

**ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672**

**9725 SENATE RULES**

## CHRISTINE J. "CHRISTY" PENNINGTON



1971 - 1991

Christine J. "Christy" Pennington, was born in Kodiak, Alaska, in 1971 and had been a Firefighter/EMT with the Ester Volunteer Fire Department since January, 1990. Christy was attending classes at the University of Alaska - Fairbanks and had a three month old son.

On March 15, 1991, Christine Pennington, a Firefighter & Emergency Medical Technician for Ester Volunteer Fire Department, responded from her home to a medical emergency call, along with her three month old baby, Jonathan. While rushing to save a life, she lost hers and that of her infant son when she lost control of her Ford Bronco and slammed into an on-coming pickup . The infant died instantly and Christine who was pinned in the crushed car, died later at Fairbanks Memorial Hospital.

Christine was survived by her parents, Henry and Janet Pennington of Kodiak, her sister, Linda Pennington and her fiancé, Johnnie Patterson. Christine was described by her friends and co-workers as cheerful, energetic, loving and helpful person. Christy loved the outdoors and horses. She competed in rodeos from age 9 to 19.

Christy died while doing the most meaningful thing she found in life.

circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state. (§ 1 ch 67 SLA 1983)

NOTES TO DECISIONS

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

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

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

- (1) "action" includes any matter or proceeding in a court, civil or criminal;
- (2) "daytime" means the period between sunrise and sunset;
- (3) "month" means a calendar month unless otherwise expressed;
- (4) "municipality" means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality;
- (5) "nighttime" means the period between sunset and sunrise;
- (6) "oath" includes affirmation or declaration;
- (7) "peace officer" means
  - (A) an officer of the state troopers;
  - (B) a member of the police force of a municipality;
  - (C) a village public safety officer;
  - (D) a United States marshal or deputy marshal; and
  - (E) an officer whose duty it is to enforce and preserve the public peace;
- (8) "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person;
- (9) "personal property" includes money, goods, chattels, things in action, and evidences of debt;
- (10) "property" includes real and personal property;
- (11) "real property" is coextensive with land, tenements, and hereditaments;
- (12) "signature" or "subscription" includes the mark of a person who cannot write, with the name of that person written near the mark by a witness who writes the witness's own name near the name of the person who cannot write; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names to the sworn statement;
- (13) "state" means the State of Alaska unless applied to the different parts of the United States and in the latter case it includes the District of Columbia and the territories;
- (14) "writing" includes printing. (§ 4 ch 62 SLA 1962; am § 2 ch 66 SLA 1965; am § 10 ch 117 SLA 1968; am § 19 ch 74 SLA 1985; am § 1 ch 60 SLA 1990)

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

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

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

**Opinions of attorney general.** — The statutory framework of the Alaska Statutes viewed as a whole contemplates that for any publicly employed law enforcement officer to be considered a peace officer within the meaning of present paragraph (7), he or she must be empowered with a full range of police duties and authority and must be currently function-

ing on essentially a full-time basis in that role. September 18, 1977, Op. Att'y Gen.

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

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

Comparing the classification of "peace officer" in present paragraph (7) with that of "police officer," it is apparent that police officers, as defined in AS

18.65.290(2), are always peace officers performing full police duties that are not limited to that basis. However, the converse is not necessarily the case; that is, peace officers do not automatically vest one with the authority of a peace officer since peace officers are not members of a police department and are not given all the power to enforce all the laws of the state. September 18, 1977, Op. Att'y Gen.

Because AS 11.55.020 (no longer in effect) only "peace officers" from a municipality are prohibited against carrying concealed weapons, including state employees performing enforcement duties, unless a statute provides a meaning of present paragraph (7), the prohibition against concealed weapons. December 18, 1985, Op. Att'y Gen.

**Retirement plan interest.** — The court did not err in holding that the interest in a retirement plan did not attach to debtor's interest in a pension plan, as such interest is "property" within the meaning of "person" in the United States, 152 Bankr. 61 (9th Cir. 1993).

**State as "person".** — The court necessarily exclude political subdivisions of "person". Accordingly, a village is properly considered a "person" under the rule of judicial discretion. AS 22.20.020. *Mustafoski v. State*, 982 P.2d 1000 (Alaska Ct. App. 1994).

**Sec. 01.10.065. Certificates required by the laws of the state.** (§ 1 ch 66 SLA 1965)

Section

- 70. Time statutes become law
- 80. Computation of time

**Collateral references.** — Statutes, §§ 342-373. 82 C.J.S., Statutes, §§ 399

**Sec. 01.10.070. Time when laws of the state become effective.** If the legislature becomes effective on the day after expiration of the term of the Alaska Constitution, the legislature, by concurrence with the next legislature, another effective date.

(b) The actual effective date of a law becomes effective by starting with the day after the day the law is vetoed or the day the law is overridden or the day the law is enacted by art. II, § 17 of the Alaska Constitution becoming effective at 1:

**HB**

**343**

# Alaska State Legislature

*Interim:*  
145 Main St. Lp., 223  
Kenai, Alaska 99611  
907/283-7095  
907/283-3075 fx  
907/262-7574 hm



*Session:*  
State Capitol  
Juneau, AK 99801  
907/465-2693  
fx 907/465-3835  
800/463-2693

## Representative Gary Davis

### SPONSOR STATEMENT

#### SCS CS HB 343(TRA)

#### **"An Act excluding certain motor vehicles from the definition of commercial motor vehicle"**

There is apparent confusion among law enforcement officials as to under what circumstances an individual is required to possess a commercial driver's license (CDL). Some Alaska statutes and regulations reference federal requirements, which exempt the need for a CDL in cases of moving construction equipment from one site to another—this is considered by them to be an incidental move. However other Alaska statutes require drivers of any equipment weighing over 26,000 pounds "used upon a land highway or vehicular way" to possess a commercial driver's licenses.

This legislation amends the definition of "commercial motor vehicle" in AS 28.40.100(a)(2) by expanding the exceptions to include "special mobile equipment"--construction vehicles--that are driven on roads in order to relocate the vehicle to a job site. This exception occurs only when the equipment is on a highway **in order to relocate to a job site**. In addition, existing permitting requirements for oversize or overweight vehicles remain in effect, which include pilot vehicles, radio communications, etc. This legislation also has no effect on the statutes concerning commercial motor vehicle financial responsibility or commercial motor vehicle safety inspections.

Including this exception clears up the confusion. The intent of the legislation is to allow individuals to move their construction equipment from one site to another without being required to have a commercial driver's license. If an individual is involved in work on the road, a commercial driver's license is still required.

SCSHB343/SS/2/4/98

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

Representative\_Gary\_Davis@legis.state.ak.us

# Alaska State Legislature

*Interim:*  
145 Main St. Lp., 223  
Kenai, Alaska 99611  
907/283-7095  
907/283-3075 fx  
907/262-7574 hm



*Session:*  
State Capitol  
Juneau, AK 99801  
907/465-2693  
fx 907/465-3835  
800/463-2693

*Representative Gary Davis*

## SECTIONAL ANALYSIS

### SCS CS HB 343 (TRA)

#### **“An Act excluding certain motor vehicles from the definition of commercial motor vehicle”**

Section 1: Amends AS 28.40.100(a)(2) by expanding the exceptions listed under subsection (D) to include special mobile equipment that is driven on roads in order to relocate the vehicle to a job site from the definition of a commercial motor vehicle.

Title 13 of the Alaska Administrative Code, Chapter 10, Section 010 defines special mobile equipment as follows:

#### 13 AAC 10.010. Definitions

In Chapters 02, 04, 06, and 08 of this title, and in AS 28, unless otherwise provided . . .

(52) "special mobile equipment" means a vehicle which is not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to ditch digging apparatus, well boring apparatus, construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earthmoving carryalls and scrapers, power shovels and drag lines, and self-propelled cranes and earthmoving equipment; it does not include house trailers, mobile homes, off-highway vehicles, dump trucks, truck-mounted transit mixers, cranes, or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached; . . .

*Representing House District 8*

CSHB343(SA) 1/28/98  
*Wrangell, Funny River, Hope, Moose Pass, Seward, Sterling, Soldotna*

Representative\_Gary\_Davis@legis.state.ak.us

**HB**

**347**

## House Bill 347

Existing law does not exempt flat-rate mechanics from overtime pay requirements. Employers currently prohibit their flat-rate mechanics from working overtime because of complications in existing regulations. House Bill 347 spells out the conditions and minimum allowable rates for flat-rate mechanics. It requires that these conditions and minimums must be agreed upon in writing by the employee and that overtime must be paid at the standard rate based on the agreed upon compensation. Finally, the bill requires that an employee's compensation, for overtime purposes, be computed on a weekly basis.

IT IS THE INTENT OF THIS AMENDMENT TO THE ALASKA WAGE AND HOUR ACT TO SIMPLIFY THE COMPUTATION OF THE REGULAR RATE OF PAY FOR FLAT RATE MECHANICS. WHEN A FLAT RATE MECHANIC IS PAID AN AMOUNT EQUAL TO OR IN EXCESS OF HIS/HER STRAIGHT TIME HOURS (UP TO 8 HOURS IN A WORKDAY OR 40 HOURS IN A WORKWEEK) AT THE FLAT HOURLY RATE DEFINED IN SUBSECTION (B) OF THE BILL, AND IS PAID FOR ALL HOURS WORKED IN EXCESS OF 8 HOURS IN A WORKDAY OR 40 HOURS IN A WORKWEEK, WHICHEVER IS GREATER, AT 1.5 TIMES SUCH FLAT HOURLY RATE THE MECHANIC IS EXEMPT FROM THE OVERTIME REQUIREMENTS OF THE ALASKA WAGE AND HOUR ACT. THIS IS TRUE WHETHER THE FLAT HOURLY RATE EARNINGS (BILLABLE HOURS TIMES THE MECHANICS FLAT HOURLY RATE) ARE LESS THAN OR GREATER THAN THE MECHANICS COMPENSATION COMPUTED IN ACCORDANCE WITH SUBSECTIONS (C) AND (D). IF THE FLAT RATE MECHANICS BILLABLE HOURS TIMES HIS/HER FLAT HOURLY RATE ARE GREATER THAN THE AMOUNT COMPUTED UNDER SUBSECTIONS (C) AND (D) THEN THE BILLABLE HOURS AMOUNT SHALL BE PAID AS THE EMPLOYEES GROSS PAY FOR THE WORKWEEK AND NO OVERTIME PREMIUM, DAILY OR WEEKLY IS DUE. TWO EXAMPLES FOLLOW USING A FLAT HOURLY RATE OF \$20.00.

#### EXAMPLE ONE

THE MECHANIC WORKS 9 CLOCK HOURS AND BILLS 9 HOURS EACH DAY MONDAY THROUGH FRIDAY. THE MINIMUM AMOUNT DUE THE MECHANIC PER 23.10.060 (d) (17) (C) AND (D) IS 40 STRAIGHT TIME HOURS (FIVE 8 HOUR DAYS) AT \$15.00 [75% OF \$20.00 IS \$15.00 OR TWICE THE ALASKA MINIMUM WAGE OF \$5.65 (\$11.30), SO THAT \$15.00 IS USED] OR A TOTAL OF \$600.00 REGULAR TIME PLUS FIVE HOURS IN EXCESS OF 8 HOURS IN A DAY OR 40 IN A WEEK, FIGURED ON A WEEKLY BASIS, AT 1.5 TIMES \$15.00 OR \$22.50 FOR OVERTIME PAY OF \$112.50 WHICH YIELDS \$712.50. THE MECHANICS FLAT RATE PAY IS \$900.00 (45 BILLABLE HOURS TIMES \$20.00) SO THAT THE EMPLOYEE IS PAID \$900, BECAUSE THIS AMOUNT EXCEEDS THE MINIMUM COMPENSATION DUE UNDER THE (d)(17) EXEMPTION NO ADDITIONAL OVERTIME PREMIUM IS DUE.

#### EXAMPLE TWO

THE MECHANIC WORKS 9 CLOCK HOURS AND BILLS 8 HOURS ON MONDAY AND TUESDAY AND WORKS 8 CLOCK HOURS AND BILLS 4 HOURS ON WEDNESDAY THROUGH FRIDAY. THE MINIMUM AMOUNT DUE THE MECHANIC UNDER THE (d)(17) EXEMPTION IS 40 STRAIGHT TIME HOURS (FIVE 8 HOUR DAYS) TIMES \$15.00 [75% OF \$20.00 IS \$15.00 AND 2 TIMES ALASKA MINIMUM WAGE IS \$11.30 SO THAT \$15.00 IS USED] OR \$600.00 OF STRAIGHT TIME HOURS PLUS 2 HOURS IN EXCESS OF 8 HOURS IN A DAY OR 40 IN A WEEK FIGURED ON A WEEKLY BASIS TIMES \$22.50 (1.5 TIMES \$15.00) OR \$45.00 WHICH YIELDS \$645.00. THE MECHANICS FLAT RATE OF PAY IS 28 (8+8+4+4+4) BILLABLE HOURS TIMES \$20.00 OR \$560.00.

THEREFORE THE EMPLOYEE IS PAID \$645.00 OF WHICH \$45.00 WAS PAY FOR THE 2 OVERTIME HOURS WHICH INCLUDES HALF-TIME OVERTIME PREMIUM OF \$15.00

*Example #1*

FLATRATE	\$20.00	REG HOURS	OT/ HOURS	BILLED HOURS
MONDAY		8	1	9
TUESDAY		8	1	9
WEDNESDAY		8	1	9
THURSDAY		8	1	9
FRIDAY		8	1	9
SATURDAY			0	0
<b>TOTAL HOURS</b>		<b>40</b>	<b>5</b>	<b>45</b>
<b>TOTAL \$ DUE</b>		<b>\$600.00</b>	<b>\$112.50</b>	<b>\$900.00</b>
<b>ACTUAL \$ VS BILLED \$</b>		<b>\$712.50</b>	<b>\$900.00</b>	

*Example #2*

FLATRATE	\$20.00	REG HOURS	OT/ HOURS	BILLED HOURS
MONDAY		8	1	8
TUESDAY		8	1	8
WEDNESDAY		8	0	4
THURSDAY		8	0	4
FRIDAY		8	0	4
SATURDAY			0	0
<b>TOTAL HOURS</b>		<b>40</b>	<b>2</b>	<b>28</b>
<b>TOTAL \$ DUE</b>		<b>\$600.00</b>	<b>\$45.00</b>	<b>\$560.00</b>
<b>ACTUAL \$ VS BILLED \$</b>		<b>\$645.00</b>	<b>\$560.00</b>	

# FISCAL NOTE

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO.** HB 347

Revision Date (Note if correction): \_\_\_\_\_  
 Title: Overtime Wage Exemption  
for Mechanics  
 Sponsor: Representative Cowdery  
 Requestor: House Labor & Commerce

Department Affected: Labor  
 BRU: Labor Standards & Safety  
 Component: \_\_\_\_\_  
Wage & Hour Administration  
**COMPONENT SERIAL NO.** 345

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>						
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<b>CHANGE IN REVENUE FUND SOURCE #</b>						
--------------------------------------------	--	--	--	--	--	--

**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

**ANALYSIS:** (Attach a separate page if necessary)

This bill provides a new exemption from overtime in the Wage and Hour Act for auto mechanics employed on a flat rate of pay based upon a standardized industry manual. Such mechanics would not be entitled to overtime pay even though they may work more than eight hours in a single day or 40 straight time hours per week. This legislation will have no fiscal impact on Wage and Hour Administration.

Prepared by: Alan W. Dwyer, Director *AWD for* Phone: 465-4855  
 Division: Labor Standards & Safety Date: 2/12/98  
 Approved by Commissioner: Tom Cashen, Commissioner *Tom Cashen*  
 Agency: Department of Labor Date: 2/12/98

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**HB**

**353**

# Alaska State Legislature

REPRESENTATIVE  
PETER KELLY

Mailing Address:

119 N. Cushman, Suite 203  
Fairbanks, Alaska 99701  
(907) 456-8161

While In Juneau  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-2327

House District 31

## House Of Representatives

### Sponsor Statement HB 353

#### Medical regulations by reference

This bill will allow the department of Health and Social Services to efficiently adopt the latest version of specific national standards and numeric billing codes. The adoption is fast, if the code is previously adopted by regulation and specifically described in this bill.

This bill saves time and paper. It allows individuals within the medical industry to use the latest version of a numeric code. It seeks to reduce the time lag between versions of complex medical codes and standard references.

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAL ASSISTANCE

P.O. BOX 110660  
JUNEAU, ALASKA 99811-0660  
PHONE: (907) 465-3355  
FAX: (907) 465-2204

January 22, 1998

The Honorable Pete Kelly  
House of Representatives  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Kelly:

You have asked me to briefly explain the substance of the adoption by reference Legislation that you intend to introduce on behalf of the Department of Health and Social Services.

This bill, if enacted, would allow the department to adopt within its regulations standards set out in state law or regulation, or the specific national standards itemized in subsection (a)(2), without adopting a new regulation every time that these standards are changed. The procedure for notifying the public of adoption of a changed standard would be a notice published in the Alaska Administrative Journal.

The Department of Law, under current law and legal interpretation of the reference standard made through court decisions, require agencies to adopt by reference any material with a specific citation and date. Any time these materials are changed, the state agency must adopt a new regulation adopting the citation change; as the regulation adoption process is so lengthy, it is impossible for a state agency to remain current with standards adopted by reference.

The Medicaid Program is particularly hard hit by the adoption by reference requirement, as we operate like an insurance company and there is an expectation by health care providers that they can do business with us in the same manner as Blue Cross, Aetna or any other insurance company. The health care industry has adopted numerous standardized codes related to billing for services to assure that all providers and payers are "speaking" the same language. All of these standards are updated annually to keep pace with medical practice standards. If the Medicaid Program cannot consistently use current standards, providers will simply cease doing business with us and it will create an access problem for the 90,000 people who depend on Medicaid for health care coverage.

The standards listed in this bill are mostly related to Medicaid; I am attaching a list of the standards with a brief explanation of their use for your reference. None of these standards should be controversial.

The Honorable Pete Kelly  
January 22, 1998  
Page 2

Thank you for your assistance with this important Legislation, and please contact me at any time if you need additional information.

Sincerely,



Nancy Wehler,  
Medical Assistance Administrator

*International Classification of Diseases, Clinical Modifications - ICD* - this book establishes a numerical code for each clinical diagnosis/disease. These codes are required on all medical claim forms.

*Common Procedure Coding System* - This system of numerical codes is maintained by the Health Care Financing Administration, and are uniformly used by all insurers. The coding system includes CPT codes and HCFA created codes for special procedures not included in other coding systems.

*Specifications for National Uniform Billing Data Elements* - Commonly known as revenue codes, this numerical coding system describes the services rendered in hospitals. These codes are required on all medical claim forms for hospital services.

*Federal Poverty Guidelines* - These guidelines are published annually, adjusted by the consumer price index, and are used to determine program eligibility. Many DHSS programs refer to the federal poverty level in their grants, as grantees are required to have a sliding fee schedule based on income.

*Indian Health Service Encounter Rates* - these rates are negotiated annually by the Health Care Financing Administration, Office of Management and Budget, and the Indian Health Service to be used as reimbursement for IHS and tribal health facilities by the Medicaid Program.

*Current Procedural Terminology for Physicians - CPT* - these numerical codes describe each treatment rendered by physicians and other providers. The CPT codes are required on all insurance claim forms and are updated January 1st of every year.

*Diagnostic and Statistical Manual of Mental Disorders - DSM* - Similar to the ICD, this manual contains a system of numerical codes that describes mental disorders for use on claim forms.

*Length of Stay in Hospitals by Diagnosis and Operation for the Western Region of the US - LOS* - These two manuals describe the average length of inpatient hospital admission in the western US. Some percentage of this standard is ordinarily used by an insurer as the limit on length of stay they will reimburse, although LOS can usually be extended if there are complications.

*Relative Value Guide* - This book creates standards for the administration and billing of anesthesia procedures.

*Consumer Price Index - CPI* - Used by the federal government and the state to annually update a number of standards for needs based programs.

*Health Plan Employer Data and Information Set - HEDIS* - These standards are commonly used to evaluate how well providers and plans meet managed care standards of practice.

*Practice Standards* - practice standards adopted by many national organizations are routinely used in managed care as the purchaser's expectations for patient outcomes that are evaluated with HEDIS.

*Compendium of Animal Rabies Control* - This publication serves as the basis for animal rabies control programs throughout the United States and facilitates standardization of procedures among jurisdictions. Immunization procedure recommendations are contained in Part 1; all animal rabies vaccines licensed by the United States Department of Agriculture (USDA) and marketed in the US are listed in Part 2; Part 3 details the principles of rabies control.

*Control of Communicable Diseases Manual* - This manual furnishes public health administrators with a source of reliable information for preparing regulations and legal requirements for the control and management of communicable diseases and for developing programs for the health education of the public.

*Standards Manual and Interpretive Guidelines for Behavioral Health, Employment and Community Support Services and for Medical Rehabilitation* - The Divisions of Mental Health and Developmental Disabilities and Alcoholism and Drug Abuse uses these standards for accreditation of psychiatric or substance abuse rehabilitation programs that are grantees of the state.

*Accreditation Manual for Mental Health, Chemical Dependency, and Other Health Care Facilities* - This manual is used by the Divisions of Mental Health and Developmental Disabilities and Alcoholism and Drug Abuse for accreditation of general psychiatric or substance abuse treatment programs that are grantees of the department.

*Standards for Accreditation of Managed Care Organizations, Standards for Accreditation of Managed Behavioral Health Organizations, and Standards for Certification of Credentials Verification Organizations* - These accreditation standards will be used by the department for the certification of managed care organizations under contract.

*Consumer Assessment of Health Plans* - This consumer assessment of managed care is a tool created by the federal government for use with government health care programs required to complete such annual assessments.

*Resources for the Optimal Care of the Injured Patient* - This national evaluation tool establishes comprehensive guidelines for the care of the injured patient, including standards for different levels of trauma centers. The State of Alaska uses compliance with the standards in the document as one of the qualifications for certification as a trauma center (7 AAC 26.010 - 7 AAC 26.999).

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. HB 353

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: Adoption by reference BRU: Administrative Services  
 Component: Commissioner's Office  
 Sponsor: Kelly COMPONENT SERIAL NO. 317  
 Requestor: HESS See also (SN#): \_\_\_\_\_

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY98) cost: \$0.0

**ANALYSIS:** (Attach a separate page if necessary)

This bill amends AS 47.05, general authority for the Department of Health and Social Services, to allow the adoption by reference of federal and state laws and regulations and those specific items listed in the bill in their most current form. The current adoption by reference standard employed by the Department of Law requires a regulation change every time the reference material is changed. Most of the items listed in this bill are used for purposes of billing the Medicaid Program for services rendered, and are annually updated. Delays in the regulation process prevent the department's regulations from remaining current with standards as they are changed, so adoption of this legislation will reduce the administrative work related to regulations for more efficient operations.

1128198  
Prepared by: Nancy Weller  
 Division: Medical Assistance

Phone: 465-3355  
 Date: 01/27/98

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

Date: 1/28/98

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**HB**

**369**

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

P.O. BOX 110601  
JUNEAU, ALASKA 99811-0601  
PHONE: (907) 465-3030  
FAX: (907) 465-3068

May 10, 1998

Honorable Tim Kelly, Chairman  
Senate Rules Committee  
State Capitol Room 101  
Juneau, AK 99801-1182

Dear Senator Kelly,

The Department of Health and Social Services respectfully requests that Committee Substitute for House Bill 369 (FIN) Amended "An Act relating to Medicaid coverage for certain eligible children and pregnant women; relating to primary care case management and managed care services as optional services under the Medicaid program; relating to premiums and cost-sharing contributions under the Medicaid program; and providing for an effective date" be scheduled in the Senate Rules Committee for placement on the Senate calendar.

This bill was introduced by the House Rules Committee at the request of the Governor. You have been provided four new fiscal notes dated May 7, 1998 to reflect the amended version of the bill.

This bill will expand the availability of health coverage for eligible children and pregnant women in accordance with the recently passed federal child health care initiative.

Your favorable consideration of this request will be most appreciated.

Sincerely,



Elmer A. Lindstrom  
Special Assistant to the Commissioner

cc: Bob Labbe, Director, Medical Assistance  
Pat Pourchot, Office of the Governor

## Medicaid Expansion Legislation

**CSHB 369 (FIN)am – An act relating to Medicaid coverage for certain eligible children and pregnant women; managed care as optional Medicaid services; cost sharing.**

### Medicaid Expansion for Children

- ❑ HB 369 will provide Medicaid coverage for thousands of uninsured Alaska children in families with income at or below 200% of the Federal Poverty Level (\$33,340 annual income for a family of three; \$16.03 hourly wage).
- ❑ Covering these children under Medicaid is a bargain at \$504 in per child, per year.
- ❑ Alaska's Medicaid expansion would be covered mostly with federal funds. Through the recently expanded Children's Health Insurance Program (CHIP), the federal government will cover about 72 percent of the cost for non-Native children. The federal Medicaid match is 100 percent for services provided at Indian Health Service facilities. Next year, for instance, the federal government would pay about \$6.7 million of the expansion's \$8.8 million cost.
- ❑ Unless we have a plan in place this year, Alaska stands to lose \$5.6 million in federal CHIP funds that have already accrued to the state.
- ❑ Medicaid services for children are comprehensive, focusing on prevention and screening aimed at early detection of health problems. Comparable private insurance costs more.
- ❑ Children will be granted extended eligibility, which will improve access to services and reduce paperwork.
- ❑ Children without health insurance are six times more likely to go without needed medical care and five times more likely to use the emergency room as a regular source of medical care.
- ❑ Health coverage helps families become more self-sufficient, and will support families in transition from welfare to work.

## HB 369 – Medicaid Expansion

- ❑ Discussions with the Robert Wood Johnson Foundation and health insurance industry officials indicate that there is very little chance of substitution of Medicaid for private insurance for families at or below 200% of the Federal Poverty Level (\$33,340 for a family of three; \$16.03 hourly rate).

### Medicaid Expansion for Pregnant Women

HB 369 would also expand Medicaid coverage to approximately 800 pregnant women in Alaska.

- ❑ Alaska's Medicaid coverage of pregnant women is at the federally mandated level of 133% of the Federal Poverty Level – the lowest level allowed under federal law.
- ❑ Thirty-five states – including Mississippi – have expanded pregnant woman Medicaid coverage above the federally mandated level.
- ❑ Medicaid coverage for pregnant women will assure that children receive a healthy start through early prenatal care as well as detection and treatment of conditions that might harm the child.
- ❑ Medicaid coverage for pregnant women would last through pregnancy and two months postpartum. It also assures automatic eligibility for the child through his or her first birthday.
- ❑ Many of the costs associated with poor pregnancy outcomes are preventable.
- ❑ There is a direct correlation between the lack of prenatal care and low birthweight babies.
- ❑ Babies born too small require increased medical attention and have significantly higher mortality rates.
- ❑ Discussions with the Robert Wood Johnson Foundation and health insurance industry officials indicate that there is very little chance of substitution of Medicaid for private insurance for families at or below 200% of the Federal Poverty Level (\$33,340 for a family of three; \$16.03 hourly rate).

## HB 369 – Medicaid Expansion

- ❑ Pregnant women cannot easily access private insurance since this is considered a pre-existing condition under most policies. Therefore, this expansion of Medicaid would not compete with private insurers.
- ❑ Some House members said they were concerned the provision covering pregnant women would lead to more state-funded abortions for low-income women under the General Relief Medical program. Before passing HB 369, the House added the following intent language: “It is the intent of the legislature that funds expended for expansion of coverage for pregnant women under this Act will not be used for funding abortions except as required under the Hyde amendment.”

### Other Provisions of CSHB 369(FIN):

#### **Section 4 – Primary Care Case Management (PCCM)**

- ❑ This section of the bill would allow the state to take advantage of managed care as a state option.
- ❑ In 1996, the Legislature adopted HB 393, requiring the department to develop a managed care system for Medicaid clients, and authorizing application for a managed care waiver.
- ❑ The Balanced Budget Act of 1997, authorized states to do primary care case management and contracts with managed care entities as a state option instead of applying for a waiver, as most states have already successfully implemented managed care.
- ❑ Under PCCM, Medicaid clients choose a primary care provider as their “medical home and receive all basic health services from that provider. The client receives better coordinated care and there are potential cost savings through prevention, early detection of health problems and reduced emergency room use.
- ❑ Waivers are administratively complex and gaining federal approval takes a lot of time.

**Sections 5-6 - Cost Sharing**

- ❑ These sections would allow the department to establish cost-sharing requirements for those children with incomes above 150% of the Federal Poverty Level.
  
- ❑ Current federal rules do not allow cost sharing for children at this time, but these sections would allow the state to implement cost sharing if federal rules are changed.

TONY KNOWLES, GOVERNOR

**DEPT. OF HEALTH AND SOCIAL SERVICES**

OFFICE OF THE COMMISSIONER

P.O. BOX 110601  
JUNEAU, ALASKA 99811-0601  
PHONE: (907) 455-3030  
FAX: (907) 465-3068

May 7, 1998

Honorable Con Bunde  
House of Representatives  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Bunde:

I want to take this opportunity to thank you for your support for restoring Medicaid coverage for pregnant women in House Bill 369. I would also like to briefly comment on the legislative intent attached to the bill.

I believe the intent correctly states the provisions of federal law relating to funding for abortions under the Medicaid program, i.e., the procedure can ONLY be paid for with Medicaid funds under the very limited circumstances provided for under the federal Hyde amendment.

I want to assure you that the Department of Health and Social Services will fully comply with the federal law and the legislative intent.

Again, thank you for your support for this important legislation.

Sincerely,



Karen Perdue  
Commissioner

May 6, 1998

3571

## HB 369

Absent: James, Therriault

And so, CSHB 369(FIN) am passed the House.

Representative Porter moved the effective date clause.

The question being: "Shall the effective date clause be adopted?" The roll was taken with the following result:

CSHB 369(FIN) am  
Third Reading  
Effective Date

YEAS: 30 NAYS: 6 EXCUSED: 2 ABSENT: 2

Yeas: Austerman, Berkowitz, Brice, Bunde, Cowdery, Croft, Davies, Davis, Elton, Foster, Green, Grussendorf, Hanley, Hodgins, Hudson, Ivan, Joule, Kelly, Kemplen, Kott, Kubina, Martin, Masek, Moses, Mulder, Nicholia, Phillips, Porter, Rokeberg, Williams

Nays: Dyson, Kohring, Ogan, Ryan, Sanders, Vezey

Excused: Barnes, Kookesh

Absent: James, Therriault

And so, the effective date clause was adopted.

Representative Porter moved and asked unanimous consent that the following Letter of Intent for CSHB 369(FIN) am be adopted:

"It is the intent of the legislature that funds expended for expansion of coverage for pregnant women under this Act will not be used for funding abortions except as required under the Hyde amendment."

The question being: "Shall the Letter of Intent for CSHB 369(FIN) am be adopted?" The roll was taken with the following result:

May 6, 1998

3572

## HB 369

CSHB 369(FIN) am  
Third Reading  
Letter of Intent

YEAS: 36 NAYS: 0 EXCUSED: 2 ABSENT: 2

Yeas: Austerman, Berkowitz, Brice, Bunde, Cowdery, Croft, Davies, Davis, Dyson, Elton, Foster, Green, Grussendorf, Hanley, Hodgins, Hudson, Ivan, Joule, Kelly, Kemplen, Kohring, Kott, Kubina, Martin, Masek, Moses, Mulder, Nicholia, Ogan, Phillips, Porter, Rokeberg, Ryan, Sanders, Vezey, Williams

Excused: Barnes, Kookesh

Absent: James, Therriault

And so, the House Letter of Intent was adopted.

Representative Mulder gave notice of reconsideration of his vote on CSHB 369(FIN) am.

## HB 375

The following was read the second time:

## HOUSE BILL NO. 375

"An Act relating to children in need of aid matters and proceedings; relating to murder of children, criminally negligent homicide, kidnapping, criminal nonsupport, the crime of indecent exposure, and the crime of endangering the welfare of a child; relating to registration of certain sex offenders; relating to sentencing for certain crimes involving child victims; relating to the state medical examiner and reviews of child fatalities; relating to teacher certification and convictions of crimes involving child victims; relating to access, confidentiality, and release of certain information concerning the care of children, child abuse and neglect, and child fatalities; authorizing the Department of Health and Social Services to enter into an interstate compact concerning adoption and medical assistance for certain children with special needs; authorizing the establishment of a multidisciplinary child protection team to review reports of child abuse or neglect;

8325 Security Boulevard  
Baltimore, MD 21207

December 28, 1993

RECEIVED  
DEC 16 1993  
OFFICE OF THE DIRECTOR

*Dear State Medicaid Director:*

*The purpose of this letter is to notify you about a recent Congressionally enacted revision to the "Hyde Amendment" which affects the Medicaid program and to tell you how this revision in the law is to be implemented.*

*Effective October 1, 1993, as part of P.L. 103-112, the Health and Human Services Appropriation bill, Congress passed a revision of the Hyde Amendment pertaining to Federal funding of abortions under the Medicaid program. As enacted, the provision states:*

*None of the funds appropriated under this Act shall be expended for any abortion except when it is made known to the Federal entity or official to which funds are appropriated under this Act that such procedure is necessary to save the life of the mother or that the pregnancy is the result of an act of rape or incest.*

*Thus, Federal funding (FFP) is now available for abortions performed to save the life of the mother or to terminate pregnancies resulting from rape or incest when the claim for such an abortion is paid by the State on or after October 1, 1993. Please note that it is the date that the State pays the claim and not the date of the service which determines the availability of FFP.*

*In order to implement this provision of the law, we are requesting that beginning with the first Quarterly Expenditure Report (HCFA-64) for fiscal year (FY) 1994 in January, States submit to the Health Care Financing Administration (HCFA) regional office (RO) a form certifying the number of abortions for which FFP is being claimed. The form should outline the number of abortions performed to save the life of the mother, the number performed for a pregnancy resulting from an act of rape, and the number performed for a pregnancy resulting from an act of incest. This certification should be submitted to the RO on a quarterly basis with the completed HCFA-64.*

*Current regulations at 42 CFR 441.203 and 441.206 require that before FFP can be made available, the State must obtain a signed physician's certification that, based on the professional judgment of the physician, the abortion was necessary because "the life of the mother would be endangered if the fetus were carried to term." Because the language of the current Hyde Amendment differs somewhat from its predecessors, the State must change the wording of the physician's certification to comport with the current statutory language. With regard to this portion of the Hyde Amendment, the new legislative language, "to save the life of the mother", has essentially the same meaning as the previous legislation.*

*As with all other mandatory medical services for which Federal funding is available, States are required to cover abortions that are medically necessary. By definition, abortions that are necessary to save the life of the mother are medically necessary. In addition, Congress this year added abortions for pregnancies resulting from rape and incest to the category of medically necessary abortions for which funding is provided. Based on the language of this year's Hyde Amendment and on the history of Congressional debate about the circumstances of victims of rape and incest, we believe that this change in the text of the Hyde Amendment signifies Congressional intent that abortions of pregnancies resulting from rape or incest are medically necessary in light of both medical and psychological health factors. Therefore, abortions resulting from rape or incest should be considered to fall within the scope of services that are medically necessary.*

*The definition of rape and incest should be determined in accordance with each State's own law. States may impose reasonable reporting or documentation requirements on recipients or providers, as may be necessary to assure themselves that an abortion was for the purpose of terminating a pregnancy caused by an act of rape or incest. States may not impose reporting or documentation requirements that deny or impede coverage for abortions where pregnancies result from rape or incest. To insure that reporting requirements do not prevent or impede coverage for covered abortions, any such reporting requirement must be waived and the procedure considered to be reimbursable if the treating physician certifies that in his or her professional opinion, the patient was unable, for physical or psychological reasons, to comply with the requirement.*

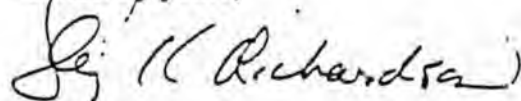
*States which have State Plan language more restrictive than that provided for under the revised Hyde Amendment may qualify for Federal funding for the first quarter of FY 94 if they submit approvable State Plan language changes by December 31, 1993.*

*By March 31, 1994, all States must ensure that their State Plans do not contain language that precludes FFP for abortions that are performed to save the life of the mother or to terminate pregnancies resulting from rape or incest.*

*As you know, it is necessary for States to adhere to all conditions for Federal Medicaid funding. As part of its ongoing State assessment and audit programs, HCFA may include reviews of abortion claims, if necessary, to assure compliance with these conditions.*

*Please call my office if you have any questions about this matter.*

*Sincerely yours,*



*Sally K. Richardson  
Director  
Medicaid Bureau*

*cc: All Regional Administrators*

## CHILD HEALTH INSURANCE PROGRAM (CHIP)

- **WHO IS ELIGIBLE:** children under age 19, ineligible for Medicaid, not covered by health insurance, whose family income does not exceed 200% of the federal poverty level, not an inmate in a public institution, or dependent of a family member with benefits from public agency employment. Children with a pre-existing condition cannot be excluded; Alaskan Native children must be included. Any child applicant eligible for Medicaid must be enrolled in Medicaid.
- **BENEFITS:** State option: provide health insurance, expand Medicaid, or a combination of both.
- *Health Insurance* coverage must be equivalent to one of the following plans: the standard Blue Cross PPO plan for federal employees, the state employee plan, or an HMO plan; or a different benefit package that includes basic services that has an aggregate actuarial equivalent to one of the latter specified plans.
- *Medicaid Coverage* includes: the state has income and asset rules no more restrictive than those in place on June 1, 1997, a state can choose to expand coverage immediately for children born after October 1, 1983, and a state can allow 12 month continuous eligibility of children.
- **FUNDING:** \$24 billion has been appropriated for 5 years of the program; Alaska's allotment for Federal Fiscal Year 1998 is \$5,664,899. Enhanced Federal Medical Assistance Percentage (FMAP) expenditures can be used for health insurance, outreach activities, and administration. The FMAP for Alaska is 71.86%.
- Funds will remain available for three years as long as a state has an approved CHIP state plan in place; the Secretary will give unspent funds to other states who have spent their allotment. A plan must be approved by September 30, 1998 in order to retain the FFY 98 allotment; states are to submit plans by June 1, 1998 in order to allow sufficient time for approval.
- Administration of the plan is limited to 10% of expenditures, and include outreach, data collection, performance measurement and the required annual assessment.
- **CHIP STATE PLAN:** include a description of children with health coverage, state efforts to provide health coverage, how the plan will coordinate with efforts to increase coverage of children with health insurance, methods of delivery, utilization control, eligibility criteria, outreach activities, and methods of assuring appropriate care and access.
- **COST SHARING:** for families below 150% of the FPL, enrollment fee, premium or similar charge must be related to income, and deductible and cost sharing cannot exceed a "nominal" amount. For families with higher income, cost sharing can be imposed on a sliding scale fee but may not exceed 5% of the family's annual income. If child health services are provided through Medicaid, cost sharing is not allowed because of Medicaid rules.

## WHY MEDICAID

Leverage more federal funds because Alaska Native children served by IHS are reimbursed at 100% federal. Of the 6,000 children to cover, about 1,100 are Native.

Medicaid Benefit package is a good one for children because it includes well child services and immunizations. Comparable private insurance package costs more.

Medicaid administrative structure in place. Can use existing payment system, and network of Medicaid providers.

**CHILD HEALTH CARE PROGRAM:**  
***Why Choose Medicaid***  
***Instead of Private Health Insurance Plans ?***

**Under the State Child Health Insurance Program (SCHIP) federal law, states have the option to use their allotment to cover uninsured children through Medicaid, a health insurance purchase program, or a combination of both.**

- If a state chooses the Medicaid option, Medicaid rules apply and a state must offer the Medicaid benefit package. If a state chooses to purchase health insurance it must offer a benefit package actuarially-equivalent to either the state's employee health plan, the federal employee health plan, or the largest HMO in the state<sup>1</sup>.

For any state, the best option is dependent on many factors and the decision should be based on the following criteria:

- minimizing state general fund cost;
- maximizing the number of children covered;
- the cost of administrating the program; and
- the benefit package most appropriate for children.

**COST/NUMBER OF CHILDREN COVERED**

**Using Alaska's SCHIP allotment to extend Medicaid coverage will stretch the State's general funds further and cover many more children.**

- Between 25 and 40 percent of the SCHIP eligible children will be Alaskan Native and by law must be included in any SCHIP plan. Under a Medicaid expansion for SCHIP, services provided to Alaskan Native children by IHS or tribal providers will be paid with 100 percent federal funds *outside of the state's SCHIP allotment*. Under an insurance purchase plan, costs for Alaskan Native children will come out of the state allotment at a 72 percent federal match. A Medicaid SCHIP expansion takes advantage of the special funding for Alaskan Natives.
- Based on preliminary information fathered by the Division of Medical Assistance<sup>2</sup>, comparable private health plans appear more costly than the average cost for a Medicaid child. The Division compared the per-child cost for a Medicaid expansion, estimated at \$1,908, to what the Medicaid benefit package would cost in the current private market. These preliminary estimates suggest that the comparable (Medicaid) package in the current private market would cost at least \$400 more per year per child.
- The Governor's Smart Start proposal to invest \$4 million in general funds will cover 6,000 uninsured children and 800 pregnant women. Under a separate insurance program, only an estimated 3,300 to 4,000 children (and no pregnant women) could be covered with that general fund investment.

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<sup>1</sup>The HMO option is not currently applicable in Alaska since there are no HMOs licensed to sell health plans.

<sup>2</sup> The Division of Medical Assistance continues to seek information from insurers on private insurance options but to date, has not received any information suggesting that less costly options exist in Alaska's private insurance market.

## **The Cost and Ease of Administering the Program**

**Extending Medicaid, as compared to creating a child health insurance program, minimizes new administrative and cost management.**

- Implementation of a new child health insurance program would require duplication of many administrative components which already exist in the Medicaid Program. A further consideration is that start-up costs cannot be funded with SCHIP funds as administrative costs are limited to 10 percent of *actual* expenditures on children.
- As a condition of receipt of federal funds, each child who applies for SCHIP must be screened by the state for Medicaid eligibility. Therefore, eligibility determination in a child health insurance program is still linked to the Medicaid Program.
- Most health care providers are already enrolled and familiar with the Medicaid program.
- Extending Medicaid to additional children can be readily implemented<sup>3</sup>.

## **An appropriate Benefit Package for Children**

- Medicaid provides an appropriate benefit package for children including preventive services such as well-child exams and immunizations which are not covered by most insurance plans.
- The preventive health services offered under Medicaid make this approach a better fit in addressing issues like Alaska's declining child immunization levels.
- The benefit package for either Medicaid or an insurance purchase option is stipulated in federal law, therefore, reducing services in the benefit package as an approach to lowering premiums is largely precluded.

## **CONCLUSION**

**Given the data available to the Alaska Department of Health and Social Services at this time, expanding Medicaid to uninsured low-income children represents the best financial and least burdensome approach to providing health coverage. The department is continuing to seek additional information by meeting with private insurers and health care providers and securing the analysis and consultation of national experts.**

**Summary**  
**Meeting Between Knowles Administration Representatives**  
**and Health Insurers**  
**Regarding the Children's Health Insurance Program**

**February 13, 1998**  
**Anchorage**

**State/HCFPA Participants:** *Commissioner Karen Perdue, Jeff Bush, Alison Elgee, Bob Labbe, Marianne Burke, Nancy Cornwell.*

**Industry Participants:** *Mike Wiggins, NYLCare; Jeffrey Davis, Blue Cross/Blue Shield of Alaska, Cleo O'Rourke, (Great West) One Health Plan of Washington, Inc.; Patrick Carmody, Mutual of Omaha.*

**State Children's Health Insurance Program (S-CHIP): Legal Guidelines and Requirements.** *Elizabeth Trias, CHIP Coordinator, Region 10, Health Care Financing Administration explained the federal requirements and options available to the State of Alaska. Bob Labbe, Director, Alaska Division of Medical Assistance briefly reviewed the State's cost under a Medicaid CHIP program.*

**Trends in Employer-Financed Health Coverage.** *Nancy Cornwell, Alaska Division of Medical Assistance, briefly reviewed some national data which show a significant decline in employer-financed dependent coverage, particularly for low-income workers. Each of the insurers present explained their companies have experienced a significant decline in the financial contributions made by employers for dependent coverage.*

**General Conclusions.** *The following general conclusions were made related to the families expected to be covered under the Governor's Smart Start (Medicaid) coverage expansion.*

*These families are poor or very low income. They live on tight budgets, and health care coverage is not their highest priority unless they have a child with high health care needs, for example, a chronically ill or disabled child. It is reasonable to assume that given the demands on their budgets for food, housing, clothing, child care, and other basic needs, that their ability to pay their portion of a health premium in an employer-supported benefit program is very limited (assuming their employer makes a plan available to them at all). With the understanding that most employers are increasingly requiring their employees to contribute a portion of their premium and other cost-sharing, particularly for dependents, it is reasonable to assume that these poor and low-income employees are MOST likely to participate in an employer-sponsored program for*

*their dependents when they a child with have high health care needs. In contrast, parents with healthy children are less likely to make the budget sacrifices on an ongoing basis if their child has no few health care needs.*

*If these poor and low-income families do not have access to an employer-sponsored benefit plan, and they are purchasing an individual plan for their child in Alaska's insurance market, they have a limited number of insurers to choose from. By far the largest, Blue Cross of Washington and Alaska, offers their Traditional Program (under 30, non-smoker) for the annual premium (\$1,560) and (\$200) deductible cost to a family for the for one child is \$1,760. Again, given the tight budgets that these families exist on, it is reasonable to assume that most families at these income levels do not purchase individual policies for their children unless they are high health care needs.*

*Families at these income levels often have few assets so they are less concerned than higher income families about losing their assets as a result of a catastrophic health problem and the accompanying medical bills.*

*For families in these income levels, a parent may decide to take a particular job solely because the employer covers most or all of the cost for dependent coverage. If the employee's motivation is access to employer-financed dependent coverage, it should be anticipated that the parent's decision to stay with the employer will be driven by their child's health care problems and that they are prepared to wait through the pre-existing exclusion period in order to get their child's health care bills covered.*

*For the reasons stated above, the insurers who attended this meeting agreed that the poor and low-income Alaskan children who are expected to be eligible under the Governor's coverage expansion are not attractive as potential subscribers.*

*Future Meeting. Marianne Burke, Director, Division of Insurance, reminded the group that these insurers would be in Alaska in late summer for unrelated meetings and that would be a good opportunity to reconvene the participants of this meeting.*

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAL ASSISTANCE

P.O. BOX 110660  
JUNEAU, ALASKA 99811-0660  
PHONE: (907) 465-3355  
FAX: (907) 465-2204

#### MEMORANDUM

DATE: February 23, 1998

TO: Karen Perdue, Commissioner  
Department of Health and Social Services

FROM: *BL* Bob Labbe, Director  
Division of Medical Assistance

SUBJECT: Crowd-out

Attached is a memorandum from Deborah Chollet of the Alpha Center in which she provides an assessment of issues related to "crowd-out." She defines crowd-out as the "reduction in private effort to purchase private health insurance because of eligibility for public program coverage." I've summarized the key points:

- Only a few studies of crowd-out have been done and the results are inclusive.
- Estimates of crowd-out are greater when the program enrolls higher income adults than when it enrolls only children.
- Few people who would qualify for public insurance have access to affordable private coverage.
- States that have already expanded public coverage to low and middle income children (below 200%FPL) have not found crowd-out to be a problem. They believe:
  - Lower income workers typically have either steady but low wage jobs, or are periodically unemployed due to lay off or seasonal work; and that
  - These workers generally do not have ongoing access to employer based coverage.
- To prevent crowd-out some states have limited eligibility for public health insurance to those who don't have insurance.

#### *Conclusion*

Ms. Chollet's assessment supports our conclusion that crowd-out will not be a significant issue when we expand Medicaid coverage as the Governor has proposed in Smart Start.

Attachment



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MEMORANDUM

TO: Bob Labbe, Director  
Division of Medical Assistance  
Department of Health and Social Services, State of Alaska

FROM: Deborah Chollet, Ph.D.  
Vice President

SUBJECT: Issue of crowd-out

DATE: February 10, 1998

RECEIVED  
98 FEB 13 AM 11 50  
DIV. OF MEDICAL ASSISTANCE  
OFFICE OF THE DIRECTOR

---

This memorandum responds to your request for a summary of the issue of crowd-out in public insurance programs. It addresses four aspects of the issue:

- What is crowd-out?
- How big is the problem of crowd-out?
- State program features to deter crowd-out; and
- State programs to buy employer-based coverage as one way potentially to mitigate crowd-out.

As you are aware, in states that are considering extending public health insurance eligibility to children and adults with income above poverty, concern about the potential for crowd-out has grown. Most recently, this concern underlies the federal requirement that states explicitly propose how children's health insurance programs will deter crowd-out in order to qualify for federal funds under Title XXI.

*What is crowd-out?*

Crowd-out is defined as a reduction in private effort to purchase private health insurance because of eligibility for public program coverage. In theory, crowd-out can result from any of four types of reduced effort:



Memorandum to Bob Labbe

February 10, 1998

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- (1) individuals may stop buying nongroup (individual) health insurance for themselves or their dependents, when it is available and affordable to them;
- (2) individuals may stop making required contributions to employer-sponsored insurance for themselves or their dependents, when group insurance is available and affordable to them;
- (3) employers may increase the level of employee contributions that they require, presuming that lower-wage employees have access to public coverage or subsidies; or
- (4) employers may terminate the group health insurance plan altogether or some employees' eligibility for the group plan, presuming both that lower-wage employees have access to public coverage and that higher-wage employees can buy individual private health insurance.

Most states' concerns about crowd-out focus on the potential for workers or their employers to substitute public coverage for employer-group coverage (issues 2 through 4, above). In general, policy makers are less concerned about the possibility that individuals would substitute public coverage for individual insurance because few people who would qualify for public insurance would find individual insurance affordable. In some states, as public program eligibility begins to reach middle-income families without group coverage, concern about public programs crowding out individual insurance purchase may grow.

*How big is the problem of crowd-out?*

The research literature measuring the magnitude of crowd-out is thin and offers conflicting estimates of how great crowd-out might be when more people are made eligible for public insurance programs. Estimates of crowd-out range from quite large (in one study, researchers estimated that as many as 50 percent of new Medicaid enrollees would otherwise have been privately insured) to zero. In considering the usefulness of this literature to public policy makers, two aspects are of particular importance:

- (1) The differences among estimates appear (in part) to be driven by the population subgroup being studied. Estimates of crowd-out are greater when



Memorandum to Bob Labbe

February 10, 1998

Page 3

the program enrolls adults at higher income levels than when it enrolls only children or families with lower levels of income.

- (2) The reliability of the estimates is unknown. None of the available estimates is based on actual observation of employer or individual behavior. Instead, all of the research to date compares population groups that are broadly similar (for example, women with similar annual income, age, employment and education levels) over time. None of these studies control for whether workers who enroll in public insurance programs have access to affordable employer-sponsored insurance.

Because these studies are inconclusive, public policy makers must base their decisions about whether a specific proposal would cause crowd-out on an appraisal of whether private health insurance is available, affordable and stable for most people who would become eligible for public coverage. No research to date is adequate to inform public policy makers about whether or how employers might adjust group health benefits in response to wider eligibility for public programs.

*State program measures to deter crowd-out*

In a recent monograph prepared for the Robert Wood Johnson Foundation's *State Initiatives in Health Care Reform Program* (attached), we reviewed sixteen states' public insurance programs, including:

- public programs for children,
- public programs that enroll adults and children, and
- Medicaid programs that have expanded eligibility under Section 1115 waivers.

In states that had expanded public health insurance not just to people in poverty but also to people with incomes as high as 200 percent of poverty or more, officials had differing views about the relative importance of crowd-out as an issue for the programs. In states that had developed programs only for low- or middle-income children or that had extended program eligibility to only the near-poor population (under 185 percent of poverty), officials were unconcerned about crowd-out. In these states, officials presume



Memorandum to Bob Labbe

February 10, 1998

Page 4

that people with such low income have few or no options for finding group insurance. In families with such low income, workers typically are either (1) steadily employed, but at very low wages; or (2) periodically unemployed due to lay-offs or seasonal work opportunities. In either case, few of these workers are likely to have ongoing access to employer-based coverage.

Insurance programs that target populations up to 400 percent of poverty generally devote more attention to crowd-out than programs that cap eligibility at 200 percent of poverty or less, especially when they enroll adults as well as children. In states with programs that enroll low-income adults or that extend eligibility to middle-income populations, the potential for crowd-out is believed to be greater, and these programs are designed with various features to deter crowd-out. These features are of two major types:

- (1) *Measures designed primarily to address other program issues but which also discourage crowd-out.* These include:
  - program limits on enrollee assets and age, as well as income;
  - requiring enrollees to pay premiums; and
  - limited program benefits (for example, no coverage for hospitalizations).

These measures typically are imposed to address public funding constraints, not because the program is particularly concerned about crowd-out. However, they deter crowd-out *de facto* by targeting public programs to families and individuals who are less likely to have private insurance options.

- (2) *Measures designed explicitly to address crowd-out.* These include:
  - requirements that applicants be uninsured or underinsured;
  - requirements that applicants be without insurance for some minimum spell; and
  - requirements that applicants have no access to employer-based insurance.



Memorandum to Bob Labbe

February 10, 1998

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Restrictions intended explicitly to deter crowd-out may seem necessary from the viewpoint of protecting the resources of public programs, but they can cause serious problems of equity and efficiency. Waiting periods, in particular, cause problems of equity because not all uninsured families with the same financial resources qualify for public coverage (some must wait), and because families that have made an effort to find and buy insurance must wait longer for public coverage than families that never tried. Problems of efficiency arise because families are forced to weather gaps in coverage to qualify for the public program. Gaps in coverage are a problem that the program ideally would solve, not require.

In addition, for all programs that require minimum spells without coverage or ineligibility for private coverage, enforcement is a problem. Verifying applicants' declarations that they are uninsured or underinsured is time-consuming and costly. Among the states that we reviewed, state-only children's programs were especially reluctant to invest resources to verify applicant declarations. Most state-only programs that include adults had found that verifying all applicant declarations was too costly to implement or to continue. In general, Medicaid expansion programs were the most likely to attempt to verify minimum spells without access to employer-based coverage. However, even these programs more often rely on partial and/or random audits to enforce restrictions than on systematic verification of applicant declarations.

With respect to their proposed Title XXI programs, two states -- California and Colorado -- have adjusted their use of waiting periods in an effort to minimize the equity and efficiency problems that they entail:

- California proposed a 3-month waiting period for any child who had been covered by an employer-sponsored plan. Children who had been covered in the nongroup (individual) market are not subject to the waiting period, nor are children of parents who lose coverage involuntarily (through job loss or termination of the group plan).
- Colorado also proposed a 3-month waiting period for children who were covered by an employer-sponsored plan, but (as in Minnesota's MinnesotaCare program) only if the employer pays at least 50 percent of the premium for dependents. As in California, the waiting period does not apply if prior coverage was nongroup, or if the parent loses coverage involuntarily.



Memorandum to Bob Labbe

February 10, 1998

Page 6

Like research studies that attempt to measure crowd-out from available national data, studies that have attempted to evaluate the effectiveness of restrictions to reduce crowd-out are compromised by the quality of available information. However, evaluation studies conducted in a number of states with varying programs and restrictions on eligibility all have indicated that the potential crowd-out caused by the programs is small. Most program officials and policymakers also believe that their programs reach target populations with reasonable efficiency and that crowd-out is not a serious problem.

#### *State programs to buy employer-based coverage*

We identified two states (New York and Oregon) that have programs to assist employees in purchasing employer coverage when it is available. In principle, such programs would discourage crowd-out by maximizing available employer-based coverage. However, crowd-out still can occur if employers respond to available public contributions for coverage over time by reducing employer payments for coverage (substituting public funding for employer funding). In addition, a premium subsidy program may have trouble constraining its budget if the program becomes liable for any level of premium cost that the employer does not pay.

New York's program, an older pilot program to insure adults, is exclusively an employer-premium subsidy program for workers who (1) have access to employer coverage; and (2) have family income less than 200 percent of poverty. The program limited its total cost by closing new enrollment, and at this time, no new enrollment is contemplated. Because the program was experimental and ultimately enrolled very few workers, it is unlikely that crowd-out was ever a significant problem.

Oregon's new Family Health Insurance Assistance Program (FHIAP) is designed to enroll workers and dependents who (1) have income less than 200 percent of poverty; and (2) are without insurance for 12 months. The program screens applicants for available employer coverage. FHIAP will pay the applicant's employee contribution to enroll in the employer plan if it costs less than the average cost of FHIAP coverage. FHIAP is a new program, and at this writing, has processed few if any applicants pending the design of Oregon's Title XXI program for children. FHIAP's restrictions on income for eligibility and its 12-month waiting period both suggest that crowd-out will not be a significant problem. However, FHIAP's design suggests equity problems (families that succeed in finding or buying health insurance cannot qualify as soon as families that never try). In addition, over time, FHIAP may pay employee premiums for fewer and fewer applicants if FHIAP is able to control its costs more successfully than employers do.



ALPHA CENTER

Memorandum to Bob Labbe  
February 10, 1998  
Page 7

I hope that this information is useful to you. Please do not hesitate to call on me or on other Alpha Center staff if we might be of further assistance to you in considering this issue.

Attachment: *Deterring Crowd-out in Public Insurance Programs: State Policies and Experience* (Alpha Center, October 1997).

cc: Nancy Barrand, Robert Wood Johnson Foundation, *State Initiatives in Health Care Reform* Program  
W. David Helms, Ph.D.  
Anne Gauthier

**HB**

**373**

# Alaska State Legislature



Official Business  
Fax: (907) 465-3472

State Capitol  
Juneau, AK 99801-1182  
(907) 465-3720  
(907) 465-2689

Speaker of the House of Representatives

Rep. Gail Phillips

## Sponsor Statement

February 19, 1998

### House Bill 373

### "An Act relating to forests and forestry practices."

A cooperative agreement between timber, fishing and environmental stakeholders has resulted in proposed changes to the Forest Practices Act (FPA) that will strengthen the stream and water quality protections currently found in state law.

In an effort to continually reappraise the FPA's effectiveness, a committee comprised of timber, fishing and state agency representatives evaluated scientific findings over a two-year period. In January, the Board of Forestry endorsed the findings at its January 1998 meeting. The Board subsequently requested legislative approval of the proposed protective measures.

Under current regulations, all anadromous\* streams are protected, but exceptions are allowed for marginal streams. The new law will eliminate that exception, while adding additional stream protections.

The changes affect only the "coastal forest of spruce or hemlock" in the Department of Natural Resources' Region I (coastal area covering roughly Ketchikan to Kodiak). The proposed language accomplishes several goals:

- assigns a "type" designation to all streams, putting to rest concerns that some segments of anadromous streams were not classified
- extends the no-harvest riparian\*\* buffer zone to ALL anadromous fish streams, relative to "type"
- requires the retention of low-value timber along certain tributaries where prudent, so that the large woody debris (LWD) may eventually fall into streams, forming natural pools downstream, which are important for the rearing of juvenile fish.

I am pleased to sponsor this legislation which represents solid teamwork between various members of timber, fishing, environmental groups and state agencies. The resulting legislation is a big step toward protecting our valuable fish resources, while the collaborative process all the stakeholders went through to define the changes has paved the way for future cooperation.

---

\*anadromous – bodies of water in which salmon travel upstream to spawn

\*\*riparian – located on a river or stream bank, as in riparian vegetation

State of Alaska  
Office of the Governor

**Tony Knowles**  
Governor  
P.O. Box 110001  
Juneau, Alaska 99811-0001  
**NEWS RELEASE**



**Bob King**  
Press Secretary  
**Claire Richardson**  
Deputy Press Secretary  
907-465-3500  
FAX: 907-465-3533

FOR IMMEDIATE RELEASE: January 30, 1998

98-023

**STAKEHOLDER INVOLVEMENT CRAFTS**  
**FOREST PRACTICES ACT REVISION**

Calling it a model of stakeholder involvement, Gov. Tony Knowles hailed the work that crafted proposed amendments to the Forest Practices Act. The changes affecting logging practices on private land in Alaska strengthen fish habitat and water quality protections, and were the result of a stakeholder process initiated by Knowles in 1995.

"By bringing together Alaskans from all sides, we have crafted a bill which increases fish habitat and water quality protections and is workable for the timber industry," Knowles said. "The Forestry Board and the Science and Technical Committee have produced a solid bill that could only come about by bringing all stakeholders to the table."

Knowles created the Science and Technical Committee to work on amendments to the Forest Practices Act after concerns regarding the act were raised by the Alaska Department of Fish and Game. The committee included state agency officials, timber industry representatives and the fishing industry. The nine-member Board of Forestry, which includes representatives of the forest, mining, commercial fishing, and recreation industries, reviewed the work.

The proposal, and the process that created it, won praise from the industry. "The Alaska Forest Association (AFA) congratulates you on the very positive outcome of the process you initiated two years ago to deal with issues surrounding the state's Forest Resources and Practices Act," Jack Phelps, executive director of the AFA, said in a letter to Knowles. "The Science/Technical Committee you established encouraged industry and agency cooperation. The result was a science-based review which enabled us to cooperatively identify areas for improvement in a very sensitive section of Alaska law. The AFA thanks you for your leadership in this very important activity."

Legislation to amend the act to require buffers on ALL anadromous fish streams and strengthen protections along their tributaries was introduced in the state House and Senate this week with bipartisan support. Knowles thanked Senate President Mike Miller and House Speaker Gail Phillips for their support and pledged to work with them as the bill moves to passage.

"The principles on which I base resource decisions are sound science, prudent management and an open, public process," Knowles said. "It's a winning combination that produces solid success, but it's only possible by bringing all Alaskans to the table. It's what 'doing it right' is all about."

*Voice of the Times*

**OPINION: THE RIGHT WAY**

Habitat protection legislation introduced recently in the Alaska Legislature merits a lot more public attention than it initially received. Senate Bill 270, and an identical bill in the House, would amend the state's Forest Practices Act and provide additional protection for salmon streams. Specifically, the legislation would require streamside buffers -- areas in which no timber could be harvested -- along so-called "marginal" salmon streams that cross private property. Under existing state law, all anadromous fish streams are protected by no-cut buffer zones, but an exception is allowed for certain marginal fish streams. The new law would eliminate the exception.

Additionally, the bill would make dozens of other modifications and improvements to update the Forest Practices Act. These changes were recommended by the state Board of Forestry after its members evaluated scientific research conducted over a two-year period by biologists hired to study the effects of Alaska's regulations on timber industry operations.

The nine members of the Board of Forestry, appointed by the governor, represent the commercial fishing, mining, tourism and timber industries, the environmental sector and Native groups. The state forester is also a member.

The legislation that was introduced last Thursday is sponsored by the Republican leadership -- Sen. President Mike Miller, R-North Pole, and House Speaker Gail Phillips, R-Homer. The bill is strongly endorsed by Gov. Tony Knowles and is expected to have solid bipartisan support as it moves through the legislative process.

There is a dramatic difference between the process followed by the state to protect all fish streams and the recent decree by the U.S. Forest Service banning new roads in national forests. Both were justified as necessary to protect habitat. The state's policy decision is based on sound science and a consensus negotiated among the stakeholders. It's a win-win situation for all sides. The timber industry can still operate, the salmon stocks remain strong, and streams are not

polluted. Not surprisingly, the bill now enjoys broad support.

The federal action, in contrast, was based on a deal cut by the Clinton administration and the national environmental lobby behind closed doors, according to Alaska Rep. Don Young.

There is no scientific study backing the road ban. A number of local communities, states and businesses are being unnecessarily hurt by it. In Alaska, for instance, if an exception isn't made for the Chugach National Forest, there can be no way of effectively addressing the spruce bark beetle crisis. Few people are happy with the federal edict.

Uncle Sam could learn a thing or two by noting how the process works in Alaska.



# UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112  
Juneau, Alaska 99801  
907/586-2820  
Fax: 907/463-2545  
E-Mail: ufa@alaska.net

February 17, 1998

The Honorable Gail Phillips  
Speaker of the House  
State of Alaska  
Juneau, AK 99801-1182

Dear Representative Phillips:

Today the Board of Directors of United Fishermen of Alaska (UFA) adopted a position in support of legislation you introduced, HB 373, relating to forests and forestry practices.

This bill is the achievement of industries, assisted by the Board of Forestry and state agency staff, working together to find common ground. The forest products industry and commercial fishing industry worked together to resolve their particular concerns with the proposals advanced by the Board of Forestry, and they were successful. The legislation, as introduced, is supported by United Fishermen of Alaska because it represents an improvement in the laws governing forest practices. It affords greater protection than now exists for sensitive fish habitat.

United Fishermen of Alaska's mission includes preserving fishery resources through research, development and habitat protection. We will continue to work with other industries, as we did in our work on the forest practices provisions embodied in HB 373, to pursue this important objective.

We hope that the members of the Legislature will acquaint themselves with the provisions of this legislation, the language of which was carefully crafted to meet concerns of commercial fishermen and representatives of the forest products industry, and we strongly support the passage of the legislation as introduced.

The commercial fishing industry is very appreciative of your work on this legislation. Thank you.

Sincerely

Jerry McCune  
United Fishermen of Alaska

#### MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Longline Fishermen's Association • Alaska Trollers Association • Bristol Bay Driftnetters Association • Concerned Area "M" Fishermen  
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Kena Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association • Kodiak Seiners Association  
North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Northwest Seiners Association • Peninsula Marketing Association  
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association • Seafood Producers Cooperative  
Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association • United Cook Inlet Drift Association • United Southeast Alaska Gillnetters

February 10, 1998

20th Alaska State Legislature  
State Capitol  
Juneau Alaska 99801-1182

**Sent Via-Facsimile to (907) 465-2698**

Dear Legislators:

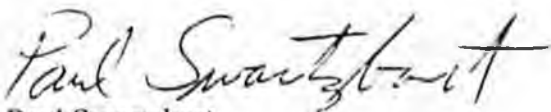
I support House Bill 373 relating to forest practices in the state of Alaska. This bill provides needed changes to the Forest Practices Act that both our state natural resource management agencies and our timber industry agree to.

This is a step forward for salmon habitat protection that will benefit sport and commercial fisherman, and the environmental community. This bill is the result of two years of consensus building and scientific inquiry by state and federal scientists meeting with members of private industry. We have come up with the most habitat protection for the least economic cost to private industry; it is a delicate balance. Any wording changes could have large consequences so I hope it will be considered "as is".

As the commercial fisherman on the Board of Forestry, I feel that salmon habitat protection is vital to the economic health of our state. Being a business person, I also understand how burdensome new regulations can be on an industry. This legislation was written by the timber industry and the resource agencies working together. It will help minimize the impact of logging operations on our salmon runs.

Thank You.

Sincerely,



Paul Swartzbart  
Alaska State Board of Forestry  
Commercial Fishing Seat

DEPARTMENT OF NATURAL RESOURCES

3601 C Street, Suite 1034  
Anchorage, Alaska 99503-5937

*DIVISION OF FORESTRY*

February 12, 1998

Representative Bill Hudson, co-chair  
Representative Scott Ogan, co-chair  
House Resources Committee  
State Capitol  
Juneau, Alaska 99801-1182

Dear Sirs,

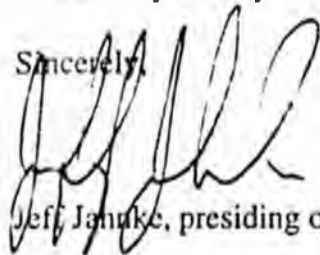
The Board of Forestry would like to register its support for H.B. 373. This bill incorporates the results of two years of work developing an agreement on appropriate changes to the Forest Resources and Practices Act. The Board unanimously endorsed the proposals in the bill after considering the results of a scientific and technical review of the Act, and the recommendations from a drafting process that included representatives of affected interests.

This bill maintains the balance intended by the Act: It ensures adequate protection of fish habitat and water quality while continuing to support the timber and fishing industries. It is important that this bill go forward as proposed without substantive changes. The widespread support this bill has received is contingent on preserving the specific package of changes in the bill.

We are aware that the drafting process has resulted in some minor and non-substantial changes to the specific wording endorsed by the Board. We do not object to these changes. We also understand that the Attorney General's review of the bill has identified some minor wording changes to improve clarity and consistency within the bill. We endorse these changes (attached).

We thank you for your support of this important legislation.

Sincerely,



Jeff Januke, presiding officer

For/cc: Board of Forestry Members Richard Carle, Lawrence Hartig, Bill Jeffress, Chris Maisch, Rick Smeriglio, John Sturgeon, Paul Swartzbart



**Koncor Forest Products Company**

3501 Denali, Suite 202  
Anchorage, Alaska 99503  
(907) 562-3335 FAX (907) 562-0599

February 12, 1998

Gail Phillips  
Speaker, Alaska House of Representatives  
State Capital  
Juneau, AK 99801-1182

Dear Gail:

Koncor participated in the development, and fully supports the passage, of HB 373 which modifies the Alaska Forest Resources & Practices Act. This bill represents a balance between economic considerations and protection of public resources such as water quality and fish habitat. The process used to draft the bill is a model for using scientific review, cost/benefit analysis, and consensus building of stakeholders. Passage of this bill is also important to ensure that our forestry laws are the best in the nation, and that these laws will constantly be reviewed and modified as new scientific information becomes available.

We urge the Legislature to pass HB 373.

Sincerely,

John Sturgeon  
President





February 11, 1998

The Honorable Gail Phillips  
Speaker of the House  
Alaska State Legislature  
M/S 3100  
Juneau, Alaska 99801-1182

Dear Representative Phillips:

This letter is to inform you of Sealaska Corporation's support for HB 373 titled an "Act Relating to Forest and Forestry Practices". This bill establishes supplemental environmental protection standards on private lands in Region 1 (hemlock, spruce forests of coastal Alaska) and adds a new stream type.

This Act evolved out of a two year process in which biological, environmental and economic issues associated with timber harvest and its interaction with fisheries habitat and water quality were evaluated. This stakeholder review identified opportunities to strengthen the fish habitat and water quality protection in Alaska's Forest Resources and Practices Act. Through this collaborative process the timber industry and land owners could see that the proposed changes will yield measurable, beneficial results to fish habitat and water quality. Conversely the timber industry was able to guide development of legislative changes to achieve protection objectives without unreasonable cost or burden on the industry or private landowners.

This letter is to inform you of Sealaska's endorsement of the process and support for the results that are embodied in the legislation currently before you. The State of Alaska already has one of the most comprehensive and effective Forest Practices Acts in the Nation. The proposed amendments will serve to strengthen that Act and still ensure a healthy timber industry.

We support the current legislation but understand that there are a few clarifying amendments recommended by the Attorney General's office.

These amendments do not change the intent of the legislation as recommended by the Board of Forestry. We support those amendments to the degree they do not alter the consensus objectives established by the Board.

We request your support of this legislation and recognize the carefully crafted compromise between the industry, fisherman and environmental community to develop an effective set of amendments. This collaboration has lead to an impressive working relationship and the results of those efforts should be honored by the legislature by passing the bill before you.

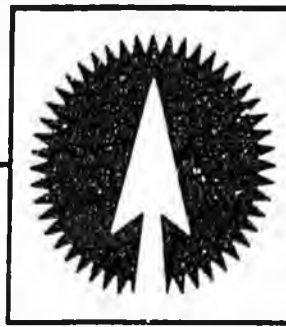
Sincerely,

SEALASKA CORPORATION

*Richard P. Harris/jh*

Richard P. Harris  
Senior Vice President  
Natural Resources

cc: House Resources Committee  
Senator Mike Miller  
Senate Resources Committee  
Sam Kito  
Senator Robin Taylor  
Senator Jim Duncan  
Senator Jerry Mackie  
Representative Bill Williams  
Representative Ben Grussendorf  
Representative Kim Elton  
Representative Bill Hudson  
Representative Albert Kookesh  
S.E. Village/Urban Corporation  
Jack Phelps, AFA  
AFA Technical Committee  
Thyes Shaub  
Jerry McCune



**Statement of Support**  
**House Bill 373**  
*An Act relating to forests and forestry practices*

Testimony before the House Resources Committee  
February 19, 1998

The Alaska Forest Association desires to be on record in full support of House Bill 373. "An Act relating to forests and forestry practices." This bill is the direct result of a proposal set before the Alaska Board of Forestry after a collaborative process involving the timber industry, the fishing industry and the resource agencies of the state. Both the process and the substance of this effort were based upon sound science and a balancing of interests.

Alaska already has a very effective, science-based forest practices law which ensures protection of important fisheries habitat while recognizing the unique relationship between private land rights and related public resources. The current law, which was developed through a cooperative process in 1989 and 1990, involves the Division of Forestry, the Division of Habitat and Restoration, and the Division of Air and Water Quality in monitoring and enforcing the provisions of the law. It enables timber operators in Alaska who conduct their harvest activities according to best management practices to have the assurance that they are operating in compliance with a variety of laws under which they would otherwise be individually scrutinized. That alternative would cost both the industry and the state more time and money than is necessary under the current system.

Current law also provides for ongoing examination of the effectiveness of Alaska's forest practices standards, so that the law and regulations can be adjusted to reflect new scientific knowledge as it is developed. Over the past two years, the timber industry has participated in a thorough review of the science relating to logging along anadromous fish streams in the coastal forests of Alaska. This review was conducted under the rubric of the Science and Technical Committee appointed by the Board of Forestry with the support of Governor Knowles. The Committee's report and the subsequent stakeholders' meeting led to the introduction of House Bill 373.

It is important to note that the Science & Technical Committee did not specifically recommend 66 foot buffers on type B streams as provided in Section 1 of the bill. The

committee recommended that these streams be given some means of obtaining large woody debris. AFA member companies looked at the operational issues and concluded that buffers of 66 feet or to the slope break would satisfy the goals of the recommendation in a way that field personnel believe can be implemented without severe adverse affects on harvest economics. It does mean surrendering trees of value by leaving them in riparian buffers, but the standard can be applied in the field and can be readily monitored by the regulators. AFA believes this is a good solution, the effects of which can be evaluated over time.

A matter of great importance to AFA is the fact that House Bill 373 is the result of a collaborative process. The agreement that makes these changes in the Act possible depends upon the substance of the bill remaining as it is now. The amendments proposed by the Attorney General's office, which are before the committee today, only provide consistency and clarification and are therefore acceptable. AFA would urge the committee not to entertain any other amendments so that the underlying agreement between affected parties can remain intact.

In summary, House Bill 373 addresses a real need, and represents a balanced approach to resolving an important issue affecting Alaska's forest products sector. When this bill becomes law, it will be a model for broad-based cooperation between affected industries, the agencies, the Governor's office and the legislature. This is a bill that can and should enjoy full, bi-partisan support. I urge its speedy passage.



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( Keeping the Public Informed )

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### Concerning work of the Science & Technical Committee

Testimony of Jack E. Phelps, Executive Director  
Offered to the Alaska Board of Forestry  
January 21, 1997

The Alaska Forest Association has closely observed the work of the Science and Technical Committee formed last year to examine allegations set forth in the report from the Department of Fish and Game, Habitat Division regarding the state's Forest Resources and Practices Act. Among other claims, the report stated that ADF&G staff are uniformly of the belief that the implementation of the FPA remains seriously deficient. The Science & Technical Committee was formed to investigate those allegations and to determine the extent to which the aforementioned belief could be substantiated by facts.

In short, the question was whether substantial harm was being done to fish and wildlife habitat as a direct result of timber harvests, particularly on private land. A closely related question which was not directly raised by the report but that begged an answer in the process, was whether any reduction in theoretical carrying capacity of any habitat was disproportionate to the benefit derived by the private landowners from managing their timber resources for their shareholders. This question is raised by the fairness doctrine and the no big hit doctrine of the Alaska Forest Resources and Practices Act.

Simply put, these doctrines declare that a balance must be struck between the values at stake when private land interests come in contact with public resource interests, in this case fisheries. The fairness doctrine insists that there be shared risks and incentives for both timber owners and the public, represented by the regulatory agencies. The no big hit doctrine requires that private landowners should not carry an inordinate economic burden for minimal losses to fish habitat. The law envisions a balance of interests between forestry and fisheries when it comes to timber harvests on private land.

After a year of meetings and careful examination of the evidence, the Science & Technical Committee's work suggests that the existing law protecting fish habitat is working very well. Many of the issues discussed by the committee had to do with technical definitions and minutia, not evidence of actual harm. The deliberations tended to verify that logging is having a very minor impact on fish habitat. Timber harvest on private lands, at the rate and under the regulatory conditions that now exist, is taking place without significant harm to Alaska's important fisheries resources.

To those of us in the industry who have worked to comply with the Forest Resources and Practices Act, and have made a sizable investment in fish habitat research over the past several years, this comes as no surprise. It is compatible with the tentative findings of our own ongoing scientific studies and of the research being done by others. A recent paper published in the journal of the American Fisheries Society shows that fewer than 5 percent of the anadromous fish spawning

aggregates in Southeast Alaska are in decline and some of those are in unlogged areas. Private landowners have willingly left millions of dollars worth of trees in riparian buffers over the past half decade, and those contributions are augmenting the health of Alaska's fisheries.

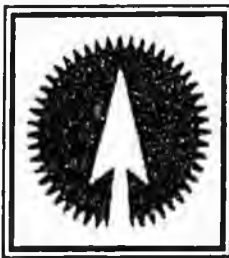
AFA commends the participants in the Science and Technical Committee for ensuring that the process of addressing the Habitat Division's report was conducted in a professional and scientific manner. On balance, the leadership of the committee was fair and diligent. Various participating parties were consistently given a fair hearing, and the committee was able to arrive at a satisfactory level of consensus. The Science and Technical Committee has done a good job of identifying and clarifying technical problems with monitoring and enforcement of the Act, and most of the recommended changes have the industry's support.

It was a good process, but it was an expensive one. It was costly for the state, and it was costly for industry. AFA member companies, one in particular, invested more than \$100,000 over the past year to enable professional and research staff to attend the meetings and study the ADF&G allegations. On the state side, the process demanded huge blocks of time from Division of Forestry and Department of Fish and Game personnel, taking staff away from field work. This is unfortunate and ironic, given the frequently stated complaint from Fish and Game that they lack the financial resources to do adequate field work.

The Alaska Forest Association is committed to supporting reasonable enforcement procedures for the Forest Resources and Practices Act. Industry has shown its willingness to work through the process, even at great expense, to ensure that other resources are not harmed by harvest activities. We hope that the exercise forced upon industry, the Board of Forestry and the other agencies last year by ADF&G's approach will not be repeated in the future. If one agency or another has questions or wishes to raise concerns about scientific or technical issues, those issues should be raised using established interagency procedures, and the discussion should take place in the context of scientific investigation before unnecessary alarm bells are rung with the press and the general public.

Thank you for the opportunity to testify on this important matter.

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Last Updated: 28 Mar 97

*Summary of Legislation Implementing the Recommendations of  
the Forest Practices' Science and Technical Committee*

Alaska's Forest Practices Act (the "FPA") was comprehensively amended in 1990 as a result of a two-year cooperative effort by government agencies, fishing and environmental groups, and the timber industry. An integral part of this consensus-based process was a commitment to periodically reappraise the FPA's effectiveness in protecting Alaska's streams.

As a result of that continuing review, legislation has now been prepared to implement two changes to the FPA that would:

- 1. extend the FPA's mandatory no-harvest riparian zones to additional streams;*
- and*
- 2. extend the width of scope stability standards on some streams.*
- 3. provide additional sources of large woody debris (or "LWD") for fish habitat.*

Both changes affect only the "coastal forest of spruce or hemlock" in DNR's "Region I." Forest practices in Regions II and III--basically, anything north of Mt. St. Elias--will continue to be governed by their own rules under the FPA, which, on private, restrict but do not prohibit timber harvest adjacent to streams.

Like the 1990 FPA itself, these changes reflect a broad-based consensus among forest stakeholders. The agreement arose out of an intensive study of the FPA conducted by a group of public and private sector scientists called the Science and Technical Committee (the "S/TC"). The S/TC found much to commend in the FPA, but also recommended two changes, both of which are mirrored in the proposed statutory language:

1. *Extending no-cut buffers to all anadromous streams.* The public and private scientists who collaborated on the 1990 FPA agreed that the need for no-cut buffer zones varied dramatically according to the characteristics of the stream. Even so, the 1990 legislation required 66-foot no-cut zones along most anadromous streams on private lands. These were so-called "Type A" waterbodies.

Another class of anadromous streams--those with rocky banks and bottoms--were subject to special bank stability requirements, though riparian timber harvest was allowed. These were the so-called "Type B" streams, and because their banks were held in place by rock, rather than vegetation, the scientists who worked on the 1990 legislation could not justify the considerable cost of requiring the retention of all timber adjacent to them.

The proposed legislation would reverse that decision, and require 66-foot no-cut buffers along all anadromous streams, irrespective of stream characteristics. This protection would extend both to all "Type B" streams, as well as a small subclass of anadromous streams that were originally not given a formal "type" designation.

In so doing, the proposed legislation assigns a "type" to all segments of an anadromous stream system. Anadromous streams themselves are labeled "A" or "B," while tributaries to anadromous streams are labeled "C" or "D" streams, depending on their steepness. All Types B and C streams would be subject to special stream bank stability rules.

This puts to rest the concern that some segments of an anadromous system were "unclassified" under the FPA.

2. *Requiring timber to be left along other streams in order to provide LWD.*

LWD can be an important source of habitat for juvenile fish, and the 1990 FPA encouraged the retention of low-value trees as potential LWD sources even along streams where no formal buffer zone was required.

The proposed legislation goes much further in this respect. It *requires* the retention of low-value timber along certain tributaries to anadromous streams, when it is "prudent" to do so. LWD, of course, is of no direct value to these tributaries, because there are no anadromous fish in them. But, research has shown that certain tributaries--*i.e.*, those of sufficient width and steepness--can transport LWD downstream to the anadromous waterbody itself, and it is for these streams that retention is required.

The "prudence" limitation exists because it is sometimes dangerous to leave wood adjacent to steep tributaries, because the trees can become part of debris torrents. And also, some low-value trees can be damaged as part of the harvest of the more valuable timber that can still be taken along these tributaries. It was never the S/TC's intent to restrict the harvest of valuable, merchantable timber along these tributaries, and the "prudence" limitation assures that operators will still be able to harvest this timber

PUBLIC LANDS PROTECTION PROVIDED IN STATUTE:

**Sec. 41.17.118. Riparian standards for state land.**

(a) The riparian standards for state land are as follows:

(1) on state forest land managed by the department that is located north of the Alaska Range, harvest of timber may not be undertaken within 100 feet immediately adjacent to an anadromous or high value resident fish water body unless the division determines that adequate protection remains for the fish habitat;

(2) on state forest land managed by the department that is located south of the Alaska Range,

(A) harvest of timber may not be undertaken within 100 feet immediately adjacent to an anadromous or high value resident fish water body;

(B) between 100 and 300 feet from the water body, timber harvest may occur but shall be consistent with the maintenance of important fish and wildlife habitat.

(b) The commissioner may impose additional riparian protection standards for timber harvest operations through the adoption of land use plans under AS 38.04.065 and under forest management plans and reports under AS 38.05.112 and AS 41.17.230.

(c) In the absence of a site-specific determination by the Department of Fish and Game, the commissioner shall presume for planning purposes that a stream is anadromous if it is connected to anadromous waters that are without Department of Fish and Game documentation of a physical blockage and has a stream gradient of 8 percent or less.

**Sec. 41.17.119. Minimum riparian standards for other public land.**

On other public land, harvest of timber may not occur

(1) within 100 feet from the shore or bank of an anadromous or high value resident fish water body that is located south of the Alaska Range;

(2) within 100 feet immediately adjacent to an anadromous or high value resident fish water body north of the Alaska Range unless the commissioner determines that adequate protection remains for the fish habitat.

**Sec. 41.17.950. Definitions.**

In this chapter, unless the context otherwise requires . . . .

(11) "other public land" means state land managed by state agencies other than the department, land owned by a municipality, and land owned by the University of Alaska;

## DESIGNATION OF REGION I

### ARTICLE 07 GENERAL PROVISIONS

#### 11 AAC 95.800

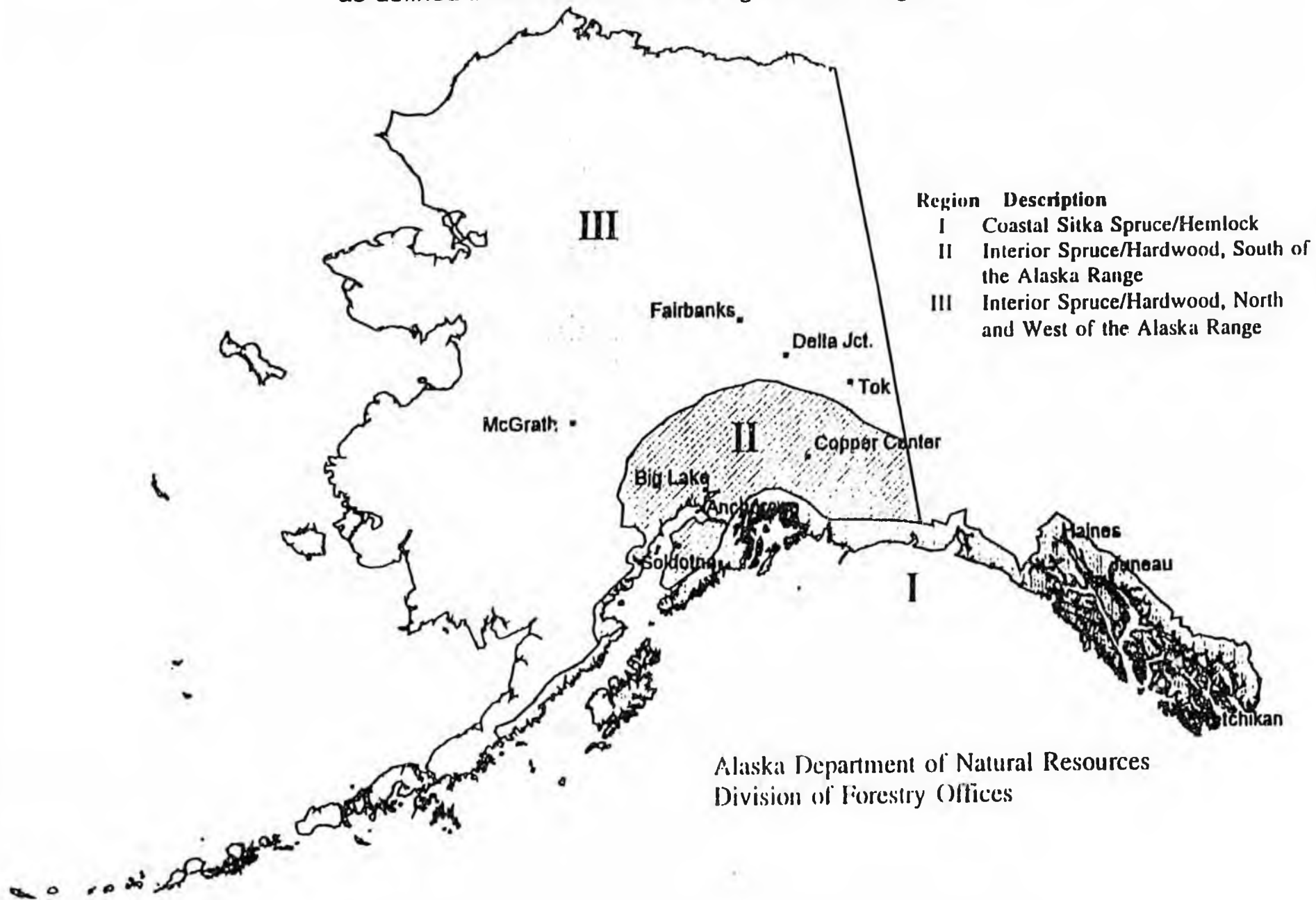
#### DESIGNATION OF REGIONS.

For the purposes of this chapter; the forest land of the state is divided into three regions as follows:

(1) Region I (Coastal Sitka Spruce/Hemlock Region). Region I, the coastal forest, is comprised primarily of Sitka spruce, western hemlock, mountain hemlock, Alaska cedar, red alder, black cottonwood, western red cedar, and lodgepole pine. Region I consists of the land within the following area: Beginning at Tongass, Alaska and then in a northwesterly direction along the United States-Canada border to Mt. St. Elias; then westerly along the crest of the Chugach Mountains to Portage; then continuing southwesterly through Moose Pass, to the north end of the Harding Ice Field; then to the mouth of Fox River; then southwesterly out of Kachemak Bay to Mt. Douglas; then along the divide of the Aleutian Range to Aniakchak Crater; then to Cape Kumliun; then easterly to Cape Sitkinak; then in a northeasterly direction to Cape Suckling; then along the coastline in a southeasterly direction to Cape Spencer; then along the coastline in a southeasterly direction along the outer coasts of southeastern Alaska including all the islands of the Alexander Archipelago to Cape Muzon; then in an easterly direction through Dixon Entrance to Tongass, the point of beginning;

# Alaska Forest Resources & Practices Regions

as defined in 11 AAC 95.800 Designation of Regions



Alaska Department of Natural Resources  
Division of Forestry Offices

**HB**

**375**

## HB 375 – Protecting kids with tougher, clearer laws

Protecting children from abuse and neglect helps assure them the happy, healthy childhood they deserve. But it does more than that. Child protection is quickly being recognized as perhaps the most effective crime prevention tool available to society. As one expert put it, children terrorized by violence in their own homes too often “exchange the slats in their cribs for prison bars.”

The statutory changes proposed under the administration’s House Bill 375 (and companion measure SB 272) would:

- ❑ Set in statute a *Child Fatality Review Team* to assure that child deaths are fully investigated and prosecuted as homicides. The team has already uncovered deaths of children that were actually homicides, although initially attributed to “natural causes.” The bill helps assure that people who kill children will be prosecuted and that siblings of the victims will be protected.
- ❑ Establish a multi-agency approach to investigating reports of child abuse and neglect. DFYS would be required to team up with experts from outside of the agency. The use of outside expertise will decrease the chance of “overreaching” and allow the agency to focus resources toward families that are dangerous to children.
- ❑ Assure that foster parents and relatives who care for abused and neglected children are notified about all hearings and have an opportunity to be heard at all hearings. The participation of full-time caretakers helps ensure that court decisions about a child’s welfare are based on accurate, timely and comprehensive information.
- ❑ Requires DFYS to provide foster parents with complete background information on a child coming into the foster home. Foster parents will be better prepared for the particular needs of the child in their care, and will be able to provide longer, stable, care for a child.
- ❑ Require DFYS to provide family visitation opportunities for children who have been removed from their home. This will help assure children maintain their bonds with family members.

Children reported as abused or neglected are 67 times more likely to be arrested as pre-teens, according to a recent nationwide study.

*‘Alaska (child protection) statutes are more narrowly drawn in certain respects than those of almost any other state.’*

-- Kempe Children's Center

Every day last year in America, 8,523 children were reported abused or neglected – and every day three kids died as a result.

*‘The ghosts of children lost to rage and despair ... do retaliate. These children – like all children – ‘do unto others’.’*

--Ghosts from the Nursery

- Clarify definitions to provide guidelines to courts and workers. The open case files at DFYS reveal two major problems in Alaska that contribute to child abuse and neglect: substance abuse and domestic violence. The bill provides clear guidelines and definitions for social workers who are required on a daily basis to get parents into substance abuse programs and anger management counseling.
- Make the health and safety of the child the paramount concern of the court. Family preservation is no longer the goal in every case where a child is removed from home. Children will not be returned to parents who have killed, seriously assaulted, tortured, sexually abused, abandoned, or chronically abused and neglected children.
- Require DFYS to provide timely rehabilitation services to parents so that children do not have to be removed from their homes, or if removed, can return to a permanent safe home. Children will no longer have to wait years for their parents to enter rehabilitation.
- Require DFYS to complete criminal background checks on those who care for children. Children will not be placed in homes with caretakers who have harmed children.

#### HOW HAS THE BILL CHANGED SINCE IT WAS INTRODUCED?

The bill has been narrowly focused to address problems with protecting Alaska's children. The bill no longer contains:

- provisions relating to CSED payments;
- sex offender registration provisions;
- provisions relating to custody in marriage and divorce cases.

#### MYTHS ABOUT THE BILL:

- The bill expands the power of DFYS to remove more children from their homes. FALSE. The bill requires DFYS to offer services to families early, before a problem escalates to the point that a child dies or is seriously injured. The earlier the treatment, the better the chance of success. Legal custody does not always mean removal. Legal custody means that a family needs to participate in a service plan to solve a problem.
- The bill allows DFYS to take children who are not happy. FALSE. DFYS must look into cases where parental conduct places children at high risk of serious mental injury. Such parental conduct would include domestic violence that is witnessed by children. An expert must testify that the parental conduct will cause a serious mental injury to the child.
- The bill diminishes parental rights. FALSE. All parental rights remain in place and remain protected. Every parent has appointed counsel, notice of hearings, the right to challenge

DFYS decisions. Parents get copies of DFYS files on their children and may challenge a DFYS-decision within 48 hours.

- Parents must be losing something. The only thing parent lose is time.
- The bill gives DFYS immunity. FALSE. DFYS has the same level of immunity as any government body: police, firefighters, paramedics. DFYS has no more or no less immunity. HB 375 does not increase protection for the agency. The bill increases the duties that DFYS has in a child protection matter.
- We need to study this problem more. There have been numerous reviews and audits of Alaska's child protection system and they all have reached similar conclusions. One common conclusion: Alaska needs better child protection laws.
  - The Alaska Supreme Court has stated clearly that the existing law needs to be changed.
  - A 1997 audit of case files by The Kempe found that Alaska's law is one of the most restrictive statutes in the U.S. because it requires "imminent and substantial harm" before action by DFYS can be taken.
  - A bipartisan Child Protection Review Team issued a December 1997 report that made 24 recommendations for improving DFYS. Those recommendations have been addressed in HB 375 or in policy and management decisions.
  - A recent legislative audit strongly recommended that HB 375 be passed so that social workers can adequately assess harm to children.
  - Federal changes in the bill passed Congress with bipartisan support in November 1997. The Congressional bill was sponsored by Rep. Clay Shaw (R).

**What parts of the bill are required by federal law?**

1. Foster parents and relatives who provide care for children get notice of hearings, and an opportunity to be heard at hearings.

**AS 47.10.030 (b)**

**AS 47.10.070 (a)**

**AS 47.10.080 (f)**

2. Permanency hearings 12 months after a child is removed from home and annually thereafter.

**AS 47.10.080 (f) and (l)**

3. Judges must make specific findings at the permanency hearing about whether a child will return home or go into some other permanent safe home.

**AS 47.10.080 (l)**

4. The health and safety of the child shall be the paramount concern.

**AS 47.10.082**

5. Reasonable efforts to return the child home if the child is removed, will not be required in all cases. If there has been a homicide of a child in the family, felony assault on a child, abandonment of a child, sexual abuse, torture, chronic abuse or neglect, the state must look for a permanent safe home for the child.

**AS 47.10.086 (c)**

6. The state must file a petition to terminate parental rights in some cases: abandoned children younger than 6; children who have been in foster care for 15 of the most recent 22 months; siblings of children who were killed by a parent; children who were seriously injured by the parents. The state must have a compelling reason not to proceed to termination in the above-described cases.

**AS 47.10.088 (d) and (e)**

7. States are required to do concurrent planning for children: have a plan for reunification with the parents and also develop an alternative permanent safe plan for the child.  
AS 47.10.086 (f)  
AS 47.10.088 (i)
8. States must offer families community-based family support services on a time-limited basis, not to exceed 15 months, whenever the plan is to prevent removal from the home or to return the child to the family home.  
AS 47.10.086 (a) and (b)
9. States must have a preference for kinship care with relatives.  
AS 47.14.100 (e) and (i)
10. States are required to conduct thorough criminal background investigations on anyone over 16 in any licensed home or facility where children are placed.  
AS 47.35.017(b)  
AS 47.35.022  
AS 47.35.023 (b)
11. States are required to define abuse and neglect at a minimum, to include acts by caretakers that result in: death; serious physical harm; serious emotional harm; sexual abuse or exploitation; imminent risk of harm.  
AS 47.10.011 (a) (8)
12. States are required to expedite the permanent placement of abandoned infants.  
AS 47.10.088(d) (2)
13. States are allowed to create child fatality review teams and must set up a public disclosure provision for the team to issue public reports.  
AS 12.65.005 - 12.65.140.

14. States are allowed to provide respite care to foster parents for temporary stress relief.

**AS 47.14.100 (d)**

15. States are allowed to create Multidisciplinary Teams to improve the quality of investigations of child abuse and neglect.

**AS 47.14.300**

**What parts of the bill did the courts want changed?**

1. Children can only be declared abandoned if they have no parent willing or able to care. Willing is enough even if a parent is not able to care.

**AS 47.10.011 (a) (1)**

**AS 47.10.013**

2. The law does not provide the state with the authority to intervene in cases of emotional neglect.

**AS 47.10.011 (a) (8)**

**What parts of the bill are state-initiated changes?**

1. Providing a policy, purpose, and legislative findings section in statute that gives courts guidance in making decisions about children.
2. Clarifying in statute that parents have important rights, especially the right to use reasonable corporal discipline.
3. Redefining the situations where the state may get involved and seek services for a family to include domestic violence, substance abuse, and parental conduct that results in serious emotional problems in children.
4. Definitions should allow workers to consider the family's full history and address the problem comprehensively. Workers should no longer look at isolated incidents when making conclusions about children.

5. Creating a separate "Termination of Parental Rights" statute.
6. Allowing the state to intervene earlier before problems are severe or chronic and children are more damaged.
7. Eliminating multiple and repeated moves of children by preparing foster parents and creating procedural hurdles before children may be moved.

**PARENTAL RIGHTS WHEN THE STATE TAKES LEGAL  
CUSTODY OF A CHILD. BUT THE CHILD IS NOT REMOVED**

Service of petition to adjudicate the child a Child in Need of Aid (CINA)

Notice of initial probable cause hearing within 48 hours of the filing of the petition

Right to counsel, including right to appointed counsel

Right to a copy of the DFYS file as "discovery" documents

Right to require state to prove allegations in the petition at a probable cause hearing

Right to cross-examine state witnesses

Right to present own witnesses

Right to compulsory process to compel own witnesses to appear

Privilege against self-incrimination

Right to have a guardian ad litem represent the child's best interests

Right to have the social worker provide a "case plan" in writing that specifies what is required to regain legal custody of the child

Right to require state to assist with financial costs of services for family members that are required to re-obtain custody of a child

Right to require state to prove allegations in the petition at an adjudication trial, by a preponderance of the evidence, within 90 days.

Right to appeal adjudication order

IF A CHILD IS REMOVED FROM HOME. ADD:

Require state to prove that reasonable efforts were made to prevent the need for removal of the child

Require state to prove that it is contrary to the child's welfare to remain in the parental home

Right to have a relative care for the child

Right to have notice of any proposed move in the child's placement. Right to object to proposed moves and to have a hearing.

Right to ask for court review of case plan, removal of child, visitation rights, at any time

If the state seeks to terminate parental rights, add to above:

Service of petition to terminate parental rights

Notice of trial date

Right to have state prove by clear and convincing evidence at trial that:

- a. parental conduct made the child a CINA
- b. parental conduct has not been remedied
- c. the state provided services to remedy the problem

Right to appeal termination order

**HB**

**383**

# Alaska State Legislature

## Interim:

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907/283-7095  
907/283-3075 fx  
907/262-7574 hm

## Session:

State Capitol  
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907/465-2693  
fx 907/465-3835  
800/463-2693

## Representative Gary Davis

### SPONSOR STATEMENT

#### Committee Substitute for House Bill 383 (Jud)

#### "An Act relating to expected deaths that occur at home"

Expected home death describes a circumstance whereby a person has a limited life expectancy and wants to die at home. This person receives care from a home health care or hospice agency. When the individual dies at home, a registered nurse pronounces death and assists the family with contacting the attending physician and funeral director and providing support to the family. Having additional personnel in the home at this time can cause unnecessary stress.

Committee Substitute for House Bill 383(Jud) states it is not necessary for law enforcement to respond to the scene of an expected home death unless requested to do so. Some interpret current law as requiring peace officers to be notified of **and to respond to the scene** of all instances of death. Statutes require the state medical examiner and a peace officer to be notified of deaths that appear to occur under certain circumstances. The types of death include, among others, those caused by unknown or criminal means, those occurring under suspicious or unusual circumstances and those unattended by a practicing physician. In these instances, peace officers **should** respond to the scene of the death upon being notified of its occurrence.

Even though expected home deaths do not fall under any of the above categories, varying interpretations of the phrase "unattended by a practicing physician" have resulted in them being handled differently throughout the state. An expected home death is not "unattended" regardless of whether the physician was physically present at the time of death. In common medical and legal terminology, a patient is "attended" by a physician when that patient is receiving treatment and under the care and supervision of a physician.

Committee Substitute for House Bill 383(Jud) states that peace officers do not need to respond to the scene of an expected home death provided that certain criteria are met. A form signed by the person's physician concerning the expectation that the death would occur due to the person's state of health must be on file with the local law enforcement agency. The death must occur at the dead person's home as expected, and a person authorized to determine and pronounce death must do so. If these criteria are met, a peace officer need not respond to the scene of the death.

The legislation specifies, however, that a person is not prohibited from requesting a peace officer to respond if a death investigation may be appropriate. Nor does it relieve a person of the duty of notifying the medical examiner and peace officer if the death occurs in a manner other than expected.

Death at home can be a natural, smooth occurrence, and removing unnecessary steps and personnel from the situation reduces the trauma to the family. Committee Substitute for House Bill 383(Jud) clarifies statutes to allow this to happen without undue intrusion, while still providing that the interests of the state and the deceased are protected.

*Representing House District 8*

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

Representative\_Gary\_Davis@legis.state.ak.us

# Alaska State Legislature

## Interim.

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## Representative Gary Davis

### SECTIONAL ANALYSIS

#### Committee Substitute for House Bill 383 (Jud)

"An Act relating to expected deaths that occur at home"

Section 1 Adds a new section to AS 12.65, "Death Investigations and Medical Examiners," stating that a peace officer does not have to respond to the scene of expected home deaths provided that the following criteria are met:

- 1) the death was expected to occur due to the person's state of health;
- 2) the death occurred as expected due to the person's state of health;
- 3) a person authorized to determine and pronounce death does so; and
- 4) a form signed by the dead person's physician concerning the physician's expectation that the death would occur is on file with the law enforcement agency for that jurisdiction.

Also states a person is not prohibited from requesting a peace officer to respond to the scene if the person feels a death investigation may be appropriate. Additionally the person is not relieved of the duty to notify the medical examiner and peace officer of a death that is described in AS 12.65.005(a), "Duty to notify state medical examiner."

CSHSB383/SA/3/11/98

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

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**HB**

**392**

## SENATE FLOOR INFORMATION

on  
CSHB 392

This bill primarily addresses the wholesale price reporting to the Department of Revenue.

HB 392:

- 1) reestablishes the time intervals of wholesale price reporting to the Department of Revenue: the current semiannual wholesale reporting is replaced by three new reporting periods per year (adds one report per year);
- 2) stipulates that the wholesale information provided to Revenue will include data in terms of *all sizes sold* instead of specific can sizes which may or may not be utilized;
- 3) includes pouches or similar containers within the scope of what is to be reported within wholesale price information as well. The unit-of-sale categories specified in current statute are often no longer used by the processing industry.

The new reporting periods will provide marketers and negotiators more information in a more timely manner.

The first part of the bill, sections one through three, addresses exvessel fisheries information shared between DOR, ADFG and DEC. HB 392 allows the Department of Revenue to provide only the names and addresses of processor businesses to ADFG and DEC – with this information they may choose to verify the names of businesses which they already get directly from processors, but this does not provide for sharing anything other than names and addresses.

Passage of CSHB 392, should help fishermen in their pursuit of better information, help them keep more apprised of the current market prices for their salmon products and should increase the exvessel value they receive which the raw fish tax, ASMI tax and aquaculture assessments are all based on.