

**ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672**

**10143 SENATE RESOURCES**

745644	The Date of Birth associated with this report is... (playback of 8-digit DOB).
745645	To enter another number for verification, press 1; to end this call, press 2 or simply hang-up.
745646 <i>No Verification</i>	According to our records, there is not a report associated with this number.
745804	If this is correct, press 1 If this is not correct, press 2.
745647 <i>Closing</i>	Thank you for calling the Alaska Harvest Reporting Verification Program. Goodbye.

**Referral Message**

<u>745100</u>	Welcome to the Alaska Dept. of Fish and Game's Harvest Information Program. This system is currently under construction, but will soon be available for your use. Please call back after August 3 <sup>rd</sup> .
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08/07/98 3:41 PM

# SENATE COMMITTEE REPORT

DATE: 4/12/00

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: 4/19/00

Resources Committee considered  
FISH AND GAME LICENSES & TAGS

CS FOR HOUSE BILL NO. 206(FIN) am

and recommends:

- be replaced with S CS HB 206 (RES)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:  
same title
- new title
- House Bill:  
same title
- technical title
- new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>John L. Tolson</i>	✓	<i>Amendment</i>	✓		
<i>Blair Kelly</i>	✓				
<i>Lynne Byer</i>	✓				
CHAIR: <i>Rich Hallford</i>	✓	CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal	
DF & G: Admin	3/1/00	✓	✓	#3
DF & G: Wildlife	2/22/00	✓		#2
DPS: Fish & Wildl.	2/7/00	✓		#1

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

**HB**

**238**

Internal Revenue Service

Department of the Treasury

District  
Director

915 Second Avenue  
Seattle, WA 98174

FEB 26 1999

Representative Mary Sattler Kapsner  
Attn: Aaron Spitzer  
State Capitol  
Juneau, AK 99801-1182

Dear Mr. Spitzer:

Enclosed are three summary sheets of limited entry permit holders who have transferable permits with value. These sheets cover the two periods you requested plus the most current information we have for 1999. Unfortunately, we do not have non-filer information for 1999 at this time. Please let me know if you need this information and we will provide it as soon as it is available.

The summary sheets have the taxpayers separated into two categories:

1. IRS NON FILERS - Individuals who have not filed required tax returns and have no outstanding tax liabilities (balance due).
2. IRS BALANCE DUE - Individuals who have tax liabilities outstanding.  
**NOTE:** Some of these individuals also may not have filed all required tax returns. To avoid duplication we have omitted them from the "non filer" column.

We also provided a breakout for Alaska residents and residents of Washington and Oregon. The balance due is broken down into various dollar amounts with the number of individuals falling into each category.

The bottom portion of the sheet contains a listing of geographic areas with the greatest tax compliance problem among Limited Entry Permit Holders.

There is one flaw in the information we are providing. In 1992, we had a listing of all permit holders by name and Social Security Number. This enabled us to do a 100% match against our database of non-filers and balance due accounts. Subsequent to 1992, we have not been able to obtain a listing of permit holders with their Social Security Number. The information we recently obtained came off the public bulletin board and it does not contain the permit holders Social Security Numbers. As a result, we are not able to match the name to a Social Security Number on 1,600 of the estimated 11,000 permit holders. Therefore, we do not know if these 1,600 individuals are non-filers, have outstanding balance due, or are compliant.

October 1993 Summary of Tax Delinquencies Among LEP Holders					
	IRS Non Filers	** IRS Balance Due	IRS Total	LEP Holders	* Amount Due
Alaska Residents	1173	1111	2284	8,802 (Estimate)	13.7 M
Lower 48 States and Hawaii Residents	333	315	648	2,000 (Estimate)	3.9 M
<b>TOTAL</b>	<b>1506</b>	<b>1426</b>	<b>2,932</b>	<b>11,000</b>	<b>17.6 M</b>

25.9%

32.4%

\* In 1993, the amount due only reflected the assessed balance due. Accrued penalties and interest were not calculated. Based on historical knowledge, the total amount due with accruals as is reflected in the 1997 and 1999 data would be an additional fifty to 100 percent. Therefore in 1993, the total amount due would have been between 20.5 M and 27.4 M

**\*\* Breakdown of Alaska Resident Balance Due Taxpayers by Amount Owed**

\$0 - 10,000	\$10,001 - 20,000	\$20,001 - 50,000	\$50,001 - 100,000	\$100,000 +	TOTAL	BALANCE DUE
827	130	101	32	21	1111	13.7 M

Regions with the Greatest Incidence of Tax Delinquencies Among LEP Holders

Region	Greatest Problem(s)
Bethel	Non Filing/Non Payment
Bristol Bay and Dillingham	Non Filing/Non Payment
Haines Borough & Skagway-Yakutat-Angoon	Non Filing/Non Payment
Kenai Peninsula Borough	Non Payment
Kodiak Island Borough	Non Payment
Wade Hampton	Non Filing/Non Payment

# CORRECTION

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



Rev. 6/98

Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

Internal Revenue Service

Department of the Treasury

District  
Director

915 Second Avenue  
Seattle, WA 98174

FEB 26 1999

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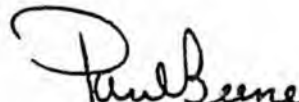
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Representative Mary Sattler Kapsner  
State Capitol

In the event we get a listing of permit holders with Social Security Numbers from the State of Alaska, we will do a 100% match and provide you with a corrected summary sheet. I hope you find this information useful in your resurrection of the Tax Obligation Loan Program.

If you have any further questions on this subject, please contact Douglas Hartford, Collection Group Manger, at 949 E 36th Avenue, Anchorage, AK 99508, MS A201 or call him at (907) 271-6982.

Sincerely,

  
Paul Beene  
District Director

Enclosures

cc: Bruce Twomley  
Chairman, CFEC

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Kenai Peninsula Borough	Non Payment
Kodiak Island Borough	Non Payment
Wade Hampton	Non Filing/Non Payment

February 1997 Summary of Tax Delinquencies Among LEP Holders					
	IRS Non Filers	* IRS Balance Due	IRS Total	LEP Holders	Amount Due
Alaska Residents	271	643	914	8,802 (Estimate)	18.6 M
Washington and Oregon Residents	23	102	125	2,000 (Estimate)	1.5 M
<b>TOTAL</b>	<b>294</b>	<b>745</b>	<b>1,039</b>	<b>11,000</b>	<b>20.1 M</b>

10.3%

6.2%

**\* Breakdown of Alaska Resident Balance Due Taxpayers by Amount Owed**

\$1,000 - 10,000	\$10,001 - 20,000	\$20,001 - 50,000	\$50,001 - 100,000	\$100,000 +	TOTAL	BALANCE DUE
311	103	120	63	46	643	18.6 M

Regions with the Greatest Incidence of Tax Delinquencies Among LEP Holders

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Bethel	Non Filing/Non Payment
Bristol Bay and Dillingham	Non Filing/Non Payment
Haines Borough & Skagway-Yakutat-Angoon	Non Filing/Non Payment
Kenai Peninsula Borough	Non Payment
Kodiak Island Borough	Non Payment
Wade Hampton	Non Filing/Non Payment

February 1999 Summary of Tax Delinquencies Among LEP Holders					
	IRS Non Filers	* IRS Balance Due	IRS Total	LEP Holders	Amount Due
Alaska Residents	Unknown	838	Unknown	8,802 (Estimate)	24.5 M
Washington and Oregon Residents	Unknown	108	Unknown	2,000 (Estimate)	2.0 M
<b>TOTAL</b>	<b>Unknown</b>	<b>946</b>	<b>Unknown</b>	<b>11,000</b>	<b>26.5 M</b>

4.5%  
5.4%

**\* Breakdown of Alaska Resident Balance Due Taxpayers by Amount Owed**

\$1,000 - 10,000	\$10,001 - 20,000	\$20,001 - 50,000	\$50,001 - 100,000	\$100,000 +	TOTAL	BALANCE DUE
467	117	125	71	58	838	24.5 M

Regions with the Greatest Incidence of Tax Delinquencies Among LEP Holders

Region	Greatest Problem(s)
Bethel	Non Filing/Non Payment
Bristol Bay and Dillingham	Non Payment
Haines Borough & Skagway-Yakutat-Angoon	Non Filing/Non Payment
Kenai Peninsula Borough	Non Payment
Kodiak Island Borough	Non Payment
Wade Hampton	Non Filing/Non Payment

## I. INTRODUCTION.

The Internal Revenue Service (IRS) administratively seized property possessed with respect to an Alaskan salmon limited entry permit held by Francis S. Carle, a 61-year-old Alaska Native fisherman from Hydaburg, Alaska. The IRS attempted to sell the right, title and interest of Mr. Carle in and to his fishing privileges at its Anchorage public auction in December of 1995.

Subsequent to this administrative seizure and sale, the IRS applied to the Commission for a voluntary transfer of the privileges completing the application forms as if it were Mr. Carle.

An Alaska limited entry permit is a use privilege that may be transferred only by the Alaska Commercial Fisheries Entry Commission (CFEC), and CFEC is required to review every request for transfer to ensure compliance with the law. AS 16.43.170.

This application for transfer is the first time CFEC has been called upon to review an IRS request for transfer arising from an IRS administrative levy and sale. We agreed to review this request as expeditiously as possible, and, toward that end, we Commissioners are taking up the request directly (without the normal, intermediate procedural levels of review).

Although we provide background and discuss additional issues raised by IRS, this request for transfer presents a simple question of IRS' statutory authority.

We have reviewed (1) IRS' application and conclude federal governing statutes do not authorize the administrative levy and sale of Alaska limited fishing privileges. Therefore, we deny IRS' request.

## II. FACTS OF IRS' REQUEST FOR TRANSFER OF MR. CARLE'S FISHING PRIVILEGE.

### A. Mr. Carle.

Francis S. Carle is a 61-year-old fisherman from the Alaska Native fishing community of Hydaburg on Prince of Wales Island in Southeast Alaska. As an Alaska Native elder, Mr. Carle has maintained for his lifetime a traditional dependence upon commercial fishing as his only means of earning a living to support himself and his extended family (including his wife, two sons, and daughter).

In 1975, pursuant to AS 16.43 et. seq., the State of Alaska Commercial Fisheries Entry Commission (CFEC) originally issued Mr. Carle his Southeast Alaska purse seine entry permit. (2) The permit is a revocable use privilege. As 16.43.150(e) The state found Mr. Carle would have suffered "significant economic hardship" without the permit, because he was so heavily dependent upon the fishery. In fact, Mr. Carle's dependence on his salmon fishing was so substantial, the state could not have denied him the privilege even if it meant issuing more than the maximum number of entry permits. (3)

Mr. Carle's Southeast salmon seine permit is one of three such permits in Hydaburg today. Mr. Carle has owned his own seine vessel since 1963. In his seine operation, Mr. Carle employs six crewmembers from Hydaburg.

### B. IRS Action.

On November 13, 1995, pursuant to 26 USC 6331(a), the IRS levied upon property possessed by Mr. Carle with respect to his permit by personally serving him with a Notice of Seizure. (4)

IRS published a notice (5) for its public auction of property of Mr. Carle and others in the Juneau Empire on November 29, 1995, that stated in part as follows:

Sales are subject to any and all qualifications and/or restrictions established by the Alaska Limited Entry Fishing Commission . . . . Successful bidders must meet all qualifications prior to transfer.

Mr. Carle turned to his local tax preparer and Alaska Legal Services Corporation for help. When Mr. Carle's tax preparer was out of town and unable to complete the required work in time, Mr. Carle's attorney sought help from the IRS Problem

The economy is dependent to the extent of more than two-thirds (2/3) of its income upon Federal Expenditures.

However, the prevailing view was Alaska could survive as a state, but only if Alaska controlled its own natural resources including fisheries(15)

H.R. 7999 will enable Alaska to achieve full equality with existing States, not only in a technical juridical sense, but in practical economic terms as well. It does this by making the new State master in fact of most of the natural resources within its boundaries . . . .

\*\*\*

In order to understand clearly the necessity for certain different provisions in the Alaska statehood bill, it is advisable to have in mind some of the basic facts about Alaska's peculiar situation.

\*\*\*

Over 99 percent of the land area of Alaska is owned by the Federal Government. [S]uch a condition is unprecedented . . . .

\*\*\*

Much of the remaining area of Alaska is covered by glacier, mountains, and worthless tundra. Thus it appeared to the committee that this tremendous acreage of [federal] withdrawals might well embrace a preponderance of the more valuable resources needed by the new State to develop flourishing industries with which to support itself and its people.

\*\*\*

If Alaska is to become a State, it must be a full and equal State, and not a puppet of the Federal Government.

With respect to demands on the Federal Treasury, proponents of statehood also noted(16):

Concretely, the grant of statehood will mean some saving to the Federal Government as the people of Alaska take over part of the burden of supporting certain governmental functions now borne by the United States Treasury.

The "extreme degree of Federal domination of Alaskan affairs"(17) and its deleterious effect was very evident in Alaska's salmon fisheries. As long as Alaska remained a Territory, the Federal Government managed Alaska's fisheries. Under federal management, canneries were allowed a monopoly over the Alaska salmon harvest through the use of fish traps. This federal management practice undermined sustained yield management and, over time, resulted in severe harm to the resource. Additionally, federal management of Alaska's fisheries through fish traps denied individuals, who traditionally relied on commercial fishing for their livelihood, the opportunity to fully participate in the commercial harvest. As the result of this exclusion, these individuals and those dependent upon them suffered severe economic distress. This placed a heavy burden on the Territory and the Federal Government to provide basic support to those individuals, their families and their communities.

Senator Ernest Gruening summarized the fishery situation before statehood:

The Salmon Conservation Fiasco.--Another long-standing Alaskan grievance relates to the depletion of what was once Alaska's greatest natural resource, the salmon fishery. It was also the nation's greatest fishery resource.

The Pacific salmon originate in the rivers and lakes of North America's northwest coast; they migrate to sea and return to the waters that gave them birth to spawn and then to die. The salmon industry consists of catching them as they return at the end of their life cycle and processing them, chiefly by canning. Such was the abundance of this resource that Alaska's coastal streams were once solidly red with the mass of anadromous salmon. The first cannery was established in Klawock in 1878 and others followed, financed chiefly by San Francisco capital. Conservation was undreamed of in those days. Not until 1889 did the federal government, alerted by warnings of

Alaska's limited entry system is the product of years of effort by the State beginning in 1961. Two previous attempts by the legislature to establish the means to limit entry into Alaska's fisheries failed as the result of legal challenges.

The Alaska legislature persisted, however, because Alaska's salmon fisheries were experiencing a long and threatening decline, while the number of participants continued to increase substantially, which resulted in more and more fishing pressure on a diminishing resource. A limited entry system was the only means by which the State could control a critical variable in the management of its fishery resources: the number of fishermen participating in a given fishery.

Following action by the legislature, in 1972, Alaska voters approved an amendment to Article VIII, Section 15 of the Alaska Constitution, which authorized:

the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Building upon this constitutional foundation, in 1973, the Alaska legislature adopted the Limited Entry Act, which has resulted in the largest limited entry program of its kind in the United States. Limitation of entry into all twenty-six of Alaska's salmon fisheries followed shortly. During 1976, by referendum, the voters of Alaska again supported limited entry by a margin of almost two-to-one. Today, some forty-six of Alaska's fisheries are under limitation.

As a food source important to Alaskans and the world, Alaska's fisheries are without question one of its most important renewable resources. Alaska's fisheries employ a substantial segment of the State's population, and many remote communities rely upon commercial fishing as their primary economic base. Therefore, sound management of its fisheries is crucial to the State of Alaska, and limited entry is an important part of the State's management system.

Extensive biological, economic, historic, and cultural data and analyses have been generated to aid the development, enactment, and review of entry limitation in Alaska. (A partial bibliography is set forth in Appendix A.) Thousands of hours of hearings throughout the State and before the legislature have informed the choices made in shaping Alaska's limited entry system. Alaska's courts have carefully scrutinized the program and developed a body of law governing limited entry in Alaska that is both extensive and unique. (A partial list of cases decided by the Alaska Supreme Court is set forth in Appendix B.)

In addition to direction and support from the legislature and the courts, Alaska's limited entry program has functioned only through the continuing cooperation and support of the Governor of Alaska, the Alaska Departments of Fish and Game, Law, Revenue, Administration, Commerce, and Public Safety, together with that of private citizens, economists, lawyers, scientists, processors, and, particularly, fishermen.

Under AS 16.43.140, no commercial fisherman may operate fishing gear in a limited fishery without an entry permit. The Alaska Commercial Fisheries Entry Commission (CFEC) issues entry permits and administers the program. ~~The entry permit is the critical element of the system and, to an Alaskan fisherman, an entry permit is a legally required tool of his trade.~~ In establishing limited entry and considering the needs of the State and its citizens, the Alaska legislature gave careful consideration to the nature of an entry permit and the privileges that a permit would extend to its holder.

In enacting a limited entry system, if the legislature had been committed only to simplicity and economy, it could have authorized auctioning of a limited number of property rights to its fisheries. The legislature rejected this approach, because it would not have been consistent with the State's most important objectives in establishing a limited entry system.

~~The legislature recognized that, for the purpose of conservation, the State needed to retain control of its fishery resources. Looking ahead, the legislature wished to ensure that privileges extended through an entry permit could~~

generating an additional and unnecessary State bureaucracy.

Consistent with its grant of only a privilege, the State through CFEC, retained control over all transfers. A permit holder may transfer his permit only upon approval by CFEC. AS 16.43.170. To ensure against intemperate transfers, the legislature requires a 60-day waiting period before a permit may be transferred. A fisherman may revoke an agreement to transfer any time during this 60-day period. A number of legal requirements must be satisfied before CFEC will approve a transfer. AS 16.43.170; 20 AAC 05.710.

Generally, AS 16.43.150(g) prohibits involuntary transfer requiring that an entry permit may not be "attached, distrained, or sold on execution of judgement or under any other process or order of any court." Additionally, a fisherman may not pledge his entry permit as security for a debt. (The legislature recognized that the absence of a property right might impair a fisherman's ability to obtain financing for the purchase of a permit and his fishing operation, and, therefore, established two State authorized loan programs. AS 16.10.333-16.10.377; 44.81.271; and 44.81.230-44.81.250.) Just as a fisherman could not, contrary to State law, create a security interest in his fishing privilege, neither can a creditor.

The legislature recognized that a fisherman's earnings were seasonal and subject to many variables from year-to-year beyond control (for example, weather, predation, and interception). If creditors with short term objectives were allowed to treat an entry permit as a fungible item of property and to seize and force its sale, a fisherman without other means of earning a living, together with those dependent upon him, could well be left destitute. In Alaska, where many communities in remote areas of the State depend upon commercial fishing as the primary basis for their cash economy, this is a very real possibility. [The legislature notes that the Social Security Administration has acknowledged the wisdom of Alaska's approach by recognizing that an entry permit is essential to self-support, and, therefore, by not considering the market value of a permit as an alternative resource in determining an individual's eligibility for Supplemental Security Income benefits. 50 Fed. Reg. 42683, 42685 (1985).]

Although the State of Alaska could not countenance a system that inexorably would sever fishermen from the source of their livelihood, nonetheless, as a privilege, the legislature has made clear that an entry permit is subject to forfeiture, if its holder fails to abide by the applicable laws. See, for example, AS 16.05.480; 16.05.665; 16.05.710; 16.43.960; 16.43.970. Ultimately, because it has granted to fishermen only a revocable privilege, the State retains the dominion and control necessary to protect and manage its fishery resources.

In conclusion, compelling State interests were served, when the legislature rejected the idea that an entry permit represent a property right belonging to the permit holder. Instead, the legislature chose to establish an entry permit as a mere privilege, subject to State control, and revocable at the will of the State without compensation.

In this manner, Alaska established fundamental policies through its comprehensive fisheries management system. Alaska directed the benefits of the system to individual fishers dependent on the resource (as opposed, for example, to processors, banks, and investment companies). From its unique circumstances giving rise to statehood, Alaska has attempted to protect individual fishers from economic coercion by nonfishers and from forced loss of their livelihood.

When too many participants threatened sustained yield and caused economic distress among fishers, Alaska established limited entry, but not an exclusive right or special privilege of fishery. AS 16.43.150(g) ensures individual fishers are fully accountable only to the state, so no third party can pressure or influence their commercial fishing activities. Consider, Alaska manages more fishery resources and more coastline than exist in the rest of the United States combined. Currently, Alaska has some 54 enforcement officers in the field. Alaska requires complete authority over fishing activities to ensure compliance with regulations necessary for sustained yield. The risk of losing fishing privileges is a critical incentive to comply with Alaska's requirements for sustained yield of its fisheries.

And Alaska's requirements are many. See, for example, AS 16.05; AS 16.10; AS 16.40; AS 16.43, and regulations adopted thereunder. As sovereign, Alaska closely regulates its fisheries, as necessary, to open and close fishing seasons, to prohibit fishing, to limit the size of vessels as well as type and amount of gear, to restrict areas of fishing, to limit the amount of harvest, to ensure escapement, to impose strict liability for certain fishing offenses, to board vessels without warrants, and to forfeit permits, vessels, gear and catch.(21)

salmon fishery through the limited entry system.

Nevertheless, the report recognizes limited entry would become a destabilizing influence in the area if permits are sold outside the area. It also notes the risks of open access fisheries:

The limited entry permit system is the other powerful force at work in the region. The loss of commercial permits to outsiders by sale alienates the local society from its resource base. With the development of the fisheries, the market value of commercial permits increases, making sales for short term gain more attractive. The opening of new commercial fisheries without limits on outside competition holds the potential for degradation of the resource or loss of the value of the resource to more heavily capitalized competitors. Further, the need to preserve a commercial resource from over-exploitation requires the application of restrictive management systems from state or federal agencies.

In summary, commercial fishing provides one of the few sources of cash income in many isolated rural fishing communities. Cash is needed in these villages both to purchase basic necessities and to purchase gear and equipment needed for subsistence harvests. Limited entry helped stabilize a source of monetary income through the initial allocation of entry permits to applicants in those communities and by preventing the dilution or destruction of that economic base through the influx of large numbers of outsiders.

The State of Alaska must preserve the economic base in such isolated rural fishing villages. With declining oil revenues, State subsidies in such communities may decline by necessity in the near future. Furthermore, Alaska is becoming increasingly responsible for the economic welfare of its citizens as the Federal government significantly downsizes its activities (in part, through reductions in public assistance) in order to balance the Federal budget. The fragile economic base in these communities is of vital importance.

Any substantial loss of permits in these villages would be devastating. Large-scale seizure of entry permits by the IRS and sales to outsiders pose such a threat to the economies of many rural fishing villages. The widespread poverty in many of these villages and the lack of cash and/or available credit means persons within such villages likely would be unable to compete with outsiders at IRS permit auctions.(28)

B. IRS has Targeted Individuals in Rural Alaskan Communities.

1. IRS asserts "unlimited supply" of limited entry permits to sell.

a. IRS data.

For more than ten years, the IRS has declared its intention to seize and force the sale of limited entry permits, making the state aware the problem is extensive throughout Alaska and heavily concentrated in isolated rural communities. As former Chief of Collections for the IRS, Dave Tucker, announced(29) in 1994: "we have an unlimited supply of entry permits to sell."

Mr. Tucker estimated as many as 4,000 limited entry permits held by Alaskans could be at risk of IRS seizure due to failure to file tax returns and failure to pay federal tax obligations.(30) Four thousand limited entry permits would constitute roughly 40% of all permits held by Alaskans.(31) The primary source of this supply of limited entry permits is rural Alaska.

In response to repeated requests from the State, in November of 1993, the IRS provided more specific estimates to the Entry Commission. Exhibit L This limited view(32) shows as many as 26%(33) of Alaska resident limited entry permit holders(34) had failed to meet some federal tax obligations. The majority of individuals did not owe an overwhelming amount of taxes. Among those not in compliance, the IRS estimated 74% owed \$10,000 or less, and 86% owed \$20,000 or less. Because some of these figures are derived from IRS forced filing of returns when an individual has not filed, the amount owing likely would be much less upon filing of actual returns with full deductions for actual expenses.

Most disturbing is the focus on isolated rural fishing communities throughout Alaska. Among others, the IRS report singles out the Dillingham, Bethel, and Wade Hampton 1990 census districts as serious problem areas.(35)

b. A glimpse behind the data.

**YEAR TOTAL PERMITS GROSS AVERAGE FEDERAL PERMITS FISHED EARNINGS FISHING TAX GROSS DUE(40)**

1989	60	53	\$196,690	\$3,711	0
1990	63	45	72,410	1,609	0
1991	52	42	104,522	2,489	0

**c. IRS summons: a snapshot of IRS' enforcement targets.**

In the summer of 1992, IRS served the Limited Entry Commission with an extensive summons demanding earnings records for more than 2,500 fishers(41) IRS stated(42) the individuals targeted by the summons were limited entry permit holders who failed to file returns for the year 1992. The information conveyed by the summons(43) is only a snapshot in time: it represents only part of the problem. As such, we need to cautiously view this information as the tip of an iceberg.

We extracted the following data from the summons to highlight the number of individuals targeted in the particular census districts and communities mentioned in the previous subsection.

Census Area	Village(s)	Number of Individuals Targeted by IRS Summons
Dillingham Census Area	Togiak	69
	Other Dillingham area communities	149
	<b>TOTAL</b>	<b>218</b>
Bethel Census Area	Kipnuk	15
	Other Bethel area communities	248
	<b>TOTAL</b>	<b>263</b>
Wade Hampton Census Area	Hooper Bay	18
	Other Wade Hampton area communities	224
	<b>TOTAL</b>	<b>242</b>

**2. IRS permit seizures cause significant hardship.**

**a. Isolated Alaskan fishing villages depend upon commercial fishing for their survival.**

All of these data underscore the importance of commercial fishing as a source of livelihood for Alaskans in many isolated fishing villages(44) The loss of permits would reduce the monetary income of permit holders, their crewmembers, their families and households, and others in the community sustained through the village's non-commercial sharing networks.

The loss of permits and commercial fishing income would push more residents below the poverty level and increase the community's dependency on public assistance. The loss of commercial fishing income would also reduce the community's ability to purchase the gear, equipment, and supplies needed to harvest subsistence foods for survival.

**b. Seizing entry permits undermines a purpose of limited entry (and may not be in the national interest).**

(1) United States' special relationship to Alaska Natives

Many villages are populated largely by Alaska Natives engaged in a "mixed, subsistence-cash" economy. Commercial fishing is one of the few sources of monetary income available to people in many of these villages.

Monetary income from commercial fishing is for basic necessities and is used to purchase the gear and equipment required to harvest subsistence food needed for basic survival. Permit holders, their crewmembers, their families and households, and others who are sustained through non-commercial sharing networks would all suffer from the loss of their commercial fishing economic base.

flow of tax revenues to the U.S. Treasury.

### 3. IRS and CFEC experience in villages.

IRS statistics highlight isolated, rural Native Alaskan villages. Communicating with villagers has always been difficult for distant governmental entities (including our own). For example, every attorney attempting to work within these communities has experienced a similar problem. Commonly, a resident produces a small stack of official letters. The correspondence is invariably years old and unanswered. At an earlier time, the letters were often from the U.S. Department of Interior informing the village resident of the necessity to respond within thirty days or lose the resident's claim to land.

In short, for a variety of reasons, including isolation, culture, language, and lack of formal education, the individuals did not have the capacity to answer such a letter.(51) The inherent risk in governmental communications is for a distant bureaucrat to assume the individual who did not respond to the letter is a bad actor who requires a harsher measure to get his attention.(52)

Going to a village and meeting the individual can quickly dispel such a notion. Recently, Charles M. Stromme, Chief of Special Procedures for the IRS in Alaska,(53) returned from a regional village meeting held in Kasigluk (an Alaska Native village on the Yukon-Kuskokwim Delta) and announced, "my God, we're trying to collect money from people who don't even know we exist!"(54)

Individual insight, however, may not curb a bureaucratic agenda. At least one IRS supervisor has stated limited entry permit seizures should target lower valued limited entry permits in Western Alaska (representing less valuable commercial fisheries), because such lower valued permits are less likely to be rescued from the enforcement process by legal means, and, thereby, IRS could more quickly obtain ultimate legal victory over the State of Alaska.(55)

At a time when IRS is facing severe budget reductions and responding with dramatic consolidation, we fear such a bureaucratic agenda may prevail.(56)

### 4. State of Alaska and IRS cooperation.

In the face of IRS' threat, the state has extended itself to help IRS achieve tax compliance and avoid IRS seizures of limited entry privileges. In turn, the IRS has supported and joined these efforts. Under the leadership of IRS' District Director Michael R. Allen,(57) the IRS in Alaska committed resources to work with individual fishers to achieve voluntary compliance. The state has encouraged and joined in this effort as have private parties.(58)

The State Division of Investments (which manages the Tax Obligation Loan Program) and the Commercial Fishing and Agriculture Bank (CFAB) represent arms of the state established by the Alaska Legislature to avoid economic distress to fishermen and those who depend upon them for a livelihood. State employees have worked hand-in-hand with IRS employees to visit Rural Alaskan communities helping individuals understand and meet their tax obligations, often with the help of the State's Tax Obligation Loan Program. In slightly over a year during which the program has functioned, the state has committed more than \$3.6 million through the Tax Obligation Loan Program. This amount represents revenue the IRS would not likely have received but for the direct effort of the state.

Private individuals have helped as well. The Alaska Business Development Center works with individual permit holders throughout the state. In the Bristol Bay area, the Bristol Bay Economic Development Corporation together with the Bristol Bay Native Association have funded an office to work with local permit holders. In Western Alaska, other regional economic development corporations are looking at the Bristol Bay model in order to develop similar projects. In support, the Division of Investments, the University of Alaska, the Alaska Business Development Center, and the IRS are developing a plan through Volunteer Income Tax Assistance (VITA), to place accounting students in rural communities to assist individuals to meet their federal tax obligations.

That no individual or public officer can sell, and convey good title to, the land of another, unless authorized to do so by express law, is one of those self-evident propositions to which the mind assents, without hesitation; and that the person invested with such power must pursue with precision the course prescribed by law, or his act is invalid, is a principle which has been repeatedly recognized by this court.

## 2. Federal tax lien.

A lien arises by operation of law upon "all property and rights to property, whether real or personal, belonging to such person" where (1) a tax assessment has been made; (2) a taxpayer has been given notice of the assessment, stating its amount, and demanding payment; and (3) the taxpayer has failed to pay the amount demanded within ten days after the notice and demand. IRC 6321; Saltzman, *IRS Practice and Procedure*, 14.05 (2d ed. 1991). This tax lien does not seize or deprive the taxpayer of his property. It is merely a claim against the taxpayer's property comparable to a Uniform Commercial Code lien of a private creditor. H.R. Rep. No. 1884, 89th Cong., 2nd Sess., 1966-2 CB 815; Saltzman, *supra*, 14.04 (2d ed. 1991).

## 3. Enforcement of federal tax lien.

The IRC provides the government with two methods to enforce the lien: (1) as in the case of Mr. Carle, it may levy, and sell the property administratively without judicial intervention pursuant to IRC 6331-6343 or (2) it may institute suit to foreclose the lien pursuant to IRC 7403. *LLS. v. Hemmen*, 51 F.3d 883, 887 (9th Cir. 1995); Saltzman, *supra*.

## 4. Statutory administrative levy and sale provisions.

The statutory authority for the IRS to levy upon and administratively sell property of a delinquent taxpayer is contained in the Internal Revenue Code (IRC), Subchapter D, Chapter 64, Subtitle F, in particular 6331 "Levy and distraint," 6335 "Sale of seized property," 6338 "Certificate of sale; deed to real property," and 6339 "Legal effect of certificate of sale of personal property and deed of real property." Related provisions are contained in Subchapter C, Chapter 64, Subtitle F governing liens for taxes, in particular 6321 "Lien for taxes" and in Subchapter A, Chapter 76, Subtitle F, governing civil actions brought by the United States, in particular 7403 "Action to enforce lien or to subject property to payment of tax."

In their relevant parts, we have set out the controlling federal statutes in this section.

IRC 6331(a). [in part]

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax.

IRC 6331(b). [emphasis added]

The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

6335(e)(1)(B). [in part, emphasis added]

If, at the sale, one or more persons offer to purchase said property for not less than the amount

required condition necessary before the IRS was entitled to administratively sell such property. Specifically, the IRS levy did not affect Mr. Carle's right, as a permit holder, to fish under State law. Alaska Statutes, Title 16, Fish and Game

#### 6. Administrative sales and the plain language of statutes.

Controlling law in this circuit makes clear in conducting an administrative sale, the government must strictly comply with 6335. *Anderson v. U.S.*, 44 F.3d at 801 (holding where a sale was postponed or adjourned for a period in excess of 1 month in violation of 6335(e), the sale was invalid) (62) *Goodwin*, 935 F.2d at 1065 (holding that failure to give the notice as required by 6335(a) invalidated a sale notwithstanding that the delinquent taxpayer had actual notice of the sale).

Section 6335(e) gives the IRS three possibilities at the time of sale: sell the property, buy it, or release it. *Anderson*, 44 F.3d at 800. The statutory language is clear that the IRS shall: (1) if a bid is made that equals or exceeds the minimum price set by the IRS, declare the property sold to the highest bidder [ 6335(e)(1)(B)]; and (2) give the purchaser a certificate of sale upon payment of the full price [ 6338(a)]. The use of the word shall leaves no room for discretion. *Anderson*, 44 F.3d at 799.

Specifically, the IRC requires such property "shall" be declared sold to the highest bidder at the sale. Also, the applicable federal regulations provide the property shall be sold by the IRS "as is" and "where is" and "without recourse" against the IRS with "no guarantys (sic) of warranty, including the validity of title". 26 C.F.R. 310.6335-1(c)(iii). Contrary to the explicit requirements of the IRC and the applicable regulations, the IRS conducted a sale of Mr. Carle's property subject to the condition that CFEC transfer Mr. Carle's permit to the successful bidder. The IRC does not authorize the IRS to sell Mr. Carle's property subject to the condition that the State transfer Mr. Carle's permit to the successful bidder. IRC 6335(c)(1)(B); IRC 6338(a); IRC 6339(a)(2) (63) Accordingly, the sale is invalid under IRC as interpreted by our Ninth Circuit Court of Appeals in *Anderson* and *Goodwin*.

#### C. Conclusion.

In its application to transfer Mr. Carle's entry permit, IRS has raised other issues we will discuss briefly in the following section. However, at this point we conclude we must deny the requested transfer of Mr. Carle's fishing privilege. For lack of federal statutory authority, the administrative levy and sale (upon which the transfer request is based) appears to be ineffective.

#### V. OTHER ISSUES RAISED BY IRS.

##### A. Claim by IRS State Law Invalid.

In making this application, the IRS rejected the procedure required by the state (64) as follows:

The IRS has not completed the Request for Permanent Transfer of Entry Permit Due to Involuntary Action form as the restrictions set out in A.S. 16.43.170(g)(6) and (h) are not applicable to transfer requests by permit holders and are invalid to the extent they interfere with revenue collection. *Perez v. Campbell*, 402 U.S. 637, 649 (1971).

*Perez v. Campbell*, 402 U.S. 637, 29 L.Ed. 2d 233, 91 Sup. Ct. 1704 (1971), does not stand for the principle that state laws "are invalid to the extent they interfere with revenue collection." The IRS was not a party to *Perez*, and the IRC was not at issue in *Perez*. The case presented the U.S. Supreme Court with a glaring conflict between a specific state law and federal bankruptcy law. In short, federal bankruptcy law discharged debts in order to provide a fresh start for the debtor. 29 L.Ed. 2d at 241. Directly to the contrary, the state law in question provided certain judgment debtors were not relieved of liability by a discharge in bankruptcy. *Id.* at 238. The five-member majority stated the court must proceed by a 2-step process: (1) look for authoritative construction of the two statutes (federal and state); and (2) determine whether they are in conflict. *Id.* at 239. With ease, the court found "both statutes authoritatively construed" and concluded they were in direct conflict. *Id.* Due to direct conflict, the state law violated the Supremacy Clause of the Constitution and was preempted. (65)

The word "property" is commonly equated with "things". However, in its true sense, property is a cultural concept that serves to order relations between people in organized societies. As noted legal philosopher Morris Coher(69).observed (emphasis added):

Whatever technical definition of property we may prefer, we must recognize that a property right is a relation not between an owner and a thing, but between the owner and other individuals in reference to things.

The U.S. Supreme Court and the lower federal courts routinely recognize that, although the IRC sets forth the rules to assess and collect taxes on property, the IRC does not create property; rather, property is created by non IRC law. *U.S. v. Bess*, 357 US 51, 55 (1958); *Aquilino v. U.S.*, 363 US 509, 512 (1960); *U.S. v. Durham Lumber Co.*, 363 US 522, 526 (1960); *U.S. v. Rodgers*, 461 US 677, 683 (1983); *U.S. v. National Bank of Commerce*, 472 US 713, 719-720 (1985); *In re Tergwillinger's Catering Plus, Inc.*, 911 F. 2d 1168, 1171 (6th Cir. 1990) cert. den'd *Ohio Department of Taxation v. I.B.S.*, 111 S. Ct. 2815 (1991); *In re Kimura*, 969 F. 2d 806, 811 (9th Cir. 1992). Alternatively stated, property may not be created under the IRC for the sole purpose of federal seizure. *U.S. v. California*, 281 F. 2d 726, 728 (9th Cir. 1960).

Lower federal courts addressing the issue have tended to treat the license as a tangible thing (like a car) or have addressed only disposition of proceeds after a license has been transferred by a government regulator. Few courts have considered whether a federal tax lien specifically attaches itself to the license itself, or the use and enjoyment thereof, the qualified right to request the state to transfer the license, or the proceeds thereof.

Since the *Lorentzen* ruling(70) that an entry permit represents "property or rights to property" under the IRC, a new line of cases concerning FCC licenses has analyzed the various relationships a licensee may have with third parties and what interests those relationships may affect. The analysis addresses some of the court's remaining questions posed to the parties at the conclusion of the *Lorentzen* case.

The threshold case, *In re Bidgley Communications, Inc.*, 139 B.R. 374, 377-379 (Bkrcty. D. Md. 1992), held a third-party creditor of the licensee may not assert a property right to force the sale of the license against the government issuer and explained its reasoning as follows:

[A] license confers certain private rights upon the licensee and that these rights may be sold for profit to a private party, subject to Commission approval. [The] rights between licensees and the Commission are to be distinguished from rights between the licensee and a private third party. It is this distinction that permits a licensee to receive a profit from the transfer of a license to a third party.

\*\*\*

The case of *In re Jewel F. Smith*, 94 Bankr. 220 (Bankr. D. Ga. 1988), [held] a creditor could not take a security interest in the debtor's broadcast license.

\*\*\*

In *Smith*, the creditor sought to abrogate the rights of the licensee, i.e., its ability to freely initiate a transfer of a license. The right to initiate a transfer is a right granted by the terms of the license and is seriously impaired if it is subject to the dictates of a creditor . . . . This interference in the relationship between the licensee and the [FCC] is precisely the evil the FCC was attempting to avoid by the terms of its policy against the recognition of security interests . . . .

\*\*\*

[I]n the instant case [the creditor] is not asserting any interest in the rights of a licensee with respect to the FCC. The right to transfer is a right between the FCC

PBB Communication; 172 B.R. 132; Beach Television Partners, 38 F.2d 535.

Furthermore, the FCC's distinction between the license and the licensee's right to receive proceeds from an FCC approved transfer of it is the distinction between a privilege as between the licensee and the FCC and a property right as between the licensee and third parties, such as creditors. See also, U.S. v. Berkshire Street Railway Co., 219 F.Supp. 861 (DC Mass. 1963) (IRS may not enjoin Commonwealth of Massachusetts from discharging a sovereign function to revoke a franchise from the Department of Public Utilities, because the franchise was a privilege, not property); Tak, 985 F.2d 916 (As a privilege, not property, an FCC license is neither part of the bankrupt's estate nor property to which a UCC security interest may attach). Compare Brown v. Baker, 688 P.2d 943 (Alaska 1984) (A promise to retransfer an entry permit is an attempt to create a security interest in the permit and illegal under AS 16.43.150(g) and, therefore, will not be enforced by the courts); Pavone, 860 P.2d 1228.

The IRS accepts FCC policy enunciated in Chesky, 9 FCCR at 987, and does not conduct IRS administrative levy and sales of FCC licenses. The Internal Revenue Manual (IRM) directs IRS' employees as follows:

#### 56(16) 4 FCC Broadcasting Licenses

(1) Administrative seizure and sale of FCC broadcasting licenses are not feasible due to the difficulties involved in the transfer of ownership without the approval of the Federal Communications Commission. However, levy against other assets of the taxpayer business is still appropriate. Such seizures should be handled on a routine basis. As is the case with any issue of a sensitive nature, management should be apprised of pertinent developments.

Although the IRM does not have the force of law, see Anderson, 44 F.3d at 799, the IRS "manual provisions do constitute persuasive authority as to the IRS' interpretation of the IRC." Griswold v. U.S., 59 F.3d 1571, 1576 n.8 (11th Cir. 1995).

#### b. Nature of an Alaskan limited fishing privilege.

In Alaska, fish within the jurisdiction of the state are reserved to the people for their common use and no person may have an exclusive right in fishery resources. Article VIII., Section 3, and Section 15, Alaska Constitution. Limited entry permits do not confer an exclusive right or a special privilege of fishery upon the holders: they are a use privilege authorized under Article VIII., Section 15. Accordingly, no person may assert a property right against the State of Alaska to fishery resources. State v. Hebert, 803 P.2d, 866 (Alaska 1990). The permission granted in itself represents only a revocable use privilege. AS 16.43.150(e).

As such, the permission itself is not property. AS 01. 10.060; AS 16.43.150(e); In re Harrell 73 F.3d at 220. The nature of the permission conferred upon the holder is designed to serve fundamental purposes of the State of Alaska. To avoid economic harm, Alaska ensures access to fisheries by those dependent upon them. The State maintains and requires complete control over the holders and corresponding accountability of the holders solely to the State, free from direct economic coercion, in order to ensure compliance with laws regulating Alaska's geographically vast and biologically complex fisheries. The state reserves control over the use of the privilege that may be transferred only by the state. AS 16.43.170.

The state does not confer but reserves and strictly prohibits encumbrances, retained rights of repossession, and involuntary transfers. AS 16.43.150. These reservations attached to the permission serve the State's fundamental purposes and can not stand alone any more than the Limited Entry Act can stand apart from the state's comprehensive fisheries management system. (73)

Kimura, supra at 812, held (74) the state could impose transfer conditions on a license for the state's own benefit and did not limit the benefit to money:

by: \_\_\_\_\_

# Representative Mary Sattler Kapsner

State Capitol • Juneau, Alaska 99801-1182

Phone: (907) 465-4942 • Fax: (907) 465-4589

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House District 39  
Lower Kuskowim and Upper Bristol Bay

Resources Committee  
Fisheries Committee  
Regulation Review Committee

Akiachak  
Akiak  
Aleknagik  
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Kwethluk  
Kwigillingok  
Manokotak  
Napakiak  
Napaskiak  
New Stuyahok  
Nunapitchuk  
Oscarville  
Platinum  
Portage Creek  
Quinhagak  
Togiak  
Tuntutuliak  
Twin Hills

## Sponsor Statement

### House Bill 238 Fishermen's Tax Obligation Loan Program

This bill would re-institute a widely supported, previously existing program to assist fishermen in paying back taxes, thereby rescuing Alaska limited entry permits from the continued threat of seizure and resale by the Internal Revenue Service.

The Tax Obligation Loan Program was initially created in 1993, in the wake of threats by the IRS to seize the permits of fishermen who were found to owe back taxes. The program draws from the existing Fishermen's Loan Fund, providing loans of up to \$30,000, with a pay-back interest rate of 10.5 percent. The money paid back returns to the fund where it becomes available for further loans.

This bill is not simply aimed to assist delinquent taxpayers. Rather, it assists all fishermen and, in turn, the economy of Alaska. When the IRS seizes commercial fishing permits, they are under no obligation to re-sell the permit for its real value. In one case in 1996, the IRS seized the \$30,000 permit of a Kenai fisherman and sold it for only \$5,005. Such an action had the effect of devaluing all commercial fishing permits.

Moreover, the IRS is under no obligation to re-sell permits to Alaskans. Due to transferability, a great number of limited entry permits are gifted or inherited from one Alaskan to another, protecting a valuable state resource. When the IRS re-sells a permit, they cannot discriminate between Alaskans and outsiders. The IRS' actions threaten to speed the movement of permits into the hands of non-Alaskans.

Before it sunsetted in 1997, the Tax Obligation Loan Program provided 288 loans, at a value of \$6.06 million, to fisherman from every region of Alaska. Though tax compliance has dramatically improved among Alaskan fishermen since the early part of this decade, there still exists a need for the Tax Obligation Loan Program. The IRS still staunchly opposes the state's view that fishing permits cannot be legally seized. Moreover, the number of fishermen with tax delinquencies has climbed since the sunsetting of the program in 1997.

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## MEMORANDUM

February 4, 2000

**SUBJECT:** Sectional Summary of HB 238; An Act establishing a federal tax obligation loan program under the commercial fishing loan program. (HB 238)

**TO:** Representative Mary Kapsner

**FROM:** George Utermohle *GU*  
Legislative Counsel

You have requested a sectional summary of HB 238; An Act establishing a federal tax obligation loan program under the commercial fishing loan program.

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

Section 1 of the bill amends AS 16.10.310(a) to authorize the commercial fishing loan program to make loans to Alaska resident fishermen to satisfy past due federal tax obligations that may result in the involuntary transfer of their entry permits.

Section 2 of the bill adds a new subsection to AS 16.10.310 to provide that a loan may not be made to satisfy past due federal tax obligations unless the person has filed past and current federal tax returns and has executed an agreement with the federal government for the payment of past due federal tax obligations. A person may obtain only one loan from the commercial fishing loan program to pay past due federal tax obligations during the person's lifetime. The maximum amount of a loan that can be made by the commercial fishing loan program to pay past due federal tax obligations is \$30,000.

GU:jdr  
00-059.jdr

**FISCAL NOTE**

Bill Version: HB 238  
 (H) Publish Date: 2/9/00

**STATE OF ALASKA  
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) February 4, 2000 Dept. Affected Community and Econ. Development  
 Title An act establishing a federal tax obligation loan BRU Investments  
program under the commercial fishing loan program Component \_\_\_\_\_  
 Sponsor Representative Kapsner  
 Requester House Special Committee on Fisheries Component No. \_\_\_\_\_

**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	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
-------------------------------	------------	------------	------------	------------	------------	------------

**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2000) cost: 0.0

**POSITIONS**

POSITIONS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

This legislation establishes a new program within the Commercial Fishing Revolving Loan Fund to allow Alaskan commercial fishing harvesters to borrow funds to satisfy past due federal tax obligations that could result in the loss of a limited entry permit through a foreclosure action.

Prepared by: Martin J. Richard  
 Division: Investments  
 Approved by Commissioner: Deborah B. Sedwick  
 Agency: Community and Economic Development

Phone (907) 465-2510  
 Date/Time 2/4/00 8:07 AM  
 Date 02/04/2000

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COMMITTEE COPY

# SENATE COMMITTEE REPORT

DATE: 4/17/00

FURTHER:

DATE TURNED  
IN TO OFFICE:

19  
4/17/00

Resources Committee considered

HOUSE BILL NO. 238

"An Act establishing a federal tax obligation loan program under the commercial fishing loan program."

and recommends:

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

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>			
<i>[Signature]</i>	✓				
<b>CHAIR:</b> <i>[Signature]</i>	✓	<b>CHAIR:</b>			

**NEW FISCAL NOTE(S):**

Department                      Date      Zero      Fiscal


**PREVIOUS FISCAL NOTE(S):\***

Department                      Date      Zero      Fiscal

DCED	2/4/00	✓	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

**HB**

**304**

# SENATE COMMITTEE REPORT

DATE: 3/31/00

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: 4/18/00

Resources Committee considered

CS FOR HOUSE BILL NO. 304(FIN) am

CLEAN WATER FUND/DRINKING WATER FUND

and recommends:

- be replaced with S CS HB 304 (RES)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:
- same title
  - new title
- House Bill:
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Andrew W. Taylor</i>	✓	<i>Laura Roper</i>	✓		
		<i>Pete Kelly</i>	✓		
		<i>James Michael Fisher</i>	✓		
CHAIR: <i>Rick Halford</i>	✓	CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
DEC	4/10/00		✓

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
Revenue	12/22/99	✓	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# STATE OF ALASKA

## DEPT. OF ENVIRONMENTAL CONSERVATION

### DIVISION OF FACILITY CONSTRUCTION & OPERATION

TONY KNOWLES, GOVERNOR

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April 13, 2000

The Honorable Rick Halford, Chair  
Senate Resources Committee  
Alaska State Senate  
State Capitol, Room 121  
Juneau, Alaska 99801-1182

Dear Senator Halford:

In committee discussion on HB 304, the Water Bonding Bill, you asked that we suggest options for differentiating the terms of loans made to publicly-owned vs. privately-owned water and sewer utilities. We were able to envision the five alternatives which are described below. There undoubtedly are more.

1. Establish loan terms for private utilities based on increased costs and risk. This is the method currently in the legislation, and the one we believe works best. The approach acknowledges that loans to certain types of privately-owned utilities will cost more to process due to the need for more complex credit analyses, and that certain loans may involve a greater degree of risk. In developing the rate structure in regulation, we would quantify these costs and risks for categories of potential applicants and pass them on to the borrowers through the loan terms.

2. Establish loan terms for privately-owned utilities based on eliminating the state subsidy. This is the specific concept you asked us to explore. While there are several potential variations, one approach is: Define the total subsidy as the difference between market rate and subsidized rate. Assume that the total subsidy consists of a state and a federal component. Assume that those components are fixed by the state and federal capitalization investment in the program at 1/6<sup>th</sup> (16.67%) state and 5/6<sup>th</sup> (83.33%) federal funding. Eliminating the state component would mean that the subsidy would be 83.33% of the full subsidy and set the interest rate accordingly.

This approach is best illustrated by example: Currently the Municipal Bond Index is 5.56% and the fully subsidized rate available to municipalities on a 20-year loan is 4.17%. Using the Bloomberg fair market yield curve for taxable utility bonds as an index gives a market rate for private utilities of 8.06%. The total subsidy then is the difference between the

◀◀◀*Building Community Sanitation Systems*▶▶▶

market rate of 8.06% and the fully subsidized rate of 4.17%, or 3.89%. The partially subsidized rate based on only the federal subsidy would be 83% of the full subsidy (3.89%), or 3.23%. That would yield an interest rate for privately-owned utilities of 4.83%.

3. Establish loan terms for privately owned utilities that are indexed to the municipal bond index. The current interest rate for long-term loans to municipalities is set in regulation at 75% of the Municipal Bond Index (MBI). In our discussions, it was pointed out that loans to privately-owned utilities at 100% of the MBI would represent a significant savings to privately-owned utilities that otherwise would not have access to municipal bond rates. An MBI-indexed rate could also be some other percentage between 75 and 100%.

4. Establish loan terms for privately-owned utilities that are indexed to a market rate for private borrowers – just as the current rate for publicly-owned utilities is indexed to a market rate for public borrowers. For example, the Bloomberg fair market yield curve for taxable utility bonds could be used as an index for market rates available to privately-owned utilities. To satisfy federal law and to provide any benefit at all, the rate, of course, would have to be set at something less than 100% of the market rate.

5. Differentiate the public and private rate structures by imposing additional collateral requirements on private systems. This is, in essence, another form of passing on costs associated with increased risk to private borrowers. In practical terms, it could take the form of requiring private utilities to purchase and provide loan insurance. Typical rates would vary from 0.16% to 2.00% of the loan principal, and would vary inversely with the loan amount and directly with the creditworthiness of the applicant.

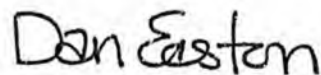
The exercise of developing these options was instructive. In the end, however, we find that we prefer the first option – the one embodied in the current bill. As mentioned, the current bill has evolved to include elements that address the key policy issues presented by expanding the loan eligibility pool:

- Requiring that privately-owned utilities be regulated by the Regulatory Commission of Alaska provides assurance that the economic benefit derived from access to a publicly-subsidized program will generally be passed on to the public in the form of lower user fees. The public would also benefit from improved drinking water quality provided by privately-owned systems.
- The bill allows us to apportion charges such that lower-risk, lower-cost public borrowers would be shielded from the potential impacts of making higher-cost, higher-risk loans to private borrowers.
- The bill, as well as federal law, contains a prohibition on using loans to refinance existing debt. This keeps the program focused on the prime mission of constructing facility improvements that will improve drinking water and wastewater quality.

In addition, we expect healthy growth in both of the funds and an increasing capacity to meet demand for loans.

We stand ready to work with the Senate Resources Committee on these issues. Please let me know if you have additional questions.

Sincerely,



Dan Easton, Director

cc: Senator Robin Taylor, Vice-Chair  
Senator Lyda Green  
Senator Pate Kelly  
Senator Georgianna Lincoln  
Senator Jerry Mackie  
Senator Sean Parnell  
Steve Hildebrand, Office of Management and Budget

H-13 304

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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 20, 2000

The Honorable Brian Porter  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Speaker Porter:

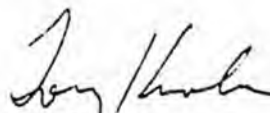
Low-interest state loans from the Alaska Drinking Water Fund and the Alaska Clean Water Fund offer municipalities the means to build drinking water and sewage facility projects. This bill I transmit today will allow the state to use revenue bonds to capitalize the Alaska Drinking Water Fund.

Both the Drinking Water and Clean Water funds are capitalized by annual federal grants that require a 20 percent state match. Bond revenues will help provide the state match for federal drinking water project money. But the state is only authorized to sell bonds for the Clean Water Fund. It makes sense to extend this leveraging power to the Drinking Water Fund.

As with existing law, the bill requires the state bond committee to conduct its activities in the best interests of the state, in a manner that will accomplish the most advantageous sale of the bonds. The bill also provides for a new, self-supporting structure to pay for the costs of operating these important loan programs.

I urge your prompt consideration and passage of this bill.

Sincerely,



Tony Knowles  
Governor

# FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO. CS HB 304 (FIN)

Revision Date/Time (Note if correction) _____	Dept. Affected <u>DEC</u>
Title <u>AK Bonding - AK Drinking Water Fund</u>	BRU <u>Facility Construction and Operation</u>
	Component <u>Facility Construction and Operation</u>
Sponsor <u>House Rules Committee</u>	
Requester <u>Senate Resources Committee</u>	Component No. <u>637</u>

**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	0.0	62.2	120.7	120.7	120.7	120.7
Travel	0.0	7.5	14.6	14.6	14.6	14.6
Contractual	0.0	27.2	52.8	52.8	52.8	52.8
Supplies	0.0	1.0	2.0	2.0	2.0	2.0
Equipment	0.0	1.0	1.0	1.0	1.0	1.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>98.9</b>	<b>191.1</b>	<b>191.1</b>	<b>191.1</b>	<b>191.1</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	(1,551.4)	(1,551.4)	(1,551.4)	(1,551.4)	(1,551.4)
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1075 Clean Water Loan Fund	0.0	0.0	(395.5)	(455.3)	(455.3)	(455.3)
1100 Drinking Water Loan Fund	0.0	168.9	(380.4)	(448.4)	(448.4)	(448.4)
Drinking Water Fund Bond Recpts	0.0	1,551.4	1,551.4	1,551.4	1,551.4	1,551.4
Clean Water Administrative Fund	0.0	0.0	395.5	455.3	455.3	455.3
Drinking Water Administrative Fund	0.0	0.0	641.5	709.5	709.5	709.5
<b>TOTAL</b>	<b>0.0</b>	<b>168.9</b>	<b>261.1</b>	<b>261.1</b>	<b>261.1</b>	<b>261.1</b>

Estimate of any current year (FY2000) cost: 0.0

**POSITIONS**

Full-time	0	1	2	2	2	2
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

This legislation would provide for:

- 1) Using bond proceeds instead of GF Match to capitalize the Alaska Drinking Water Fund;
- 2) Deriving loan program operating costs from a portion of loan repayments deposited into two new administrative funds; and
- 3) Making loans to privately-owned utilities which are currently ineligible for the low-interest drinking water and wastewater loan programs.

Prepared by <u>Dan Easton, Director</u>	Phone <u>465-5135</u>
Division <u>Facility Construction and Operations</u>	Date/Time <u>4/10/00 7:48 AM</u>
Approved by <u>[Signature]</u>	Date <u>4-10-00</u>
Agency <u>Dept. of Environmental Conservation</u>	

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ANALYSIS: (Continued)

The Drinking Water and Clean Water Loan Programs offer low-interest loans to municipalities for drinking water and sewerage facility construction projects. Loans are made from the Alaska Drinking Water Fund and the Alaska Clean Water Fund. Both funds are capitalized by annual federal grants that require a 20 percent state match. The Funds also earn investment and repayment interest.

To date, the state capitalization match requirement for the Drinking Water Fund has been met with GF Match. Federal law provides an alternative to general fund outlays for satisfying the state match requirement. States may use bond financing as match for federal funds to capitalize the Fund, and repay the bonds from interest earnings from the Fund. Statutes (AS 37.15.560) currently provide the bonding authority for the Clean Water Fund needed to take advantage of this funding mechanism. This legislation would provide the same bonding authority for the Drinking Water Fund.

Beginning in FY 2002 there will be sufficient interest in the Alaska Drinking Water Fund to meet the match requirement. Interest will be converted to bond proceeds and supplant the annual general fund appropriation. The effect will be to save approximately \$1.5 million in GF Match that year and each year thereafter. Bonding costs will be about \$70.0.

This legislation would also provide authority to collect fees as a means of funding the operation of the two loan programs. Federal law allows states to set aside four percent of the federal capitalization grants to help pay for program administration. To date, annual program operating expenditures have been met with this set aside. As federal grants decrease and ultimately end in the next few years, the State will be left without a means of paying for program operating costs. To prepare for that, this legislation provides for using a portion of loan repayments to cover program operating costs. The legislation creates two new administrative funds into which a portion of loan repayments would be deposited. Money could then be transferred from these administrative funds to the operating budget to finance program operating costs.

This legislation also makes some privately-owned utilities eligible for the Drinking Water Loan program. Under current law, loan program eligibility is restricted to municipalities. This change has the potential to improve drinking water quality, but it also has the potential to produce a significant increase in the number of loans and drinking water construction projects to be managed by the program. The best estimate is that 133 privately-owned drinking water systems could become eligible for the program. We project an increase of 10 new loan projects each year -- roughly doubling the current pace at which loans are made. This will result in receiving and prioritizing new loan applications, executing additional loan agreements, guiding additional loan recipients through the federally-mandate environmental review process, additional and more complex credit worthiness and owner capacity assessments, reviewing additional documents to approve loan payments, issuing additional payment checks, reviewing and improving a substantial increase in the number of engineering plans, and additional construction inspections and associated travel costs. The first year will also require development of regulations governing this new class of loan recipients.

The department estimates that two new positions will be required to handle the increased loan processing and engineering workload. The first position will be needed by SFY 2002 and both by SFY 2003. In addition, contractual funding of \$50.0 will be used to contract for credit worthiness assessments, as well as assessments of owner managerial, technical and financial capacity as required by federal law.

## Personal Services New Position Detail

Department of Environmental Conservation  
HB 304 Personal Services - FY2003

Scenario: FY2001 Legislative Fiscal Note Info - 2  
Component: Facility Construction and Operations (637)  
BRU Name: Facility Construction and Operations

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs	
18-#032	Loan/Collection Off II	FT	A	GG	Anchorage	1A	16C	12 0		47,004	0	0	15,236	62,240	
Justification: Implementation of HB 304							Funding Detail:								
							1004	General Fund Receipts					100 00%	62,240	
													Total Funding:	100 00%	62,240
18-#033	Environ Eng Asst II	FT	A	GG	Anchorage	1A	17C	12 0		43,860	0	0	14,617	58,477	
Justification: Implementation of HB 304							Funding Detail:								
							1004	General Fund Receipts					100 00%	58,477	
													Total Funding:	100 00%	58,477

### Component Summary:

Total New Positions: 2

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100 00%	120,717
<b>Total Funding:</b>	<b>100 00%</b>	<b>120,717</b>

Note: If a position is split, an asterisk (\*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (\*\*) will appear in this column.

## Personal Services New Position Detail

Department of Environmental Conservation

HB 304 Personal Services - FY2002

Scenario: FY2001 Legislative Fiscal Note Info - 2  
 Component: Facility Construction and Operations (637)  
 BRU Name: Facility Construction and Operations

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#032	Loan/Collection Off II	FT	A	GG	Anchorage	1A	18 C	12 0		47,004	0	0	15,236	62,240
Justification:							Funding Detail:							
Implementation of HB 304							1004	General Fund Receipts					100 00%	62,240
Total Funding:												100 00%	62,240	

### Component Summary:

Total New Positions: 1

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100 00%	62,240
Total Funding:	100 00%	62,240

Note: If a position is split, an asterisk (\*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (\*\*) will appear in this column

# FISCAL NOTE

Bill Version: HB 304

(H) Publish Date: 1/21/00

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Revenue</u>
Title <u>Drinking Water Fund Bonds</u>	BRU <u>Revenue Operations</u>
	Component <u>Treasury Division</u>
Sponsor <u>Rules Committee</u>	
Requester <u>Governor</u>	Component Serial No. <u>.121</u>

**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						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>						

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of current year (FY00) cost: 0.0

**POSITIONS**

POSITIONS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Full-time						
Part-time						
Temporary						

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

The Alaska Drinking Water Fund will pay all costs of issuance, administration, and debt service for bonds issued. Bond proceeds will be deposited in the Drinking Water Fund to make loans to municipalities. There is no other fiscal impact on state funds.

Prepared by	Deven Mitchell, Debt Manager <i>Deven Mitchell</i>	Phone 465-3750
Division	Treasury Division	Date/Time December 22, 1999
Approved by	Wilson L. Condon <i>Wilson L. Condon</i>	Date December 22, 1999
Commissioner		
Agency	Department of Revenue	

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**HOUSE BILL 304**  
**SENATE BILL 210**

**SECTIONAL ANALYSIS**

Introduction. This bill authorizes revenue bonds to be sold to make available bond receipts for the Alaska Drinking Water Fund by providing the same bonding authority that currently exists with the Alaska Clean Water Fund. The bill also creates two administrative funds to provide the authority to use a portion of the repayments being made on the loans to support program operations for both Funds. And it clarifies the uses of the Alaska Drinking Water Fund to ensure that its purposes conform to current federal statutes.

Section 1 and 2. AS 37.15.560 (a) (b). **BOND AUTHORIZATION-** Authorizes the state bond committee to issue and sell bonds to raise money to be placed into the **Alaska Drinking Water Fund**. Because these are revenue bonds, they can be issued when the committee decides and this does not require a public vote. The committee may enter into agreements and perform those functions that are normally required to accomplish the task of issuing and selling bonds.

Section 3. AS. 37.15.565. **BOND REDEMPTION FUND-** A new bond redemption fund is established as the **Alaska Drinking Water Fund Revenue Bond Redemption Fund**. This is a standard industry technique for making it easier and more accountable to perform the many functions necessary in the bond issuance and sales process. And also, to provide accountability for any future principle and interest payments and any premium redemption on the bonds.

Sections 4, 5, 6, 7. AS 37.15.570(c)(d)(e)(f) **BOND TERMS-** The state bond committee may issue, sell, control or redeem bonds for the **Alaska Drinking Water Fund** in such a way as to achieve the greatest advantage for the State. They can make decisions based upon the market conditions of that moment and do not require approval of another agency or group to execute these decisions. The committee will decide the level of security required from the fund that will provide this collateral security. A trustee may be appointed by the committee to perform all necessary functions as directed by the committee. The committee must give due regard to the federal requirements of this drinking water fund, but any decisions made after giving this consideration are final. Bond resolutions that reference these statutes shall be regarded as having given this consideration.

Section 8. AS 37.15.573. **BOND RESOLUTION-** The committee must adopt a bond resolution to issue bonds for the **Alaska Drinking Water Fund**. The resolution will contain those items that are necessary to identify and define the bonds and the bond sales process.

Section 9. AS 37.15.575. **STATE AID INTERCEPT-** This paragraph defines the procedure for allowing the State to intercept or garnish other legitimate sources of State aid should a community default on a loan from the **Alaska Drinking Water Fund**. This paragraph is included in the legislation to enhance investor confidence in the program and ultimately, lower

for making and servicing loans.

Section 20 AS 46.03.036 ALASKA DRINKING WATER FUND. This section is updated so that the proceeds and interest from the sale of bonds can be deposited into the fund and well as funding the administration of the fund. The requirement is set that municipalities wishing to borrow money have to have the authority to incur debt and establish a source of revenue for payment. Regulations are required that set out criteria for priority setting, standards for borrowers eligibility, types of projects to be funded and long term interest rates, standards for self sufficiency, collateral and loan terms.

Section 21. AS 46.03.038 ALASKA DRINKING WATER ADMINISTRATIVE FUND. This fund is set up the same as the Alaska Clean Water Administrative Fund in Section 18 with a 1). Alaska Drinking Water Administrative Operating Account and the 2). Alaska Drinking Water Administrative Income Account to receive payment of fees and earnings of the Alaska Clean Water Administrative Fund.

Section 22. AS46.03.039 FEES CHARGED FOR LOANS MADE FROM THE ALASKA DRINKING WATER FUND. This authorizes the department to charge and collect reasonable fees for making and servicing loans.

Section 23. Clarifies that this portion of the legislation would create a change in Civil Procedure 3 and cause all actions to be filed in Superior Court in Juneau. The second paragraph recognizes that in order for this procedure change to be in effect, this section must receive a two-thirds majority vote of each house as required by Article IV, Section 15, Constitution of the State of Alaska.

Section 24. Specifies that the regulations adopted under this statute may not take effect before the statutory effective date of sections 1 through 22.

Section 25. States that section 24 takes effect immediately upon passage of the statute.

# CORRECTION

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



Rev. 6/98

Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

**HOUSE BILL 304  
SENATE BILL 210**

**SECTIONAL ANALYSIS**

Introduction. This bill authorizes revenue bonds to be sold to make available bond receipts for the Alaska Drinking Water Fund by providing the same bonding authority that currently exists with the Alaska Clean Water Fund. The bill also creates two administrative funds to provide the authority to use a portion of the repayments being made on the loans to support program operations for both Funds. And it clarifies the uses of the Alaska Drinking Water Fund to ensure that its purposes conform to current federal statutes.

Section 1 and 2. AS 37.15.560 (a) (b). **BOND AUTHORIZATION-** Authorizes the state bond committee to issue and sell bonds to raise money to be placed into the **Alaska Drinking Water Fund**. Because these are revenue bonds, they can be issued when the committee decides and this does not require a public vote. The committee may enter into agreements and perform those functions that are normally required to accomplish the task of issuing and selling bonds.

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Section 8. AS 37.15.573. **BOND RESOLUTION-** The committee must adopt a bond resolution to issue bonds for the **Alaska Drinking Water Fund**. The resolution will contain those items that are necessary to identify and define the bonds and the bond sales process.

Section 9. AS 37.15.575. **STATE AID INTERCEPT-** This paragraph defines the procedure for allowing the State to intercept or garnish other legitimate sources of State aid should a community default on a loan from the **Alaska Drinking Water Fund**. This paragraph is included in the legislation to enhance investor confidence in the program and ultimately, lower

program costs.

Section 10 AS 37.15.580. PLEDGE OF THE STATE- The committee has the right to make contracts for any bonding effort for the **Alaska Drinking Water Fund** and not have the terms of those contracts altered by any subsequent state action. The bond investors also have the right to rely upon the terms of any contracts.

Section 11. AS 37.15.583. ENFORCEMENT BY BONDOWNER- For any resolution of disagreements between the bondowners and the committee involving a bonding issue of the **Alaska Drinking Water Fund**, 10% or more of the owners of any series or issue of the bonds can bring suit in Superior Court in Juneau. The amount of 10% was selected to prevent frivolous suits from being brought.

Section 12. AS 37.15.585. AMOUNTS REQUIRED FOR PAYMENTS- Each year the committee will inform the commissioners of the departments of Environmental Conservation and Revenue of the amounts needed in that year to pay for the costs of issuing or maintaining the bonds from the **Alaska Drinking Water Fund**. The notice will be given at this time so that the departments will be able to incorporate these numbers into their financial planning for the next fiscal year.

Section 13. AS 37.15.587. PURPOSES AND SUFFICIENCY OF REVENUE- Bond proceeds will be used to build projects that are eligible in the **Alaska Drinking Water Fund** program. No bonds will be issued if there is not enough security available in the fund to make it prudent to sell the bonds.

Section 14. AS 37.15.590. REFUNDING- If it is in the best interests of the State, the committee will refund all or some of the bonds for the **Alaska Drinking Water Fund**. They do not need any authority from the voters or the legislature to do this. The committee will follow the defined procedures to conduct the refunding process. The committee is authorized to incur the expenses inherent with this process. A trustee may be appointed to conduct this process. The trustee has the right to invest funds in short-term federal instruments until the refunding proceeds are needed.

Section 15, 16, 17 AS 37.15.605(1), (3), (7) DEFINITIONS. These sections update the definitions to include the **Alaska Drinking Water Fund** and the funds bonding accounts.

Section 18 AS 46.03.034 ALASKA CLEAN WATER ADMINISTRATIVE FUND. Replaces the current Alaska Clean Water Account with Alaska Clean Water Administrative Fund which is composed of the 1). Alaska Clean Water Administrative Operating Account that can be used to pay for the Departments costs in managing the fund and the 2). Alaska Clean Water Administrative Income Account to receive payment of fees and earnings of the Alaska Clean Water Administrative Fund.

Section 19 AS 46.03.035. FEES CHARGED FOR THE LOANS MADE FROM THE ALASKA CLEAN WATER FUND. This authorizes the department to charge and collect reasonable fees

for making and servicing loans.

Section 20 AS 46.03.036 ALASKA DRINKING WATER FUND. This section is updated so that the proceeds and interest from the sale of bonds can be deposited into the fund and well as funding the administration of the fund. The requirement is set that municipalities wishing to borrow money have to have the authority to incur debt and establish a source of revenue for payment. Regulations are required that set out criteria for priority setting, standards for borrowers eligibility, types of projects to be funded and long term interest rates, standards for self sufficiency, collateral and loan terms.

Section 21. AS 46.03.038 ALASKA DRINKING WATER ADMINISTRATIVE FUND. This fund is set up the same as the Alaska Clean Water Administrative Fund in Section 18 with a 1). Alaska Drinking Water Administrative Operating Account and the 2). Alaska Drinking Water Administrative Income Account to receive payment of fees and earnings of the Alaska Clean Water Administrative Fund.

Section 22. AS46.03.039 FEES CHARGED FOR LOANS MADE FROM THE ALASKA DRINKING WATER FUND. This authorizes the department to charge and collect reasonable fees for making and servicing loans.

Section 23. Clarifies that this portion of the legislation would create a change in Civil Procedure 3 and cause all actions to be filed in Superior Court in Juneau. The second paragraph recognizes that in order for this procedure change to be in effect, this section must receive a two-thirds majority vote of each house as required by Article IV, Section 15, Constitution of the State of Alaska.

Section 24. Specifies that the regulations adopted under this statute may not take effect before the statutory effective date of sections 1 through 22.

Section 25. States that section 24 takes effect immediately upon passage of the statute.

**CITY OF UNALASKA**

P.O. BOX 610  
UNALASKA, ALASKA 99685-0610  
(907) 581-1260 FAX (907) 581-2187



February 16, 2000

Senator Rick Halford  
Alaska State Legislature  
State Capitol Building, Rm. 121  
Juneau, AK 99801

**FEB 21 2000**

Dear Senator Halford,

The City of Unalaska is writing to seek your support for the recently introduced Water Bond Bill (Senate Bill 210 and House Bill 304). The bill gives ADEC authority to use bonds to capitalize the Alaska Drinking Water Fund – the fund used to make low-interest loans to communities for drinking water projects.

The City of Unalaska has enjoyed the benefits of this program and would like to emphasize the importance of keeping this program viable. The Water Bond Bill will allow the loan program to be self-supporting and will provide a long-term mechanism for the program to continue to be available to Alaskan communities.

We appreciate your support in this matter. Please feel free to contact me at 907-581-1260 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Mike Golat".

Mike Golat  
Director of Public Utilities

cc: Scott Seabury, City Manager  
Mike Burns, ADEC  
Ray Gillespie  
67.115



**RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE  
AND ALASKA CONFERENCE OF MAYORS**

**RESOLUTION 00-01**

**A RESOLUTION URGING THE LEGISLATURE TO PASS THE  
GOVERNOR'S ADEC BONDING AND FEE AUTHORITY BILL**

**WHEREAS**, it is important that the State promote the health of its citizens and encourage the growth of infrastructure by assisting communities in developing safe water supplies and sanitary means of wastewater treatment and disposal; and

**WHEREAS**, the Alaska Clean Water Fund and the Alaska Drinking Water Fund are important financial alternatives for communities, having so far provided \$160,000,000 in subsidized, low-interest loans to communities for projects of this type; and

**WHEREAS**, Governor Knowles has introduced a bill to provide for the issuance of bonds as an alternative to using state general funds to capitalize the loan Funds; and

**WHEREAS**, the alternative financing method provided by the bill will allow the State to continue securing federal grants to grow the Funds and the amounts available for loans; and


**WHEREAS**, the alternative financing method provided by the bill will save approximately \$1.5 million in state general fund expenditures annually; and

**WHEREAS**, the bill also reserves a portion of the finance charges paid on the loans to pay the costs of administering the loan programs to offset decreasing federal grant funding available; and

**WHEREAS**, reserving a portion of the loan finance charges for program administration will not increase the cost of the loans to the communities of the State nor increase the need for any State general fund dollars;

**NOW, THEREFORE, BE IT RESOLVED** by the Alaska Municipal League and Alaska Conference of Mayors that the Alaska State Legislature is urged to adopt the ADEC Bonding and Fee Authority legislation during the 2000 legislative session.

Adopted on January 27, 2000.

Attest:   
Kevin C. Ritchie, Executive Director

Post-It® Fax Note	7671	Date	1-31	# of pages	1
To	Mary	From			
Co./Dept.	ADEC	Co.	AWL		
Phone #		Phone #			
Fax #	465-5342	Fax #			



Alaska Department of Environmental Conservation  
Division of Facility Construction and Operation  
Municipal Loans Program

**Water Bond Bill Fact Sheet**

January 14, 2000

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**What does the legislation do?**

Authorizes DEC to:

- Sell bonds as a means of capitalizing the Alaska Drinking Water Fund; and
- Designate a portion of the interest charged on Drinking Water and Clean Water program loans to help pay for program operations.

**What are the Drinking Water and Clean Water Loan Programs?**

DEC-operated loan programs that offer low-interest loans to municipalities for drinking water, sewerage and other water-quality construction projects.

**How are the programs funded?**

Each year the State may apply for two federal capitalization grants: one for the Drinking Water Loan Program and one for the Clean Water Loan Program. Both federal grants require a 20 percent state match. In state fiscal year 2000, the State received \$15.5 million in federal grants and contributed \$3.1 million in state funds.

In addition to annual contributions of state and federal capitalization money, the funds also earn interest. Funds that have yet to be loaned out are invested in interest bearing accounts and earn investment interest. Communities also pay interest when they repay their loans. Both investment and repayment interest must, by federal law, be retained in the Alaska Drinking Water and Clean Water Funds and thus contribute to the growth of the Funds.

**What are the rules about how the programs are operated?**

The funds must be used in accordance with federal rules derived from the Safe Drinking Water Act for the Alaska Drinking Water Fund and the Clean Water Act for the Alaska Clean Water Fund. The federal rules are complex, but an important concept is central: Once money is deposited into a fund, it must remain in the fund and unavailable for any purposes other than to make loans to communities – except in a very limited number of special cases.

### **How do the programs work?**

Each year DEC mails applications to all Alaska municipalities. Interested communities complete and return the applications proposing specific projects for funding. DEC ranks the applications based primarily on the degree of public health benefit expected from the projects. Loan agreements with municipalities are executed for the highest-ranking projects. As construction costs are incurred, monies are drawn from the Funds and loaned to municipalities. The municipalities pay back the loans when projects are complete. This money is returned to the loan Funds where it becomes available for other projects.

For each loan project, DEC assigns an engineer to assist the community in selecting an appropriate project design, in getting permits and other authorizations, and generally in serving as an advisor to the community on the project. There is a broad range of assistance provided depending on each community's capabilities and needs. The engineers also approve all payments to communities to make certain that all costs are eligible for funding under state and federal law.

### **Why is bonding authority needed?**

Until now, the State of Alaska has met its match obligation using general funds. However, the federal government recently offered the states another option for meeting their match requirements. The option is to use interest retained in the Funds in a form of short-term bonding exercise to meet the state match requirement. In essence, this form of bonding lets the states convert interest earned by the funds into bonds and then use the bonds to meet the state match requirement. To take advantage of that option requires that state statutes provide bonding authority. The statutes establishing the Alaska Clean Water Fund currently provide authority to use bonds for financing. That authority does not exist for the Alaska Drinking Water Fund.

### **Since the statutes currently provide authority to use bonds to capitalize the Alaska Clean Water Fund, does DEC plan to exercise that authority in FY 2001?**

Yes. DEC intends to use the existing Clean Water Loan Program bonding authority to obtain the \$1.5 million in state match needed to capture the \$7.5 million in federal grant funds expected for FY 2001. That will save the State \$1.5 million in general funds in FY 2001.

**What will the bonding costs be?**

The costs for preparing bond documents and finance charges will be approximately \$50,000.

**What about the Alaska Drinking Water Fund? Can the State do the same for the Alaska Drinking Water Fund?**

Not until two things happen. First, the statutes need to be amended to provide authority to use bonds to capitalize the Alaska Drinking Water Fund. Second, there needs to be an amount of interest earnings in the Alaska Drinking Water Fund equal to the state match requirement plus bonding costs. In other words, there needs to be about \$1.5 million in interest in the Fund to execute a short-term bonding exercise. Because the Alaska Drinking Water Fund is much younger than the Alaska Clean Water Fund, there aren't enough interest earnings in the fund to take advantage of this short-term bonding option in FY 2001.

**When will the State be in a position to use short-term bonds to meet its capitalization obligation for the Alaska Drinking Water Fund?**

There should be enough interest earnings in the Alaska Drinking Water Fund by FY - 2002. With enough interest and bonding authority for this Fund, the State would be positioned to save \$1.5 million in general funds in the FY 2002 budget.

**What overall savings could the State realize by bonding for both the loan Funds?**

The State could save about \$3 million each year in money needed to capture \$15 million in federal grants. Our hope is to save \$1.5 million beginning in FY 2001 and \$3.0 million in FY 2002 and beyond.

**Will bonding affect the amount of federal grant funds the state qualifies for?**

No. The amount of the federal grant awards will be the same whether the State match comes from general funds or bond proceeds.

**Switching to the second part of this legislation, why is fee authority needed?**

It costs about \$1 million each year to operate the two programs – to provide engineering assistance, to execute loan agreements, to review payment requests and issue payments to communities, to track loan debt, to collect and record repayments from communities, and to pay for audits by CPA firms. Federal law allows states to use a small part of the federal capitalization grants to pay for program costs. For the past few years, DEC has relied entirely on this source to fund program operations. With decreasing federal grant levels, this funding source will not be sufficient to cover program costs – even though those costs are expected to remain stable. Another source of funding is needed. Most states already use a portion of the repayment

interest to pay for program costs. Eventually all states will be doing the same. We think it makes sense in Alaska as well.

**Are personnel and other costs increasing?**

No. The number of personnel and other program costs are expected to remain at current levels for the foreseeable future. We are seeking only to replace the declining federal subsidy.

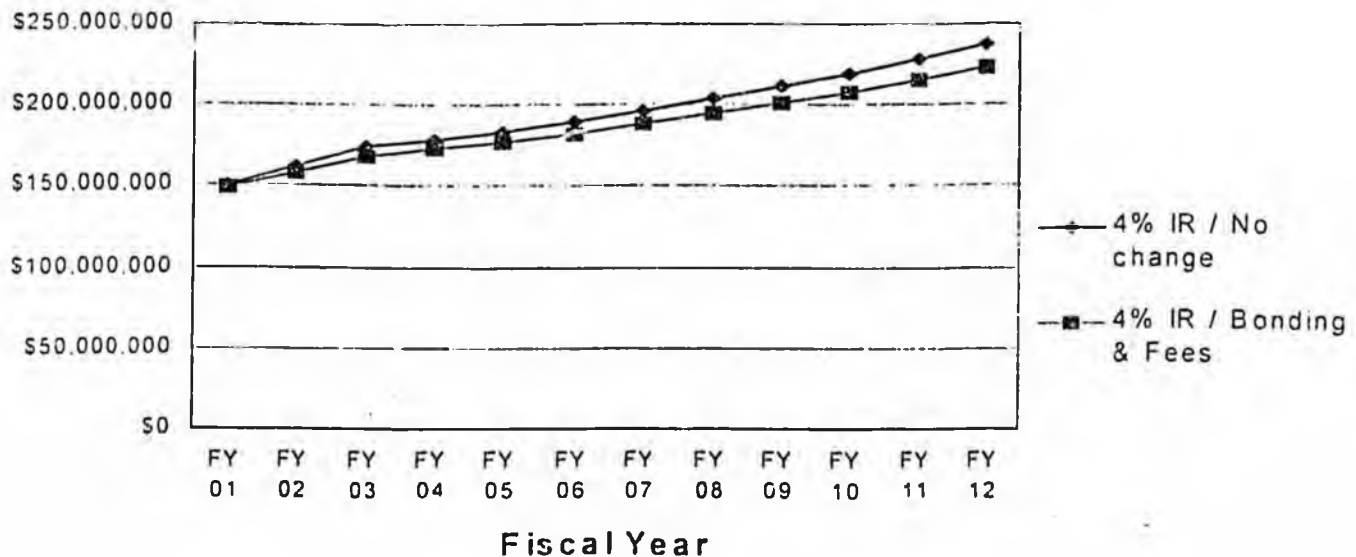
**How will these changes affect the terms of the loans DEC makes to communities? Will costs go up?**

Finance charges on the loans will not go up. In fact we are proposing to lower finance rates. All of the finance charges for the loans are currently treated as interest and returned to the Funds. To assess fees, the finance charges that communities pay would be broken into two parts: a portion that is interest to be returned to the Fund, and a portion that would go to paying for program operations. For example, if the overall financing charge is 2.5 percent, 2 percent might be interest that is returned to the Fund, and 0.5 percent might go to fund program operations. Again though, the overall debt service cost to the municipalities is expected to go down.

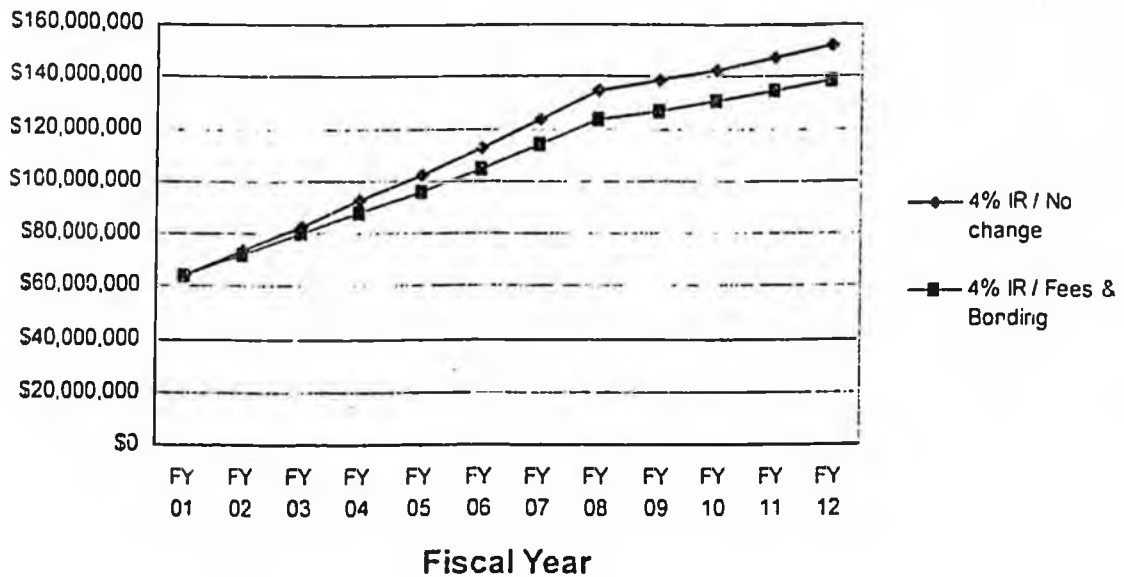
**What about the impacts on the amount of money available to loan out? Will the changes reduce the rate of growth of the funds?**

Yes. The changes will result in slower growth in the Funds. For example, the projected annual growth in the Alaska Clean Water Fund over the next 12 years is expected to decrease from 5.3% to 4.6% per year. Similarly the annual growth in the Alaska Drinking Water Fund is expected to slow from 13.8% to 11.9%. Nevertheless, the funds will remain healthy and capable of meeting the expected demand for loans.

**Clean Water Projected Growth**



### Drinking Water Projected Growth



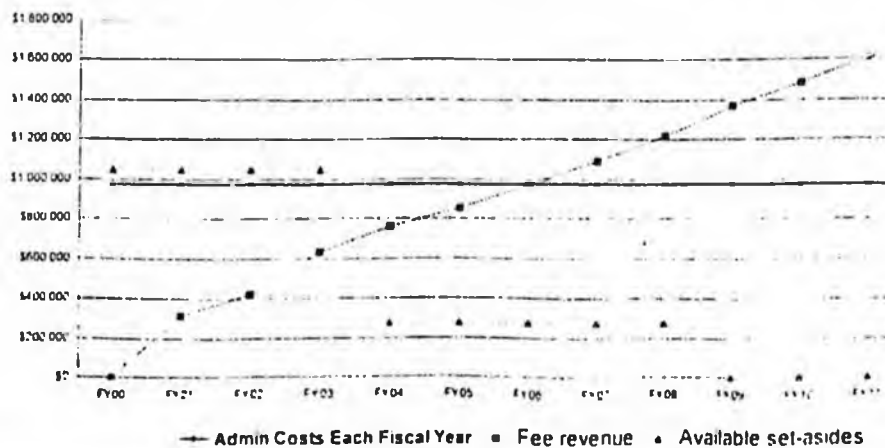
### What else needs to happen?

The new finance charge structure and amounts need to be established in regulation (18 AAC 76). We are proposing a structure that satisfies the conflicting goals of trying to provide the lowest loan cost to the communities and still protect the long-term financial integrity of the Funds. We are proposing a flat loan rate of 2.5% that graduates to a bond-indexed rate when the municipal bond index hits 8 percent. Included within that rate is a designated 0.5% to pay for program administration. For purposes of comparison, the current interest rate is about 4.3%.

### Will this cover program costs?

The expected revenue will be small at first and gradually increase. At the proposed rate of 0.5%, we expect to collect enough money to cover operating expenses. The following chart shows the relationship between the expected revenues and program costs.

CW & DW Set-Asides & Fee Revenue Versus Admin Costs



**When interest rates go down, what will happen to the existing loans made at higher rates? Will communities be stuck with the higher rate loans?**

We will offer all communities with existing loans the opportunity to convert to the new rate structure. No communities will be stuck with higher rate loans.

**If more fees are collected than are needed to cover program costs, what will happen?**

Fees will be deposited into an income account. Each year we will request that the legislature appropriate funds from the income account to an operating account to cover program costs. If there are more funds in the income account than are needed to cover program costs, we will use those excess funds to make loans to communities.



**Alaska Department of Environmental Conservation**  
**Division of Facility Construction and Operation**  
**Municipal Loans Program**  
David "Mike" Burns, Program Manager  
555 Cordova Street  
Anchorage, AK 99502-2617  
(907) 269-7502

## **Loan Fund Bonding and Fee Authority Legislation FACT SHEET**

**April 6, 2000**

---

### **What does the legislation do?**

Authorizes DEC to:

- Sell bonds as a means of capitalizing the Alaska Drinking Water Fund; and
- Designate a portion of the interest charged on Drinking Water and Clean Water program loans to help pay for program operations.
- Make certain privately-owned utilities eligible for low-interest loan financing.

### **What are the Drinking Water and Clean Water Loan Programs?**

DEC-operated loan programs that currently offer low-interest loans only to municipalities for drinking water, sewerage and other water-quality construction projects.

### **How are the programs funded?**

Each year the State may apply for two federal capitalization grants: one for the Drinking Water Loan Program and one for the Clean Water Loan Program. Both federal grants require a 20 percent state match. In state fiscal year 2000, the State received \$15.5 million in federal grants and contributed \$3.1 million in state funds.

In addition to annual contributions of state and federal capitalization money, the funds also earn interest. Funds that have yet to be loaned out are invested in interest bearing accounts and earn investment interest. Borrowers also pay interest when they repay their loans. Both investment and repayment interest must, by federal law, be retained in the Alaska Drinking Water and Clean Water Funds and thus contribute to the growth of the Funds.

### **What are the rules about how the programs are operated?**

The funds must be used in accordance with federal rules derived from the Safe Drinking Water Act for the Alaska Drinking Water Fund and the Clean Water Act for the Alaska Clean Water Fund. The federal rules are complex, but an important concept is central: Once money is deposited into a fund, it must remain in the fund and unavailable for any

purposes other than to make loans to systems or some private systems – except in a very limited number of special cases.

### **How do the programs work?**

Each year DEC mails applications to all eligible systems. Those that are interested complete and return the applications proposing specific projects for funding. DEC ranks the applications based primarily on the degree of public health benefit expected from the projects. Loan agreements with applicants are executed for the highest-ranking projects. As construction costs are incurred, monies are drawn from the Funds and loaned to borrowers. The systems pay back the loans when projects are complete. This money is returned to the loan Funds where it becomes available for other projects.

For each loan project, DEC assigns an engineer to assist the applicant in selecting an appropriate project design, in getting permits and other authorizations, and generally in serving as an advisor to the system on the project. There is a broad range of assistance provided depending on each system's capabilities and needs. The engineers also approve all payments to make certain that all costs are eligible for funding under state and federal law.

### **Why is bonding authority needed?**

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### **Since the statutes currently provide authority to use bonds to capitalize the Alaska Clean Water Fund, does DEC plan to exercise that authority in FY 2001?**

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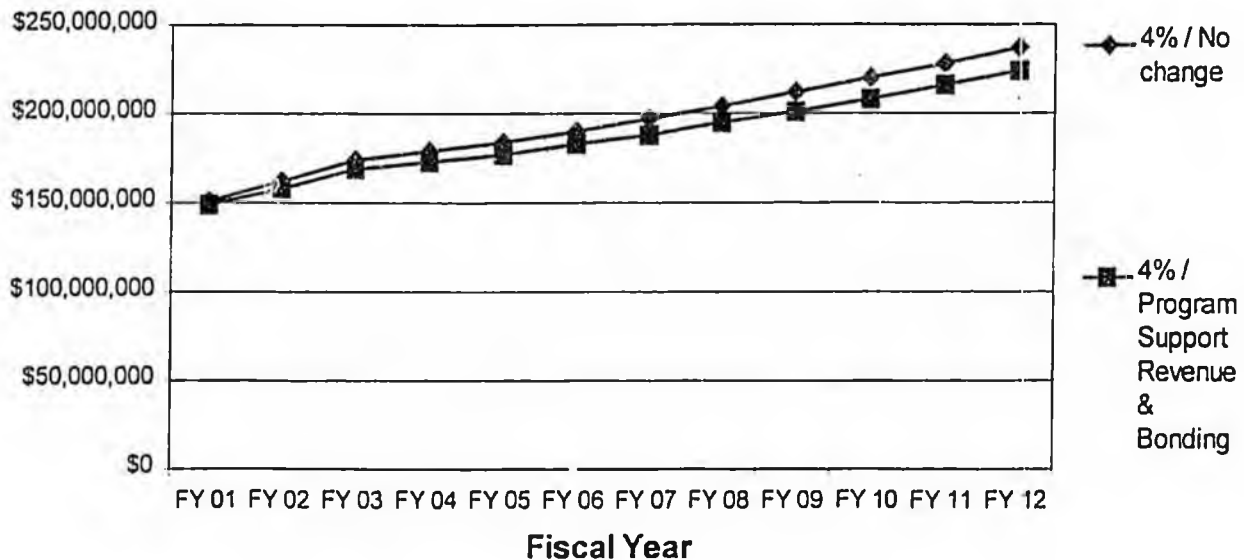
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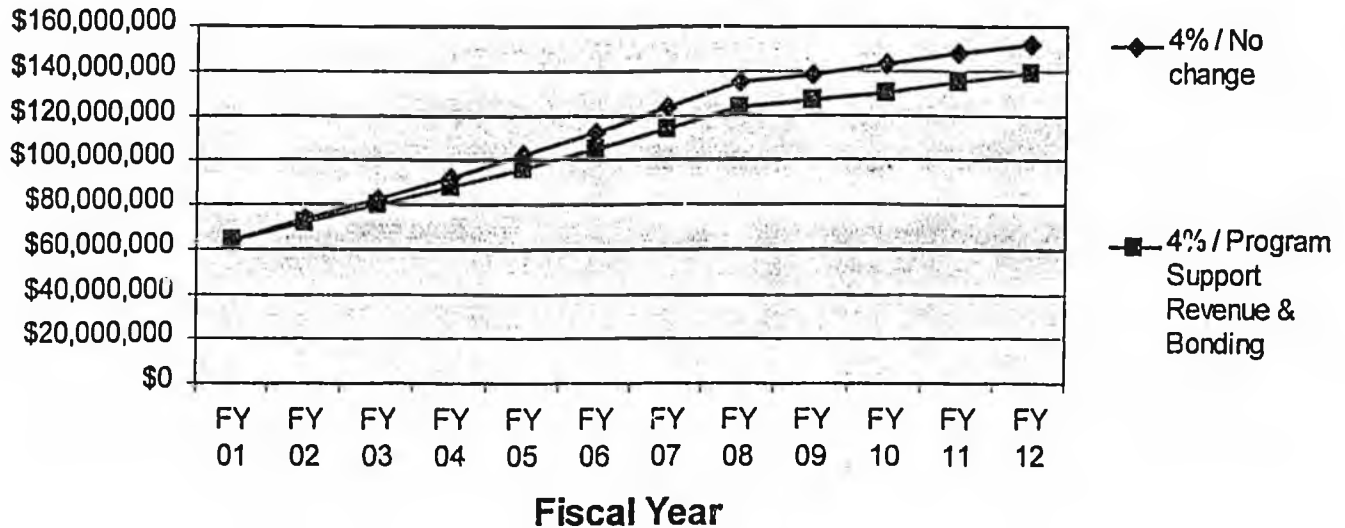
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Yes. The changes will result in slower growth in the Funds. For example, the projected annual growth in the Alaska Clean Water Fund over the next 12 years is expected to decrease from 5.3% to 4.6% per year. Similarly the annual growth in the Alaska Drinking Water Fund is expected to slow from 13.8% to 11.9%. Nevertheless, the funds will remain healthy and capable of meeting the expected demand for loans.

**Clean Water Projected Growth**



## Drinking Water Projected Growth



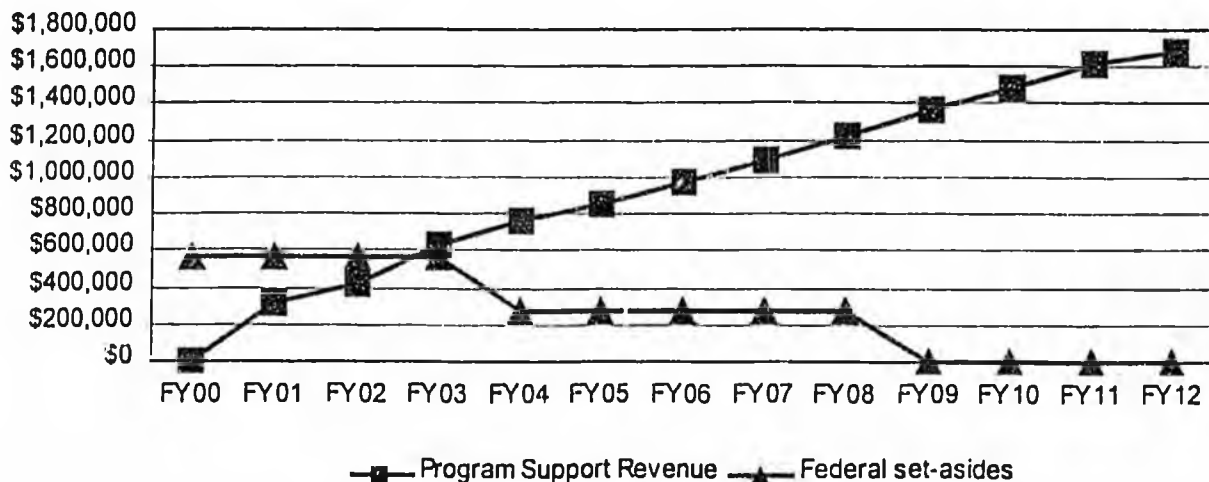
### What else needs to happen?

The new finance charge structure and amounts need to be established in regulation (18 AAC 76). We are proposing a structure that satisfies the conflicting goals of trying to provide the lowest loan cost to the applicants and still protect the long-term financial integrity of the Funds. We are proposing a flat loan rate of 2.5% that graduates to a bond-indexed rate when the municipal bond index hits 8 percent. Included within that rate is a designated 0.5% to pay for program administration. This loan rate will be for the most credit-worthy applicants, which are mostly the municipalities. For purposes of comparison, the current interest rate is about 4.1%.

### Will this cover program costs?

The expected revenue will be small at first and gradually increase. At the proposed rate of 0.5%, we expect to collect enough money to cover operating expenses. The following chart shows the relationship between the expected revenues and program costs.

### CW & DW Set-Asides & Program Support Revenue



**When interest rates go down, what will happen to the existing loans made at higher rates? Will systems be stuck with the higher rate loans?**

We will offer all borrowers with existing loans the opportunity to convert to the new rate structure. No system will be stuck with higher rate loans.

**If more fees are collected than are needed to cover program costs, what will happen?**

Fees will be deposited into an income account. Each year we will request that the legislature appropriate funds from the income account to an operating account to cover program costs. If there are more funds in the income account than are needed to cover program costs, we will use those excess funds to make loans to other projects.

**The last objective of this bill is to allow loan financing to some eligible privately-owned water and wastewater systems. Why?**

The House Finance committee felt that private systems that serve the public and are certificated and economically regulated by the Regulatory Commission of Alaska should be eligible to receive assistance from the loan programs. They amended the bill to make private systems eligible for the loan program. These amendments provide an opportunity to improve drinking water quality and to correct wastewater pollution problems that could not previously be addressed.

**Does federal law allow private systems to receive assistance through these loan programs?**

Federal statutes currently allow states to provide this funding to private systems under the Drinking Water loan program. However, the federal Clean Water Act currently prohibits funding of private systems for wastewater projects. In the last few years, there has been discussion in the U. S. Congress about expanding eligibility to include private systems. The state bill anticipates a change in federal law such that the State program could make loans to privately-owned wastewater systems if and when the federal statutes change. Until that time, we would be prohibited from making loans to private systems for wastewater projects.

**Would all types of systems, whether publicly- or privately-owned, receive the same loan rates and terms?**

Not necessarily. The bill allows us to establish different terms and rates for different classes of borrowers to accommodate different levels of risk and cost. Higher risk, higher cost systems may well pay higher rates. The structure for loan program rates, terms and the credit analyses will be set in regulation.

**Would either category of public or private systems have an advantage in receiving funding over the other?**

Federal guidelines provide the criteria used to rank projects for loan funding. Whether a system is publicly- or privately-owned will not enter into the scoring process.

**These amendments also prohibit a private system from refinancing debt. Why?**

The amended federal Safe Drinking Water Act contains this specific prohibition. This portion of our State bill repeats the federal law. This policy insures that the program stays closer to its primary mission, to finance new projects that address drinking water needs. Any refinancing of old debt would detract from that mission.

**Finally, the amendments also do not allow loans to private systems until July 2002. Why the delay?**

The delayed effective date does two things. First, it gives the new revenue stream established in the bill a year to work. Those revenues can then be used to pay for the increased program costs associated with making more loans to a larger and more diverse eligibility pool. Second, it gives us a year to develop the new regulations that will be required to implement the expanded program.

**HB**

**311**

# FISCAL NOTE

## STATE OF ALASKA 2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected \_\_\_\_\_ Revenue \_\_\_\_\_  
 Title No Social Security Number Required BRU Child Support Enforcement Division  
on Hunting and Fishing Licenses Component Child Support Enforcement Division  
 Sponsor Representative Coghill  
 Requester House Resources Component No. 111

### 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						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

CHANGE IN REVENUES	(77,000.0)	(77,000.0)	(77,000.0)	(77,000.0)	(77,000.0)	(77,000.0)
--------------------	------------	------------	------------	------------	------------	------------

### FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: \_\_\_\_\_

### POSITIONS

Full-time						
Part-time						
Temporary						

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

According to federal law, Alaska will lose all of its federal funding for the child support division and public assistance (IV-A) programs if we do not have a law requiring that Social Security numbers be provided on applications for recreational hunting and fishing licenses. The federal funding lost will be over \$14 million a year for child support and \$63 million a year for public assistance.

Prepared by: Barbara Miklos Phone 269-6800  
 Division Child Support Enforcement Division Date/Time 4/7/00 - 3 p.m.  
 Approved by: Commissioner Wilson Condon Date 04/07/2000  
 Agency Department of Revenue

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 For further distribution information, call the Governor's Legislative Office

**CS FOR HOUSE BILL NO. 311(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered: 4/14/00**

**Referred: Finance**

**Sponsor(s): REPRESENTATIVES COGHILL, Ogan, Foster, Kohring, Sanders, Harris, Therriault, James, Croft**

**A BILL**

**FOR AN ACT ENTITLED**

**1 "An Act eliminating a requirement that a social security number be provided by  
2 an applicant for a hunting or sport fishing license or tag; and providing for an  
3 effective date."**

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

**5 \* Section 1. AS 16.05.330(e) is repealed.**

**6 \* Sec. 2. This Act takes effect January 1, 2001.**

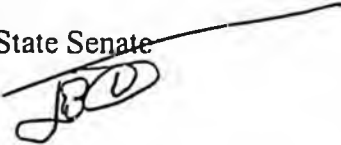
# ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:  
119 N. Cushman, Suite 211  
Fairbanks, AK 99701  
(907)-456-5081  
Fax# (907)-456-8245



Session Contact:  
(907)-465-3719  
FAX# (907)-465-3258  
State Capitol  
Room 416

## REPRESENTATIVE JOHN COGHILL

Date: April 20, 2000  
To: All Members of the Alaska State Senate  
From: Representative John Coghill   
Re: Social Security Number on Recreational Licenses

---

I would like to ask you to support HB 311, an act eliminating the requirement of having a social security number on hunting and/or fishing licenses. I have attached some back up information on the legislation and would be glad to answer any questions you might have.

I have been in contact with the Washington D.C office of Congressman David Obey (D-WI) to discuss his legislation H.R. 1345, which would eliminate the mandate requiring States to require people to provide their Social Security numbers on recreational licenses. Congressman Obey introduced the legislation because he was concerned about the security issue involved with the sale of recreational licenses over the counter at retail store outlets.

Andy Tantillo, an aide to Congressman Obey, said passage of HB 311 would send an excellent message to Congress that H.R. 1345 should be taken more seriously than it has to date. The legislation was referred to the House Ways & Means Committee on March 25, 1999, but has not been heard as of yet. Representative Don Young is a co-sponsor of H.R. 1345.

There has been much reservation about this bill resulting in a loss of millions of dollars for ATAP, TANF, and CSED. In fact the bill carries a fiscal note showing a possible challenge to \$77 million dollars annually. An effective date was added for further investigation of whether we would lose federal dollars. I don't share that concern because I know of states that do not follow the federal mandate and have been in contact with two of them. One state has been out of compliance since the beginning and has gone through four federal appropriations with out a hitch.

North Carolina requires driver's license as identification to purchase hunting or fishing license. When a person wishes to purchase a license electronically by credit card, North Carolina requires a social security number, a driver's license, and the credit card information.

My office contacted Bud Hettinga who is on the NM Fish & Game Commission and made the motion to eliminate the social security number requirement. The main motivation for changing the requirement was so many complaints from hunters and fishermen who felt their privacy was at risk. He said they decided to call the federal governments bluff because the requirement is in conflict with a federal law that says it is illegal to use a social security number for identification. He said the federal government backed off this conflict was pointed out. The federal government has not threatened them and they have not lost any federal money. New Mexico received their FY'00 appropriations for public assistance and CSED without a hitch.

Michigan has never required a social security number for hunting and fishing licenses. Like Alaska's law prior to changing it, Michigan asks for it but does not deny someone a license if the person refuses to provide a social security number. Loren Hersy, director of fish and game licensing in Michigan told my staff that when the Personal Responsibility and Work Opportunity Rec. Act of 1996 was passed, Michigan took exception to the recreational licensing provision and challenged the requirement administratively. Michigan prevailed and has never been threatened since the initial threats with FY'97 funding.

Michigan has never required a social security number for hunting and fishing licenses. Like Alaska's law prior to changing it, Michigan asks for it but does not deny someone a license if the person refuses to provide a social security number. John Wynalda of the Michigan Department of Natural Resources negotiated with the federal government in 1996 when Michigan said they would not comply with the requirement enacted by Congress in 1996. Michigan providing adequate assurance that the social security number on hunting and fishing licenses was not necessary because the social security number was available at other state agency sources. Michigan has gone through five federal appropriations without a glitch.

During the House Judiciary hearing there was some discussion of Idaho being out of compliance with federal child support laws and receiving some stiff sanctions. In researching this, we discovered that Idaho not only requires a social security number for hunting and fishing licenses, they suspend hunting and fishing licenses if parent fail to pay child support, as well as, failed to comply with visitation orders. Social security numbers are not the reason for Idaho's sanctions.

Finally, during that same Judiciary hearing, Barbara Miklos, Director of CSED, stated that having social security numbers on hunting and fishing licenses "does not help to collect child support". Government should not impose laws that have no use or necessity.

Thank you for your consideration.

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## Social Security number requirement angers hunters, fishermen

The Associated Press

FAIRBANKS — A federal regulation that has forced the state to collect Social Security numbers from people buying Alaska hunting and fishing licenses has merchants grumbling and some customers seeing red.

State officials are using the information as a way to track down parents who are behind on child support payments. It's a practice that began Jan. 1 and one that Alaska officials were required to start or face losing \$70 million in federal welfare aid.

But that hasn't eased the anger the rule

sparks at license counters.

"We've had some real unhappy campers because of it," said Darrell Henry at Sentry Hardware in Fairbanks. "One guy said, 'I'll see you in court.'"

John Evans at Down Under Guns in Fairbanks has encountered the same response when he asks for a customer's Social Security number.

"Many people are unhappy about it, but we can't sell it if they don't have it," he said.

Still, most customers don't complain, said Orson Johnson, sporting goods manager at

Sentry Hardware.

"We have had a number of people who don't like it but put it down anyway," he said.

Kristin Wright of the Alaska Department of Fish and Game said she tells people who complain that it's the federal government's requirement, not the state's.

Wright said her office has fielded several dozen calls from angry people. Most of the calls came from the Interior.

Requiring Social Security numbers for hunting and fishing licenses is merely another

way to get delinquent parents to pay child support, said Byron Walther, a spokesman for the Alaska Child Support Enforcement Division. Delinquent parents already face the possibility of losing their driver's license.

"Our goal here is to encourage these folks to make their payments," Walther said.

Last year the state sold more than 428,000 sportfishing licenses and more than 100,000 hunting licenses, although more than half the sportfishing licenses were purchased by outsiders.

# Legislators report to the people

ceeds of the income of commonly held resources have been distributed to the people of Alaska. Certainly no government program even comes close in matching it for either efficiency or equity.

Many Alaskans believe that any changes in the dividend program would require a public vote. This is not the case. In fact, the dividend program can be terminated, and be redirected to government spending by simple majority vote of the legislature. In 1999, the House of Representatives passed a bill that would have capped dividends at \$1,000. Fortunately, we were able to defeat this bill in the Senate. I think Alaskans want (and deserve) more protection for their permanent fund and dividends than Gov. Knowles' political rhetoric affords. The only way to guarantee the continuation of the permanent fund dividend program, and the inflation-proofing that has strengthened it, is through adoption of a constitutional amendment mandating the continuation of these two important features. None of the other bills that purport to protect dividends but have the primary goal of using the permanent fund for government spending provides any real protection or assurances.

The only real guarantee you can count on is that once government starts relying on the earnings of the permanent fund, without constitutional limits or constraints, it is only a matter of time before the dividend and the permanent fund itself are gone.

## SSN abuse will lead to civil disobedience

By Rep. Vic Kohring

R-Wasilla, Peters Creek



In the early 20th Century, beginning in 1911, liberals sought a means to track and control every citizen in this nation. It was called the Social Security Act and was passed in 1935. A terrific fuss was made at the time by civil libertarians worried that the SSN (Social Security Number) could be used for nefarious purposes by the federal government. As a result, the law was passed with a major proviso that the SSN was not to be used

for identification under any circumstances. There was fear that the U.S. government would turn into a tyrannical monster as many European governments were, using the SSN as an effective spying and tracking mechanism on their citizens.

For the next 40 years, the SSN was kept pretty much between individuals and the Social Security Administration. The back of the Social Security card stated plainly that the card

was not to be used for identification. Toward the end of the 1960s, things began to change, when more and more activities were tracked by government with a SSN. The military began to use it instead of a serial number. State motor vehicle departments began to "ask" for it at driver's license renewal time.

In the spring of 1998, Alaska's Legislature, lured by millions of federal tax dollars, passed a state law that required the SSN for new driver's licenses, as well as hunting and fishing licenses. The excuse this time was that it was necessary to track down "deadbeat dads." At least politicians admitted it was to be used for tracking purposes.

Now the specter familiar from old World War II movies has finally come to pass; we have law enforcement demanding to see, "Papers, Papers!" This time as a de facto National ID Card. The police roadblock with a little gate, manned by Germans in dull gray uniforms, demanding "Papers, Papers!" culling the demeaned masses through a government gauntlet is now a very real scenario.

When opposing this attack on our privacy, I ran into the most ridiculous group of ideas. Proponents simply defined their way out of privacy issues. "But we need it to help the kids" was the constant refrain. This does not make sense on its face. While meant for deadbeat dads, all are required to show the SSN, men, women, children, teen-agers. "But we need the federal money" was another constant reply. "But at the price of our liberty?" I asked them. To this, most legislators would simply not acknowledge the question. It was dismissed as unimportant.

This is a dangerous slide into government control of a once free country. The Alaska Constitution guarantees individuals' privacy. The new state-mandated demand for the SSN denies this most seriously, and implies that the current Alaska government simply lies to its citizens as the federal government has long done. Civil disobedience has already begun over this denial of privacy. At least one court case is ongoing and one of my constituents is planning on leaving the state if it's not reversed.

House Bill 311, which I've co-sponsored, would help reverse this advance of the government boot, but is now languishing in the House Resources Committee. Apparently the members of this committee are unaware of the dangers of having a national ID card, or worse, don't understand the issue. They could use a few thousand Public Opinion Messages and e-mails to induce them to act. But, then, freedom is always lost a little at a time for allegedly humanitarian reasons.

Wake up, Alaska! We are losing our precious liberty to the state. Are we Volk marching in lock step to an Orwellian Big Brother? Or are we free Alaskans?

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Continued from Page 6

spend our savings on a new center for Anchorage, we could use long-suffering rural programs.

lasted approximately one half-hour.

The committee then voted on each candidate. Each candidate member had one vote

*Short-timers don't deserve cash*

# House rejects Social Security requirement

By ROD BOYCE  
Staff Writer

JUNEAU—Applicants for a hunting or sport-fishing license will no longer have to provide a Social Security number under a bill passed Friday by the House.

For Rep. John Coghill, R-North Pole, his three-line bill is an issue of privacy and federal intervention.

The state Department of Revenue opposes the bill, saying the state would lose \$77 million in federal aid linked to child support enforcement.

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■ SCHOOL BONDS—House measure passes; Senate at standstill. Page B-2

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Coghill, speaking on the House floor Friday, countered that the federal government has not withdrawn the aid from other states that have not complied with the federal law requiring use of the numbers.

"It's a small issue, and I understand there's the threat of losing federal money," Coghill said. "But does the federal government arm-wrestle us, or do we stand up for our people?"

Congress in 1998, as part of its welfare reform effort, said states must require Social Security numbers on driver's, occupational and recreation licenses to qualify for federal aid in finding parents delinquent in child support payments. Alaska has been complying with that law.

Having a Social Security number on hunting and fishing licenses allows the state's Child Support Enforcement Division to match license applicants against a list of delinquent parents. But the division has not yet created the computer program to match numbers.

If the federal government rules Alaska is no longer complying, the state would lose its \$63 million federal grant for the Temporary Assistance for Needy Families program, according to the Department of Revenue. Alaska would also lose \$14 million in federal aid for its child support enforcement program.

The goal of the federal law, said Deputy Revenue Commissioner Larry Persily, is to increase collection of child support payments and thereby, perhaps, prevent recipients from sliding into welfare.

"Finding someone is just the first small step," Persily said. "This doesn't tell you where they work or bank."

In an unusual alignment, House Minority Leader Ethan Berkowitz, D-Anchorage, spoke in favor of the bill, saying there are several safeguards against the state losing federal money.

Berkowitz offered a different reason for support, however—that the child support collectors had not

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# LICENSES: Privacy

Continued from Page B-1

set up their computer program. Jeopardizing the money might jolt them, he said.

"What's troubling to me is that we are not using the Social Security numbers in the manner intended," he said. "That's a sad message."

Coghill said the Social Security requirement can also be a security problem for owners of stores

that sell hunting and fishing licenses. Licenses must be filed with the state quarterly, meaning the forms could be left in the open for others to see, he said.

"This is part of a larger debate," he said. "Should we use Social Security numbers to identify people?"

House Bill 311, which passed 28-10, now goes to the Senate.

# House rejects Social Security number requirement

By DAN JOLING  
The Associated Press

JUNEAU — Social Security numbers would no longer be required to buy sportfishing and hunting licenses under a bill approved Friday by the house.

House Bill 311 would repeal a law the Legislature approved two years ago under threat of losing federal money. Congress required states to provide Social Security numbers on recreational licenses to help track parents who do not pay child support. Sponsor Rep. John Coghill, R-Orth Pole, said he filed the bill in response to repeated requests from constituents who resent the invasion of their privacy.

Coghill noted testimony by Child Support Enforcement Division director Barbara Miklos, who acknowledged that her agency does not use information from fishing and hunting licenses to track down deadbeat parents.

"Not one has been used to find any parent in arrears," Coghill said.

Coghill said two states, New Mexico and Michigan, don't require Social Security numbers and have not lost federal money.

The requirement is an issue of security, Coghill said. While other licenses are issued directly by the



state, fishing and hunting licenses are sold by vendors, increasing the chance of identity theft and illegal use of a license holder's credit.

Coghill said there's no reason to invade privacy when the information is not being used anyway.

"Does the federal government arm-wrestle us or do we stand up for the people?" Coghill asked. "That's what it comes down to."

Coghill, a member of the House's dissident Republican minority, found unusual allies in House Minority Leader Ethan Berkowitz and Rep. Eric Croft, both Anchorage Democ-

rats.

But others said the opportunity to flout federal requirements was not worth the risk of losing \$77 million. According to the Department of Revenue, Alaska could lose \$14 million in federal funding for the child support enforcement program and \$63 million in temporary assistance for needy families, a program that provides public assistance to low-income families with children.

"Other states have received warnings," said Rep. Beth Kerttula, D-Juneau. "What's to say we won't be the state that gets nailed?"

HB 311 was approved 28-10 but could come up for another vote Monday.

## LEGISLATIVE NEWS

**Report renamed to honor Stevens**  
Anchorage International Airport on Friday officially became Ted Stevens Anchorage International Airport. Gov. Tony Knowles signed the bill to honor Alaska's longtime senator. A ceremony is being planned for early July. "Few people have done more to benefit Alaska than Ted Stevens," Knowles said. "His years of dedication and commitment, of hard work and advocacy have benefited Alaskans in innumerable ways." Stevens was appointed to the U.S. Senate in 1968 to fill the vacancy left by the death of E.L. Bartlett. He has represented Alaska in the Senate ever since. "Naming the state's largest airport in his honor is a fitting tribute to his accomplishments, one that Alaskans and visitors alike will be reminded of each time they pass through this gateway to Alaska," Knowles said.

Daily News wire report

## Slope, villages split \$28 million oil compensation

The Associated Press

BARROW — The North Slope Borough and four of the borough's communities will share \$28 million to compensate for the impact of development in the National Petroleum Reserve-Alaska.

The petroleum reserve makes up about a third of the borough and encompasses the communities of Barrow, Atkasuk, Nuiqsut and Wainwright.

The grant money will come as 24 separate grants earmarked to pay for a variety of services, said Deborah Sedwick, commissioner of the Alaska Department of Community and Economic Development.

The borough is getting 10 of the grants, the largest being \$10 million for power plant and electrical distribution and waste heat conversion upgrades for Wainwright, Atkasuk and Nuiqsut.

Small borough grants, between \$100,000 and \$200,000, will pay for a police officer in Nuiqsut for three years, monitoring for subsistence hunting and a waterfowl survey.

The city of Barrow received four grants totaling \$3.3 million. The grants will pay for renovating and upgrading the city's teen and community centers, and for other building construction and maintenance.

Nuiqsut received about \$7.5

million, most of it to fund natural gas piping and hookups for homes and buildings. Another \$765,000 is earmarked for a boat dock and ramp.

Atkasuk received \$200,000 for local government operations, and a small grant will be used to renovate the senior center in Wainwright.

The funds should be available in June, said Dennis Packer, borough chief administration officer.

The borough received \$28 million from the impact funds, and the state received \$12 million. The funds were allocated from proceeds of last year's \$105 million lease sale in the NPR-A.

## MINUTES OF STATE GAME COMMISSION MEETING

April 8, 1999  
State Capitol, Room 307  
Santa Fe, New Mexico

### Agenda Item No. 1... Meeting Called To Order

Meeting was called to order at 9:15 am.

### Agenda Item No. 2... Roll Call - Jerry Maracchini

Secretary Maracchini calls roll of Commissioners

Bill Brininstool - Present  
Gail Cramer - Present  
George Ortega - Present  
Steve Padilla - Present  
Steve Emery - Present  
Bud Hettinga - Present  
Steve Doerr - Present

Chairman Brininstool - Introduces Commissioner Emery and states that he is representing District 5 and that Commissioner Padilla has been re-appointed.

Jerry Maracchini - States for the audience that there is a new procedure for audience participation. When a member of the public wishes to speak on a particular agenda item they will need to fill out one of the participation cards that will be located on the table with the extra copies of the agenda. These cards then need to be presented to the recording secretary prior to the agenda item being presented.

Commissioner Hettinga - Asks if we will allow many members of one organization to speak or if we will require that they get together and present their comments all at one time.

Jerry Maracchini - States that if there is a large group of people who wish to speak on the same agenda item then it would be preferable if they all get together and have one person do the presenting for them. These cards also allow for those individuals who do not wish to get up and speak in public to present their comments in writing to the Commission.

### Agenda Item No. 3... Closed Executive Session

**MOTION:** Commissioner Doerr makes a motion to go into closed executive session to discuss - director's performance with respect to personnel assignments, department organization and areas of emphasis and the legal implications of the Uniform Licensing Act relating to Outfitter's and the Rock Lake Hatchery delinquent lease. Commissioner Hettinga seconds.

**VOTE:** Roll call vote taken - all present voted in the affirmative. Motion passes unanimously.

### Agenda Item No. 4... Approval of Minutes - January 6, 1999.

**MOTION:** Commissioner Doerr makes a motion to approve the minutes of the January 6, 1999 meeting

See page 3  
Agenda Item No. 8

presented Commissioner Cramer seconds.

**NOTE:** Roll call vote taken - 6 of the 7 present voted in the affirmative. Commissioner Emery who was not present at the meeting chose not to vote. Motion carried.

**Agenda Item No. 5...Consent Agenda**  
Budget Report - Pat Block  
Auction of Department Vehicles and Equipment

Commissioner Hettinga - States he would like to have the budget report faxed or mailed to the commission so that they have time to review and then if there are no questions, they can just vote on it right away.

**MOTION:** Commissioner Hettinga makes a motion to approve the Consent Agenda. Commissioner Cramer seconds.

**VOTE:** Roll call vote taken - all present voted in the affirmative. Motion passes unanimously.

**Agenda Item No. 6...1998-1999 Oryx Hunter Accommodations**

Jerry Maracchini - Explains that back in January the Commission gave the Director the authority to negotiate with White Sands Missile Range to try and come up with a reasonable method of accommodating the oryx hunters who were successful in drawing a license but whose hunts were cancelled. We have done so and we had to come up with some type of intermediate plans to handle the hunters and we came up with the spring hunts. We realize that when we came up with the spring hunts that these are far different than those that the hunters originally applied for. So in order to be as accommodating as possible on the once-in-a-lifetime hunts, we are presenting an opportunity for those hunters who participated but were not successful or for those hunters who could not participate another opportunity to hunt this fall (1999-2000).

**MOTION:** Commissioner Hettinga makes a motion to approve Agenda Item #6 as proposed. Commissioner Doerr seconds.

Commissioner Cramer - Commends the Department with the way they have handled these hunts and feels that we have gone above and beyond what needed to be done.

Steve Henry - Thanks Commissioner Cramer for the comment. He acknowledges that Commissioner Hettinga should get some of the credit. We have had about 180 hunters and about 4 have not killed an oryx. We will probably have about 30 +/- that have chosen not to hunt. There are four or five more hunts still to be held. We feel that these hunts have been successful and according to the missile range they are getting a bigger selection of trophy oryx taken than there has ever been.

Commissioner Cramer - Asks if what the commission is voting on and that it may involve 30 - 40 people.

Steve Henry - More than likely. There may still be a different understanding among the hunters.

Bob Atwood - Just wanted to say thanks and feels that the people who did not get to participate be allowed to hunt next year.

Oscar Simpson - Offers his gratitude. His concern is that only the people who were not given the opportunity to hunt be allowed. He did not want to see the elimination of the once-in-a-lifetime hunts.

Stan Lundy - Would like the opportunity to go on his oryx hunt that he was not able to go on. He is concerned with the take it or leave it attitude that the letter he received portrayed.

Jerry Maracchini - We still do not have a guarantee that the hunts published for this year will even be

held.

Commissioner Hettinga - States he is optimistic about the hunting at WSMR.

Commissioner Ortega - Thanks Jerry for the job he did on one of the more controversial individuals from here in Santa Fe.

**VOTE:** Roll call vote taken - all present voted in the affirmative. Motion passes unanimously.

**Agenda Item No. 7... Removal of "Once in a lifetime" restriction for 1998-1999 oryx hunters.**

**MOTION:** Commissioner Hettinga makes a motion to remove Item No.7 from the agenda. Commissioner Ortega seconds.

**VOTE:** Roll call vote taken - all present voted in the affirmative. Motion passes unanimously.

**Agenda Item No. 8...Social Security Number Requirements Discussion**

Larry Bell - States that this was brought up because of some questions brought up by the public and commissioners. There are a variety of concerns and we just want to have a little discussion. Back in 1998 and maybe even in 1997 the Commission had concerns relating to the use of prisoner's inputting the application information. We were just about to have a solution for this and then the Parental Responsibility Act came along. As with other laws there are exceptions and this PRA has some of these exceptions and because of these we now need to collect this information on our applications.

**MOTION:** Commissioner Hettinga makes a motion to require the NM Department of Game and Fish to NOT collect SS# on applications or licenses in any form. Commissioner Doerr seconds.

Commissioner Hettinga - There are no safe guards and we have a lot of public outcry not to require this information. There are no safe guards on any of our information because we are a public agency and therefore anyone can come to our office and request this information. The NM Driver's licenses do not require SS#'s. Feels that if it is required then we should have a court order to direct us to collect this information.

Larry Bell - Just to make something a little more clear, if someone came into the office with a public inspection request, and since we can only collect a SS# for a specific purpose and only make it mandatory for a specific purpose. Then on any public records request that we receive where that number may be contained the SS# would have to be redacted from this request. As a matter of fact even before the SS# request we have always had requests from outfitters and such for information and we have taken the SS#'s off. As for driver's license the SS# does not show up on the license but it is asked for as part of the application and then that application is then retained in their files.

Alvin Garcia - Larry is correct in that SS#'s are redacted from any document requested through public records act. This advice from the Attorney General's office for all state agencies is that these numbers be taken off any public records. The State Human Services Department is tied to the enforcement of this act. There are federal monies tied to this act. The adoption of this motion may force his office to withdraw as counsel for the State Game Commission.

Commissioner Padilla - Mentioned the importance of this act and he opposed it because of the fact that it is not funded and does not reimburse the Department for loss of revenue.

Commissioner Hettinga - Feels that we should enforce the child enforcement act, but there are other ways to do this. The Department has lists and Human Services should provide a list of those in violation and the Department can then check their records and start the revocation. States that Alvin's version of how public records are given out is not how it happens, maybe it should but it does not always happen the correct way.

Alvin Garcia - The lists are required by Human Services Department. Lists that contain these SS#'s are checked against lists of those not in compliance. This is all done by data disks.

Chairman Brininstool - Feels that federal money would be lost and feels that we are hurting ourselves.

Oscar Simpson - Does not like the SS# requirement and if we have some sort of protocol to assure that the SS#'s were not given out then maybe more people would support this action. He would like for the Department to explore some way for the in the future of not having to use SS#'s.

Commissioner Hettinga - States that the Health and Human Services asks for names. Feels that there are ways to go about this and he feels that the Department would find a way without having to hold the license buyer's hostage.

Larry Bell - We get from Human Services a datadisk and on this disk is a list of SS# of those not in compliance and we then match it to what records we have. We would be more than happy to work with Human Services to find out if they would accept some other method. They are not only dealing with Game and Fish but all other agencies as well and that he cannot speak for them, but he will work with them.

**VOTE:** Roll call vote taken and Commissioner's Hettinga, Ortega, Emery and Padilla voted in the affirmative. Commissioner's Doerr, Cramer, and Brininstool voted in the negative. Motion carries with a 4 to 3 in the affirmative.

Larry Bell - Informs the commission that since we already have our licenses printed and distributed that we will try to conform to the wishes of the Commission.

Representative Begay - Introduces himself and states that he represents legislative district 4 which covers great deal of the Navajo Nation Reservation. He is from the NW portion of the state. A couple of years ago a bill was introduced regarding amphibians and reptiles. He introduced a bill this year and he received some support. Has done some research and has found that other states have restrictions on removing native species from their states and during the research he has discovered that New Mexico does not have similar restrictions and he would like to see some set in place. There are native amphibians and reptiles that are very important to his heritage. He would like the Department of Game and Fish to take a look at this and see what they can do to help.

Commissioner Hettinga - Asks Rep. Begay to get the Department a copy of the bill and the analysis and he would like to see this on the next agenda.

Rep. Begay - Yes, he would get us all of these copies and is willing to come for the next meeting if needed.

Commissioner Doerr - As he understands it, the Department does not have jurisdiction over these and asks if this bill allows for more personnel and funding.

Commissioner Padilla - Agrees with Commissioner Hettinga and with this on the next agenda he would like to see a copy of Representative Porter's bill. We need to analyze both bills together and see what the differences are.

Jerry Maracchini - States that he would like to answer Commissioner Doerr's question with regard to personnel and money. When we first analyzed the bill we are always cautious about additional personnel and money and the bill was modified as Rep. Begay mentioned to be a little bit more regulatory friendly to the commission. In other words it would have given the commission the authority to regulate only those species that it felt necessary instead of a blanket for all species. Feels that the next step would be for the Department to analyze and come up with legislation that it feels the Commission could support. The Commission was never afforded the opportunity to look at what the implications would be in regards to manpower and money

Commissioner Hettinga - Feels that we should investigate the TWW/OCS money and see how it could help with this.

Jerry Marchini - States that if it ever happens yes it would go to help this.

#### **Agenda Item No. 9...Deer Management Long-Range and Action Plan Update**

Barry Hale - Gives the background on this subject and explains how we have gotten to where we currently are. We have updated the Long-Range Deer Management Plan and we have created a Deer Management Action Study.

We have identified the areas where we would like to

Criteria for Selecting Locations:

- Study location must have deer
- Study location has historic information on deer populations
- Land status should be primarily public, with cooperation from administering land management agency
- No depredation complaints about deer in the area
- Predator management must be an option

We have selected two areas: Unit 23 Burro Mountains and Unit 51 west of El Rito in the Carson National Forest. We have begun the planning effort for these areas.

For both areas:

- Deer - trap and collar (90), monitor (mortalities) and survey (mark/recapture and sightability).
- Predator - survey (scent stations, howl counts, etc), removal (ground/aerial), and monitor of removal.
- Areas - Two - Burro Mountains in Unit 23 and El Rito Area of Unit 51.
- Cost - average of \$400,000 per year.

We have some ground work that still needs to be laid before we can get the bulk of the work started. We need to hire the deer manager, complete the project plan, prepare FY2001 budget request and allocate FY 2000 budget for project.

We are looking to start the bulk of the work in FY2000 and we plan to: test predator survey techniques, initiate predator surveys, initiate deer sightability

Commissioner Hettinga - Asks if we were specifically asked not to institute one of these areas, Unit 51. He requests that we use an alternate area. He would also like for it all to be started at one time (law enforcement, habitat, etc).

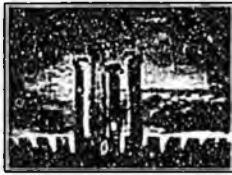
Commissioner Padilla - Asks what the opposition to Unit 51.

Commissioner Hettinga - Feels that it is hard to get the law enforcement needed up there to enforce the poaching. It is hard to get in the middle of the Carson forest and the Gila country to get law enforcement out there all the time. We need to get it started where it will at least have a chance to work.

Commissioner Padilla - States that Utah has a program called dedicated hunter program. He asks if anyone knows what this is.

Commissioner Doerr - We also talked about trying to get in addition to these two areas we are going to try and improve the habitat in other areas of the state at the same time we are monitoring these two areas.

Santiago Gonzales - We have some preliminary plans to begin habitat work with Sikes Act money. We have started on the predator removal at this time because we thought it was the most controversial portion. We have not ignored the habitat request, but we just wanted to present this portion to see if we are on the correct track.



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Tuesday, April 11, 2000

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## News Article

Courier News/Services



### Social Security thieves can do number on you

By JOHN LANG, Scripps Howard News Service

The government's got your number.

With the nine digits on your Social Security card, the government keeps track of you — where you live, where you work, how much you earn — and eventually, where to send your Social Security check.

So if somebody steals your number, what's also stolen is much of your life.

On the Social Security Administration's own Internet site, <http://www.ssa.gov>, is a history page that gives a serious lesson on what can go wrong.

The most misused Social Security number of all time was 078-05-1120.

It belonged to Hilda Whitcher, secretary to an executive at a wallet manufacturer, the E.H. Ferree Co.

When Social Security cards were first issued in 1936 they were a novelty to the public. In 1938, Whitcher's boss, Douglas Patterson, decided it would be a clever idea to show how the cards could be showcased in a wallet. He used Whitcher's actual number.

The wallet was sold by stores all over the country. Even though the card had "specimen" written across the face, many people who bought wallets somehow thought they were getting their personal Social Security numbers included.

Within five years, there were 5,755 people across the United States using Hilda Whitcher's number. Even though the Social Security Administration publicized the mistake and voided the number (Whitcher was



given a new number), the problem went on and on and on.



Ultimately, more than 40,000 people reported the number as their own. Even as late as 1977, a dozen people were found to be still using the number that was put in those wallets and sold at Woolworth's all over the country.

It was a real headache for Witcher. The FBI showed up at her door to ask about all those people using her number.

"I can't understand how people can be so stupid," she said. "I can't understand that."

The problem of your number getting in the wrong hands can be far more serious today because the power of the card is well understood by almost everyone. Lose your wallet, with license and credit cards inside, and you can lose your identity. There are numerous cases of people having their credit ruined by others who get their hands on both Social Security and credit card numbers.

"It was never meant to be a national identification number," says Social Security Administration spokesman Mark Hinkle. But he concedes, "Over the years it's become an identifier and it seems everywhere you go, people are asking for it."

However, Hinkle points out, "There's no law that says you have to give that number. No law requires its use for any other purpose than paying Social Security. We tell people it's a voluntary decision whether to give out that number."

Nobody but the Social Security Administration has the right to the number or to access its data on your earnings records or your benefit payments. "It's strictly confidential," says Hinkle.

The Social Security number has a billion combinations. Everybody's is different. To date 390 million have been used. That's just about 40 percent, with plenty of reserve, so the Social Security Administration has no plans to issue any dead person's number to anybody else.

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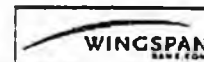
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**COLUMN: Social Security Number should be kept private**

*Updated 12:00 PM ET April 7, 2000*



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(U-WIRE) WASHINGTON -- I suggest that the Georgetown University administration use an arbitrarily invented number as our student identification number instead of our Social Security number.

The use of our Social Security number as our student identification number raises enormously pressing privacy concerns. The Social Security number should remain a very private matter, given out in only the most appropriate and needed situations. The university's use of this number as our student ID number is inappropriate and misguided.

As a result of this usage, our Social Security number appears on our student ID cards (when it should only appear on one card, our Social Security card). The Social Security number does not even appear on a United States passport; we are given a separate passport number. Yet the Social Security number appears on the Georgetown student ID card. Moreover, we are often asked to write our "student identification number" on exam blue books and papers.

This number, though, is actually our Social Security number. Yates uses our Social Security number to admit us into their facilities. Munch Money transactions, on and off campus, use this number. Our Georgetown student telephone bills use our Social Security number as our account number. AT&T does not use my mother's Social Security number as her account number. We are asked to type in our Social Security number on an insecure line over the Internet in order to get to Student Access. And the list goes on.

All this usage of our Social Security number as our student ID number increases the chance that this very private number goes into the domain of public knowledge. This is dangerous. Second and third parties can access an abundance of information about a student by knowing their Social Security number. They can also fraudulently use your identity.

A student ID number should be just that, in its own right. Our Social Security number should not double as our student ID number. A

university such as UCLA, with 35,000 plus students, uses arbitrary and newly invented numbers for their students' identification numbers. The Social Security number remains in the private domain and only is used under very special and exceptional circumstances. Georgetown is a small school; it can handle inventing numbers specifically to act as the student ID numbers. The fact that it is easier to use the Social Security number is no excuse. In fact, it ignores blatant privacy concerns. Social Security number usage is reserved for filling out federal census forms and IRS forms, not for entering a gymnasium or buying food from the campus store.

The Social Security number must not double as our student ID number. The latter number, due to its wide and open use, is very much in the public domain. The Social Security number should not be. Each student should be given a Georgetown student identification number for use in university-related matters. The Social Security number must not be this number. When you want to buy Domino's and use Munch Money, and they ask for your student ID number, this is more or less harmless. But when that number is your Social Security number, as it is now, that knowledge in the broader public domain is dangerous.

In fact, it is in Georgetown University's interest to stop using our Social Security number as our student ID number. They are setting themselves up for a series of lawsuits regarding the negligent and careless use of students' Social Security numbers. It is, after all, only a matter of time before this precious number, as a result of university policy, falls into the wrong hands. This especially is a problem in this information age with the growing Internet-ization of the United States.

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## REPRESENTATIVE JOHN COGHILL

### HB 311 Social Security Numbers & Recreational Licenses SPONSOR STATEMENT

A requirement to provide your social security number before obtaining a recreational hunting and fishing license was a recent federal mandate accepted by the legislature under the Smart Start legislation of 1998.

The reasoning for imposing the social security requirement for a casual license was to track people for child support enforcement agencies nationwide. While an integrated national system such as this may be efficient it is a double-edged sword. First, the requirement is an instrument for the abuse of privacy. Secondly the federal government tempts us to erode our constitutional responsibilities and rights through mandates that are accepted when taking federal funds.

Lets remember that our social security started in 1935 as a means of tracking earnings and benefit qualification for those workers who had jobs under this system. The social security number was never intended to be use for general identification purposes. Most importantly our social security number was not intended for invasion of anyone's privacy.

"The right to be left alone – the most comprehensive of rights, and the right most valued by free people."

Justice Louise Brandeis, *Olmstead v. U.S.* (1928)

"The right of the people to privacy is recognized and shall not be infringed."

Alaska State Constitution. Article 1, Section 22.

The privacy issue here is that information being gathered by vendors issuing licenses all over Alaska is available for purchase by anyone. The information of about 600,000 licensees can be purchased for \$350. While the social security number is purged from the database, the information provided on the application is collected by a vendor which is less secure.

The states' rights issue was created by a Supreme Court challenge by South Dakota of the federal mandate of legal drinking age requirement to receive federal highway funds. While the Court determined that the Tenth Amendment prevented the federal government from requiring states to impose a mandatory seatbelt law, the federal government did have the authority to withhold federal highway funds from a state that did not enforce a mandatory seatbelt law.

Since this decision, states have been surrendering individual and states' rights in return for federal dollars. We must ask our selves how much our individual and states' rights are worth.

Two states currently do not require a social security number for a fishing or hunting license: New Mexico and Michigan. Neither state has been sanctioned by the federal government and neither state has lost a single federal dollar. They chose to stand and say, federal government you have gone to far and have not been suffered at the heavy hand of the federal government.