1997

TO: Ted Popely, Majority Legal Counsel
Project Director - Johnson Contract

FROM: *Karla*
Karla Schofield, Deputy Director
Legislative Affairs Agency

SUBJ: **James Martin Johnson Contract**

We have received invoices for the James Martin Johnson contract which exceed the current \$25,000 contract amount by \$ 3,258.36. The contract between the Alaska State Senate Rules Committee and Mr. Johnson is to provide the Leadership of the Alaska State Senate and the Alaska State House of Representatives with technical assistance and evaluation of tribal sovereignty and resource issues.

In order to pay Mr. Johnson the \$3,258.36, the contract will have to be amended. This will require the approval of the Senate Rules Committee in a meeting. As this contract was entered into under the small procurement provision of the Legislative Procurement Procedures (Sec. 045) a memo to the file from you as project director is required stating the basis for the amendment.

Please let me know what you wish to do regarding this contract. If you have any questions I can be reached at 465-6626.

✓cc: Senator Tim Kelly, Chair
Senate Rules Committee

Alaska State Legislature

Legislative Affairs Agency

Division of Administrative Services

130 Seward Street, Suite 313 Juneau, Alaska 99801-2197 (907)465-3852 or Fax (907)465-3234



DATE: July 29, 1997

TO: Ted Popely, Majority Legal Counsel
Project Director - Johnson Contract

FROM: *Karla*
Karla Schofield, Deputy Director
Legislative Affairs Agency

SUBJ: James Martin Johnson Contract

We have received invoices for the James Martin Johnson contract which exceed the current \$25,000 contract amount by \$ 3,258.36. The contract between the Alaska State Senate Rules Committee and Mr. Johnson is to provide the Leadership of the Alaska State Senate and the Alaska State House of Representatives with technical assistance and evaluation of tribal sovereignty and resource issues.

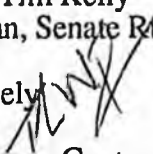
In order to pay Mr. Johnson the \$3,258.36, the contract will have to be amended. This will require the approval of the Senate Rules Committee in a meeting. As this contract was entered into under the small procurement provision of the Legislative Procurement Procedures (Sec. 045) a memo to the file from you as project director is required stating the basis for the amendment.

Please let me know what you wish to do regarding this contract. If you have any questions I can be reached at 465-6626.

✓cc: Senator Tim Kelly, Chair
Senate Rules Committee

MEMORANDUM

TO: Senator Tim Kelly
Chairman, Senate Rules Committee

FR: Ted Popely 

RE: Jim Johnson Contract

DT: August 1, 1997

April 26, 1996 - \$25,000 six month contract with Jim Johnson (Sen. Miller, Chair Senate Rules). Contract Term: 3/1/96 to 9/1/96.

September 12, 1996 - Contract term only extended until 2/28/97 (Sen. Miller, Chair Senate Rules). Amount unchanged.

Current Invoice - \$3,258.36 over the \$25,000 contract.

Jim Johnson ranks among the most qualified attorneys in the country with experience in Indian Law before federal courts, including the U.S. Supreme Court. He was retained as a consultant to the Alaska Legislature shortly after the Ninth Circuit Court of Appeals decided that Indian Country exists in Alaska.

His counsel thus far has been invaluable in getting the issue before the United States Supreme Court. Mr. Johnson is also largely responsible for convincing colleagues in California and 22 other states to file briefs in support of Alaska in this case. He is dedicated to this issue and to victory for Alaska. He has performed a substantial amount of work on our behalf for no charge, and he continues to do so even as we speak. To be candid, Mr. Johnson has instructed me not to pursue payment of the \$3,258 balance above the contract amount. I believe it is in the State's best interest to pay the balance, but the decision ultimately rests with Senate Rules.

Encl.

James M. Johnson

Office: Capitol Court, Suite 225
1110 S. Capitol Way
Olympia, Washington 98501
(360) 357-3104

Home: 3042 Oldport Lane
Olympia, WA 98502
(360) 866-2370

1993 - Present: In private practice, I continue to apply the expertise in major litigation I developed as Chief of Special Litigation for the State of Washington. In United States v. Washington, Washington's (in)famous treaty fishing case, the tribes are attempting to extend their claim to shellfish and public and private lands. My clients are private landowners, parties only after I won a Ninth Circuit appeal of an order denying them intervention. I have just completed and filed briefs in the appeal of the final decision. (Note the Tribes also appealed the rulings favorable to us.) In the Washington Supreme Court in Walker v. Munro, 124 Wn.2d 402 (1994), I successfully defended Washington's tax-limitation Initiative 601 (for the taxpayers, sponsors of the Initiative). In Mille Lacs Band of Chippewa v. Minnesota, I represent nine intervenor counties and work with the State of Minnesota to defend that Indian treaty case. In 1996, I represented the Clerk of the Washington House of Representatives in litigation with major newspapers. I also authored an amicus brief for Wyoming and Montana counties in the United States Supreme Court in Hagen v. Utah and participated in a NAAG moot court (as a "Justice") in preparing the Utah Attorney General for argument. (The Court ruled for us 7-2.)

1983-1993: Until April of 1993, I was the Chief of the Special Litigation Division, in the Washington State Attorney General's Office, representing over twenty-five client agencies, and litigating "special" cases for the State. I enjoyed being the team leader for much of the State's important litigation at the state and federal trial and appeal levels, including the United States Supreme Court. I was also national affairs liaison to the National Association of Attorneys General (NAAG) and the Conference of Western Attorneys General (CWAG). I know personally and have worked with nearly every states' Attorney General, and top staff. I was contributing editor for the CWAG on American Indian Law Deskbook (March 1993, University of Colorado Press).

Recent major cases included the "Ninth Congressional District" litigation cases to retain Washington's 9th U.S. House seat (the last awarded after the census). This included four federal district court cases, and two United States Supreme Court cases. I also authored a brief amicus for twenty-two states in the successful effort to uphold states' election protection statutes last term in Burson v. Freeman, United States Supreme Court No. 90-1056.

I have handled nearly one hundred appellate cases in the federal courts of appeal, Washington Supreme Court and United States Supreme Court. Some of these cases are listed on the attached Appendix A.

Other Experience:

1970-71 Counsel to Washington State Legislative Joint Committee on Banking Insurance and Transportation.
1971-73 United States Army Lieutenant (Chief of Administrative Services for Ninth Infantry Division).
1973-1983 Chief Attorney for Fisheries/Game Division of Washington State.

Interests: I enjoy running (including marathons), sailing, fishing, hunting, and opera.

Education and Bar Admissions: Harvard University, B.A. 1967 (Economics); University of Washington, J.D. 1970.

Admitted to Washington Bar 1970; also admitted to practice in the Washington State Supreme Court; federal district courts of Washington and California, Eighth Circuit, Ninth Circuit and District of Columbia Circuit Federal Courts of Appeals; United States Supreme Court. I have also practiced on a pro hac vice basis in federal courts in seven other states.

Attachment A
LITIGATION EXPERIENCE/LEGAL ACCOMPLISHMENTS
JAMES M. JOHNSON

I. TRIAL AND APPELLATE EXPERIENCE

My experience includes hundreds of trials in both the federal and state systems and nearly one hundred appellate cases up to, and including, the United States Supreme Court. Most of the appellate work involved cases I personally tried.

In federal court alone, I have tried over two hundred cases. Most cases have been civil trials, but my trial experience has also included criminal trials in Washington State Superior Courts involving environmental and hunting and fishing cases.

This extensive litigation and appeal practice has extended to each of the courts of which I am a bar member. I have appeared pro hac vice in another six states' federal courts.

Some noteworthy cases--my favorites--illustrating the variety of my experience are the following:

A. United States Supreme Court

1. I personally briefed and argued Munro v. Socialist Workers, 479 U.S. 499 (1986) successfully upholding the constitutionality of Washington election ballot restrictions.
2. Hagen v. Utah, (No. 92-6281, decided February 23, 1994). I wrote the brief for similarly-situated counties in Wyoming and Montana. I helped prepare the Utah Attorney General for argument (as a "justice") in moot court sessions.
3. Montana v. U.S. Dep't of Commerce, 112 S. Ct. 1704, 503 U.S. 997 (1992). The "Equal Proportions" method of allocating U.S. House seats was upheld, saving Washington's ninth seat from one challenge. I briefed at both the three-judge district and United States Supreme Court and was a justice at the moot court preparing Solicitor General Starr who argued.
4. Franklin v. Massachusetts, 112 S. Ct. 3056, 503 U.S. 929 (1992). The Census' inclusion of U.S. military--overseas on the census day was upheld, saving Washington's ninth seat from another challenge. I briefed at both three-judge district and United States Supreme Court. At the Supreme Court level, this was coordinated with the U.S. Solicitor, whom I helped prepare for argument (again as a moot court justice).
5. Burson v. Freeman, United States Supreme court No. 90-1056. I authored a brief amicus for twenty-two states. The Tennessee law, like that of Washington, proscribes activities such as campaigning around the election polls. Our brief was especially important since one justice adopted our arguments in his concurring opinion. The case was won five to three so this vote was critical (four to four would have upheld the unfavorable lower court).
6. Idaho v. Washington, Oregon, 444 U.S. 380 (1980); 462 U.S. 1017 (1983). An original action between states, challenging regulation and harvest of fish runs in Columbia River and tributaries. I tried the case to the special master appointed by the Court and participated in briefing and argument preparation for the two United States Supreme Court hearings.
7. The treaty Indian "fish cases." Department of Game v. Puyallup, 414 U.S. 44 (1973); Puyallup Tribe v. Washington Dep't of Game, 433 U.S. 165 (1977); Washington v. Washington Comm'l

Passenger Fishing Vessel, 443 U.S. 658 (1979) involving fishing regulation and Indian treaty law. I was a participant in briefing and argument preparation.

8. Antoine v. Washington, 440 U.S. 194 (1975). This dealt with Indian reservation boundaries and hunting. I was a participant in briefing and argument preparation.

B. Washington Supreme Court and Washington Court of Appeals

I have personally handled and/or argued approximately 35 cases, more than half in the Washington Supreme Court. Some recent examples include:

1. Walker v. Munro, Washington, 124 Wn.2d 402, 879 P.2d 920 (1994), upheld Initiative 601, which places a limit on state tax and budget increases.

2. Ellensburg v. Washington, 118 Wn.2d 709 (1992), held the State is not required to pay full funding for fire protection services for Central Washington University. I participated in writing the briefs and argued the case before the Supreme Court. It was decided in our favor on January 16, 1992.

3. Schrempp v. Munro, 116 Wn.2d 929 (1991), involved a challenge to the Secretary of State's acceptance of initiative. I briefed and argued this case. The court held in favor of the Secretary--allowing the voters to decide.

4. Vangor v. Munro, 115 Wn. 2d 536 (1990), involving a challenge to the Secretary of State's processing of an initiative. I briefed and argued this case, which upheld the Secretary.

5. Rains v. State, 100 Wn.2d 660 (1983), upheld the State's immunity from suit for alleged civil rights violation under 42 U.S.C. § 1983 (briefed and argued).

6. Snyder v. Munro, 106 Wn.2d 380 (1986). Washington legislative redistricting, including two "split" districts, upheld as constitutional (briefed and argued).

7. Nuxoll v. Munro, 104 Wn.2d 456 (1985). Election process for superior court judges upheld (briefed and argued).

8. Washington v. Crown Zellerbach, 92 Wn.2d 894 (1979). The stream protections of the hydraulics code and enforcement through criminal prosecution for violations was upheld (briefed, argued, and won criminal jury trial on remand).

9. The Indian Treaty Fishing Cases: Numerous cases and trials at the Superior Court (Washington's trial court) led to Washington Supreme Court cases of Puget Sound Gillnetters v. Moos, 88 Wn.2d 677 (1977); State Comm'l Passenger Ass'n v. Tollefson, 89 Wn.2d 276 (1977); Purse Seine Ass'n v. Moos, 88 Wn.2d 799 (1977). All held the state must treat citizens the same, and could not regulate for special Indian fisheries. After the United States Supreme Court review (see A-6, above), Fishing Vessel Ass'n v. Tollefson, 92 Wn.2d 939, (1980) upheld the state's authority to regulate fisheries.

C. Federal Courts of Appeal

I have personally handled and/or argued approximately 50 cases in the federal courts of appeal. Examples, indicating the breadth of experience are:

1. Federal Energy Regulation Commission appeals (FERC appeals). The Federal Power Act (16 U.S.C. 825(L)) allows appeals to either the circuit for the District of Columbia or the circuit in which the owner resides or does business. Among significant appeals, I have participated in both circuits, are:

- (a) Rock Island (Confederated Tribes v. FERC, 734 F.2d 134 (9th Cir. 1983);
- (b) Lewis River-Merwin Dam (relicensing). Clark-Cowlitz JOA v. FERC. 826 F.2d 1074 (D.C. Cir. 1987). (Argued)
- (c) Ross Dam (Seattle Light)

2. Indian Treaty Fishing cases. United States v. Washington, 384 F. Supp. 319 (1974), is the "Boldt" case on Indian treaty fishing rights (which predates my tenure; I inherited the case one year later). Over 200 mini-trials ensued, involving implementation from one day to one week. Thirty-seven decisions (selected by the judge) are published seriatim, beginning 459 F. Supp. 1020 (1978). Dozens are separately reported. Approximately 30 appeals resulted from the first five years' implementation. One anecdotal illustration; four cases are found seriatim in 573 F.2d 1117, 1118, and 1121 (9th Cir. 1978). The latter was, itself, five separate proceedings. I argued this case and most of the others.

On November 2, 1993, I won an appeal granting private landowners party status in the Ninth Circuit (No. 93-35324) Phase III (shellfish and private beaches) case in time for the 1994 trial.

United States v. Oregon, 302 F. Supp. 899 (1969). (The Indian treaty fishing rights case on the Columbia River predated "Boldt." Washington only intervened in 1975). Here, too, there were dozens of hearings and trials (under a week). There are six separate reported appeals. Most important are: 657 F.2d 1009 (9th Cir. 1981) (our injunction against Yakima fishing, including on reservation, was upheld in face of tribal immunity argument) and 529 F.2d 570 (9th Cir. 1976) ("Boldt" 50 percent formula need not apply to Columbia). I briefed and argued both.

3. Confederated Tribes of Colville v. Washington, 649 F.2d 1274 (9th Cir. 1981). State has jurisdiction over non-Indians within boundaries of Indian reservation. (Argued)

4. Sandidge v. Washington, 813 F.2d 1025 (9th Cir. 1987). National Guard officer immune from civil rights suit by subordinate.

5. Herald v. Munro, 758 F.2d 350 (9th Cir. 1984) and 838 F.2d 380 (9th Cir. 1988). ABC, CBS, NBC, and the New York Times challenged the Washington Statute prohibiting "exit-polling" around election area. The statute was upheld--first decision, invalidated by second). (Argued both) My client did not authorize U.S. Supreme Court review, but see Burson v. Freeman, *supra*, p.1.

6. Williams v. Dolliver. (Our client, Justice Dolliver, was then Chief Justice of Washington's Supreme Court) 894 F.2d 321 (1988). Washington courts' practice of dividing military retirement pay in divorce proceedings upheld. (Argued)

7. Socialist Workers' v. Munro, 765 F.2d 1417 (9th Cir. 1985) challenged Washington's election restrictions on ballot access for minor parties. The unfavorable decision was reversed by the U.S. Supreme Court, supra, which upheld Washington's law. (Argued both)

8. Columbia Gorge United v. Yeutter, 960 F.2d 110 (9th Cir. 1992) upheld the constitutionality of the Gorge Act (briefing was cooperative; Oregon Attorney General Frohnmayer argued this case).

9. Broughton Lumber v. Columbia Gorge Comm'n, State of Washington, Ninth Circuit Court of Appeals No. 91-35183 (Sept. 15, 1992). State sovereign immunity was not waived by the Gorge Act; state may not be sued in federal court for actions of the Gorge Commission. (Argued)

D. Administrative Proceedings: FERC and EFSEC

Specialized practice before such agencies has included:

1. FERC (Federal Energy Regulation Commission) Hydroelectric dam cases. Trials of licensing, relicensing, jurisdiction, and sub-issues, including:
 - (a) Skagit River; "High" Ross Dam (Seattle City Light)
 - (b) Lewis River-Merwin Dam (Pacific Power & Light competing with Clark-Cowlitz JOA)
 - (c) Elwha River, Glines & Elwha projects (Crown-Zellerbach Corporation)
 - (d) Nisqually River -- proceedings involving each project
 - Yelm diversion (City of Centralia)
 - Alder Dam (City of Tacoma)
 - La Grande Dam (City of Tacoma)
 - (e) Columbia River -- all five mid-Columbia projects
 - Rock Island Dam
 - Rocky Reach Dam
 - Wanapum Dam
 - Priest Rapids Dam
 - Wells Dam
 - (f) White River -- (Puget Power & Light)
2. EFSEC (Washington State's Energy Facility Site Evaluation Council) provides and enforces licenses for major power facilities. I participated in trial proceedings involving:
 - (a) WPPSS II (Hanford Nuclear Plant)
 - (b) WPPSS 4 and 5 (Satsop Nuclear Plant)
 - (c) Northern Tier Pipeline
 - (d) Fish Kill supplemental proceedings in WPPSS II resulted in award of a hatchery facility

II. TEACHING CREDENTIALS AND PUBLICATIONS
(chronological listing with sponsoring organization)

A. CLE's (Continuing Legal Education courses taught to Bar members)

1. Indian Treaty Hunting and Fishing, Washington State Criminal Justice Training Commission, 1977.
2. Indian Fishing Rights, Governmental Lawyers Association, 1978.
3. Anadromous Fish Management and Protection, Environmental Law Review, Northwest School of Law, 1979.
 - (1) Federal Energy Regulatory Commission Practice, Fish and Wildlife Protection; and
 - (2) Indian Fishing Rights (two separate presentations), Lewis and Clark Law School, 1980.
4. Environmental Law, Current Trends in Natural Resource Law, Office of the Attorney General, 1981.
5. Attorneys' Fees Awards Under the Civil Rights Act, Office of the Attorney General, 1982.
6. Federal Trial Practice (new Rule 16), Office of the Attorney General, 1984.
7. Constitutional Law; "EXIT-POLLING" Debate, Washington Bar Association, "Today's Constitution and You" (Bicentennial Program), 1986.
8. Appellate Practice (Argument), Office of the Attorney General, 1987.
9. Columbia River Legal Issues: Fish, Water, Power and Competing Users (U.S. and international), Western Association of Attorneys General, 1991.

B. Publications

James M. Johnson, Indian and Aboriginal Hunting and Fishing Claims (including marine mammals), International Association of Fish and Wildlife Commissioners, Toronto, Canada, 1978 (published proceedings).

Kenneth O. Eikenberry, James M. Johnson, David M. Driesen, Enforcing Washington Judgments in Canadian Courts: Taking the Dams out of the Stream of Commerce; U. Puget Sound L. Rev. 491 (1990); Washington State Bar News 45 (1991); B.C. Sup. Ct. R. 54(2).

Conference of Western Attorneys General, (James M. Johnson, contributing author/editor) The American Indian Law Deskbook (U. Colorado press 1993).

SECRETARY
of STATE



Ralph Munro

Legislative Building
P O Box 40220
Olympia WA 98504 0220
(206) 753-7121

February 11, 1993

To Whom it May Concern:

I am pleased to write to you on behalf of Jim Johnson, a Senior Assistant Attorney for the Washington Attorney General's Office. Jim has been my attorney for many years while I have served as your Secretary of State. He is outstanding.

This office deals in a wide variety of matters, from Elections to Corporate Licensing and Archives. Jim has counseled both me, my staff, and the entire office in a multitude of legal matters in which we have been involved.

More often widely noted has been his representation as our chief litigator on many important cases, which I and the state have been involved in over the last decade. A number of cases have gone to the Washington State Supreme Court, and we have won them all. Several have gone through the federal court system and one all the way to the United States Supreme Court. Jim argued the case in U.S. Supreme Court, and we won.

Should you have any questions about Jim's capabilities, background or potential, please feel free to call on me directly. I feel he is an excellent attorney and has represented us extremely well.

Sincerely,

RALPH MUNRO
Secretary of State

RM:11



Ken Eikenberry

ATTORNEY GENERAL OF WASHINGTON

7th FLOOR, HIGHWAYS-LICENSES BUILDING • PO BOX 40100 • OLYMPIA, WASHINGTON 98504-0100

January 5, 1993

TO WHOM IT MAY CONCERN:

This is to introduce and heartily recommend Jim Johnson, one of the finest attorneys I have known (and I have known many). It reflects my confidence in Jim and his abilities that he has been Chief of the Special Litigation Division for the last ten years. He has tried and/or litigated on appeal many major cases of high profile and importance to the State's people. As his resume reflects, his experience of nearly one hundred appellate cases — up to and involving the United States Supreme Court — is unequalled anywhere in this state. The trial record is equally distinguished.

During this part of his career Jim has litigated with many top quality opponents, including all of the "major" firms in this state, as well as major New York and Washington, D.C. firms. With his leadership and expertise, Washington has won most of the litigation he has handled — and he has settled many other major cases on very favorable bases.

His reputation among professionals is indicated by the fact that his assistance has been requested on United States and Washington Supreme Court cases by prosecutors' offices in this state, Attorneys General of other states, and the United States Solicitor General.


Jim's reported cases read like a list of major state litigation over the last decade. From the litigation over Washington's Ninth Congressional Seat, to the "Boldt" fish cases, to important commercial litigation for the state, he has acquired extensive and diverse experience. Some major cases are not reported. In recent years the Deferred Compensation Board's million dollar case against RainierBank and Consortium Automated Library Services vs. Dataphase were litigated aggressively to favorable settlements. The latter resulted in replacement of a regional computer system as well as payments.

One of Jim's especially valuable talents is litigating economically — learned of necessity from litigating against far better funded opponents. Jim has both the ability to manage litigative resources, and advanced technological skills (computer research and discovery).

As you would expect, Jim has become a valuable resource for this office of over 400 attorneys because he is willing to advise and assist on problems for other attorneys. He has even found time to teach numerous CLE courses to improve professional levels in this office and publish a variety of topics.

To these extensive skills, he adds enthusiasm for his work. I have no doubt of my conclusion that Jim Johnson would be a great asset to your organization.

Sincerely,


KEN EIKENBERRY
Attorney General

BILL: SB 42

SHORT TITLE: ALASKA RR BUDGET AND LAND

BILL VERSION:

SPONSOR(S): RULES BY REQUEST OF LEGISLATIVE BUDGET AND AUDIT

CURRENT STATUS: (S) RLS

STATUS DATE: 5/02/97

HEARING: (S) RLS SEP 24 09:00 AM FAIRBANKS LIO

TELECONFERENCE

TITLE: "An Act relating to the fiscal operations of the Alaska Railroad Corporation and to land acquired by the State of Alaska under the Alaska Railroad Transfer Act of 1982 or otherwise acquired for railroad purposes; and providing for an effective date."

SB 42

Bill/Resolution Floor Action

Page 2 of 2

Current Status: (S) RLS

Jrn-Date	Jrn-Page	Action
1 01/13/97	25	(S) READ THE FIRST TIME - REFERRAL(S)
2 01/13/97	26	(S) TRA, STA, FIN
3 01/14/97	41	(S) RES REFERRAL ADDED
4 01/14/97	42	(S) TRA, STA, RES, FIN
5 02/21/97	447	(S) TRA RPT 1DP 2NR 1AM
6 02/21/97	447	(S) DP: WARD; NR: WILKEN, GREEN; AM: LINCOLN
7 02/21/97	447	(S) FISCAL NOTES (LAW, DNR-2)
8 04/01/97	914	(S) STA RPT CS 2DP 1NR NEW TITLE
9 04/01/97	914	(S) DP: GREEN, WARD; NR: DUNCAN
10 04/03/97	956	(S) ZERO FN TO CS (LAW)
11 04/11/97	1107	(S) RES REFERRAL WAIVED
12 05/02/97	1642	(S) FIN RPT CS 4DP 1NR NEW TITLE
13 05/02/97	1642	(S) DP: PEARCE, PHILLIPS, ADAMS, TORGERSON
14 05/02/97	1642	(S) NR: SHARP
15 05/02/97	1642	(S) ZERO FNS TO CS (DNR-2)
16 05/02/97	1642	(S) PREVIOUS ZERO FN APPLIES (LAW)
17 05/02/97	1642	(S) REFERRED TO RLS

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP	SUBJ	EXIT	MENU	TEXT	PRINT	BWD	FWD	CMT/JRNL	FIRST	LAST	QUIT

Alaska Railroad Corporation

Financial Audits

- The financial affairs of the Alaska Railroad Corporation are audited annually by a public accounting firm. The corporation typically receives a "clean" opinion on its financial statements.

Performance Audits

- Alaska statute also requires the corporation to have an annual performance audit conducted by a recognized railroad management expert. This audit is conducted presently by Mercer Management Consulting and is presented to the Board of Directors of the corporation annually.

Significant Special Audits

Ship Creek Redevelopment Follow-up, November 17, 1994

- This audit was conducted to follow up on the findings and conclusions we made in our original review (1992) of this project. Several of the issues we initially raised appeared to have been satisfactorily resolved. Our concern in this review was whether the development would be successful.
- The redevelopment project had yielded little construction to date. None of the four centerpiece projects envisioned had commitments in place.

Anchorage Gravel Activities, July 3, 1996

- The report addresses our concerns that the Alaska Railroad Corporation's (ARRC) agreement with the Flamingo Brothers Partnership to market and extract gravel from the corporation's Anchorage property may not have been in the best interest of the corporation.
- ARRC's public procurement process was not followed. In the corporation's opinion, the gravel agreement was the disposal of real property and therefore, not subject to its procurement rules. We believe it was a commodity sale that should have been subject to the provisions of those rules.
- ARRC's real estate leases are inappropriately offered on a "first come, first served" basis.
- ARRC's justification of the project was unclear.

- ARRC's lack of public process excluded the community.
- We recommended ARRC improve its monitoring of employee conflict of interest disclosure statements.

Chena Landings Development, August 20, 1996

- This audit reviewed ARRC's management of the development project related to utility procurement, leasing, and public amenities.
- The utility project was delayed by planning and design difficulties.
- Request for proposal criteria and evaluation procedures were inadequate.
- The corporation lacked documentation regarding project development planning.
- Leases are not competitively offered; ARRC inappropriately uses a "first come, first served" approach to leasing property.

Ongoing or Pending Audits

Alaska Railroad Corporation, Equipment Purchases/Disposals

Alaska Railroad Corporation, Real Estate Appraisal Methodology

Auditor Observations

The Alaska Railroad Corporation has been under the "legislative microscope" for the last few years. The Audit Division has conducted five audits of the corporation since 1992 and has one audit in progress and another pending. Of those seven audits, two deal with rail operations, and five involve the corporation's management of real estate.

During the interim, the Legislative Budget and Audit Committee also pursued a greater understanding of the corporation and its assets. We believe that it is important that the Legislature understand the operation of the corporation and be aware of issues that impact its operation. The Legislative Budget and Audit Committee appears to be the appropriate vehicle currently available to provide that oversight.

The Alaska Railroad Corporation finds itself in an unenviable position. On one hand, it is operating under a statutory mandate to generally manage the corporation on a self-sustaining basis. On the other hand, as a corporation wholly owned by the State, the corporation must be

held to certain standards of openness and public accountability. It is in this vein that we often find ourselves at odds with the corporation. We believe that as long as the corporation is owned by the public, public accountability must come first.

We also believe that the corporation can be run in an efficient manner and still uphold those public accountability standards. Management by corporate officers and policy direction by the board of directors should strive for the appropriate balance. In our opinion, we have seen recent signs of improvement in this effort by the board, primarily through our contact with the chairman. We are hopeful that the appointment of a new chief executive officer will further foster these goals.

Without going into great detail on issues we remain concerned about regarding the Alaska Railroad Corporation, we offer these summary observations and would be happy to discuss them further with any member or committee of the Legislature. They are in no particular order of significance.

- The corporation's budget is not subject to the Executive Budget Act. We see no reason why the corporation should be exempt or even whether constitutionally, it can be. Similarly, significant federal funds have been received by the corporation for capital rehabilitation and improvements without any legislative oversight.
- The corporation has shown a profit for the last two fiscal years (calendar year end). Total net income for 1996 (unaudited) and 1995 was \$8.0 million and \$7.9 million, respectively. The net income from operations represented \$4.0 million and \$4.1 million, respectively. Approximately half of the corporation's income is generated from management of its real estate. The majority of this real estate is considered non-rail use property.
- A much talked about concern is deferred maintenance, however, little is factually known about the extent or estimated cost of that maintenance. We believe that a serious discussion needs to take place. It is possible, or even likely, that without the federal funding authorized the last two years (\$10 million per year) the railroad's income statement would look significantly different. Neither the financial statements nor the notes to the financial statements reflect any estimate of the amount of deferred maintenance.
- An observation that is important to understanding the fragile nature of the corporation's financial health is its dependence on two major customers. As disclosed in the notes to the financial statements for 1995, these two customers accounted for 45% of the corporation's revenue. The corporation's existence is dependent on those two customers.
- Through a combination of statute and corporation rules, the salary of railroad employees is confidential and therefore can not be disclosed to the public. Statute provides that the corporation may by rule designate and withhold public disclosure of matters of a

privileged or proprietary nature. Statute goes on to describe matters as including personnel records. Corporation rules include salary as a personnel record.

- Alaska Statute 42.40.260(b) requires the annual report of the corporation to include an analysis of potential sale arrangements whereby the corporation may be transferred into private ownership. The corporation has not pursued sale discussions with potential or interested buyers. The corporation has gone so far as to notify interested parties that the Board of Directors is not interested in selling the railroad.
- Statute requires the corporation to have an annual performance audit conducted by a recognized railroad expert to assure that the railroad is being managed and operated effectively and efficiently. There are two reports generated from this review. A confidential report is produced for the use of railroad management. A public version of the report is issued that does not go into nearly as much detail. We recommend that the legislature annually request a confidential briefing on the detail version of the performance report.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM

February 7, 1997

SUBJECT: Alaska Railroad Corporation (HB 55)

TO: Representative Terry Martin
Attn: Christopher Knight

FROM: Tamara Brandt Cook
Director *TBC*

You has asked me whether the Alaska Railroad Corporation may constitutionally spend revenue it generates without an appropriation. The corporation is exempted from a number of laws under AS 42.40.920(b), including the Executive Budget Act. It is far from certain to me that an exemption from the Executive Budget Act necessarily means that money involved in the exemption may be spent without an appropriation. To the extent that the state constitution requires an appropriation before money is spent, that requirement controls.

The federal Alaska Railroad Transfer Act contains a provision dedicating revenue generated by the railroad to railroad purposes. I am not convinced that a dedication of revenue, however valid under Article IX, sec. 7, places that revenue outside of the appropriation requirement of Article IX, sec. 13. It is possible that a court could conclude that, while revenue may be used only for railroad purposes, before it is so used it must be appropriated. In short, the legislature may still have the right and constitutional obligation to review proposed railroad expenditures and determine whether money will be spent for a particular railroad purpose, rather than another railroad purpose, and in what amount. The Attorney General's office has likewise concluded that a good probability exists that revenue of the Alaska Railroad Corporation is subject to appropriation before expenditure. (Memorandum, 366-575-84, May 26, 1984, copy attached)

It has been argued that money of a public corporation (like the Alaska Railroad Corporation) with an existence independent from the state is not in the state treasury and, therefore, not subject to appropriation. The Attorney General has, however, concluded that money in one public corporation (AHFC) is subject to appropriation to the extent that it is unencumbered. (Informal Opinion, 366-463-85, April 24, 1985, copy attached) That opinion was cited by the Alaska Supreme Court with approval and the court has specifically recognized that money appropriated from AHFC must be counted as "available for appropriation" for purposes of applying Art. IX, sec. 17, relating to the budget reserve fund. (Hickel v. Cowper, 874 P.2d 922 (Alaska 1994) footnotes 11 and 23) This conclusion of the court necessarily

Representative Terry Martin

February 7, 1997

Page 2

presupposes that the legislature does, indeed, have the power to make appropriations from AHFC's unencumbered assets. If revenues of that public corporation are subject to appropriation, it would seem quite likely that the revenues of the Alaska Railroad Corporation would also be treated as subject to appropriation by the court.

TBC:pl

97-030.plm

Enclosures

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 24, 1985

Hon. Al Adams, Chairman
House Finance Committee
Alaska House of Representatives
Pouch V
Juneau, AK 99811

Re: Legislative power of appropriation over funds of public corporations
Our file: 366-463-85

Dear Representative Adams:

You have requested our advice whether the legislature's power of appropriation includes the power to appropriate money administered by the Alaska Housing Finance Corporation (AHFC). AHFC was created to administer a state enterprise consisting almost entirely of making housing loans or providing a secondary mortgage market for housing loans originated by private lending institutions. AHFC is a state agency with the power to incur indebtedness if repayment is secured by pledging revenue earned from AHFC enterprises. See Alaska Const. art. IX, § 11. The pledge is secured by dedicating money, including revenues earned from the loan enterprise, to special accounts established for the benefit of bondholders. You desire to know whether the legislature may appropriate directly from AHFC's Alaska housing finance revolving loan fund (AS 18.52.082) for a purpose unrelated to AHFC. In addition, you ask if the unobligated balance of an appropriation from the general fund to the revolving fund may be reappropriated for another purpose.

First, we believe there is little doubt that the legislature may reappropriate the unencumbered and unobligated balance of an existing appropriation. See Inf. Cp. Att'y Gen. (Sept. 26; 366-132-81). The legislature is merely reducing the authorization to spend money. The formal act of appropriating money does not invest a person or entity with the right to ultimately expend the money unless a valid, binding contract is made with that entity. It is very doubtful that a political subdivision of the state being entirely a creature of statute could claim a vested right to expend money under an appropriation absent the intervention of innocent third parties. Based on these principles, we

conclude that the unexpended and unobligated balance of an appropriation to the AHFC revolving fund may be appropriated for purposes unrelated to AHFC.

We next turn to the more difficult question of whether the balance of the AHFC revolving fund may be appropriated by the legislature for a purpose unrelated to AHFC. The AHFC revolving fund serves as a central pool of money consisting of the following:

- (1) appropriations from the legislature;
- (2) assets transferred there by AHFC; and
- (3) unrestricted repayments of principal on loans made or purchased by AHFC.

The assets of the revolving fund are transferred to separate funds when necessary to satisfy covenants made with bondholders. Amounts remaining in the fund do not secure specific bond issues of AHFC and remain unrestricted for use by AHFC "for the purposes of the corporation." Id.

The answer to your question turns on whether the revolving fund is within the state treasury or, failing that, if the fund is an asset of the state which may be appropriated by the legislature. Revolving funds administered by state agencies are generally included in the state treasury for financial reporting purposes. However, the AHFC revolving fund is not carried on the state's ledgers as an asset of the state treasury. Rather, the revolving fund is an asset of AHFC. In a recent appropriation Act, the legislature has specifically appropriated to the AHFC revolving fund interest earned on loans made or purchased by AHFC on deposit in the fund. See sec. 1, ch. 129, SLA 1984. This was done to remove any question that AHFC had improperly dedicated an unrestricted revenue source of the state for a special purpose in violation of the dedicated fund prohibition set out in section 7, article IX of the Alaska Constitution. This provides some evidence that the legislature considers unrestricted earnings of AHFC to be subject to appropriation. It is important to note that we have identified these earnings as "unrestricted." This means that the rights of innocent third parties to retain the fund balance as security for the payment of debt service on bonds have not intervened to restrict the ability of AHFC to spend them. We believe that the AHFC revolving fund is not in the state treasury. The effect of this conclusion is that AHFC may spend money in the fund without further appropriation. However, money earned from investments or assets of the

fund have customarily been considered a state asset which may be transferred and deposited into the general fund.

The question then becomes: if the AHFC revolving fund is not in the state treasury, but is an asset of a state agency, is the fund subject to appropriation? We believe that unrestricted money in the fund is probably available for appropriation. No specific authority was located to support this conclusion. We base our opinion on a belief that the legislative power of appropriation will be liberally construed by the courts. The appropriation power is often described as plenary. That is, the power to appropriate is limited only by express provisions set out in the Alaska Constitution. Judicial decisions reciting this principle are legion. See, e.g., San Francisco Labor Council v. Regents of University of California, 608 P.2d 277 (Cal. 1980); City of Sand Springs v. Department of Public Welfare, 608 P.2d 1139, 1148 (Okla. 1980). Absent a specific prohibition in the Alaska Constitution against appropriating assets of an executive branch agency held outside the state treasury, we believe that the legislature may do so. This opinion does not hold that the legislature must appropriate revenue of a public corporation before it can be spent, only that the legislature may exercise control over unrestricted assets of a public corporation. To deny this power would establish an entity capable of segregating unrestricted state revenue forever. At some point, this would do violence to the dedicated fund prohibition set out in article IX, section 7 of the Alaska Constitution.

We believe it is also our responsibility to inform you that there is a contrary view on this subject. The argument could be made on behalf of bondholders that AHFC has undertaken certain obligations to bondholders which are binding on AHFC and the legislature. AHFC bonds are issued as general obligations of the corporation. Typically, AHFC covenants in its indenture that it will "defend, preserve and protect the pledge of the program obligations, pledged revenues, and other assets." Bondholders could attack any direct appropriation of the AHFC revolving fund as a violation of the covenant to preserve assets. We believe this covenant will not restrict legislative appropriations of unrestricted assets of AHFC which are unnecessary to secure the repayment of debt service on bonds. See Opinion of the Justices, 313 N.E.2d 282 (Mass 1977); Opinion of the Justices, 136 N.E.2d 223 (Mass 1956). This means that the directors of AHFC must be certain that an appropriation of corporation assets will not jeopardize its ability to pay debt service on outstanding bonds.

To prepare for and meet any challenge to the appropriation of AHFC assets, we recommend that the legislature not only

appropriate the asset but also amend the enabling Act of AHFC to assure bondholders that an impairment of their security will not occur. Under this approach, a valid transfer of assets requires not only an appropriation from the AHFC revolving fund but also an amendment to AS 18.56.020 which provides authority for AHFC to transfer unrestricted surplus to the general fund. */ Authorization by general law for the transfer of assets of public corporations has been used in the past. In 1980, the legislature transferred the assets of the Alaska State Development Corporation (AS 44.59.010), the Small Business Development Corporation (AS 44.60.020), and the Alaska Toll Bridge Authority (AS 44.57.010) to the Alaska Industrial Development Authority. Sec. 42, ch. 106, SLA 1980. The transfer was made not in an appropriations bill, but in a bill proposing the enactment of general law. It is curious to note that no corresponding appropriation was made. This approach is consistent with another familiar adage of public finance law that appropriation bills may not be used to amend substantive law. Legislative Budget & Audit Committee v. Hammond, No. 1JU-80-1163 CIV (Alaska Super., May 25, 1983). It could be argued that AS 18.56.020 implies that the assets of AHFC will be transferred to the state treasury only upon termination. Because an appropriation cannot amend existing law, a transfer from the fund before dissolution of AHFC would be subject to question.

While we believe that a direct appropriation of surplus AHFC assets is legally defensible, to avoid any question as to the validity of a transfer appropriation, we recommend that the legislature

- (1) enact an amendment to AS 18.56.020 authorizing interim transfers of unrestricted surplus assets of AHFC to the general fund;
- (2) provide that the board of directors shall annually determine the amount of surplus available for transfer; and

*/ AS 18.56.020 provides:

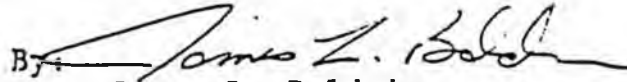
ALASKA HOUSING FINANCE CORPORATION. The Alaska Housing Finance Corporation is a public corporation and government instrumentality within the Department of Revenue, but having a legal existence independent of and separate from the state. The corporation may not be terminated as long as it has bonds, notes or other obligations outstanding. Upon termination of the corporation, its rights and property pass to the state.

(3) appropriate the assets from the fund to the general fund in accordance with the transfer authorization.

We hope this memorandum has answered your questions.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
James L. Baldwin
Assistant Attorney General

JLB/pjg

MEMORANDUM

State of Alaska

TO: Honorable Al Adams, Chairman
House Finance Committee
Alaska State Legislature

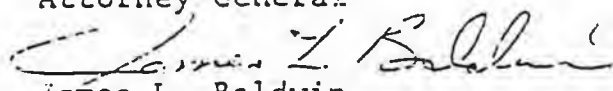
DATE: May 26, 1984

FILE NO: 366-575-84

TELEPHONE NO: 465-3600

FROM: Norman C. Gersuch
Attorney General

SUBJECT: Appropriation of
Alaska Railroad
revenue


By: James L. Baldwin
Assistant Attorney General

Luann Cutler, on your behalf, has requested our opinion whether revenues of the Alaska Railroad must be appropriated before expenditure. Under the provisions of the Alaska Railroad Transfer Act (45 U.S.C. § 1207 -- 45 U.S.C. § 1214), "revenues generated by the state-owned railroad shall be retained and managed by the state-owned railroad for railroad and related purposes." 45 U.S.C. § 1207(a)(5).

This constitutes a dedication of revenue mandated by federal law. Even if a revenue source is dedicated for a specific purpose, amounts may not be expended by an agency within the executive branch from that revenue source unless appropriated by law. Alaska Const. art. IX, §§ 12, 13; see also, Kelley v. Hammond, C.A. No. 77-4, 1st Jud. Dist. (Alaska 1977). The important distinction of a validly dedicated revenue source is that money may not be expended for a purpose other than the Alaska Railroad, not necessarily that the money may be expended without appropriation.

We acknowledge that if the railroad's function is assigned to a public corporation which is established as a political subdivision of the state, an argument can be made that railroad revenue is not a part of the state treasury, much the same as the revenues collected by municipal corporations. If this view is adopted in Alaska, railroad revenues could be expended without appropriations. To date, this view has been repudiated at the superior court level. Kelley v. Hammond, C.A. No. 77-4, 1st Jud. Dist. (Alaska 1977).

We hope this opinion answers your question.

JLB/mg