

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 86/2

9852 HOUSE JUDICIARY

НВ

179

Amendment #1

p. 3 Line 1 after [CHAIRMAN]

add

" Nothing in this section shall be construed to prohibit ~~information~~ surveys or polls, if the survey or poll is not intended to influence the election. ~~(etc.)~~ (see p 2 line 26 to line 27 to "question".

of a candidate
or outcome of a
ballot proposition.

Amendment #3

Conceptual amendment - make it back to 30 days from 10 days after contribution 15.13.40(c) is made.

& rationale is to make all deadlines consistent.

*conceptual
Amendment #10
construct a higher
title which will repair
contents of bill*

1-LS0401AN

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 179(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES COGHILL, Sanders

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the reporting of campaign contributions and to the
2 identification of political campaign communications."

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

4 * Section 1. AS 15.13.040(a) is amended to read:

5 (a) Except as provided in (g) of this section, each candidate shall make a full
6 report, upon a form prescribed by the commission, listing the date and amount of all
7 expenditures made by the candidate, the total amount of all contributions, including
8 all funds contributed by the candidate, and for all contributions in excess of \$200
9 [\$100] in the aggregate a year, the name, address, principal occupation, and employer
10 of the contributor and the date and amount contributed by each contributor. The report
11 shall be filed in accordance with AS 15.13.110 and shall be certified correct by the
12 candidate or campaign treasurer.

13 * Sec. 2. AS 15.13.040(b) is amended to read:

14 (b) Each group shall make a full report upon a form prescribed by the

*Amendment
#15
deletion
1 & 2*

1 commission, listing

2 (1) the name and address of each officer and director;

3 (2) the aggregate amount of all contributions made to it; and, for all
4 contributions in excess of ~~\$200~~ [REACHES] \$100 in the aggregate a year, the name, address,
5 principal occupation, and employer of the contributor, and the date and amount
6 contributed by each contributor; and

7 (3) the date and amount of all contributions made by it and all
8 expenditures made, incurred or authorized by it.

9 * Sec. 3. AS 15.13.040(d) is amended to read:

10 (d) Every individual, person, or group making a contribution or expenditure
11 shall make a full report, upon a form prescribed by the commission, of

12 (1) contributions made to a candidate or group and expenditures made
13 on behalf of a candidate or group

14 (A) as soon as the total contributions and expenditures to that
15 candidate or group exceeds [REACHES] \$500 in a year; and

16 (B) for all subsequent contributions and expenditures to that
17 candidate or group in a year whenever the total contributions and expenditures
18 to that candidate or group that have not been reported under this paragraph
19 exceeds [REACHES] \$500;

20 (2) unless exempted from reporting by (h) of this section, any
21 expenditure whatsoever for advertising in newspapers or other periodicals, on radio,
22 or on television; or, for the publication, distribution, or circulation of brochures, flyers,
23 or other campaign material for any candidate or ballot proposition or question.

24 * Sec. 4. AS 15.13.090(a) is amended to read:

25 (a) All advertisements, billboards, handbills, paid-for television and radio
26 announcements, and other communications intended to influence the election of a
27 candidate or outcome of a ballot proposition or question shall be clearly identified by
28 the words "paid for by" followed by the name and address of the candidate, group or
29 individual paying for the advertising. In addition, candidates and groups must identify
30 the name of their campaign chair. Telephone communications need only be
31 identified by the name of the candidate, group, or individual paying for the

communication [CHAIRMAN].

* Sec. 5. AS 15.13.125(a) is amended to read:

(a) A person who fails to register when required by AS 15.13.050(a) or who fails to file a properly completed and certified report within the time required by AS 15.13.040(d) - (f), 15.13.060(b) - (d), [15.13.080(c),] 15.13.110(a)(1), (3), or (4), (e), or (f) is subject to a civil penalty of not more than \$50 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil penalty of not more than \$500 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who violates a provision of this chapter, except a provision requiring registration or filing of a report within a time required as otherwise specified in this section, is subject to a civil penalty of not more than \$50 a day for each day the violation continues as determined by the commission, subject to right of appeal to the superior court. An affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is assessed. However, the imposition of the penalties prescribed in this section or in AS 15.13.120 does not excuse that person from registering or filing reports required by this chapter.

* Sec. 6. AS 15.13.080 is repealed.

Amend #4
delete Section #5.

idea keep it but have we deleted the form that D uses

Don't repeal

so on 1st line a "with a value exceeding or in excess of \$500"

Amend #2

conceptual amend

delete line 20
SEC 15.13.080

change in A twice to make sure its in excess of \$500.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 179

Revision Date: 4/25/00
 Title: Companion Contribution to the
of the Alaska State Bar Association
 Sponsor: Rep. Coghill
 Requester: _____

Dept. Affected _____
 BRU _____
 Component _____
 Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY00) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by House State Affairs Committee /
Battling

Phone 465-6822
 Phone 465-4963
 Date 4/25/00

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 179

Revision Date: 4/25/00
 Title: Calumet Community Center & Hall
St. Ignace Catholic Church Construction
 Sponsor: Rep. Coghill
 Requirer: _____

Dept. Affected _____
 BRU _____
 Component _____
 Component Serial No. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY00) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by

House State Affairs Committee
Blattberg

Phone 465-6822

Phone 465-4963

Date 4/25/00

FISCAL NOTE

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

BILL NO. CSSSHB 179 (STA)

Revision Date/Time (Note if correction) 4/26/00 Dept. Affected Administration
 Title An Act relating to reporting of campaign BRU Alaska Public Offices Commission
 contributions ... Component Alaska Public Offices Commission
 Sponsor Representative Coghill
 Requester (H) JUD Component No. 70

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	11.7	0.0	0.0	0.0	0.0	0.0
Travel	2.1	0.0	2.1	0.0	2.1	0.0
Contractual	49.4	20.5	20.5	20.5	20.5	20.5
Supplies	0.6	0.6	0.6	0.6	0.6	0.6
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	63.8	21.1	23.2	21.1	23.2	21.1

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	63.8	21.1	23.2	21.1	23.2	21.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	63.8	21.1	23.2	21.1	23.2	21.1

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Karen Boorman, Director Phone 276-4176
 Division Alaska Public Offices Commission Date/Time _____
 Approved by Commissioner -- Robert Poe Jr. Date 4-26-00
 Agency Department of Administration

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CSSSHB 179 (STA)

CSSSHB 179 (STA) will result in additional costs for the Commission. To enable the Commission to implement the changes quickly and effectively, the Commission needs additional personal service, contractual, travel and supply funding.

The statute will take effect just before the statewide primary and will significantly affect the reporting responsibilities of filers and contributors. As a result, it is imperative that the Commission have adequate resources to implement the changes quickly and effectively.

Contractual funding is essential in the first year to pay for computer programming necessary to revise electronic filing software, the Commission's internal tracking database, and its new internet database to accommodate the changes. In subsequent years, contractual funds will be necessary to assist in the maintenance of those changes to the system.

Contractual money is also needed to cover costs associated with publishing the statutory notices required for the Commission to amend the campaign disclosure regulations to make them consistent with the new statute and to pay for postage to mail to filers revised report forms, manuals and educational materials.

In the first year only, additional personal service funding is required to cover overtime costs associated with quickly revising report forms and educating active candidates, groups and political parties about the statutory changes. The overtime will enable staff to expeditiously complete the following tasks:

- revise forms, manuals, and other educational materials to implement the new provisions.
- conduct educational training in Anchorage, Barrow, Fairbanks, Juneau, and Kenai to notify state and municipal candidates about the provisions.

Additional travel funding in the first year and all subsequent election years will enable staff to educate candidates, groups and political party districts about the new reporting requirements. Finally, the Commission believes that the statute will result in a modest increase in supply costs for printing, paper, envelopes and other office supplies.

ALASKA STATE HOUSE OF REPRESENTATIVES

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State Capitol
Room 416

REPRESENTATIVE JOHN COGHILL

HB 179 Political Campaign Communications Sponsor Statement

HB 179 eliminates a requirement in state law that requires an individual to report his or her contribution of \$500.00 to a candidate or a group. That responsibility should lie in the hands of the recipient, not the contributor.

HB 179 also addressing a recent decision on the part of the Alaska Public Offices Commission concerning telephone calls in campaigns. APOC has determined that phone calls made to invite folks to attend a fundraiser require a disclaimer. APOC claims that when a campaign worker calls a person as a follow up to sending the person an invitation to a fundraiser, the campaign worker is intending to influence the outcome of an election, therefore, a disclaimer, just like the disclaimer on a radio or TV ad is required.

The phrase "other communications" is a broad, catchall phrase commonly used in statutes to accommodate new technology. For instance, the Internet would qualify as other communications. Internet has become a widely used media for campaigning and is under the term "other communications" required to have disclaimers.

When Alaska's campaign laws were written, however, telephones were already a means of communication. It is my contention that if telephones were meant to be covered in identification of communication, telephones would have been mentioned in the language in a specific manner.

Normally, in legal terms of notification for court rules and statutes relevant to legal and court proceedings, telephone calls are not recognized as a means of communication. I contend that they should not be defined as other communications in campaign law either.

HB 179 would specifically exempt telephone calls from a broad, catch all term that are open to interpretation. I favor specific statutes that are not subject to interpretation.

It would appear that this is a reaction to the increasingly annoying push polls that are inundating people's homes at all hours of the day and night. Political polls have become increasingly used to get public opinion in elections. While this is annoying, it does not merit restricting all telephone communications to a disclaimer requirement. If push polling is the problem than campaign laws should specifically address political polls and a disclaimer requirement.

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Room 416

REPRESENTATIVE JOHN COGHILL

HB 179 Political Campaign Communications Sectional

Section 1: Amends Sec. 15.13.040(a) to increasing the limit for individually reporting contributors from in excess of \$100 to \$200. This means that a candidate needs only report the name, address, principal occupation and employer of a contributor after the contributor has contributed more than \$200.

Section 2: Amends Sec. 15.13.040(d). Contributions, expenditures and supplying of services to be reported. It requires every individual, person, or group making a contribution to or expenditure for a candidate or group and expenditures made on behalf of a candidate or group exceeding \$500.00 in a year. Current law requires reporting when the total reaches \$500.00. This \$1.00 change would exempt individuals from reporting under this section, because individuals can not contribute more than \$500.00.

Section 3: Adds a new subsection (c) that provides that telephone communications are not required to do a complete disclaimer, but need only identify the name of the candidate, group or individual paying for the communication.

Section 4: Repeals individuals in AS 15.13.080 from civil penalties and late filing of required reports under Sec. 15.13.125 as they will no longer be required to report the contributions. Reporting will be left exclusively to the candidate or group.

Section 4: Repeals AS 15.13.080 which requires individuals contributing \$500.00 to file a contributor's statement with APOC.

STATUTES EFFECTED BY HB 179

- **Sec. 15.13.040. Contributions, expenditures and supplying of services to be reported.**

(a) Except as provided in (g) of this section, each candidate shall make a full report, upon a form prescribed by the commission, listing the date and amount of all expenditures made by the candidate, the total amount of all contributions, including all funds contributed by the candidate, and for all contributions in excess of \$100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor and the date and amount contributed by each contributor. The report shall be filed in accordance with AS 15.13.110 and shall be certified correct by the candidate or campaign treasurer.

(b) Each group shall make a full report upon a form prescribed by the commission, listing

(1) the name and address of each officer and director;

(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of \$100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred or authorized by it.

(c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer.

(d) Every individual, person, or group making a contribution or expenditure shall make a full report, upon a form prescribed by the commission, of

(1) contributions made to a candidate or group and expenditures made on behalf of a candidate or group

(A) as soon as the total contributions and expenditures to that candidate or group reaches \$500 in a year; and

(B) for all subsequent contributions and expenditures to that candidate or group in a year whenever the total contributions and expenditures to that candidate or group that have not been reported under this paragraph reaches \$500;

(2) unless exempted from reporting by (h) of this section, any expenditure whatsoever for advertising in newspapers or other periodicals, on radio, or on television; or, for the

publication, distribution, or circulation of brochures, flyers, or other campaign material for any candidate or ballot proposition or question.

(e) The report required under (d) of this section shall contain the name, address, principal occupation and employer of the individual filing the report, and an itemized list of expenditures. The report shall be filed with the commission by the contributor no later than 10 days after the contribution or expenditure is made. A copy of the report shall be furnished to the candidate, campaign treasurer or deputy campaign treasurer at the time the contribution is made.

(f) During each year in which an election occurs, all businesses, persons, or groups that furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. Records of provision of services, facilities, or supplies shall be available for inspection by the commission.

(g) The provisions of (a) of this section do not apply if a candidate

(1) indicates, on a form prescribed by the commission, an intent not to raise and not to expend more than \$2,500 in seeking election to office, including both the primary and general elections;

(2) accepts contributions totaling not more than \$2,500 in seeking election to office, including both the primary and general elections; and

(3) makes expenditures totaling not more than \$2,500 in seeking election to office, including both the primary and general elections.

(h) The provisions of (d)(2) of this section do not apply to one or more expenditures made by an individual acting independently of any group and independently of any other individual if the expenditures

(1) cumulatively do not exceed \$250 during a calendar year; and

(2) are made only for billboards, signs, or printed material concerning a ballot proposition as that term is defined by AS 15.13.065(c).

(i) The permission of the owner of real or personal property to post political signs, including bumper stickers, or to use space for an event or to store campaign-related materials is not considered to be a contribution to a candidate under this chapter unless the owner customarily charges a fee or receives payment for that activity. The fact that the owner customarily charges a fee or receives payment for posting signs that are not

political signs is not determinative of whether the owner customarily does so for political signs.

Sec. 15.13.090. Identification of communication.

(a) All advertisements, billboards, handbills, paid-for television and radio announcements and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group or individual paying for the advertising. In addition, candidates and groups must identify the name of their campaign chairman.

(b) The provisions of (a) of this section do not apply when the advertisement

(1) is paid for by an individual acting independently of any group and independently of any other individual;

(2) is made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065 (c); and

(3) is made for

(A) a billboard or sign; or

(B) printed material other than an advertisement made in a newspaper or other periodical.

- Repeals individuals in AS 15.13.080 from civil penalties and late filing of required reports under Sec. 15.13.125.
- **REPEALED LANGUAGE IN SECTION 4:**

Sec. 15.13.080. Statement by contributor.

(a) An individual who contributes \$500, or goods or services with a value of \$500, to a candidate shall file a contributor's statement as required by this section.

(b) An individual required to file a contributor's statement under (a) of this section shall file on a form made available by the commission. The statement must

(1) identify the contributor and the candidate and all groups receiving contributions;

(2) itemize the contributions and goods; and

(3) state that the contributor is not prohibited by law from contributing and that the contribution consists of funds or property belonging to the contributor and has not been given or furnished by another person or group.

(c) The contributor's statement shall be filed with the commission by the contributor no later than 30 days after the contribution that requires the contributor to report under AS 15.13.040 (d) is made.

- A "person" can be defined a business, individual, union, committee, club, other organization, or group of individuals, therefore, a person is not an individual.¹

¹ Sec. 36.30.990(15), Definitions. STATE PROCUREMENT CODE

STATE OF ALASKA

Department of Administration

Alaska Public Offices Commission

TONY KNOWLES, GOVERNOR

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April 25, 2000

Conor Sullivan
Office of Rep. John Cowdery
State Capitol
Juneau, Alaska 99801-1182

Re: Identification of Telephone Communications

Dear Mr. Sullivan:

This letter responds to your request this morning that I describe the position of the Alaska Public Offices Commission ("Commission") with regard to the responsibility of campaigns to identify telephone communications. The statutory provision that directs campaigns to identify political communications is fairly broad. AS 15.13.090 applies to all communications intended to influence the election of a candidate or outcome of a ballot proposition.

As I mentioned to you, questions related to campaign telephone calls have not arisen often. In the past, Commission staff have received public inquiries from individuals frustrated by the absence of identification on polling calls. Because the primary purpose of most polls is to gather information rather than solicit money or influence voters, however, polling calls do not trigger the identification requirements of AS 15.13.090.

Recently, however, with new technological developments in mass communication, we have received an increasing number of inquiries from members of the public contacted by automatic recorded campaign messages that failed to identify the responsible campaign. In these cases, Commission staff has directed campaigns to include in the recorded message the name of the candidate or group paying for the messages.

In general, staff believes that by disclosing the name of the entity responsible for the communication, the campaign satisfies the intent of the statutory requirement and avoids the potential damage to the public caused by anonymous campaign communications. Staff has not objected to the failure of a campaign to include in a telephone communication, the words "paid for by"; the address of the candidate, group or individual paying for the communications; or the name of the campaign chair.

Informal Advice to Conor Sullivan
Re: Identification of Telephone Communications

April 25, 2000
Page 2

I hope this informal advice helps clarify the matter. Please contact me at 276-4176 if you have any questions.

Sincerely,
ALASKA PUBLIC OFFICES COMMISSION

Karen Boorman
Executive Director

HB

180

From the office of . . . Representative John J. Cowdery

716 West 4th Avenue
Anchorage, AK 99501
907-465-3879 phone
907-465-2069 fax

MEMORANDUM

TO: Representative Pete Kott
FROM: Representative Cowdery
DATE: April 20, 1999
RE: Judiciary hearing for House Bill 180

Notes:

Please schedule House Bill 180 for a hearing in the House Judiciary Committee at your convenience.

Thank you.

Sponsor Statement for HB 180

Existing statutes acknowledge that children should not be allowed to enter or remain where drugs are stored (11.51.110) or sold (11.51.130). However, current law does not prohibit the manufacture or use of drugs in the presence of children. Children learn by example. I believe the destructive behavior modeled by drug use in the presence of a child is as damaging as that of being in the same room, dwelling or vehicle in which drugs are stored or sold. HB 180 corrects this situation.

New language in House Bill 180 expands the sphere of space in which the co-presence of children and drugs is forbidden. By using the phrase, "in the immediate physical presence of" children are protected in outdoor situations like a yard, campsite or park bench. Stiffer penalty provisions send the clear message that children and drugs don't mix.

To promote uniformity of application the new provision employs "use, manufacture, delivery and display", terms used in existing controlled substance statutes.

- Sectional Review -

House Bill 180 adds new language to 11.51.100. Section 100 is amended to recognize the damaging effects to children of being exposed to the drug culture. The new section 100 makes it a criminal act to allow a child under the age of 16 to enter or remain in a dwelling or vehicle where drugs are used, made or displayed. Additionally, Section 100 prohibits allowing a child to enter or remain in the immediate physical presence of the use, manufacture or display of drugs. In order to be prosecuted under these new provisions it must be shown that the adult legally charged with the care of the child knew that the use, sale, manufacture or display of illegal drugs was occurring. Upon the proof of knowing conduct, a person found in violation of Section 100 would be guilty of a class "C" felony.

House Bill 180 further adds new language to 11.51.300. Section 300 is amended to acknowledge the damaging example set by adults who use, manufacture or deliver controlled substances. The new language sanctions an adult who aids, induces, causes or encourages a child under the age of 18 to enter or remain in the immediate physical presence of the use, manufacture or delivery of a controlled. In order to be prosecuted under this subsection, it must be shown that the accused acted with "reckless disregard" for whether or not the drug related activity was occurring. Additionally, the new language makes it unlawful for a person to aid, induce, cause or encourage someone under 18 years old to be in the immediate physical presence of the possession of a controlled substance, knowing that the possession was occurring. A person convicted under this section would be guilty of a class "A" misdemeanor.

House Bill 180 removes redundant language from the existing statutes under 11.51.130.

AS 11.51.100 – Endangering the welfare of a child in the first degree

Currently does not recognize any drug related endangerment. Section applies to children under age 16.

New provisions provide penalty for allowing a child to enter or remain where drugs are used manufactured or displayed (direct actions).

Penalty provisions under 11.51.100 are "C" felonies unless a child is actually injured.

AS 11.51.110 – Endangering the welfare of a child in the second degree

Currently, for children under 10 years of age, it recognizes that children should not be allowed to enter or remain in a dwelling or vehicle where drugs are stored.

New provision deletes this section's reference to controlled substances

Penalty provision under 11.51.110 is a violation (Max \$300)

AS 11.51.130 – Contributing to the delinquency of a minor

Currently provides penalty for an adult who aides, induces, causes or encourages a minor to enter or remain in the same room in a building where the sale of a controlled substance occurs.

New provisions provide penalty for an adult who aides, induces, causes or encourages a minor to enter or remain in the immediate physical presence of the unlawful possession (situation) of a controlled substance, knowing that the possession is occurring.

New provisions provide penalty for an adult who aides, induces, causes or encourages a minor to enter or remain in the immediate physical presence of the unlawful manufacture, use, delivery or sale (direct actions) of a controlled substance, with reckless disregard that the unlawful conduct was occurring.

Violation is a class "A" misdemeanor.

I-LS0188\H
Luckhaupt
4/22/99

CS FOR HOUSE BILL NO. 180()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE COWDERY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the possession, manufacture, use, display, or delivery of
2 controlled substances while children are present."

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

4 * Section 1. AS 11.51.100(a) is amended to read:

5 (a) A person commits the crime of endangering the welfare of a child in the
6 first degree if, being a parent, guardian, or other person legally charged with the care
7 of a child under 16 years of age, the person

8 (1) intentionally deserts the child in a place under circumstances
9 creating a substantial risk of physical injury to the child;

10 (2) leaves the child with another person who is not a parent, guardian,
11 or lawful custodian of the child knowing that the person

12 (A) is registered or required to register as a sex offender under
13 AS 12.63 or a law or ordinance in another jurisdiction with similar
14 requirements;

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(B) has been charged by complaint, information, or indictment with a violation of AS 11.41.410 - 11.41.455 or a law or ordinance in another jurisdiction with similar elements; or

(C) has been charged by complaint, information, or indictment with an attempt, solicitation, or conspiracy to commit a crime described in (B) of this paragraph; [OR]

(3) leaves the child with another person knowing that the person has previously physically mistreated or had sexual contact with any child, and the other person causes physical injury or engages in sexual contact with the child; or

(4) allows the child to enter or remain in

(A) a dwelling or vehicle knowing that a controlled substance is being unlawfully used, manufactured, displayed, or delivered in the dwelling or vehicle;

(B) the immediate physical presence of the unlawful use, manufacture, display, or delivery of a controlled substance knowing that the unlawful use, manufacture, display, or delivery is occurring.

* Sec. 2. AS 11.51.100(c) is amended to read:

(d) Endangering the welfare of a child ^{in the first degree} ~~in the first degree~~ under (a) ⁽⁴⁾ ~~subsection~~
^{A misdemeanor.}

~~OR (2)]~~ of this section is a class ~~disorder~~ ^(e).

* Sec. 3. AS 11.51.110(a) is amended to read:

(a) A person commits the crime of endangering the welfare of a child in the second degree if the person, while caring for a child under 10 years of age,

[(1) CAUSES OR ALLOWS THE CHILD TO ENTER OR REMAIN IN A DWELLING OR VEHICLE IN WHICH A CONTROLLED SUBSTANCE IS STORED IN VIOLATION OF AS 11.71; OR

(2)] is impaired by an intoxicant, whether or not prescribed for the person under AS 17.30, and there is no third person who is at least 12 years of age and not impaired by an intoxicant present to care for the child.

* Sec. 4. AS 11.51.130(a) is amended to read:

(a) A person commits the crime of contributing to the delinquency of a minor if, being 19 years of age or older or being under 19 years of age and having the

1 disabilities of minority removed for general purposes under AS 09.55.590, the person
2 aids, induces, causes, or encourages a child

3 (1) under 18 years of age to do any act prohibited by state law unless
4 the child's disabilities of minority have been removed for general purposes under
5 AS 09.55.590;

6 (2) under 18 years of age to enter or remain in the immediate physical
7 presence of [SAME ROOM IN A BUILDING WHERE] the

8 (A) unlawful possession [SALE] of a controlled substance
9 knowing that the unlawful possession is occurring, [DRUG OCCURS] unless
10 the child's disabilities of minority have been removed for general purposes
11 under AS 09.55.590; or

12 (B) unlawful manufacture, use, display, or delivery of a
13 controlled substance with reckless disregard that the unlawful
14 manufacture, use, display, or delivery is occurring, unless the child's
15 disabilities of minority have been removed for general purposes under
16 AS 09.55.590;

17 (3) under 16 years of age to be repeatedly absent from school, without
18 just cause; or

19 (4) under 18 years of age to be absent from the custody of a parent,
20 guardian, or custodian without the permission of the parent, guardian, or custodian or
21 without the knowledge of the parent, guardian, or custodian, unless the child's
22 disabilities of minority have been removed for general purposes under AS 09.55.590
23 or the person has immunity under AS 47.10.350 or 47.10.398(a); it is an affirmative
24 defense to a prosecution under this paragraph that, at the time of the alleged offense,
25 the defendant

26 (A) reasonably believed that the child was in danger of physical
27 injury or in need of temporary shelter; and

28 (B) within 12 hours after taking the actions comprising the
29 alleged offense, notified a peace officer, a law enforcement agency, or the
30 Department of Health and Social Services of the name of the child and the
31 child's location.

HB

182

CS FOR HOUSE BILL NO. 182()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KOTT

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to charitable gaming; and providing for an effective date."

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

3 * Section 1. AS 05.15.020(b) is amended to read:

4 (b) An additional fee of one percent of the net proceeds received during the
5 preceding year from the activities authorized under the permit shall be paid to the
6 department annually by the municipality or qualified organization authorized to
7 conduct activities under this chapter, if the gross receipts for the activities were
8 \$20,000 or more. In this subsection, "activities authorized under the permit" does
9 not include activities conducted under an endorsement issued to a permittee under
10 AS 05.15.300.

11 * Sec. 2. AS 05.15.060(a) is amended to read:

12 (a) The department shall adopt regulations under AS 44.62 (Administrative
13 Procedure Act) necessary to carry out this chapter covering, but not limited to,
14 (1) the issuance, renewal, and revocation of permits, licenses, and pull-
15 tab and electronic gaming vendor registrations;

1 (2) a method of ascertaining net proceeds, the determination of items
2 of expense that may be incurred or paid, and the limitation of the amount of the items
3 of expense to prevent the proceeds from the activity permitted from being diverted to
4 noncharitable, noneducational, nonreligious, or profit-making organizations, individuals,
5 or groups;

6 (3) the immediate revocation of permits, licenses, and pull-tab and
7 electronic gaming vendor registrations authorized under this chapter if this chapter or
8 regulations adopted under it are violated;

9 (4) the requiring of detailed, sworn, financial reports of operations from
10 permittees and licensees including detailed statements of receipts and payments;

11 (5) the investigation of permittees, licensees, registered pull-tab or
12 electronic gaming vendors, and their employees, including the fingerprinting of those
13 permittees, licensees, registered pull-tab or electronic gaming vendors, and employees
14 whom the department considers it advisable to fingerprint;

15 (6) the method and manner of conducting authorized activities and
16 awarding of prizes or awards, and the equipment that may be used;

17 (7) the number of activities that may be held, operated, or conducted
18 under a permit during a specified period; however, the department may not allow more
19 than 14 bingo sessions a month and 35 bingo games a session to be conducted under
20 a permit; the holders of a multiple-beneficiary permit under AS 05.15.100(d) may hold,
21 operate, or conduct the number of sessions and games a month equal to the number
22 allowed an individual permittee per month multiplied by the number of holders of the
23 multiple-beneficiary permit;

24 (8) a method of accounting for receipts and disbursements by operators,
25 including the keeping of records and requirements for the deposit of all receipts in a
26 bank;

27 (9) the disposition of funds in possession of a permittee, a person,
28 municipality, or qualified organization that possesses an operator's license, or a
29 registered pull-tab or electronic gaming vendor at the time a permit, a license, or a
30 pull-tab or electronic gaming vendor registration is surrendered, revoked, or
31 invalidated;

1 (10) restrictions on the participation by employees of the Department
2 of Fish and Game in salmon classics and in king salmon classics, and by employees
3 of Douglas Island Pink and Chum in king salmon classics;

4 (11) other matters the department considers necessary to carry out this
5 chapter or protect the best interest of the public.

6 * Sec. 3. AS 05.15.070 is amended to read:

7 **Sec. 05.15.070. Examination of books and records.** The department may
8 examine or have examined the books and records of a permittee, an operator, a
9 registered pull-tab or electronic gaming vendor, or a person licensed to manufacture
10 or to distribute electronic gaming machines or pull-tab games in the state. The
11 department may issue subpoenas for the attendance of witnesses and the production of
12 books, records, and other documents.

13 * Sec. 4. AS 05.15.095(a) is amended to read:

14 (a) The applications and reports to the department required by this chapter
15 shall be signed under penalty of unsworn falsification by the following person, as
16 applicable:

- 17 (1) the member in charge for the qualified organization;
18 (2) a person authorized to sign on behalf of the municipality;
19 (3) the operator or the operator's agent;
20 (4) the licensed pull-tab distributor or the distributor's agent; [OR]
21 (5) the licensed pull-tab manufacturer or the manufacturer's agent;
22 (6) the licensed electronic gaming machine distributor or the

23 distributor's agent;

24 (7) the licensed electronic gaming machine manufacturer or the
25 manufacturer's agent;

26 (8) the registered electronic gaming vendor or the vendor's agent;

27 or

28 (9) the registered pull-tab vendor or the vendor's agent.

29 * Sec. 5. AS 05.15.100 is amended by adding a new subsection to read:

30 (e) The department may issue a permit to a municipality or qualified
31 organization to conduct electronic gaming activities through the use of electronic

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gaming machines.

* Sec. 6. AS 05.15.105(a) is amended to read:

(a) If a person has been convicted of a violation of a law of this state that is, or a law or ordinance of another jurisdiction that would be if it had been committed in this state, a felony, or a violation of a law or ordinance of this state or another jurisdiction that is a crime involving theft or dishonesty or a violation of gambling laws

(1) the department may not issue a license to the person;

(2) the department may not issue a license to, or register as a pull-tab or electronic gaming vendor, an applicant who employs the person in a managerial or supervisory capacity or uses the person as a fund raiser or consultant;

(3) the department may not issue a permit for an activity if the person is responsible for the operation of the activity;

(4) the person may not be employed in a managerial or supervisory capacity by a licensee or vendor or used as a fund raiser or consultant by a licensee or a pull-tab or electronic gaming vendor;

(5) the person may not participate in charitable gaming as a permittee, licensee, or pull-tab or electronic gaming vendor.

* Sec. 7. AS 05.15.115(c) is amended to read:

(c) A permittee may not contract with more than one operator at a time to conduct the same type of activity. For the purposes of this subsection, bingo games, raffles, lotteries, pull-tab games, ice classics, race classics, rain classics, goose classics, mercury classics, deep freeze classics, canned salmon classics, salmon classics, king salmon classics, dog mushers' contests, snow machine classics, fish derbies, and contests of skill are each a different type of activity. Except as authorized under AS 05.15.300, a permittee may not contract with an operator to conduct electronic gaming activities.

* Sec. 8. AS 05.15.124 is amended to read:

Sec. 05.15.124. Municipal regulation of operators or vendors. A municipality may by ordinance prohibit an operator, a pull-tab vendor, or an electronic gaming [A] vendor from conducting activities under this chapter within the

1 municipality.

2 * Sec. 9. AS 05.15.128(a) is amended to read:

3 (a) The department shall revoke the license of an operator who does not

4 (1) report an adjusted gross income of at least 15 percent of gross
5 income annually based on the total operation of the operator; or

6 (2) pay to each authorizing permittee annually at least 30 percent of the
7 adjusted gross income, as determined under (1) of this subsection, from a pull-tab
8 activity or at least 10 percent of the adjusted gross income, as determined under (1)
9 of this subsection, from a gaming activity other than electronic gaming activities and
10 pull-tabs, received from activities conducted on behalf of the authorizing permittee.

11 * Sec. 10. AS 05.15.150(a) is amended to read:

12 (a) The authority to conduct the activity authorized by this chapter is contingent
13 upon the dedication of the net proceeds of the charitable gaming activity to the awarding
14 of prizes to contestants or participants and to political, educational, civic, public,
15 charitable, patriotic, or religious uses in the state. "Political, educational, civic, public,
16 charitable, patriotic, or religious uses" means uses benefiting persons either by bringing
17 them under the influence of education or religion or relieving them from disease,
18 suffering, or constraint, or by assisting them in establishing themselves in life, or by
19 providing for the promotion of the welfare and well-being of the membership of the
20 organization within their own community, or through aiding candidates for public office
21 or groups that support candidates for public office, or by erecting or maintaining public
22 buildings or works, or lessening the burden on government, but does not include

23 (1) the direct or indirect payment of any portion of the net proceeds of
24 a bingo, electronic gaming, or pull-tab game to a lobbyist registered under AS 24.45;

25 (2) the erection, acquisition, improvement, maintenance, or repair of real,
26 personal, or mixed property unless it is used exclusively for one or more of the permitted
27 uses; or

28 (3) the direct or indirect payment of any portion of the net proceeds of
29 a charitable gaming activity, except the proceeds of a raffle and lottery,

30 (A) to aid candidates for public office or groups that support or
31 oppose candidates for public office;

32 (B) to a political party or to an organization affiliated with a

1 political party; or

2 (C) to a group, as that term is defined in AS 15.13.400, or a
3 political group, as that term is defined in AS 15.60, that seeks to influence the
4 outcome of an election.

5 * Sec. 11. AS 05.15.160(d) is amended to read:

6 (d) The total amount of authorized expenses that may be incurred under (a) of
7 this section in connection with any gaming activity other than electronic gaming
8 activities and pull-tabs may not exceed 90 percent of the adjusted gross income from
9 that gaming activity.

10 * Sec. 12. AS 05.15.170 is amended to read:

11 **Sec. 05.15.170. Suspension or revocation of permit, license, or vendor**
12 **registration.** (a) The department may suspend, for a period of up to one year, or
13 revoke a permit, license, or pull-tab or electronic gaming vendor registration, after
14 giving notice to and an opportunity to be heard by the permittee or licensee, if the
15 permittee, licensee, or pull-tab or electronic gaming vendor

16 (1) violates or fails to comply with a requirement of this chapter or of
17 a regulation adopted under this chapter;

18 (2) breaches a contractual agreement with a permittee, licensee, or
19 registered pull-tab or electronic gaming vendor;

20 (3) becomes disqualified to participate in charitable gaming as provided
21 in AS 05.15.105; for the purposes of this paragraph, a permittee, licensee, or pull-tab
22 or electronic gaming vendor that is not a natural person is considered convicted if an
23 owner or manager of the permittee, licensee, or pull-tab or electronic gaming vendor
24 is convicted;

25 (4) knowingly submits false information to the department or, in the case
26 of a registered pull-tab or electronic gaming vendor, to a permittee when the pull-tab
27 or electronic gaming vendor knows that the false information will be submitted to the
28 department as part of an application for registration; or

29 (5) gives or acts upon any inside information on the status of the prizes
30 awarded or to be awarded in a pull-tab game.

31 (b) If the department revokes a license or pull-tab or electronic gaming vendor
32 registration under this section, it may prohibit the licensee or pull-tab or electronic

1 gaming vendor from reapplying for a license or pull-tab or electronic gaming vendor
2 registration for a period of not more than five years. If the department revokes a permit
3 under this section, it may prohibit the permittee from reapplying for a permit for a period
4 of not more than one year.

5 * Sec. 13. AS 05.15.180(a) is amended to read:

6 (a) Except as provided in AS 05.15.187 or 05.15.300 - 05.15.360, this [THIS]
7 chapter does not authorize the use of playing cards, dice, roulette wheels, coin-operated
8 instruments or machines, or other objects or instruments used, designed, or intended
9 primarily for gaming or gambling or any other method or implement not expressly
10 authorized by the department.

11 * Sec. 14. AS 05.15.180(b) is amended to read:

12 (b) With the exception of raffles, lotteries, bingo games, electronic gaming
13 activities, pull-tab games, race classics, rain classics, goose classics, mercury classics,
14 deep freeze classics, dog mushers' contests, snow machine classics, canned salmon
15 classics, salmon classics, king salmon classics, an activity may not be licensed under this
16 chapter unless it existed in the state in substantially the same form and was conducted
17 in substantially the same manner before January 1, 1959. A snow machine classic may
18 not be licensed under this chapter unless it has been in existence for at least five years
19 before the licensing.

20 * Sec. 15. AS 05.15.180(g) is amended to read:

21 (g) A municipality or a qualified organization may award a maximum of
22 \$6,000,000 [\$1,000,000] in prizes each year in activities authorized under this chapter;
23 however, if a municipality or a qualified organization contracts with an operator to
24 conduct on its behalf activities authorized under this chapter, the municipality or
25 qualified organization may award a maximum of \$500,000 in prizes each year. The
26 holders of a multiple-beneficiary permit under AS 05.15.100(d) may award a maximum
27 in prizes each year of \$1,000,000 times the number of holders of the permit for activities
28 authorized under this chapter. In this subsection, "activities authorized under this
29 chapter" means all activities subject to this chapter other than bingo and electronic
30 gaming activities.

31 * Sec. 16. AS 05.15.183(e) is amended to read:

32 (e) A distributor may not

- 1 (1) take an order for the purchase of a pull-tab series from a pull-tab
2 vendor;
3 (2) sell a pull-tab series to a pull-tab vendor; or
4 (3) deliver a pull-tab series to a pull-tab vendor.

5 * Sec. 17. AS 05.15.187(h) is amended to read:

6 (h) An owner, manager, or employee of a person holding a permit or license
7 under this chapter, or registered under this chapter as a pull-tab vendor, may not
8 purchase a pull-tab from a pull-tab series manufactured, distributed, or sold by the
9 permittee, licensee, or registered pull-tab vendor.

10 * Sec. 18. AS 05.15.187(i) is amended to read:

11 (i) A permittee, operator, or registered pull-tab vendor may not turn over a prize
12 of \$50 or more to a person with a pull-tab card entitling the person to that prize unless
13 the person signs the pull-tab [A RECEIPT FOR THE PRIZE] and returns the pull-tab
14 [RECEIPT] to the permittee, operator, or pull-tab vendor. [THE RECEIPT MUST BE
15 IN A FORM APPROVED BY THE DEPARTMENT.]

16 * Sec. 19. AS 05.15.187 is amended by adding a new subsection to read:

17 (j) The department may approve the use of cash-operated machines for the sale
18 of pull-tabs.

19 * Sec. 20. AS 05.15.188 is amended to read:

20 **Sec. 05.15.188. Pull-tab sales by pull-tab vendors on behalf of permittees;**
21 **pull-tab vendor registration.** (a) A permittee may contract with a pull-tab vendor
22 to sell pull-tabs on behalf of the permittee [,] if the permittee first registers the pull-
23 tab vendor with the department by applying for registration on a form prescribed by
24 the department and by submitting the registration fee of \$50 for each location at which
25 the pull-tab vendor will sell pull-tabs.

26 (b) Upon approval of the pull-tab vendor registration, the department shall
27 issue an endorsement to the permittee's permit that authorizes the conduct of pull-tab
28 sales at that pull-tab vendor location.

29 (c) The endorsement issued under (b) of this section is an extension of the
30 permittee's privilege under AS 05.15.100 to conduct pull-tab sales in this state. A
31 pull-tab vendor may not sell a pull-tab series until a copy of the permit containing the
32 endorsement for the new pull-tab vendor location has been posted by the permittee in

1 the registered pull-tab vendor establishment. The endorsed permit must be clearly
2 visible to the gaming public.

3 (d) A separate endorsement shall be issued for each pull-tab vendor location.
4 The permittee shall inform the department when a pull-tab vendor with whom the
5 permittee is contracting changes the physical location at which pull-tabs are sold, and
6 shall return to the department all copies of a permit endorsed to a pull-tab vendor that
7 is no longer selling pull-tabs on behalf of the permittee. Failure to inform the
8 department of a change in pull-tab vendor location, or to return the endorsed copies
9 of a permit to the department after a pull-tab vendor change, may constitute grounds
10 for the suspension or revocation of a permittee's permit.

11 (e) At the time that a permittee annually renews its permit, it shall also renew
12 the registration of all locations where a pull-tab vendor is selling pull-tabs on the
13 permittee's behalf and shall pay a registration fee of \$50 for each pull-tab vendor
14 location.

15 (f) A permittee that uses a pull-tab vendor to sell pull-tabs on its behalf shall
16 enter into a written contract with that pull-tab vendor. The department may inspect
17 this contract. If the contract contains provisions that violate this chapter or the
18 regulations adopted under it, the department may declare the contract void, and may
19 suspend or revoke the registration of the pull-tab vendor and the permit of the
20 permittee.

21 (g) A person, other than a permittee's member-in-charge, may not directly
22 supply a pull-tab series to a registered pull-tab vendor for sale by that pull-tab vendor
23 on behalf of the permittee.

24 (h) If a permittee contracts with a pull-tab vendor under (a) of this section,
25 the contract must provide that the permittee shall receive no less than 70 percent of
26 the ideal net.

27 (i) An amount equal to the ideal net less the compensation owed to the pull-
28 tab vendor shall be paid by the pull-tab vendor to the member-in-charge upon
29 delivery of a pull-tab series to the pull-tab vendor for sale. The amount required to
30 be paid by the pull-tab vendor shall be paid by check and the check may not be drawn
31 in a manner that the payee is not identified.

1 (j) An operator may not contract with or use a pull-tab vendor to sell pull-
2 tabs.

3 (k) A permittee may not contract with more than five pull-tab vendors under
4 this section.

5 * Sec. 21. AS 05.15 is amended by adding new sections to read:

6 **Article 2A. Electronic Gaming Activities.**

7 **Sec. 05.15.300. Electronic gaming.** (a) The department may issue an
8 electronic gaming endorsement to a permittee to conduct electronic gaming charitable
9 gaming. The endorsement provides the permittee with the authority to

10 (1) conduct electronic gaming activities by use of electronic gaming
11 machines at a location where the permittee directly sells pull-tabs or conducts bingo
12 sessions;

13 (2) sublease electronic gaming machines to other permittees and charge
14 a fee for the sublease that is not more than three percent of net machine income, which
15 shall be paid from the permittee's share of net machine income;

16 (3) contract with an electronic gaming vendor to conduct electronic
17 gaming by use of electronic gaming machines; or

18 (4) if the permittee has a club license under AS 04.11.110, conduct
19 electronic gaming by use of electronic gaming machines at the location of the club.

20 (b) To obtain an electronic gaming endorsement under

21 (1) (a)(1) of this section, a permittee shall

22 (A) identify the locations where the permittee directly sells pull-
23 tabs or conducts bingo sessions and where the permittee intends to install
24 electronic gaming machines;

25 (B) identify the number of electronic gaming machines the
26 permittee will have at each location; and

27 (C) pay an annual fee of \$100 for each electronic gaming
28 machine;

29 (2) (a)(2) of this section, a permittee shall identify the other permittees
30 to whom electronic gaming machines are subleased, the location of the machines, and
31 the fee charged for each sublease;

1 (3) (a)(3) of this section, a permittee shall register the electronic
2 gaming vendor with the department by applying for registration on a form prescribed
3 by the department and

4 (A) identify the locations of the electronic gaming machines;

5 (B) identify the number of electronic gaming machines the
6 permittee will have at each location; and

7 (C) pay an annual fee of \$100 for each electronic gaming
8 machine;

9 (4) (a)(4) of this section, the permittee shall submit proof of the club
10 license to the department and

11 (A) identify the location of the club;

12 (B) identify the number of electronic gaming machines the
13 permittee will have at the club; and

14 (C) pay an annual fee of \$100 for each electronic gaming
15 machine.

16 (c) A permittee issued an endorsement to conduct electronic gaming activities
17 under

18 (1) (a)(1) of this section may not be issued an endorsement under (a)(3)
19 or (4) of this section;

20 (2) (a)(3) of this section may not be issued an endorsement under (a)(1)
21 or (4) of this section;

22 (3) (a)(4) of this section may not be issued an endorsement under (a)(1)
23 or (3) of this section.

24 (d) The endorsement issued under (a) of this section is an extension of the
25 permittee's privilege to conduct charitable gaming in this state. In addition to the
26 endorsement, the department shall issue a machine permit for each electronic gaming
27 machine the permittee has identified under (b) of this section. A permittee or
28 registered electronic gaming vendor may not conduct electronic gaming until a copy
29 of the permit and the endorsement is posted by the permittee at the establishment
30 where the machine is located and the machine permit is posted on the machine. The
31 permit, endorsement, and each machine permit must be clearly visible to the public.

1 (e) A separate endorsement shall be issued for each permittee location or
2 electronic gaming vendor location. An endorsement may only be issued for permittee
3 locations that are engaged in charitable gaming on the effective date of this section.
4 The endorsement for a location may not be transferred to another location. The
5 permittee shall inform the department if the permittee or its electronic gaming vendor
6 discontinues conducting electronic gaming. Failure to return the endorsed copies of
7 a permit to the department after a permittee or an electronic gaming vendor change,
8 constitutes grounds for the suspension or revocation of a permittee's permit.

9 (f) At the time that a permittee annually renews its permit, the permittee shall
10 also renew the registration of all locations where the permittee or an electronic gaming
11 vendor is conducting electronic gaming.

12 (g) A permittee that uses an electronic gaming vendor to conduct electronic
13 gaming on its behalf shall enter into a written contract with that electronic gaming
14 vendor. The department may inspect this contract. If the contract contains provisions
15 that violate this chapter or the regulations adopted under it, the department may declare
16 the contract void, and may suspend or revoke the registration of the electronic gaming
17 vendor and the permit of the permittee. The contract must contain provisions
18 regarding the allocation of the costs of purchasing or leasing the electronic gaming
19 machines.

20 (h) Only electronic gaming machines approved by the department may be used
21 for electronic gaming. A permittee may purchase the machines directly from a licensed
22 electronic gaming machine distributor or may enter into a lease or lease-purchase
23 arrangement for the machines with the distributor. A lease or lease-purchase
24 arrangement must be approved by the department.

25 (i) If a permittee

26 (1) contracts with an electronic gaming vendor under (a)(3) of this
27 section, the contract must provide that the

28 (A) permittee shall receive 30 percent of the net machine
29 income;

30 (B) registered electronic gaming vendor shall receive 30 percent
31 of the net machine income;

1 (C) state shall receive 15 percent of the net machine income;
2 and

3 (D) municipality in which each machine is located, or the state
4 if the machine is located in the unorganized borough outside of municipalities,
5 shall receive 25 percent of the net machine income;

6 (2) conducts electronic gaming under (a)(1) or (4) of this section, the
7 permittee must remit the percentages of net machine income under (1) of this
8 subsection to the state and municipality, if any, at times set by the department by
9 regulation.

10 (j) The odds of winning each electronic gaming game shall be posted on or
11 near each electronic gaming machine. The manner in which the odds are calculated
12 and how they are posted shall be set by the department by regulation.

13 (k) An electronic gaming machine may

14 (1) not be played by a person under the age of 21 and may not be
15 located in any place accessible to persons under the age of 21;

16 (2) only be played during the regular business hours for the location
17 and, if the permittee or electronic gaming vendor is licensed under AS 04.11, during
18 the legal hours of operation allowed by the license and applicable municipal ordinance;

19 (3) not be played if the machine permit is not posted on the machine.

20 (l) A permittee may not have more than 10 electronic gaming machines at each
21 location for which the permittee has an endorsement. A permittee may not contract
22 with more than five electronic gaming vendors under this section. A permittee may
23 not have endorsements cumulatively totaling more than 10 machines except for
24 endorsements for machines subleased to other permittees under (a)(2) of this section.
25 If an electronic gaming vendor is an operator, electronic gaming machines may only
26 be located in a location that was being used to conduct bingo or pull-tab games on the
27 effective date of this section.

28 (m) All electronic gaming machines shall be monitored by the permittee or the
29 electronic gaming vendor during business hours. Monitoring shall be accomplished
30 by the physical presence of an employee of the permittee or the electronic gaming
31 vendor or by an employee using video cameras or mirrors and by periodic personal

1 inspections of the machines and the area in which the machines are located.

2 (n) A permittee or a registered electronic gaming vendor may not advertise in
3 any manner the possession or availability of electronic gaming machines on their
4 premises or under their permit or registration.

5 (o) If the sale of alcoholic beverages has been prohibited within a municipality
6 under AS 04.11.491, the department may issue an electronic gaming endorsement to
7 a permittee within the municipality that provides the permittee with the authority to
8 conduct electronic gaming by use of electronic gaming machines in the manner
9 permittees with club licenses under AS 04.11.110 are authorized to conduct electronic
10 gaming if the electronic gaming is only conducted within a location into which the
11 access is restricted to persons 21 years of age or older.

12 (p) The department may by regulation exempt a permittee under this section
13 from the reporting requirements of AS 05.15.080 if the information required to be
14 submitted in the report can be obtained directly by the department from the electronic
15 gaming machines.

16 (q) An electronic gaming vendor that is an operator is subject only to the
17 provisions relating to electronic gaming vendors for actions taken as an electronic
18 gaming vendor.

19 **Sec. 05.15.310. Electronic gaming machines.** The department may not
20 approve an electronic gaming machine unless the machine

21 (1) offers only games authorized by the department;

22 (2) does not have any means of manipulation that affect the random
23 probabilities of winning a game;

24 (3) is designed to accept cash, in the form of coins or bills, to prevent
25 the obtaining of plays or credits without paying by stringing, slamming, drilling, or
26 other means of manipulation, and to suspend itself from operation until it is physically
27 reset if physically tampered with;

28 (4) has nonresettable meters housed in a readily accessible locked
29 machine area that keeps a permanent record of all money inserted into the machine,
30 all refunds of winnings made by the machine's printer, credits played for electronic
31 gaming games, and credits won by electronic gaming players;

1 (5) does not directly pay off winning players by means of tokens or
2 cash, in the form of coins or bills, but is capable of printing a ticket voucher stating
3 the value of the prize for the player at the completion of each electronic gaming game,
4 the time of day in a 24-hour format showing hours and minutes, the date, the machine
5 serial number, the sequential number of the ticket vouchers, and an encrypted
6 validation number from which the validity of the prize may be determined;

7 (6) has accounting software that keeps an electronic record that includes
8 total money inserted into the machine, the value of winning tickets claimed by players,
9 the total electronic gaming credits awarded by an electronic gaming game, and the
10 payback percentages credited players of each electronic gaming game;

11 (7) is linked under a central communications system to provide auditing
12 program information as approved by the department; the communications system
13 approved by the department under this paragraph may not limit participation to only
14 one manufacturer of electronic gaming machines by either the cost of implementing
15 the necessary program modifications to communicate or the inability to communicate
16 with the central communications system; this paragraph does not require that a
17 machine to be approved must be on-line or otherwise in constant communication with
18 a central computer;

19 (8) does not allow more than \$1 to be played on a game or award free
20 games or credits in excess of the value of \$150 per credit value of \$.25 played; and

21 (9) has a total payoff of 85 percent of the value of one \$.25 credit.

22 **Sec. 05.15.320. Electronic gaming machine manufacturers.** (a) A person
23 may not manufacture electronic gaming machines or associated equipment in the state,
24 and may not sell or distribute an electronic gaming machine or associated equipment
25 that the person has manufactured outside of the state to persons in the state, unless the
26 person has received an electronic gaming manufacturer's license issued by the
27 department.

28 (b) The department may issue an electronic gaming machine manufacturer's
29 license to a person who pays an annual fee of \$5,000.

30 (c) An electronic gaming machine or associated equipment may not be
31 manufactured, sold, or distributed in the state unless it has been approved by the

1 department. The department shall examine prototypes of electronic gaming machines
2 and associated equipment that a licensed manufacturer wishes to manufacture, sell, or
3 distribute in the state. The manufacturer shall pay in advance the costs of the
4 examination and approval of an electronic gaming machine or associated equipment.
5 The department may contract with another state or person for the examination required
6 under this subsection.

7 (d) An electronic gaming machine manufacturer may distribute electronic
8 gaming machines and associated equipment only to a licensed electronic gaming
9 machine distributor unless the electronic gaming machine manufacturer is also a
10 licensed electronic gaming machine distributor.

11 (e) An electronic gaming machine manufacturer shall report to the department
12 by the last business day of the month on each machine or associated equipment sold
13 or distributed within the state during the preceding month, including the serial number
14 of each machine or associated equipment distributed and the name of the distributor
15 to whom the machine or associated equipment was sold or distributed.

16 **Sec. 05.15.330. Electronic gaming machine distributors.** (a) A person may
17 not distribute electronic gaming machines or associated equipment in this state unless
18 the person has received an electronic gaming machine distributor's license issued by
19 the department.

20 (b) The department may issue an electronic gaming machine distributor's
21 license to a person who pays an annual fee of \$5,000.

22 (c) Electronic gaming machines and associated equipment may be distributed
23 only from a location in the state. A person may not distribute electronic gaming
24 machines or associated equipment directly to another person in the state from a
25 location outside of this state.

26 (d) An electronic gaming distributor shall report to the department by the last
27 business day of each month on each electronic gaming machine and associated
28 equipment distributed in the preceding month. The report must include the name of
29 the permittee to whom each electronic gaming machine or associated equipment is
30 distributed and the serial number of each machine.

31 (e) A distributor may only sell or lease electronic gaming machines to a

1 permittee holding a valid electronic gaming endorsement under AS 05.15.300. A
2 distributor may not

3 (1) take an order for the purchase of an electronic gaming machine or
4 associated equipment from an electronic gaming vendor; or

5 (2) sell an electronic gaming machine or associated equipment to an
6 electronic gaming vendor.

7 **Sec. 05.15.340. Distribution of net income from electronic gaming.** The
8 department shall immediately revoke the electronic gaming endorsement of a permittee
9 or the electronic gaming registration of an electronic gaming vendor that fails to pay
10 the following percentages of net machine income from each electronic gaming machine
11 at the times directed by the department:

12 (1) 60 percent to the permittee or, if the permittee uses an electronic
13 gaming vendor, 30 percent to the permittee and 30 percent to the electronic gaming
14 vendor;

15 (2) 15 percent to the state; and

16 (3) 25 percent to the municipality in which the machine is located, or
17 to the state if the machine is located in the unorganized borough outside of
18 municipalities.

19 **Sec. 05.15.350. Electronic gaming revenues may be appropriated for**
20 **education.** The state's percentage of electronic gaming adjusted gross income
21 received under AS 05.15.340 shall be deposited in the general fund. The annual
22 estimated balance in the account maintained under AS 37.05.142 for money received
23 under AS 05.15.340 may be appropriated by the legislature to provide for education.
24 Nothing in this section creates a dedicated fund.

25 **Sec. 05.15.360. Department to contract.** The department, to the maximum
26 extent practicable, shall solicit bids and contract for the performance of duties required
27 to monitor and conduct electronic gaming when the contracting will not jeopardize the
28 integrity of the gaming and enforcement of the laws of the state.

29 * **Sec. 22.** AS 05.15.620(c) is amended to read:

30 (c) If a majority of the voters vote "yes" on the question set out in (a), (b), or
31 (d) [(a) OR (b)] of this section, the department shall be notified immediately after

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certification of the results of the election and thereafter the department may not issue a license, permit, endorsement, or pull-tab or electronic gaming vendor registration authorizing charitable gaming, electronic gaming activities, or pull-tab sales, as appropriate, within the boundaries of a municipality and in unincorporated areas within five miles of the boundaries of the municipality or within the perimeter of an established village. As necessary to implement the results of an election under (a), (b), or (d) [(a) OR (b)] of this section, existing licenses, permits, endorsements, and pull-tab or electronic gaming vendor registrations for charitable gaming, electronic gaming activities, or pull-tab sales within the boundaries of a municipality and in unincorporated areas within five miles of the boundaries of the municipality or within the perimeter of an established village are void 90 days after the results of the election are certified. A license, endorsement, or pull-tab or electronic gaming vendor registration that will expire during the 90 days after the results of a local option election under this section are certified is void as of the expiration date.

* Sec. 23. AS 05.15.620 is amended by adding a new subsection to read:

(d) The following question, appearing alone, may be placed before the voters of a municipality or an established village in accordance with AS 05.15.625: "Shall electronic gaming activities in (name of municipality or village) be prohibited? (yes or no)."

* Sec. 24. AS 05.15.680 is amended to read:

Sec. 05.15.680. Penalties. (a) Except as provided in (e) of this section, a [A] person who knowingly violates or aids or solicits a person to violate this chapter is guilty of a violation for the first offense and a class B misdemeanor for the second and each subsequent offense. In this subsection, "knowingly" has the meaning given in AS 11.81.900.

(b) A person who, with [THE] intent to mislead a public servant in the performance of the public servant's duty, submits a false statement in an application for a permit, license, endorsement, or pull-tab or electronic gaming vendor registration under this chapter is guilty of unsworn falsification. In this subsection, "with intent" has the meaning given to "intentionally" in AS 11.81.900.

* Sec. 25. AS 05.15.680 is amended by adding new subsections to read:

(c) A person

1 (1) may not with criminal negligence allow a person under 21 years of
2 age to use an electronic gaming machine;

3 (2) who is under the age of 21 may not with criminal negligence use
4 an electronic gaming machine;

5 (3) may not with criminal negligence manipulate or attempt to
6 manipulate the outcome or payoff of an electronic gaming machine by tampering or
7 otherwise interfering with the proper functioning of the machine.

8 (d) In this section, "criminal negligence" has the meaning given in
9 AS 11.81.900.

10 (e) Violation of (c) of this section is a class A misdemeanor.

11 * Sec. 26. AS 05.15.690 is amended by adding new paragraphs to read:

12 (46) "electronic gaming" means a game of chance that uses an
13 electronic gaming machine;

14 (47) "electronic gaming machine" means an electronic video game
15 machine that, upon insertion of cash, in the form of coins or bills, is able to play or
16 simulate the play of a video game, including video poker, keno, or blackjack,
17 authorized by the department, using a video display and microprocessors so that, by
18 chance, the player may receive free games or credits that can be redeemed for cash;

19 (48) "electronic gaming vendor" means

20 (A) an operator licensed by the department to conduct bingo or
21 pull-tab games on the effective date of this paragraph and that conducts
22 electronic gaming activities on behalf of a permittee; or

23 (B) a business whose primary activity is not regulated by this
24 chapter but that

25 (i) conducts electronic gaming activities on behalf of a
26 permittee;

27 (ii) holds a business license under AS 43.70; and

28 (iii) is an establishment holding a beverage dispensary
29 license under AS 04.11.090 that has not been designated by the
30 Alcoholic Beverage Control Board under AS 04.16.049(a)(2) - (3), has
31 not been exempted by the Department of Labor and Workforce

1 Development under AS 04.16.049(c) and AS 23.10.355, and, if the
2 establishment is a hotel, motel, resort, or similar business that caters to
3 the traveling public as a substantial part of its business, does not
4 conduct the electronic gaming activities in a dining room, banquet
5 room, guest room, or other public areas other than a room in which
6 there is regularly maintained a fixed counter or service bar at which
7 alcoholic beverages are sold or served to members of the public for
8 consumption, or a package store license under AS 04.11.150;

9 (49) "net machine income" means money put into an electronic gaming
10 machine minus credits paid out in cash;

11 (50) "pull-tab vendor" means a business whose primary activity is not
12 regulated by this chapter but that

13 (A) is engaged in the sale of pull-tabs on behalf of a permittee;

14 (B) holds a business license under AS 43.70; and

15 (C) is an establishment holding a

16 (i) beverage dispensary license under AS 04.11.090 that
17 has not been designated by the Alcoholic Beverage Control Board under
18 AS 04.16.049(a)(2) - (3), has not been exempted by the Department of
19 Labor and Workforce Development under AS 04.16.049(c) and
20 AS 23.10.355, and if the establishment is a hotel, motel, resort, or
21 similar business that caters to the traveling public as a substantial part
22 of its business, does not allow the sale of pull-tabs in a dining room,
23 banquet room, guest room, or other public areas other than a room in
24 which there is regularly maintained a fixed counter or service bar at
25 which alcoholic beverages are sold or served to members of the public
26 for consumption;

27 (ii) package store license under AS 04.11.150.

28 * Sec. 27. AS 11.66.280(3) is amended to read:

29 (3) "gambling device" means any device, machine, paraphernalia, or
30 equipment that is used or usable in the playing phases of unlawful gambling, whether
31 it consists of gambling between persons or gambling by a person involving the playing

1 of a machine; "gambling device" does not include

2 (A) lottery tickets, policy slips, or other items used in the
3 playing phases of lottery or policy schemes; [OR]

4 (B) an amusement device as described in (2)(B) of this section;

5 or

6 (C) an electronic gaming machine or a pull-tab sales
7 machine permitted by the commissioner of revenue under AS 05.15:

8 * Sec. 28. AS 29.10.200(48) is amended to read:

9 (48) AS 29.45.650(c), (d), (e), [AND] (f), and (i) (sales and use tax);

10 * Sec. 29. AS 29.45.650 is amended by adding a new subsection to read:

11 (i) A borough may not levy or collect a sales tax on sales, rents, and services,
12 or a use tax on the storage, use, or consumption of personal property for charitable
13 gaming under AS 05.15. This subsection applies to home rule and general law
14 municipalities.

15 * Sec. 30. AS 29.45.700(d) is amended to read:

16 (d) A city that levies and collects sales and use taxes under (a) of this section
17 may not levy and collect a sales tax on a purchase made with (1) food coupons, food
18 stamps, or other types of certificates issued under 7 U.S.C. 2011 - 2025 (Food Stamp
19 Act); or (2) food instruments, food vouchers, or other type of certificate issued under
20 42 U.S.C. 1786 (Special Supplemental Food Program for Women, Infants, and
21 Children). A city that levies and collects sales and use taxes under (a) of this
22 section may not levy and collect a sales or use tax on sales, rents, services, storage,
23 use, or consumption of charitable gaming under AS 05.15. This subsection applies
24 to home rule and general law municipalities.

25 * Sec. 31. AS 05.15.690(44) is repealed.

26 * Sec. 32. REGULATIONS. Notwithstanding the effective date of secs. 1 - 31 of this Act,
27 the Department of Revenue shall begin the process under AS 44.62 (Administrative Procedure
28 Act) of adopting regulations to implement this Act so that the regulations can take effect
29 January 1, 2001, or as soon thereafter as is possible.

30 * Sec. 33. Except for sec. 32 of this Act, this Act takes effect January 1, 2001.

31 * Sec. 34. Section 32 of this Act takes effect immediately under AS 01.10.070(c).

HB 182

SECTION BY SECTION REVIEW

House Bill 182

By: Representative Kott

Introduced: 4/8/99

Referred: Transportation, Judiciary, Finance

"An act relating to charitable gaming and to gaming on state ferries; and providing for an effective date."

Section 1. AS 05.15.020(b) is amended to read:

Net proceeds from video lottery gaming activities will not be subject to the annual fee, one percent of net proceeds, required for all other gaming activities.

Section 2. AS 05.15.060(a) is amended to read:

Adds video lottery vendors to existing statute on issuance, renewal and revocation of all gaming permits. Changes existing statute from the general term "vendor" to pull-tab vendor and video lottery vendor.

Section 3. AS 05.15.070 is amended to read:

Examination of books and records. Adds pull-tab vendor, video lottery vendor and video lottery machines to existing statute for examination by the department.

Section 4. AS 05.15.095(a) is amended to read:

Adds licensed video lottery machine distributor or agent,
licensed video lottery machine manufacturer or agent,
registered video lottery vendor or agent,
registered pull-tab vendor or agent,
to existing statute requiring applications to the state.

Section 5. AS 05.15.100 is amended by adding a new subsection to read:

Adds new subsection (e) allowing video lotteries through the use of video lottery machines and the authority to issue permits.

Section 6. AS 05.15.105(a) is amended to read:

Adds pull-tab and video lottery vendors to existing statute regarding restrictions on persons not eligible to participate in gaming activities.

Section 7. AS 05.15.115(c) is amended to read:

Adds exception for operators, as defined under existing statutes, to contract with permittees to conduct video lottery gaming activities.

Section 8. AS 05.15.124 is amended to read:

Adds pull-tab vendor and video lottery vendor to existing language that allows municipalities to prohibit gaming activities.

Section 9. AS 05.15.128(a) is amended to read:

Adds video lottery language to existing language concerning operators.

Section 10. AS 05.15.150(a) is amended to read:

Deletes "Political" from text preventing net proceeds from being used for political uses. Adds video lottery proceeds with bingo and pull-tab proceeds to prevent use for payment of lobbyists.

Section 11. AS 05.15.160(d) is amended to read:

Adds video lotteries with existing pull-tab language regarding maximum authorized expenses to operate gaming activities.

Section 12. AS 05.15.170 is amended to read:

Adds pull-tab or video lottery under existing statute for suspension or revocation conditions.

Section 13. AS 05.15.180(a) is amended to read:

This will allow the use of coin/cash operated machines for gaming activities. It includes video lottery machines and pull-tab dispensing machines that accept coin/cash.

Section 14. AS 05.15.180(b) is amended to read:

Adds video lotteries as another exception to conduct activities that may be licensed if it did not exist as a gaming activity before 1 January 1959.

Section 15. AS 05.15.180(q) is amended to read:

Adds video lotteries with bingo under existing language which excludes maximum prize awards per year.

Section 16. AS 05.15.183(e) is amended to read:

Adds the word "pull-tab" before the word "vendor" where written in existing statute.

Section 17. AS 05.15.187(h) is amended to read:

Adds the words "pull-tab" before the word "vendor" where written in existing statute.

Section 18. AS 05.15.187(i) is amended to read:

REMOVES a requirement that a winner of a pull-tab price of \$50 or more to sign a state approved receipt. Allows the winner to sign the winning pull-tab as a receipt.

Section 19. AS 05.15.187 is amended by adding a new section to read:

(i) The department may approve the use of coin-operated machines for the sale of pull-tabs.

This allows the use of coin/cash machines to sell pull/tabs.

Section 20. AS 05.15.188 is amended to read:

Adds the word "pull-tab" before the word "vendor" where written in existing statute.

SECTION 21. AS 05.15 IS AMENDED BY ADDING NEW SECTIONS TO READ:

Article 2A. Video Lotteries.

Sec> 05.15.300 Video lottery

This allows the department to issue video lottery endorsements to a permittee. The permittee may conduct video lotteries in pull-tab parlors or bingo halls where the permittee **directly** sells pull-tabs or conducts bingo sessions; or may contract with a video lottery vendor; or use video lottery machines in their private clubs licensed under Title IV statutes.

The gaming permit, video lottery gaming endorsement and machine permit must be posted at the establishment clearly visible to the public.

Requires contracts between permittee and video lottery vendor(s).

Only video lottery machines **owned or leased by the department** may be used for video lottery charitable gaming.

Video Lottery Gaming In Alaska

PROPOSAL - CHARR

Sept./1989

DISTRIBUTION
OF
GAMING REVENUE

NET MACHINE INCOME:

MONEY PUT INTO A VIDEO LOTTERY MACHINE MINUS
CREDITS PAID OUT IN CASH

- 30% - PERMITTEE**
- 30% - VENDOR**
- 20% - LOCAL GOVERNMENT**
- 20% - STATE GOVERNMENT**

If there is no municipality where the video lottery terminals are located the state will receive the local government share of the net machine income.

The state will receive 100% of all video lottery gaming revenue from the Alaska Marine Highway System.

VIDEO LOTTERY GAMING IN ALASKA

What is Video Lottery Gaming?

Video lottery games are played on an electronic terminal similar to video games now played on your computers or televisions. The video lottery terminals have a large selection of games to choose from. Examples of several games include poker, blackjack, keno and bingo.

The video lottery terminal will accept \$1, \$5, \$10, and \$20 bills. Each credit is worth 25 cents. A player may wager from one to eight credits per game.

The video lottery terminal will not dispense cash. A terminal will print a cash slip for a player wanting to be paid for their credits on the terminal.

These terminals will be connected to a central state computer where all transactions can be recorded and monitored.

Why Video Lottery Gaming In Alaska?

Expanded opportunity for non-profits. Presently the sale of pull tabs and bingo games are the two largest revenue generators for charitable and non-profit groups exercising gaming permits in Alaska. Adding video lottery gaming would allow more groups to participate as well as greatly increase the annual revenues of groups already exercising their gaming permits.

In view of the decreasing levels of revenue from state and federal funding sources it is important that long term revenue sources be made available for our communities in the future.

Video lottery programs are already operating successfully in several other states and have been generating significant revenues for those states.

The proposal to add video lottery gaming in Alaska would provide revenue to four groups; First is local non-profit organizations, permittees, followed by local businesses or vendors, local governments and the state.

Enhanced accountability and security with little reporting requirements for the permittee.

Each video lottery terminal will be hooked in to a central computer operated by the state. Modern technology in the computer software would allow the state to maintain daily access to all terminals in the state.

At the end of each day the video terminals provide the central computer with a report on all transactions, revenue put in the machine, revenue paid out in prizes etc. This data will be accumulated in the central computer and when quarterly reports are due the state can generate this data thereby eliminating the need for permittees to complete these cumbersome reports they presently struggle with.

Regarding the security and integrity of the video game terminal. The central computer is capable of determining if any terminal at any location in the state has been tampered with. Any tampering and the terminal can be shut down immediately. Each terminal will have a built in security system as well as secured lines of communication to the central computer and the central computer as well will have the latest security technology to prevent outside hackers.

No more check writing. Revenues from the video lottery terminals would be deposited by the vendor into special banks accounts that are capable of electronic transfers. Funds to permittees, vendors, contractors, local governments and the state could easily be electronically transferred automatically as well.

Integrity. Charitable gaming in Alaska has become a \$270 million dollar revenue source. To continue existing gaming and expand gaming to video lottery gaming requires total accountability for these dollars.

The design of the video lottery terminal prevents illegal tampering by unscrupulous persons. The internal accounting software tracks all transactions and revenues. Within minutes an auditor has all data.

The proposal would also limit video lottery to those areas within a licensed beverage establishment that are restricted to adults over the age of 21 and provides allowances for rural communities where no alcohol is allowed.

THE PERMITTEE

The charitable or non-profit group as defined under existing gaming statutes will be eligible to participate in video lottery gaming. Once the state has issued a permit to one of these organizations they are called a "permittee".

The participation of a permittee in video lottery gaming is designed to simplify accounting and reporting procedures. The proposal calls for the permittee to complete the annual application for the State Division of Gaming. The application will identify and qualify the group.

The permittee will also provide a contract with one or up to five vendors that they wish to exercise their gaming permit with. These contracts must be reviewed and approved by the Division of Gaming. The contract will have the following required information:

1. Vendor name, location, Title IV license number, Vendor license number.
2. The number of video lottery terminals the vendor will apply to the permittee.
3. The serial numbers of those video lottery terminals to be used.
4. The beginning and ending dates that each video lottery terminal will be used by the permittee.
5. The vendor special bank account number that all funds will be deposited.

The desired effect of participating in any gaming activity available in Alaska is to generate funds for the specific needs of the individual group in their respective communities. The proposal for video lottery games in Alaska seeks to accomplish this goal by proposing the following:

1. No state fees - no application fees, no vendor registration fees.
2. No lease or purchase of gaming equipment - video lottery terminals.
3. No quarterly or annual reports to the State.
4. A minimum of 30% of the net profit of the video lottery games.
5. Do not include a 3% tax on video lottery gaming that is required on pull tab gaming activities, eliminate the tax completely.
6. Eliminate the 1% annual tax on adjusted gross income presently being levied on gaming.
7. Prevent any sales taxes on video lottery gaming revenues.

Under this proposal a permittee may not contract with more than five vendors. A vendor may contract with more than one permittee at the same time. A vendor may not have more than 10 video lottery terminals at each vendor location.

With these options it is expected that the number of permittees participating in gaming activities will increase considerably. Those permittees presently using other gaming activities such as pull tabs or bingo are able to add video lottery gaming as another tool to raise funds for the needs they wish to provide in their respective communities. Dependency on government grants or health and social service funds will decrease.

THE VENDOR

Under this proposal there will be two classifications of vendor under video lottery gaming in Alaska.

CLASS "A" VENDOR

The Class A vendor is a business whose primary activity is not regulated by gaming law but conducts video lottery games on behalf of a permittee and;

1. holds a business license under AS 43.70
2. is an establishment holding a beverage dispensary license under AS 04.11.090 that has not been designated by the ABC Board under AS 04.16.049(a)(2) - (3), has not been exempted by the Department of Labor under AS 04.16.049(c) and AS 23.10.355, and if the establishment is a hotel, motel, resort, or similar business that caters to the traveling public as a substantial part of its business, does not conduct the video lottery games in a dining room, banquet room, guest room, or other public areas other than a room in which there is a regularly maintained or fixed counter or service bar at which there is a regularly maintained or fixed counter or service bar at which alcoholic beverages are sold or served to members of the public for consumption;
3. holds a package store license under AS 04.11.150

CLASS "B" VENDOR

The Class B vendor is a permittee in a municipality that prohibits the sale of alcohol beverages under AS 04.11.491 but that municipality provides for the permittee with the authority to conduct video lottery charitable gaming by use of video lottery machines in the manner permittees with club licenses under AS 04.11.110 are authorized to conduct video lottery gaming. Video lottery gaming must be conducted within a location into which the access is restricted to persons 21 years of age or older.

The vendor is required to:

1. Register with the State Division of Gaming and obtain a license to use video lottery terminals at their location. Annual registration with a small fee.
2. Contract with permittees for exercising their gaming permits.
3. Install a dedicated line of communications for gaming use only.
4. Provide the necessary electrical connections for all gaming terminals.
5. Open a special gaming bank account to deposit all required revenues from video lottery gaming activities. The account must be capable of making electronic transfer of funds.
6. Provide sufficient funds to pay out prizes after verification of winner pay out slips.
7. Monitor the machines and playing area in a manner described by law.

The vendor may have up to 10 video lottery terminals per licensed location. Vendor may contract with more than one permittee at the same time. At a time to be determined by the Division of Gaming, the vendor will deposit all net proceeds of the video lottery gaming into the special gaming bank account.

The vendor is prohibited from leasing or owning any video lottery game terminal. All video lottery terminals will be shut off one hour before the close of business at the vendor location. All video lottery terminals will shut down for failure to deposit the required funds on time.

THE ALASKA DIVISION OF GAMING

The new Alaska Division of Gaming is established to maintain the security, integrity and control of video lottery gaming in Alaska. Under the proposed methods of operation the Division will oversee the entire video lottery operations through a central computer.

All previous reporting requirements involving massive paperwork will now be generated from the computer. Division oversight regarding all legislative inquiries will be instantaneous. Historical data will be accumulated for future upgrades or expansion.

Legislative or regulatory activity pertaining to video lottery gaming will decrease. Little or no administrative hearings or litigation with parties involved with video lottery gaming. Field investigations and inspections minimal.

The Division will purchase and own all video lottery terminals used in the state from manufacturer's in the state or out of state having a manufacturer's license from the state of Alaska.

All video lottery terminals will have the technology capable of communicating with a central computer on all transactions and maintaining data.

The Division shall solicit bids and contract for the performance of duties required to install and maintain video lottery terminals at licensed vendor locations when the contracting will not jeopardize the integrity of the gaming and enforcement of the laws of the state.

The Division shall solicit bids and contract for the performance of duties required to install and maintain a central computer through purchase or lease agreements as required to maintain the control, security and integrity of all video lottery gaming in Alaska.

THE CENTRAL COMPUTER

The central computer will be in a secured area under Division control. The computer will be linked to all video lottery terminals through dedicated land lines or other competitive communication links available in Alaska. These lines of communication used in video gaming terminals will be tamper proof and secured and upgraded when technology advances accordingly.

The central computer will be capable of generating all timely reports, quarterly and annual, per permittee. The only oversight required by the Division would be to audit the requirements a permittee has in spending the revenue derived from any gaming activity.

The central computer will shut down video lottery terminals if the terminals are tampered with or malfunction. The computer will automatically notify the contractor in charge of the terminals for immediate response and decreased shut down time.

The central computer will shut down the video lottery terminals at the vendor locations where the appropriate funds have not been deposited on time for electronic withdrawal. The computer will transfer the necessary accounting data to a banking institution contracted by the state to pull funds from vendor gaming accounts and distribute the funds to the permittee, vendor, local government, the state and contractors.

At a minimum, the computer will communicate with all video lottery terminals once in every 24 hour period to recover necessary accounting data.

The central computer should have the capacity to add additional gaming programs presently in use by permittees if or when software becomes available.

THE CONTRACTOR

The contractor is the person or business that will

1. install and maintain state owned video lottery terminals in vendor locations;
2. install and maintain communication systems connecting the video lottery terminals to the central computer;
3. be certified and licensed in all the fields of operation required to complete the duties required under state laws in video lottery gaming;
4. be capable of responding to video terminal shut downs or malfunctions within 24 hours of shut down time.

VIDEO GAMING BILLS COMPARISON

MAJOR DIFFERENCES

	SB 144	HB 182
Allows operator participation in video gaming activities	No	Yes
Owns or leases video lottery machines	Permittee Only	State Only
Allows pull-tab parlors & bingo halls to use video gaming activities	No	Yes
Allows the use of pull-tab vending machines to dispense pull-tabs	No	Yes
Allows winners of a pull-tab prize of \$50 or more to sign the pull-tab as an official receipt	No	Yes
Charges permittee fees for vendor registration – per annum	Yes \$100/Vendor	No
Charges permittee fees for video lottery machine use – per annum	Yes \$100/Machine	No
Requires permittee to file reports that can be generated by the state	Yes	No
Requires permittee to contract with vendor	Yes	Yes
Requires permittee to contract with video lottery machine distributor for a fee	Yes	No
Prevents cities from taxing video gaming Revenues under Title 29 (Sales tax, inventory tax, etc.)	No	Yes

Distribution of Revenues

City/Borough	25%	20%
State	15%	20%
Vendor	30%	30%
Permittee	<u>30%</u> 100%	<u>30%</u> 100%
*Permittee using no vendor (Private Club)	(60%)	(60%)
Payoff Percentage per machine	80%	85%

HB

185

adopted
5/5/99

AMENDMENT 1

OFFERED IN THE HOUSE

by Representative Berkowitz

TO: HB 185

- 1 Page 1, following line 8, insert,
- 2 "Sec. 2. This Act does not apply to utilities with open dockets before the Alaska Public
- 3 Utilities Commission until those dockets are closed."

HOUSE SPECIAL COMMITTEE ON UTILITY RESTRUCTURING

DATE: 5/5/99

ISSUE: Amendment 1

	YEA	NAY	PRESENT
Representative Berkowitz	/		
Representative Cowdery (VC)		/	
Representative Davies	/		
Representative Green (alternate)			
Representative Kott	/		
Representative Porter	/		
Representative Rokeberg			
Chairman Hudson	/		
TOTALS:			

PASSED 541 FAILED _____



4/28/99

REPRESENTATIVE SCOTT OGAN

Alaska State Legislature

House District 27 • Palmer • Greater Palmer • Sutton • Chickaloon • Sheep Mountain

SPONSOR STATEMENT

HB 185

Representative Ogan

This bill will make the same statutory exemptions that apply to "small electric" and "small telephone" utilities also apply to "small water utilities".

In my area, a group of homeowners who financed and built a water system are asking that they not be included under APUC oversight.

In researching the issue, I discovered there is a precedent in statute for exempting small electric and telephone utilities. I am asking colleagues to extend the same exemption to small water utilities as well.

Presently telephone and electric utilities that take in under \$50,000.00 in revenues per year are exempt from APUC.

Representative Bill Hudson
Chairman Utility Restructuring Committee
State Capital
Juneau, Alaska

RE: HB185 An act exempting certain small water utilities from regulation by APUC

CRIMSONVIEW OWNER'S ASSOCIATION TESTIMONY IN SUPPORT OF HB185
WEDNSDAY, 21 APRIL, 1999

This homeowner's association, as are most others in Alaska, is set up following the HUD model for a Community water system. These systems require Articles of Incorporation, Covenants and By-Laws and determine how the systems are owned and operated. These systems are self-regulating and HUD approval of them is required to obtain mortgages under federal programs (i.e. VA or FHA). (See encl 1)

The Articles, Covenants and By-Laws are the documents under which the current homeowners purchased their homes. This is how the property was represented to them. Clearly no one purchased their home with the understanding that they were going to have to operate a "public" utility that would have to be expanded upon a request for service by other than the 46 units that the system was approved for. Operating a public utility is not a normal part of home ownership.

APUC's current informal policy is that it does not regulate homeowner's associations. When the current complaint was filed against CVOA, our directors contacted APUC staff and were informed by five different staff members that APUC does not regulate homeowner associations. One informed a director that they do not issue certificates to homeowner's association. A second staff member would not believe that the commission had decided to hear this complaint until given the case number and then called it up on her computer. Only if a complaint is filed will APUC evaluate if the case has merit and rule whether or not to regulate.

It would appear from the APUC Staff Advocacy Group filing in the CVOA case that no regulations or procedures are in place to regulate homeowner's associations. Their filing, through their Attorney General legal counsel, recommends that the commission convene a rule-making docket to establish guidelines/regulations for homeowner associations.

Current APUC policy prevents owner operated water systems from complying with statutes. They cannot get a certificate of convenience and necessity without which they cannot file a tariff or rate schedule nor can they apply for an exemption from regulation. There are no guidelines or regulations to follow that would provide reasonable assurance of protection from even frivolous complaints.

If APUC now holds that they have the power to regulate homeowner's associations, do they then have a statutory responsibility to regulate all homeowner associations without discrimination? What statutory authority do they have to nullify Articles of Incorporation, Covenants and By-Laws under which consumers purchase their property?

ADEC indicates that there are approximately 700 Class A Water Systems in Alaska. How many does APUC regulate? Do they have the staff and budget resources to support regulation of all of them? Again, if systems fall under their regulatory authority, do they not have a statutory responsibility to regulate or establish clear rules for exemption? Under current statute, how can APUC claim power to regulate utilities that they don't certificate?

APUC staff indicate that current caseloads can exceed two years. Delays of this magnitude can jeopardize homeowner's property value and cause delays to developers as well. After nearly 8 months, the case against CVOA is unresolved and there is no indication of when a hearing will be scheduled.

Given that annual and special assessments are the only source of revenue for homeowners associations, if APUC regulates them, associations will have no way of raising funds to meet emergency situations if their reserve funds are insufficient to cover the costs. They would have to file for relief through the tariff and rate process prior to being able to collect any monies. Financial flexibility would be lost.

HB185 proposes the same exemption for water systems as that of electric and telephone utilities. A utility grossing less than \$50,000 annually has a limited subscriber base. The cost of regulation by APUC would dramatically increase per customer costs. In CVOA's case we would no longer be able to manage the water system ourselves. We would have to contract with a management firm having utility tariff and rate making experience. This, coupled with APUC's fees for regulation, could easily double the cost of operation.

The current APUC policy of "regulation by complaint" is even more expensive. When a complaint is filed the utility has little choice but to respond. Failure to do so would be construed as an admission of the facts as presented by the complainant and a judgement entered against the utility. The legal counsel costs associated with this process are high. This homeowner association is two years old. Time to accumulate reserves has been limited and legal costs associated with the APUC complaint have eroded most of those.

The issues in dispute between CVOA and a developer have little relevance to the merits of this proposed legislation.

HB185 will provide uniform standards of regulation for all small water systems, prevent unnecessary costs associated with regulation, and leave current Articles of Incorporation, Covenants and By-Laws intact while still providing the protection of AS 42.05.712(h) to subscribers.

We believe it is in the best public interest to support passage of HB185.

ADDITIONAL COMMENTS

The following are comments by CVOA members subsequent to the Wednesday, 21 April hearing.

APUC staff has indicated that current caseloads can exceed two (2) years. Regulation of homeowner associations and other small water utilities would only increase that caseload and delays in the decision process. In addition to increasing legal counsel costs, delays of this magnitude will unfavorably affect property values and cause delays in sale/loan closures. Costs to developers, builders and consumers will go up.

To illustrate. To date, this association has spent between 15 and 20 thousand dollars defending itself against a developer's complaint. Using that as a basis we estimate that the developer has now spent as much or more on legal counsel than he would have spent had he accepted our proposal for adding his proposed lots to the water system.

Within the APUC complaint process there is no mechanism for financial aid to parties if they are unable to pay the costs for adequate defense. If there is inability to contest or support expert defense of a complaint, dispute resolution due to no-contest or non-representation may occur. The APUC Staff Advocacy role does not represent those consumers residing within association against which a complaint has been filed.

Developers can and do have options to access water systems through communications and negotiations with owners of existing systems. They also have the additional choices of drilling individual wells or developing other community systems to support their development projects. Issues related to protection of developer profit margins in these decisions, or unresolved disputes amongst parties can and should be resolved in the courts.

Although the state constitution and statutes may provide for the sharing of utility assets there has been no planning of water utilities to accomplish this. Neither the state nor the Mat-Su borough has any standards or codes relating to the development of water systems. ADEC provides only suggested practices for small water systems. It is the design engineer who decides what is appropriate. As a result developers have been allowed to design water systems using a "least-cost" method and with little regard to adjacent properties and future development. These water systems are typically designed with 4-inch water mains, which allow for domestic use only. No consideration is given to yard irrigation or even fire protection. Ability to expand these systems beyond the original approved development without incurring significant costs or degrading system performance is very limited. Until such time as the useful life of these distribution systems is exhausted, it is cost prohibitive to both developers and consumers to replace them with larger mains so that these small systems can be joined together. Until then there are systems existing in close proximity to one another and more are being planned. Coincidentally, another community water system is being planned for an 83-acre tract adjacent to Crimmonview. It is currently in the borough platting process.

(As a matter of Record) This homeowners association is comprised of 46 owners and one well lot. It has been forced into a complaint with APUC by a developer who asserts right to the community well and distribution system. The association has 3 legal opinions, which state that the water system is owned by and operated for the existing association. Automatic membership to this association for the developer or any future buyers of his property is in dispute. It is not the intent of this homeowners association to try the existing complaint in this forum. Per the APUC Staff Advocacy Group, there are many issues that warrant further investigation in this case.

Should questions or concerns arise over this case as it has been addressed by the developers attorney or lobbyist CVOA would be happy to furnish any information or material requested. Additional information can be obtained through Nelson Elliott, CVOA Director at (907) 746-0775.)

**DONALD L. MELLISH
2200 CLIFF COURT
ANCHORAGE, ALASKA 99517**

April 24, 1999

Chairman Bill Hudson
Utility Restructuring Committee
State Capitol, Room 108
Juneau, Alaska 99801-1182

Re: House Bill 185

Dear Chairman Hudson:

I am writing to express my opposition to House Bill 185. This legislation would eliminate the APUC's authority to resolve a complaint against the Crimsonview Home Owners Assn which has been pending since last fall and which has been fully briefed and is awaiting the APUC's decision.

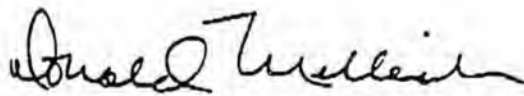
My son and I have been trying to develop the property located in the Crimsonview Subdivision and have been thwarted at every turn by the Crimsonview Owners Association. My son purchased this property located within, platted within as part of the Crimsonview Subdivision. However, the Crimsonview Owners Assn has refused to provide our property with water and has been using its control of the Crimsonview Subdivision's water distribution system to prevent our development of the remaining lots in the subdivision. They have ignored the Mat-Su Boro approval of the plat, they have ignored the approval of the Alaska Department of Environmental & Conservation's approval of the plan for upgrades to the system which I agreed to pay for and finally they ignored the opinion of their own engineer which they employed to review the plan submitted to ADEC. I negotiated in good faith with the Assn for some months and then it became apparent, after agreeing to further demands that the objective really was to stop development of Phase II of the subdivision.

As a result, we filed a complaint against the Crimsonview Owners Association with the APUC and requested a ruling as to whether or not the Crimsonview Owners Assn operating a Public Water System can refuse service. This decision to deny service is to pass up an increase in their income of 47% at no capital cost to the Assn ! This complaint has been pending since early last fall, we have already expended significant time and dollars before the APUC, and now we are only awaiting for the APUC to issue a decision. In view of this investment of public and private resources, it would not be fair for the Alaska Legislature to completely eliminate the APUC's authority to resolve this pending complaint. Moreover, based on our experience with the Crimsonview Owners Assn, I believe

that the APUC should retain its authority to resolve similar disputes in the future. We have complied with all of the laws and regulations of the State of Alaska and the Mat-Su Boro. The Crimsonview Owners Assn. have the opinion that they are not bound by any laws or regulation. Without the regulation of the APUC then someone in our predicament would have to file a lawsuit in the courts. It would appear to me that to have a regulatory body who is already established to deal with utility matters would be the proper place for settling such disputes.

Thank you for the opportunity to provide you with my comments. Please contact me if you have any question or need any additional information

Sincerely,



Donald Mellish

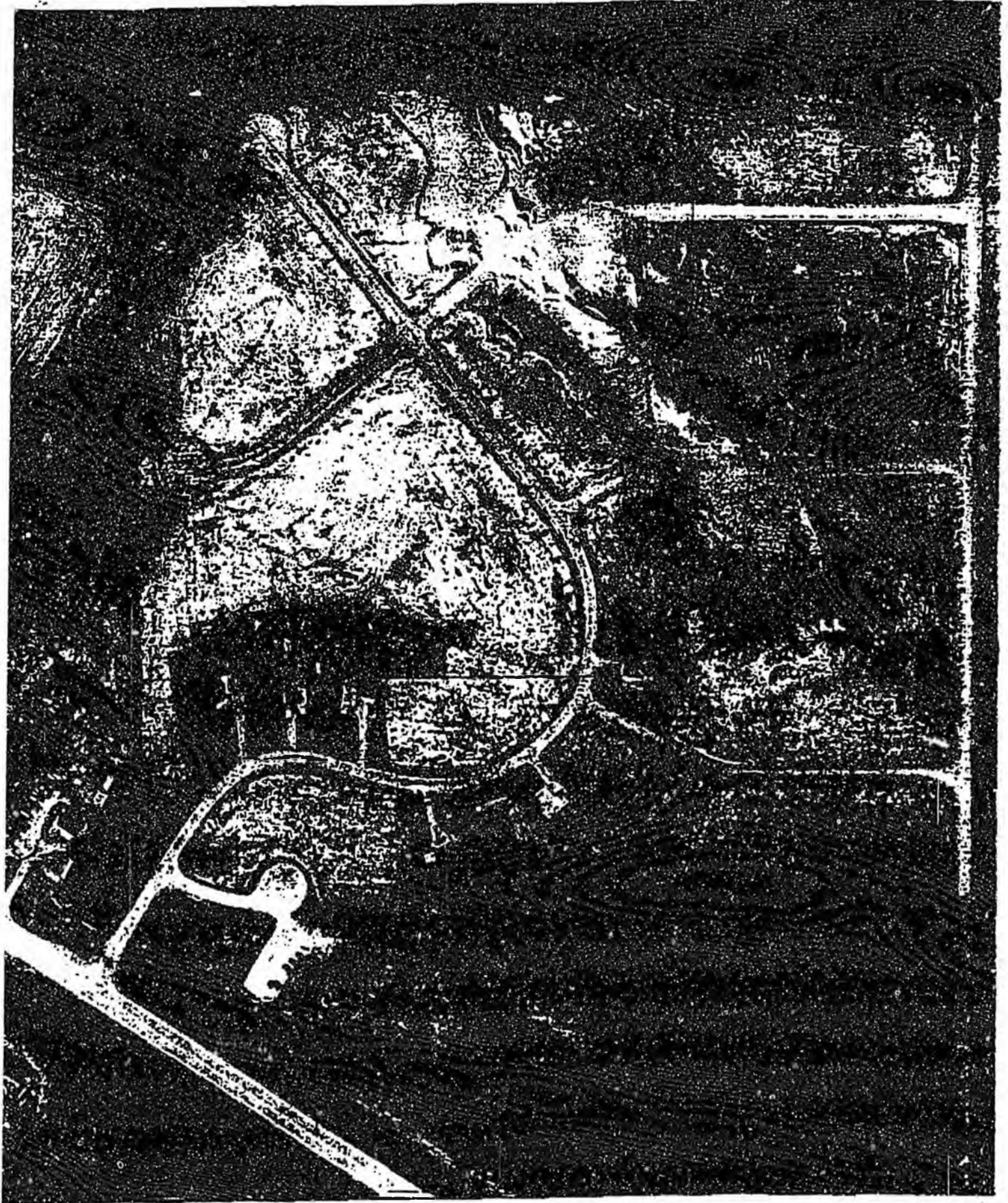
Attached:

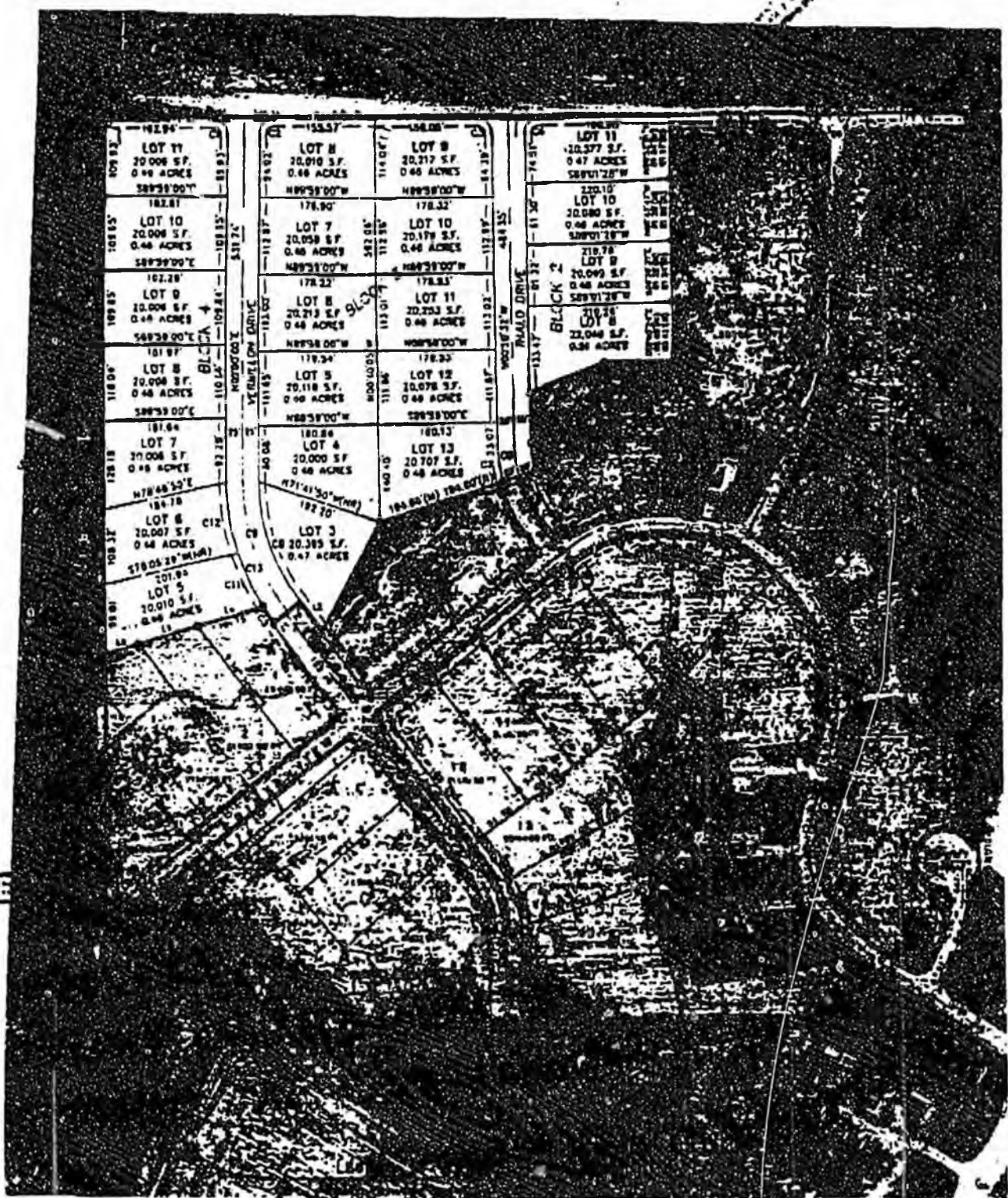
Anal photo of the subdivision when purchased by Robert Mellish

Overlaid with a transparency of Phase I lots

Overlaid bordered in yellow Phase II

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES





① SHALL BE SUBJECT OF THIS SURVEY
 ② 5/8" = 1' SCALE OF THIS SURVEY.
 COMMUNITY WILL POST

NOTES

- 1) THERE MAY BE FEDERAL, STATE AND LOCAL REGULATORY AGENCIES WHOSE JURISDICTION MAY BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED PROJECT. THE USER OF THIS SURVEY SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES.
- 2) THIS IS A PRELIMINARY SURVEY AND THE USER OF THIS SURVEY SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES.
- 3) THIS SURVEY IS INTENDED FOR DEVELOPMENT WITH A 10% BUFFER ZONE AROUND EACH LOT. THE USER OF THIS SURVEY SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES.
- 4) ALL LOTS HAVE 10% BUFFER ZONES AROUND EACH LOT.

CERTIFICATE OF APPROVAL BY THE ALASKA DEPT. OF ENVIRONMENTAL CONSERVATION

THIS SURVEY HAS BEEN REVIEWED BY AGENCY STAFF UNDER THE PROVISIONS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION ACT AND IS APPROVED FOR THE PURPOSES OF THE ACT.

Shawn A. Suter
Lee Paul D'Amico
 SIGNATURE TITLE DATE 12/28/87

CERTIFICATE OF PAYMENT OF TAXES

I CERTIFY THAT ALL CURRENT TAXES AND SPECIAL ASSESSMENTS THROUGH 12/31/87 AGAINST THE PROPERTY INCLUDED IN THIS SURVEY HAVE BEEN PAID.

John A. Bittner
 SIGNATURE TITLE DATE

BIRCH, HORTON, BITTNER and CHEROT
1127 West 7th Avenue
Anchorage, Alaska 99501-3563
(907) 263-7599, Fax (907) 276-2822

TELECOPY TRANSMITTAL COVER SHEET

TO: Representative Bill Hudson
FROM: Rebecca C. Paull
DATE/TIME: April 20, 1999
OUR FILE NO.: 505,640.1
SEND TO FAX NUMBER: (907) 465-2273
NUMBER OF PAGES (INCLUDING THIS COVER SHEET): 9
COMMENTS: See attached 4/20/99 letter regarding HB 185.
IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (907) 263-7229 AS SOON AS POSSIBLE.

Arle Dehut
Secretary

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LAW OFFICES

BIRCH, HORTON, BITTNER AND CHEROT

A PROFESSIONAL CORPORATION

1127 WEST SEVENTH AVENUE • ANCHORAGE, ALASKA 99501-3399 • TELEPHONE (907) 276-1550 • (800) 478-1550 • FACSIMILE (907) 276-3680

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WRITER'S DIRECT DIAL 263-7229 • WRITER'S DIRECT FAX 276-2822 • WRITER'S EMAIL rpauli@bhb.com

April 20, 1999

Representative Bill Hudson
 Chairman, Utility Restructuring Committee
 State Capital, Room 108
 Juneau, AK 99801-1182

VIA FACSIMILE
(907) 465-2273

Re: House Bill 185, An Act Exempting Certain Small Water Utilities From Regulation by the Alaska Public Utilities Commission

Dear Chairman Hudson:

Our firm represents Robert Mellish in his Complaint against The Crimsonview Owners Association ("Association") before the Alaska Public Utilities Commission ("APUC"). The purpose of this letter is to present Mr. Mellish's position regarding HB 185, "An Act Exempting Certain Small Water Utilities From Regulation by the Alaska Public Utilities Commission," sponsored by Representative Ogan.

Over the past two years Mr. Mellish has attempted to work with the Association regarding his development of Phase II of the Crimsonview Subdivision. The Association has been both unreasonable and unfair in its demands of Mr. Mellish. The Association is located in the Matanuska-Susitna Borough. If HB 185 passes, Mr. Mellish's frustrating and time-consuming experiences will become routine for other developers. As discussed below, we believe HB 185 is both anti-consumer and anti-development.

The Crimsonview Subdivision was designed and platted to be developed in two phases. The community well and the integrated looped water distribution system were originally designed and installed to serve both Phase I and Phase II. Phase I was successfully developed in the mid-'80s. Robert Mellish owns and desires to develop Phase II. However, the Association is preventing him from developing Phase II. As owner of the community well, the Association must sign an "Owner's Statement" form authorizing the Alaska Department of Environmental Conservation to review Mr. Mellish's plans to provide drinking water to Phase II through the existing looped water distribution system. Once the plans are approved, all that is necessary to actually provide water service to Phase II is the installation of a 2 horse power booster pump and "the turning of a valve." The Association has used its control of the system to prevent further development in its neighborhood and to unjustly extract payments and facilities from Mr. Mellish.

BIRCH, HORTON, BITTNER AND CHEROT
A PROFESSIONAL CORPORATION

Representative Bill Hudson
April 20, 1999
Page 2

The Association's unreasonable actions forced Mr. Mellish to file a complaint with the APUC. Mr. Mellish is entitled to service from the Association because he is a member of the Association and because the Association is a public utility.¹ Mr. Mellish is awaiting an APUC decision on whether the Association is a public utility with an obligation to serve Mr. Mellish under the same terms and conditions as it provides service to the other members in the subdivision.

HB 185 amends AS 42.05.711(e) to read:

(e) not withstanding any other provisions of this chapter, any electric, water, or telephone utility that does not gross \$50,000 annually is exempt from regulation under this chapter unless the subscriber petition the commission fro regulation under AS 42.05.712(h).

When I contacted Representative Ogan's office and inquired into the impetus for the legislation, I was informed that Representative Ogan saw no difference between a small electric or telephone utility and a small water utility. On the surface they appear to be the same. However, water is essential to a person's survival while electricity and telephone service are not.

It is our position that HB 185 is unnecessary, reactive legislation. Historically, the APUC has not sought out small water utilities such as homeowners associations for regulation. The APUC only becomes involved in the "regulation" of these water utilities when asked to do so by a consumer or a lending institution.² Wisely, the APUC retains jurisdiction to resolve disputes in these situations but grants the association a public interest exemption under AS 42.05.711(d)³ from certification and

¹ AS 42.05.990 defines public utility as:

every corporation, public, cooperative or otherwise, company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant, pipeline, or system for furnishing water to the public (10 or more persons) for compensation.

Under established Commission precedent, the Association is a public utility.

² See, e.g., *Re Country Lane Estate Subdivision Property Owners Association, Inc.*, 11 APUC 238 (1991) (case enclosed).

³ AS 42.05.711(d) provides "the commission may exempt a utility, class of utilities, or a utility service from all or a portion of this chapter if the commission finds that the exemption is in the public interest."

BIRCH, HORTON, BITTNER AND CHEROT
A PROFESSIONAL CORPORATION

Representative Bill Hudson
April 20, 1999
Page 3

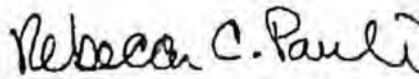
rate regulation. By providing for the public interest exemption, prior legislatures and the APUC wisely recognize that consumers must have an easily accessible and friendly forum for disputes. Perhaps the most important function of the APUC is to provide a forum where an aggrieved or potential consumer may be heard. If HB 185 became law, the only recourse for an aggrieved or potential consumer would be the court system. The APUC is a much friendlier and accessible forum than the legal system.

The impact of HB 185 on potential developments such as Mr. Mellish's must be considered. Here, we have a case where all engineers (including the Association's) agree there is an adequate water supply and an adequate water distribution system ready to provide water service with the turn of a valve. However, a few individuals who control the Association do not want further development in their neighborhood and are effectively blocking responsible development by refusing to provide water via the existing facilities. If HB 185 passes, it is possible that Mr. Mellish will have to dedicate several lots to a well to draw from the same aquifer as the existing well and install his own distribution system, thereby increasing the cost of the development. This is contrary to the public interest and this is why the APUC regularly amends water utilities service areas to accommodate new developments when it makes economical and engineering sense to do so. House Bill 185 appears to be a piece of reactionary legislation, which is both anti-consumer and anti-development. Accordingly, it should not pass.

Thank you for your prompt attention to this matter. If you have any questions or would like to discuss this matter in further detail, please do not hesitate to contact me.

Very Truly Yours,

BIRCH, HORTON, BITTNER and CHEROT


Rebecca Cohen Pauli

RCP:and
Enclosures: *Re Country Lane Estate Subdivision*
cc: Robert Mellish (w/o encls.)
Don Mellish (w/o encls.)

*Melish
Crimsonview*

ALASKA PUBLIC UTILITIES COMMISSION — 11 APUC

approved as modified herein.

2. No later than August 15, 1991, Alascom, Inc., shall submit revised tariff sheets incorporating the tariff modifications approved herein.

DATED AND EFFECTIVE at Anchorage, Alaska, this 26th day of July, 1991.

FOOTNOTES

¹The Commission understands that no charge for BCF will be applied to those customers already receiving the service. The Commission is in agreement that no charge should be applied in those cases.

**Re Country Lane Estates
Subdivision Property Owners'
Association, Inc.**

U-90-65
Order No. 1

Alaska Public Utilities Commission
July 30, 1991

ORDER declaring a small residential subdivision's sewer operations to be a public utility, but exempting the utility from regulation by the commission.

1. PUBLIC UTILITIES, § 112 — Regulatory status — Sewer service — Provided by a homeowners' association — Factors.

[ALASKA] Where a homeowners' association was providing sewer service to more than 10 customers, and owned, operated, and managed associated sewer plant, the association was found to fall within the definition of a public utility subject to commission regulation. p. 239.

2. CERTIFICATES, § 26 — When required — Sewer service — Public utility status as a factor.

[ALASKA] Any entity providing sewer

service that has been declared a public utility is subject to the commission's certification requirements. p. 239.

3. PUBLIC UTILITIES, § 51 — Regulatory status — Sewer service — Provided by a homeowners' association — Exemptions — Factors.

[ALASKA] Although a homeowners' association providing sewer service had been declared a public utility, it was exempted from regulation by the commission where (1) its operations were small and limited to the 44 lots in the subdivision; (2) by virtue of association membership, homeowners had significant control over operations; and (3) the costs of regulation would be disproportionate to the utility's size and revenues. p. 240.

4. PUBLIC UTILITIES, § 51 — Regulatory status — Sewer service — Provided by a homeowners' association — Exemptions — Conditions.

[ALASKA] The exemption from commission regulation granted a homeowners' association providing sewer service was conditioned on the association never serving more than 44 customers; also, the exemption could be rescinded should a petition requesting such and signed by at least 25% of the association's customers be filed with the commission. p. 240.

Before Commissioners:

Don Schroer, Chairman
Susan M. Knowles
Daniel Panck O'Tierney
Mark A. Foster
Donald F. May

BY THE COMMISSION:

**ORDER DECLARING
ASSOCIATION A UTILITY AND
GRANTING EXEMPTION FROM
REGULATION**

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ALASKA PUBLIC UTILITIES COMMISSION — 11 APUC

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he commission's certification

Introduction

Security Pacific Bank, Alaska (the Bank), on July 2, 1990, requested the Commission's declaration concerning the regulatory status of Country Lane Estates Subdivision Property Owners' Association, Inc. (the Association). The Bank's Request for Declaration, as confirmed by the Commission Staff's (Staff) subsequent inquiry and the May 8, 1991, letter from the Association, which is attached hereto as an Appendix, indicates that the Bank is currently the beneficial owner of at least one lot in Country Lane Estates and a member of the Association. Prior to filing its Request for Declaration on July 2, 1990, the Bank was beneficial owner of the majority of lots in Country Lane Estates and in effect controlled the Association.

ciation may constitute a public utility through its provision of sewer service. The Request for Declaration asks that the Commission determine that the Association is not a public utility or, alternatively, that the Commission exempt the Association from regulation pursuant to AS 42.05.711(d). The Association did not oppose the Bank's Request for Declaration; however, neither did the Association desire to join in that petition or participate in proceedings before the Commission. (Association Letter, May 8, 1991.)¹

Discussion

Pursuant to AS 42.05.990(4) a "public utility" or "utility" is specifically defined to include "every corporation whether public, cooperative, or otherwise. . . that owns, operates, manages, or controls any plant, pipeline, or system for . . . furnishing water, steam, or sewer service to the public for compensation . . ." The term "public" is further defined under AS 42.05.990(3)(A) to mean "any group of 10 or more customers that purchase the service or commodity furnished by a public utility . . ."

[1, 2] It is apparent to the Commission, under the facts presented by this case, that the Association is a public utility. The Association is a corporation that owns, operates, manages, and controls a system for furnishing sewer service to 10 or more customers for compensation. As a public utility, the Association is subject to the Commission's full regulatory authority set forth in AS 42.05.141.² In the absence of an exemption, a public utility which provides sewer service is subject to the Commission's certification requirements (AS 42.05.221 — 281) and to the Commission's economic regulation. Presently, the Association has not obtained or otherwise qualified for any such regulatory exemption.

Upon determining that the Association is a public utility subject to the Commission's full regulatory authority, the Commission has proceeded to evaluate the Bank's alternative request that the Association be granted an exemption from regulation.³ Pursuant to AS 42.05.711(d), "[t]he Commission may exempt a

The Association is a non-profit corporation whose members are comprised of the beneficial owners of 44 lots in Country Lane Estates. Each member of the Association is entitled to one vote for each lot held as beneficial owner. As set forth by its Articles of Incorporation and Bylaws, the purpose of the Association is, among other things, "to own and provide for maintenance and operation of a sewer drain field." The Association provides a common sewage drain system and leach field for the use of all of its members. There are 42 residences receiving sewage disposal services at this time. If sewer service is extended to Country Lane Estates by the Municipality of Anchorage d/b/a Anchorage Water and Wastewater Utility (AWWU), the Association may abandon the leach field and connect its system to the AWWU sewer system. The Association's board of directors determines the monthly charge and that portion of the charge collected for the sewer system is to be disbursed only in payment for expenses of the sewer system. Currently, the entire monthly charge is \$35, including all costs relating to the Association's operation.

The Bank's Request for Declaration further states that Alaska Housing Finance Corporation has refused to provide financing for lots within Country Lane Estates because the Asso-

UTILITIES, § 51 — Regulatory sta-
service — Provided by a home-
ciation — Exemptions — Factors.

A) Although a homeowners' providing sewer service had been public utility, it was exempted from the commission where (1) its are small and limited to the 44 lots; (2) by virtue of association homeowners had significant contributions; and (3) the costs of regulation are disproportionate to the utility's costs.

UTILITIES, § 51 — Regulatory sta-
service — Provided by a home-
ciation — Exemptions — Condi-

(A) The exemption from commis- granted a homeowners' associa- g sewer service was conditioned tion never serving more than 44 also, the exemption could be ould a petition requesting such and least 25% of the association's cus- d with the commission.

Commissioners:

- Director, Chairman
I. Knowles
Patrick O'Tierney
Foster
F. May

COMMISSION:

ORDER DECLARING
CIATION A UTILITY AND
TING EXEMPTION FROM
REGULATION

ALASKA PUBLIC UTILITIES COMMISSION — 11 APUC

utility, a class of utilities, or a utility service from all or part of this chapter if the Commission finds that the exemption is in the public interest."

[3] The Commission has considered the facts and circumstances of the sewer public utility service being provided by the Association and has determined that it would be in the public interest to grant the Association a complete exemption from regulation, subject to certain conditions. In this case the Commission is persuaded that the customers are provided significant protections by virtue of their right to control management and operation of utility services through Association membership. As set forth in the Association's Articles of Incorporation and Bylaws, each customer/member has the right to vote for election of the Association's board of directors and officers, who are selected from among the customers/members. Further, given the relatively small size of this utility, limited to 44 customers, even a small number of customers/members may have a significant voice in the utility's operations. The Commission also notes that the ownership of the properties which qualify individuals for customer/member status are now sufficiently dispersed that no one owner controls the Association.

In addition to the ownership and governance of the Association supporting an exemption, the cost of regulation for this utility would be significant in relation to its size, operating budget, and the benefits to be achieved from regulation. Here, the utility's sewer service is limited to 44 customers/members, and the total monthly charge, including other Association expenses as well, is only \$35. The cost burden on the Association just for the certification process could well exceed several months of its gross revenues.

At the same time, the benefits to be conferred upon the customers by extensive regulation are speculative, at best. In the case of small homeowner associations such as this Association, where membership runs appurtenant to the customer/member's ownership in a parcel of land, there is but one source for payment of expenses, whether they be utility-related or not.

In such cases it appears to the Commission that its exercise of rate regulation for utility services would likely result in little more than a change in allocation of total charges between "utility" and "other" categories, with little or no overall real savings accruing to the customers/members. The Commission also notes that the Association has been essentially self-regulated since its inception and appears to be providing satisfactory sewer service at a reasonable cost to its customers/members.

The only concern raised by the exemption of the Association is the current status of the septic plant facilities. As the Association noted in its letter of May 8, 1991, there have been a number of problems with the sewer system primarily associated with a failure to construct or repair the system according to plans and specifications. Correspondence indicates, however, that the Bank has agreed to assume, at least in part, financial responsibility for making the repairs necessary to bring the facilities into conformance with operational and regulatory standards. The problems described by the Association would generally lead the Commission to decide against an exemption, at least until it could be demonstrated that they had been resolved. In this case, however, there is documentary evidence that the Association has been aware of the situation and has been, and is, working diligently and competently to bring the matter to resolution. Further, it is the Commission's understanding that the required corrections will be completed by the end of the 1991 construction season. For these reasons the Commission is not persuaded that its intervention would assure a better, more timely, or less costly result. Therefore, under the unique circumstances of this case the plant problem does not present a necessary or sufficient basis for denying the exemption request.

Conclusion

[4] Based on the foregoing, the Commission has determined that the Association is a sewer public utility under AS 42.05 but that it is in the public interest to exempt the Association from regulation pursuant to AS 42.05.711(d), subject, however, to two conditions. First, and

— 11 APUC

appears to the Commission that regulation for utility services is little more than a change in the distribution of costs, with little or no overall benefit accruing to the public. The Commission also notes that the Association has been essentially inactive since its inception and appears to be unable to provide factory sewer service at a reasonable cost to its customers/members.

The Commission also notes that the Association's concern raised by the exemption is the current status of the system. As the Association noted by letter of August 8, 1991, there have been a number of problems with the sewer system primarily with a failure to construct or maintain the system according to plans and correspondence indicates, however, that the Association has been unable to assume, at least in part, its official responsibility for making the necessary repairs to bring the facilities into full operational and regulatory compliance. The problems described by the Association generally lead the Commission to conclude that the exemption, at least until it is demonstrated that they had been resolved, is not warranted. In this case, however, there is documentation that the Association has been active and has been, and is, able to bring the system into full compliance and competently to bring the system into full compliance. Further, it is the Commission's understanding that the required repairs will be completed by the end of the season. For these reasons the Commission is persuaded that its intervention is warranted, a better, more timely, or less expensive solution, under the unique circumstances of this case, the plant problem does not constitute a necessary or sufficient basis for denial of the exemption request.

Conclusion

In the foregoing, the Commission has concluded that the Association is not a public utility under AS 42.05 but that it is eligible for exemption pursuant to AS 42.05.711(d), subject to two conditions. First, and

implicit in the Commission's rationale for exemption, the utility is limited to providing sewer service to the 44 lots which are entitled to membership in the Association. Second, this public interest determination will be reevaluated if the Commission receives a petition for regulation signed by at least 25 percent of the customers/members of the Association. This condition utilizes a mechanism recognized by the Legislature in other exemptions to provide the customers/members of the Association access to Commission oversight if self-regulation becomes ineffective.

ORDER

THE COMMISSION FURTHER ORDERS:

1. Country Lane Estates Subdivision Property Owners' Association, Inc., is a public utility which furnishes sewer service pursuant to AS 42.05 and is subject to the regulatory authority of the Commission.

2. Country Lane Estates Subdivision Property Owners' Association, Inc., is granted an exemption from AS 42.05 by the Commission pursuant to AS 42.05.711(d), subject to two conditions:

a. Country Lane Estates Subdivision Property Owners' Association, Inc., is limited to serving the 44 lots which are entitled to membership in the Association.

b. The exemption shall be reevaluated if a petition for regulation under AS 42.05 is submitted by at least 25 percent of the customers/members of the Country Lane Estates Subdivision Property Owners' Association, Inc.

DATED AND EFFECTIVE at Anchorage, Alaska, this 30th day of July, 1991.

FOOTNOTES

¹At the Association's meeting on December 5, 1990, the members passed a motion agreeing "that our sewer system is a private system but that we, the Homeowners, were not the originators of suggesting that we are a Private System."

²Legal authorities advanced by the Bank in support of a finding that the Association is not a public

utility are found by the Commission to be not persuasive. In fact, the case primarily relied upon by the Bank, *Re Utility Status of Certain Water Supply Associations*, 91 PUR3d 126 (Iowa State Com. Comm'n, October 7, 1971) held that rural cooperative-type water systems constitute public utilities. In that case the Iowa Commission noted that the subject associations were formed by the rural residents who comprised the association's membership. 91 PUR3d at 127. Customers were required to be association members in order to receive water service. *Id.* The association rules also provided that following completion of the system, requests for service from potential customers may be denied by the association's board of directors. *Id.* The Iowa Commission reinforced this limited access concept somewhat in stating that those rural cooperative-type water associations would not necessarily be required to accept all future requests for new service, even though they were public utilities subject to commission jurisdiction. 91 PUR3d at 132.

Other courts likewise have supported a finding of public utility status in this case. In *State v. Mackie*, 338 S.E.2d 888 (N.C. App. 1986), the court reviewed the North Carolina Utilities Commission's order that a small water and sewer system constituted a "public utility" even where the utility had not offered to extend services to residences other than those already connected to the system. 338 S.E.2d at 893. The *Mackie* court noted that "although a service may be offered to only a definable class . . . it still may be considered an offering of service to the 'public' within the meaning of the regulatory statutes." 338 S.E.2d at 893-94. Like the present case, the utility in *Mackie* "willingly provided service to new customers who moved into homes already connected to facilities." 338 S.E.2d at 894.

The Florida Supreme Court in *Fletcher Properties, Inc. v. Florida Public Service Commission*, 356 So.2d 289 (Fla. 1978), held an entity to be a public utility where it provided water and sewer service through a master meter system from another public utility, owned the lines and lift stations from the master meter to end-user, and merely recouped the cost of water and sewer service from various end-users. 356 So.2d at 290 — 1.

Moreover, the Uniform Common Interest Ownership Act (UCIOA) (AS 34.08) contains no explicit reference to the provision of "utility" service for the benefit of common owners. It thus appears that the Alaska Legislature did not intend by this more recent enactment to displace the Commission's regulatory authority over sewer systems such as presented by this case. Further, as reported to Staff by the Connecticut Assistant Attorney General, the Connecticut

ALASKA PUBLIC UTILITIES COMMISSION — 11 APUC

Public Utility Control Department (CPUC) found itself in the same quandary regarding this matter. In response to an apparent belief that owner associations under Connecticut's UCIOA were subject to the CPUC's authority, the Connecticut legislature in 1987 amended the CPUC definition of "water company" to state that "[a] water company does not include homeowners, condominium associations providing water only to their members and homeowners associations providing water to customers at least eighty percent of whom are members of such associations." Conn. Gen. Stat. § 16-1(a)(10).

As a preliminary matter, while the Bank has standing to request a declaration as to the Association's status as a public utility, the Commission notes that the Bank may not have standing per se to request that the Association be exempt from regulation. However, in the instant case, the latter request has effectively been endorsed by the Association in its vote to be designated as a "private" rather than "public" utility and its explicit decision not to assume responsibility to be the moving party for acquiring such a designation. Under these circumstances to require the Association to file essentially duplicative legal pleadings would not be constructive. Additionally, and alternatively, the Commission has the option to grant exemptions on its own motion.

The Bank no longer owns the majority of the lots and, thus, does not have a dominant position in the Association relative to other lot owners.

Re Providing and Charging for Statewide Directory Assistance

R-89-2
Order No. 9

Re Alascom, Inc.
U-91-30
Order No. 2

Re Interior Telephone Company
U-91-65
Order No. 1

Re GTE Alaska Inc.
U-91-66
Order No. 1

Re Telephone Utilities of Alaska, Inc.
U-91-67
Order No. 1

Re Telephone Utilities of the Northland, Inc.
U-91-68
Order No. 1

Alaska Public Utilities Commission
August 1, 1991

ORDER setting an interim per-message rate of 40 cents for local directory assistance (DA) calls, to be assessed only after a subscriber has surpassed a free call allowance of four local DA calls per month. Also, the charge is held not to be applicable to disabled or pay telephone customers.

1. RATES, § 553 — Telephone rate design — Information service — Directory assistance — Local information — Cost components — Billing and collection.

[ALASKA] Per-message charges for local telephone directory assistance calls should not include any component for billing and collection services, since such costs are already recovered through basic local rates.
p. 244.

2. RATES, § 553 — Telephone rate design — Information service — Directory assistance — Local information — Monthly allowances — Exemptions.

[ALASKA] Per-message charges for local telephone directory assistance (DA) calls should be assessed only after a subscriber has surpassed a free call allowance of four local DA calls per month, while disabled and pay telephone users should be exempted from the charges entirely.
p. 244.

3. RATES, § 553 — Telephone rate design — Information service — Directory assistance

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 185

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce
 Title Small Water Utilities Exempt from APUC BRU
 Component Alaska Public Utilities Commission
 Sponsor Rep. Ogan
 Requester Spec. Committee on Utility Restructuring Component Serial No. 364

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 New funds are not required to implement this bill.

Prepared by Robert A. Lohr Phone 276-6222
 Division APUC Date/Time 4/21/99 12:54 PM
 Approved by Commissioner *[Signature]* Date 4/21/99
 Agency _____

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*HB 185 Recd
4:15 PM 4/27*

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April 27, 1999

Representative Bill Hudson
Chairman
Utility Restructuring Committee
State Capitol, Room 108
Juneau, Alaska 99811-1182

Re: House Bill 185

Dear Chairman Hudson:

Enclosed please find a written copy of my testimony during last week's hearing on H.B. 185.

Thank you for the opportunity to provide you with my comments. Please don't hesitate to contact me if you have any questions or need any additional information.

Sincerely,



Rebecca C. Pauli

Enclosure

- cc: Chairman Sam Cotten (w/o enc)
- Commissioner Tim Cook, Manager of Docket U-98-151 (w/o enc)
- Bob Lohr, Executive Director (w/o enc)
- Bob Mahoney, Counsel for Crimsonview
Owners Association (w/o enc)