

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10267 HOUSE JUDICIARY

HB

111

ALASKA STATE LEGISLATURE
House of Representatives

Committee Assignments:

Judiciary Committee, Chairman
Labor & Commerce Committee, Member
Legislative Council, Member
Special Committees:
Economic Development, Member



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REPRESENTATIVE NORMAN ROKEBERG

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

FAX COVER SHEET

DATE: 4.4.01

TO: Legal Services Attn: Mike Ford

FAX: 2029 VOICE: _____

RE: 22-LS0231L - CS for House Judiciary

MESSAGE: I would like a CS for HB 111 (JUD)

final with the following change:

Page 2, Line 26 add the word

"negligence" after "gross."

Heather x 4990

TOTAL NUMBER OF PAGES SENT, INCLUDING COVER SHEET: 1

ALASKA STATE HOUSE OF REPRESENTATIVES

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Room 102

REPRESENTATIVE JOHN COGHILL

INJURIES RESULTING FROM LIVESTOCK ACTIVITIES SSHB 111 SPONSOR STATEMENT

Sponsor Substitute for House Bill 111 is the product of several meetings and work sessions with a group of 4-H members, a local veterinarian, and stable owners in the Tanana Valley. This bill is intended to give livestock owners and those associated with livestock activities extra protection from frivolous lawsuits. Forty-four other states currently have similar legislation.

This bill will recognize that a person assumes some risk when placing themselves in the vicinity of livestock. The livestock owner with the best of intentions cannot completely prevent accidents from happening. For example, a bee could come along and sting a horse, causing the horse to buck and throw a rider. Or, a bunny at a 4-H sponsored petting zoo could bite the finger of a small child feeding the bunny grain. Presently, both of these accidents could result in a lawsuit.

In June of 1996, during the Miller Reach Fire, the Alaska State Fair in Palmer opened the fairgrounds to provide housing for evacuated animals. Pens were set up in Farm Exhibits and at France Equestrian Center on the fairgrounds to hold a variety of animals. Both areas looked like Noah's ark had unloaded. All the animals' owners made the best of the crowded situation, and appreciated the Fair's hospitality except one. This individual chose to ride her horse on the fairgrounds despite the crowded conditions. Her horse spooked from a pig in a pen near the arena and bucked her off. She suffered broken ribs and a punctured lung. She sued the fair because she had "warned" them about the problem of other animals spooking her horse. In November of the following year, the fair's insurance company settled out of court for \$3,500, plus legal fees and medical expenses, because to fight the lawsuit would have cost them four or five times as much as settling."

SSHB 111 will not protect the livestock owner who acts in an unreasonable manner. By reducing some of the liability, the expectation is this legislation will create an atmosphere for more livestock activities to occur within the state, as insurance premiums become more favorable for livestock activities.

This piece of legislation is the work product of 4-H members statewide who will be following this legislation through the legislative process and participate in the passage of this bill. A 4-H member in Fairbanks wrote the bulk of this sponsor statement.

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SSHB 111 SECTIONAL

Sec. 1. Intent language outlining that this legislation was introduced to encourage more livestock activities by limiting the civil liability of livestock activities recognizing that there are certain risks taken when participating in or attending a livestock activity.

Sec. 2.(a) Provides immunity to participants and sponsors of a livestock activity when an injury or death results from the inherent risk of a livestock activity.

(b) Exempts livestock activities from AS 09.55.580(a) Action for Wrongful Death unless any of the following apply:

Gross, reckless, or intentional misconduct of someone directly involved in the livestock activity.

Faulty or defective products were knowingly allowed to be used for the livestock activity by someone directly involved in the livestock activity.

Failure of someone directly involved in the livestock activity to make reasonable efforts to determine a person's ability to participate in a livestock activity.

(c) exempts injuries or death covered by worker's compensation laws.

(d) does not exempt or limit injuries or liabilities from product liability laws.

(e) exempts a sponsor of a livestock activity from civil liability for negligent acts of participants or professionals of a livestock activity.

(f) Provides for a person signing a waiver of right to recover damages resulting from inherent risk of a livestock activity.

(g) Preserves tort immunity for a person with unimproved land unless gross negligence is an issue.

Sec. 3. Establishes definitions in state statute for inherent risk of a livestock activity, livestock, livestock activity, livestock activity sponsor, livestock professional, and participant.

Sec. 4. Establishes a date of applicability to the law.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SSHB 111
 (H) Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title: Civil Liability and Livestock BRU: Alaska Court System
 Component: Trial Courts
 Sponsor: Rep. Coghill
 Requester: House Judiciary Committee Component Number: 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will not have any fiscal impact on the Alaska Court System.

Prepared by: Heather Nobrega, House Judiciary Aide Phone 465-4990

Representative Norman Rokeberg Date 4/4/01
Committee Chair

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SSHB 111
(H) Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: All Departments
Title: Civil Liability and Livestock BRU: _____
Sponsor: Rep. Coghill Component: _____
Requester: House Judiciary Committee Component Number: _____

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

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CAPITAL EXPENDITURES						
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ANALYSIS: (Attach a separate page if necessary)

This bill will not have any fiscal impact on the state.

Prepared by: Heather Nobrega, House Judiciary Aide Phone 465-4990

Representative Norman Rokeberg Date 4/4/01
Committee Chair

THE
FOLLOWING
DOCUMENT(S)
ARE
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COPIES

**ANIMAL
VETERINARY CLINIC**

Representative & Senators
Fairbanks, Alaska 99811

Subject: House Bill 111

To Whom It May Concern:

I am a 4-H leader in Fairbanks that has, unfortunately, been sued by someone that believed I was being neglectful at the Tanana Valley Fair in August of 1997. In October of 1996, I started a 4-H group for kids that did not have the means to have a horse of their own. The four young ladies that participated in my group, were required to take riding lessons for several months, attend lectures on the care of the horse and have their skills tested with a written and riding examination. They all passed and qualified to ride in the 4-H horse show at the Fair in 1997. They were to use my horses for the contests.

The member's parents and I supervised the activities. Due to the congestion of horses at the entry gate of the show ring, as each member was called into the arena for their chance at a blue ribbon, I would lead them in on one of my two horses. I would then wait for them to finish to help guide them out. As I led Ms. Ashley Swanson on my horse "Pretty Boy" into the arena, a strange woman ran up on the right rear side of "Pretty Boy" and slapped him on the rump and grabbed Ashley's right leg almost dismounting her. As the stranger did this she loudly yelled "Ashleyyyy". I was almost knocked down by the startled horse. I turned around and demanded she get away from my animal immediately. She gave me a cruel stare and walked off, never exhibiting any signs of pain or a limp (this becomes important later). Ashley's parents had evicted the stranger, Debra Bogan, from the apartments they manage. They quickly came up to me after the incident and informed me that I was never to let the woman near their daughter. Twenty minutes later Debra Bogan came up to the Swansons and showed them her toe, which was bleeding profusely. She alleged that "Pretty Boy" had stepped on her

foot when she had startled him. At the time of the alleged incident she was in an area posted for exhibitors only and was wearing opened toe sandals.

Ms. Bogan sued the Tanana Valley Fair Ground, Ashley Swanson and myself for her injuries, which included a nervous condition in both of her legs that she alleged had resulted due to the incident. With council provided to me by the 4-H district, eight months, approximately eighty hours of my own time and fifteen thousand dollars later, her case was dismissed against me. It took Ms. Ashley's attorney and the Tanana Valley Fair Association two additional months to be released of her allegations. This does not include the emotional stress and anger I still feel because of this attack on my volunteer service.

It is my opinion when someone attends a public event they need to take some personal responsibility for their own actions. It does not matter how many signs you have posted or how many guards you have in place, it is not the responsibility of the animal owner, when involved in a judged or timed event to be responsible for spectators or other participants. The participants are there primarily for the challenge of the task at hand and secondary to entertain those watching the event. The spectators are there simply present to enjoy watching. If House Bill 111 is implemented it will minimize the risk of the animal owner, participant and host of the event of being responsible for the brainless acts of others.

I am encouraging limited liability to those working on a horse during medical treatment. Being a veterinarian, I have been notified by my liability insurance company that currently I am legally liable for anyone, including the owners, while I am treating or caring for an animal. Unfortunately, I will not work on any animal in any situation, which I do not have one of my trained employees restraining the animal being treated. What this means is that if I am at the fair and an animal is injured I will not work on an injured animal unless I can use my employees in restraining the animal. Even if the owner is there and willing, I will not have them hold an animal under any circumstances and be held liable for any injury they may incur while holding their animal.

I have also stopped accepting new large animal clients for the same reason. I am required to train one of my employees to restrain any animal I am examining or treating. Working on large animals greatly increases the risk to my employees. I feel that anyone that owns a large animal has accepted the risk that inherently comes with the ownership. Although I am willing to risk injury to myself to help an animal, I have a difficult time asking my employees to do so, even if they are trained. I have enclosed a copy of an article found in a newsletter from the American Veterinary Medical Association Professional Liability Insurance Trust describing the court cases that have necessitated this action. If House Bill 111 clearly limits the liability of a veterinarian when they are working on an animal

while the owner assists, I would not limit my services. Unfortunately, as it stands, without a statute of limitations, it is the large animal owner and their animals that will suffer the consequences of veterinarians refusing to work with large animals because of their potential liability.

I am speaking on behalf of my large animal clients and their pets. I urge you to pass House Bill 111 as it is written. I plan on being only a spectator at the fair this year.

Thank you for your time and consideration of this matter,

A handwritten signature in black ink, appearing to read 'Dee Thornell', with a long horizontal flourish extending to the right.

Dee Thornell, DVM



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
 committee name
 committee on HB 111, dated April 4, 2001
 bill/subject

Dear Sirs:

As an assistant leader of the Delta 4-H club and a life-long horse owner + participant of horse shows and related activities, I have seen many dangerous incidents occur. We as horse owners know that often times these large animals do become frightened or upset and can become "out-of-control". A single person can be virtually helpless to control these large animals. In short, how can we prove "negligence" when these situations can become totally out of our control even when we have done everything reasonable to avoid these situations?

The law as it stands now makes it very difficult, if not impossible, for clubs, organizations + individuals to put on shows, activities or give riding lessons for fear of retribution and the financial costs of liability insurance to cover these activities. So I am greatly in favor of passing this bill. Thank you.

Signed:

Jackie Heller
Testifier

Self + Delta Saddletramps 4-H club
Representing (Optional)

HC 110 BOX 3208 DELTA Junction AK 99737
Address

907 895-1967
Phone No.

Phone No.

APR 04 2001



Alaska State Legislature

Please enter into the record my testimony to the Judiciary
committee name

committee on HB 111, dated 4/4/2001
bill/subject

The Horse Industry Alliance took a poll and one out of three people said they wanted to ride a horse.

See attached statistics

Signed: *Landra K Shacht*
Testifier

Self as publisher of Alaska Horse Journal
Representing (Optional)

310 N Harriette St, Wasilla, AK 99654
Address

376-4470
Phone No.

HORSE & HORSE SHOW STATISTICS

There are over 150 different breed registries and associations, we have only contacted a few of them. These numbers are just to give you food for thought. Grade horses, if counted, would outnumber registered horses by far.

The U.S. Equestrian Marketing Association estimated Alaska's total horse population at 16,935 for 1996

The U.S. Department of Agriculture estimated 2,400 horses in Alaska. Many wonder why there is such a huge difference in numbers. The major factor is that the U.S. Department of Agriculture only counted horses that were on farms. These figures should come much closer together in 2000 when an actual count of horses in Alaska takes place. We hope to bring you more information on this in the future.

There were 11 American Horse Show Assoc.(AHSA) recognized shows held in 1999. The total number of horses competing at each show were as follows:

(Show	1999 (98)
Colony Days	112 (94)
ADA Spring Festival I	17 (26)
ADA Spring Festival II	17 (n/a)
Midsummer Festival	97 (102)
1st Annual Jr./Amateur	n/a (32)
WCCEC Show	108 (95)
Morgan Open Breed	48 (54)
ADA Big Event	14 (23)
ADA Bigger Event	14 (19)
Ak. State Fair Dressage	18 (15)
Ak. Hunter/Jumper	54 (45)
Ak. State Fair	128 (113)

Palmer Anchorage

(Continued on page 7)

REGISTERED HORSES (cont.)

International Arabian Horse Assoc. (Half-Arabian and Anglo-Arabian Registries) 10805 E. Bethany Dr., Aurora, CO 80014-2605	229 (221)
American Bashkir Curly Registry..... P.O. Box 246, Ely, NV 89301-0246	58 (55)
The American Hanoverian Society, Inc. 4059 Iron Works Pike, Bldg. C, Lexington, KY 40511	4 (2)
Hungarian Horse Assoc. of America HC 71, Box 108, Anselmo, NE 68813	1 (1)
Icelandic Horses (estimated by count)	69 (69)
American Miniature Horse Association, Inc..... 5601 South Interstate 35W, Alvarado, TX 76009	65 (65)
Am. Miniature Horse Registry & Am. Shetland Pony Club... 81-B E. Queenwood, Morton, IL 61550	40 (40)
Missouri Fox Trotting Horse Breed Assoc., Inc..... (This number represents the number of members in Alaska, not horse.) P.O. Box 1027, Ava, MO 65608-1027	0 (7)
American Morgan Horse Assoc., Inc..... P.O. Box 960, Shelburne, VT 05482-0960	350 (351)
National Show Horse Registry 11700 Commonwealth Dr., #200, Louisville, KY 40299-2344	15 (16)
Norwegian Fjord Horse Registry 8539 13 Mile Rd, Marshall, MI 49068	30 (64)
American Paint Horse Assoc..... P.O. Box 961023, Fort Worth, TX 76161-0023	214 (177)
Peruvian Paso Horse Registry of North America 3077 Wiljan Court, Suite A, Santa Rosa, CA 95407-5702	5 (3)
Pinto Horse Assoc. of America, Inc..... 1900 Samuels Ave., Fort Worth, TX 76102-1141	58 (48)
Pony of the Americans Club, Inc..... 5240 Elmwood Ave., Indianapolis, IN 46203-5990	33 (30)
American Quarter Horse Assoc..... P.O. Box 200, Amarillo, TX 79168-0001	1,330 (1,256)
Rocky Mountain Pleasure Horse Assoc..... 6569 East Hwy. 36, Olympia, KY 40358	2 (2)

Apr 04 01 03:07P

The AQHA Shows in Alaska had an average of 165 entries at 18 shows compared with 13 shows held in 1998 with an average of 235 entries.

During 1998 the first American Paint Horse Association recognized show was held. There were a total of 109 entries for the 21 classes. Both APHA and all-breed classes were held. The entries increased to 111 in 1999 with 38 classes being held.

American Saddlebred Horse Assoc., Inc..... 4093 Iron Works Pike, Lexington, KY 40511-8434	35 (36)
American Trakehner Assoc. 1520 W. Church St., Newark, OH 43055	12 (18)
Welsh Pony & Cob Society of American, Inc. (This number reflects the number of members they have, not horses) P.O. Box 1977, Winchester, VA 22604-2977	15 (2)
Paso Fino Horse Assoc. 101 North Collins St., Plant City, FL 33566-3311	1
American Donkey & Mule Society 2901 N. Elm St., Denton, TX 76201-7631	8



Please note: These numbers are estimates only. There has not been an actual count of horses in Alaska. Some of these figures are based on the number of members the association has in Alaska, some horses may be owned by an Alaskan resident and boarded elsewhere, and horses that have moved to Alaska or born in Alaska may not be registered yet.

Horse Show & Rodeo Grounds

Anchorage

William Clark Chamberlin
Equestrian Center
3900 Abbott Road

Chamberlin Equestrian Center is a municipal park and open to riders during the summer season with either a season pass or hourly fee. There are also numerous activities scheduled at the facilities throughout the week as well as on weekends.

The Center has a trail system, a large show arena, dressage arena, western arena, schooling arena, and over 100 stalls. Next to the large arena and western arena is an office/announcers booth. Bleachers are located on both sides of the large arena and there is both paved parking for spectators and non-paved parking for the equestrian event participants.

If you would like more information you can contact the Anchorage Horse Council at: P.O. Box 112195, Anchorage, AK 99511-2195 or you can leave a message for the facility scheduling manager at 522-1522.

Directions: Coming from the South
Take the Glenn Hwy to Diamond Blvd exit, turn right

onto Diamond Blvd. It will curve to the right turning into 88th, then turn left changing to Abbott Rd. You will pass a stop light at Lake Otis Blvd. keep going and watch for the sign and entrance on your right.

Directions: Coming from the North-
Take the Glenn Hwy to Muldoon Rd. After a sweeping right hand turn, Muldoon will change into Tudor Rd., stay on Tudor until you reach Lake Otis Pkwy. Turn left on Lake Otis Pkwy. Going South on Lake Otis Parkway to Abbott - turn left on Abbott Road - watch for signs and the entrance will be on your right.

Chugiak

Peters Creek Horse Park
19300 Old Glenn Hwy

Peters Creek Horse Park is open Tuesday through Friday from 11 a.m. until 10 p.m., Saturday from 11 a.m. until 6 p.m. and at other times for events or by prior arrangement.

Southcentral Horsemen, Inc. operates and maintains Peters Creek Horse Park, a municipal park located within the Loretta French Park, established, in part, to replace the



HB

114

*4/19/01 - Meyer moving adoption as work draft
James sent it now recs + 4/18/01*

22-LS0130V
Luckhaupt
4/16/01

CS FOR HOUSE BILL NO. 114() Am

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

*4/19/01
Luckhaupt*

BY

**Offered:
Referred:**

**Sponsor(s): REPRESENTATIVES KAPSNER, Kookesh, Hayes, Kerttula, Guess, Stevens, Murkowski, Fate,
Dyson, Cissna, Joule, Meyer, Coghill**

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to abuse of inhalants; and relating to minors under the influence of**
2 **alcohol, inhalants, or drugs."**

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

4 *** Section 1. AS 11.76 is amended by adding a new section to read:**

5 **Sec. 11.76.200. Abuse of inhalants. (a)** Under circumstances not otherwise
6 **proscribed under AS 11.71, a person commits the offense of abuse of inhalants if the**
7 **person smells or inhales any inhalant, other than an alcoholic beverage, with the intent**
8 **of causing intoxication, inebriation, excitement, stupefaction, or dulling of the brain or**
9 **nervous system.**

10 **(b)** This section does not apply to the administration of a controlled substance,
11 **drug, or other substance by a practitioner or otherwise in a medical context. In this**
12 **subsection, "administer," "drug," and "practitioner" have the meanings given in**
13 **AS 11.71.900.**

14 **(c)** In this section,

1 (1) "alcoholic beverage" has the meaning given in AS 04.21.080;

2 (2) "inhalant" has the meaning given in AS 47.37.270(10).

3 (d) Abuse of inhalants is a violation. A court ~~may~~ suspend the imposition of
4 sentence, place the defendant on probation under AS 12.55.085, and require the
5 defendant to successfully complete an inhalant abuse treatment program. *Am #1 James*

6 * Sec. 2. AS 47.10.019 is amended to read: *Accepted*

7 **Sec. 47.10.019. Limitations on determinations.** Notwithstanding other
8 provisions of this chapter, the court may not find a minor to be a child in need of aid
9 under this chapter solely on the basis that the child's family is poor, lacks adequate
10 housing, or exhibits a lifestyle that is different from the generally accepted lifestyle
11 standard of the community where the family lives, or that the child has been taken
12 into protective custody and placed with a relative, another person willing to care
13 for the minor, a shelter, a program, or a facility under AS 47.37.165. However,
14 this section may not be construed to prevent a court from finding that a child is in need
15 of aid if the child has been subjected to conduct or conditions described in
16 AS 47.10.011 - 47.10.015.

17 * Sec. 3. AS 47.12.030(b) is amended to read:

18 (b) When a minor is accused of violating a statute specified in this subsection,
19 other than a statute the violation of which is a felony, this chapter and the Alaska
20 Delinquency Rules do not apply and the minor accused of the offense shall be
21 charged, prosecuted, and sentenced in the district court in the same manner as an
22 adult; if a minor is charged, prosecuted, and sentenced for an offense under this
23 subsection, the minor's parent, guardian, or legal custodian shall be present at all
24 proceedings; the provisions of this subsection apply when a minor is accused of
25 violating

26 (1) a traffic statute or regulation, or a traffic ordinance or regulation of
27 a municipality;

28 (2) AS 11.76.105, relating to the possession of tobacco by a person
29 under 19 years of age;

30 (3) a fish and game statute or regulation under AS 16;

31 (4) a parks and recreational facilities statute or regulation under

1 AS 41.21;

2 (5) AS 04.16.050, relating to possession, control, or consumption of
3 alcohol; [AND]

4 (6) a municipal curfew ordinance, whether adopted under
5 AS 29.35.085 or otherwise, unless the municipality provides for enforcement of its
6 ordinance under AS 29.25.070(b) by the municipality; in place of any fine imposed for
7 the violation of a municipal curfew ordinance, the court shall allow a defendant the
8 option of performing community work; the value of the community work, which may
9 not be lower than the amount of the fine, shall be determined under AS 12.55.055(c);
10 in this paragraph, "community work" includes the work described in AS 12.55.055(b)
11 or work that, on the recommendation of the municipal or borough assembly, city
12 council, or traditional village council of the defendant's place of residence, would
13 benefit persons within the municipality or village who are elderly or disabled; and

14 (7) AS 11.76.200, relating to abuse of inhalants.

15 * **Sec. 4.** AS 47.37 is amended by adding a new section to read:

16 **Sec. 47.37.165. Services for minors.** (a) Notwithstanding other provisions
17 of this chapter, a peace officer may take into protective custody a minor who is not
18 otherwise subject to arrest, detention, or protective custody if the peace officer has
19 reasonable cause to believe the minor is

20 (1) under the influence of alcohol, inhalants, or drugs and subject to
21 citation for a violation of AS 04.16.050 or AS 11.76.200; and

22 (2) unwilling or unable to exercise judgment necessary to protect the
23 minor's health and safety as evidenced by the minor's conduct and circumstances.

24 (b) A peace officer taking into protective custody a minor under (a) of this
25 section shall

26 (1) take the minor to the minor's parent or guardian or, if the minor's
27 parent or guardian is unknown or unavailable, shall

28 (A) take the minor to a relative, or to a shelter, program, or
29 facility suitable for the minor; or

30 (B) use the procedures provided in AS 47.37.170 for an
31 intoxicated person if the minor appears to be intoxicated; and

1 (2) use the procedures provided in AS 47.37.170 for a person
2 incapacitated by alcohol, inhalants, or drugs if the minor appears to be incapacitated.

3 (c) A peace officer, relative, other person, or a representative of a shelter,
4 program, or facility shall notify the minor's parent or guardian as soon as possible
5 when the minor is placed with a person or in a setting other than that directed by the
6 parent or guardian of the minor.

7 (d) When a minor has been placed and is required to be released as provided
8 under AS 47.37.170, the minor shall be returned to the minor's parent or guardian or,
9 if the minor's parent or guardian is unknown or unavailable, to a relative or other
10 person willing to care for the minor. If no suitable person or placement can be found
11 for the minor being released, the person or program caring for the minor may notify
12 the department.

13 * Sec. 5. AS 47.37.170(b) is amended to read:

14 (b) A person who appears to be incapacitated by alcohol, inhalants, or drugs
15 in a public place shall be taken into protective custody by a peace officer or a member
16 of the emergency service patrol and immediately brought to an approved public
17 treatment facility, an approved private treatment facility, or another appropriate health
18 facility or service for emergency medical treatment. If a [NO] treatment facility or
19 emergency medical service is not available, a person who appears to be incapacitated
20 by alcohol, inhalants, or drugs in a public place shall be taken to a state or municipal
21 detention facility in the area if that appears necessary for the protection of the person's
22 health or safety.

23 * Sec. 6. AS 47.37.170(d) is amended to read:

24 (d) A person who, after medical examination at an approved private treatment
25 facility, or another appropriate health facility or service for emergency medical
26 treatment, is found to be incapacitated by alcohol, inhalants, or drugs at the time of
27 admission or to have become incapacitated by alcohol, inhalants, or drugs at any time
28 after admission, may not be detained at a facility after the person is no longer
29 incapacitated by alcohol, inhalants, or drugs. A person may not be detained at a
30 facility if the person remains incapacitated by alcohol for more than 48 hours after
31 admission as a patient. A person may consent to remain in the facility as long as the

1 physician in charge considers it appropriate.

2 * **Sec. 7.** AS 47.37.170(f) is amended to read:

3 (f) If a patient is admitted to an approved public treatment facility, family or
4 next of kin shall be promptly notified. If an adult patient who is not incapacitated by
5 alcohol, inhalants, or drugs requests that there be no notification of next of kin, the
6 request shall be granted.

7 * **Sec. 8.** AS 47.37.170(g) is amended to read:

8 (g) A person may not bring an action for damages based on the decision under
9 this section to take or not to take an intoxicated person or a person incapacitated by
10 alcohol, inhalants, or drugs into protective custody, unless the action is for damages
11 caused by gross negligence or intentional misconduct.

12 * **Sec. 9.** AS 47.37.170(i) is amended to read:

13 (i) A person taken to a detention facility under (a) or (b) of this section may be
14 detained only (1) until a treatment facility or emergency medical service is made
15 available, (2) until the person is no longer intoxicated or incapacitated by alcohol,
16 inhalants, or drugs, or (3) for a maximum period of 12 hours, whichever occurs first.
17 A detaining officer or a detention facility official may release a person who is detained
18 under (a) or (b) of this section at any time to the custody of a responsible adult. A
19 peace officer or a member of the emergency service patrol, in detaining a person under
20 (a) or (b) of this section and in taking the person to a treatment facility, an emergency
21 medical service, or a detention facility, is taking the person into protective custody,
22 and the officer or patrol member shall make reasonable efforts to provide for and
23 protect the health and safety of the detainee. In taking a person into protective custody
24 under (a) and (b) of this section, a detaining officer, a member of the emergency
25 service patrol, or a detention facility official may take reasonable steps for self-
26 protection, including a full protective search of the person of a detainee. Protective
27 custody under (a) and (b) of this section does not constitute an arrest and an [NO]
28 entry or other record may not be made to indicate that the person detained has been
29 arrested or charged with a crime, except that a confidential record may be made that is
30 necessary for the administrative purposes of the facility to which the person has been
31 taken or that is necessary for statistical purposes where the person's name may not be

1 disclosed.

2 * **Sec. 10.** AS 47.37.180(a) is amended to read:

3 (a) An intoxicated person who (1) has threatened, attempted to inflict, or
4 inflicted physical harm on another or is likely to inflict physical harm on another
5 unless committed, or (2) is incapacitated by alcohol, inhalants, or drugs, may be
6 committed to an approved public treatment facility for emergency treatment. A
7 refusal to undergo treatment does not constitute evidence of lack of judgment as to the
8 need for treatment.

9 * **Sec. 11.** AS 47.37.190(a) is amended to read:

10 (a) A spouse or guardian, a relative, the certifying physician, or the
11 administrator in charge of an approved public treatment facility may petition the court
12 for a 30-day involuntary commitment order. The petition must allege that the person
13 is an alcoholic or inhalant or drug abuser who (1) has threatened, attempted to inflict,
14 or inflicted physical harm on another and that, unless committed, is likely to inflict
15 physical harm on another; or (2) is incapacitated by alcohol, inhalants, or drugs. A
16 refusal to undergo treatment does not constitute evidence of lack of judgment as to the
17 need for treatment. The petition must be accompanied by a certificate of a licensed
18 physician who has examined the person within two days before submission of the
19 petition, unless the person whose commitment is sought has refused to submit to a
20 medical examination, in which case the fact of refusal must be alleged in the petition.
21 The certificate must set out the physician's findings in support of the allegations of the
22 petition.

23 * **Sec. 12.** AS 47.37.205(a) is amended to read:

24 (a) At any time during a person's 30-day commitment, the director of an
25 approved public facility or approved private facility may file with the court a petition
26 for a 180-day commitment of that person. The petition must include all material
27 required under AS 47.37.190(a) except that references to "30 days" shall be read as
28 "180 days" and must allege that the person continues to be an alcoholic or inhalant or
29 drug abuser who is incapacitated by alcohol, inhalants, or drugs, or who continues to
30 be at risk of serious physical harm or illness.

31 * **Sec. 13.** AS 47.37.235(c) is amended to read:

1 (c) A person who knowingly initiates an involuntary commitment petition
2 under AS 47.37.180 - 47.37.205 without having good cause to believe that the other
3 person is an alcoholic or inhalant or drug abuser and is incapacitated or at risk of
4 serious physical harm or illness if not treated is guilty of a class C felony.

5 * Sec. 14. AS 47.37.270(1) is amended to read:

6 (1) "alcoholic or inhalant or drug abuser" means a person who

7 (A) demonstrates increased tolerance to alcohol, inhalants, or
8 drugs, who suffers from withdrawal when alcohol, inhalants, or drugs are not
9 available, whose habitual lack of self-control concerning the use of alcohol,
10 inhalants, or drugs causes significant hazard to the person's health, and who
11 continues to use alcohol, inhalants, or drugs despite the adverse consequences;
12 or

13 (B) uses inhalants on a more than occasional basis, whose
14 use of inhalants has caused significant adverse consequences to the
15 person's health or whose use of inhalants is likely to cause a significant
16 hazard to the person's life or health, and whose use of inhalants impairs
17 the person's judgment to such a degree that the person continues to use
18 inhalants despite the adverse consequences or hazards;

19 * Sec. 15. AS 47.37.270(10) is amended to read:

20 (10) "hazardous volatile material or substance" or "inhalant"

21 (A) means a material or substance that is readily vaporizable at
22 room temperature and whose vapors or gases, when inhaled,

23 (i) pose an immediate threat to the life or health of the
24 person; or

25 (ii) are likely to have adverse delayed effects on the
26 health of the person;

27 (B) includes, but is not limited to,

28 (i) gasoline;

29 (ii) materials and substances containing petroleum
30 distillates; and

31 (iii) common household materials and substances

1 whose containers bear a notice warning that inhalation of vapors or
2 gases may cause physical harm;

3 * **Sec. 16.** AS 47.37.270(11) is amended to read:

4 (11) "incapacitated by alcohol, inhalants, or drugs" means a person
5 who, as a result of alcohol, inhalants, or drugs, is unconscious or whose judgment is
6 otherwise so impaired that the person (A) is incapable of realizing and making rational
7 decisions with respect to the need for treatment, and (B) is unable to take care of the
8 person's basic safety or personal needs, including food, clothing, shelter, or medical
9 care;

10 * **Sec. 17.** AS 47.37.270(14) is amended to read:

11 (14) "intoxicated person" means a person whose mental or physical
12 functioning is substantially impaired as a result of the use of alcohol, inhalants, or
13 drugs;

Representative Mary Sattler Kapsner

State Capitol • Juneau, Alaska 99801-1182

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

E-Mail: Representative_Mary_Kapsner@legis.state.ak.us



Resources Committee
Fisheries Committee
Regulation Review Committee

House District 39

Lower Kuskokwim and Upper Bristol Bay

Akiachak

Akiak

Aleknagik

Atmautluak

Bethel

Chefornak

Clarks Point

Dillingham

Eek

Ekuk

Ekwook

Goodnews Bay

Kasigluk

Kipnuk

Koliganek

Kongiganak

Kwethluk

Kwigillingok

Manokotak

Napakiaik

Napaskiak

New Stuyahok

Nunapitchuk

Oscarville

Platinum

Portage Creek

Quinhagak

Togiak

Tuntutuliak

Twin Hills

Sponsor Statement

HOUSE BILL NO. 114

"An Act relating to the abuse of Inhalants"

House Bill 114 targets a problem in Alaska that has been neglected for many years. It will provide public safety officials, medical personnel and the courts leverage to place individuals who use and abuse inhalants into rehabilitation. I introduced HB 114 after listening to the concerns of many providers working with young people and to VPSO's who feel they have no tools to intervene when they see someone huffing.

Although the abuse of inhalants is not a new problem, it is reaching rampant proportions throughout Alaska and among youth across the nation. As of January 1999, twenty-four states have passed laws addressing inhalant problems. These laws vary greatly in content, ranging from sending individuals to treatment to criminalizing the behavior.

One of the problems in forging a direction to deal with inhalant abuse is the lack of appropriate treatment facilities. Most substance abuse treatment programs are geared toward problems of alcohol and drugs. Nationally, there are only two residential treatment facilities designed for inhalant abusers, in Texas and South Dakota. Thanks to the efforts of Senators Frank Murkowski and Ted Stevens, the Yukon Kuskokwim Health Corporation in Southwest Alaska received a grant in 1999 to build an inhalant abuse treatment facility. Construction of the facility is presently underway with completion scheduled for August 2001.

A 1998 survey by the YKHC found that during 1996 and 1997, 161 Alaskan sought treatment for inhalant abuse at drug and alcohol programs. During the same period they found 46 people with a history of inhalant abuse died. A 1993 study by the Indian Health Service in Alaska looked at the cost to society if inhalant abusers are left untreated. That study found that a 19 year old with a chronic history of inhalant abuse and significant brain or organic damage will cost society \$1.4 million over a lifetime of treatment, medical care, social services, law enforcement and court costs.

We are fortunate in Alaska to be at a threshold of a new era in addressing inhalant abuse with the coming residential treatment facility. I would hope the legislature takes a pro-active look at ways in which we can raise awareness and address statutory needs to complete a package approach that includes prevention, intervention and treatment.

Thank you for your consideration.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB 114 (HES)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
Title: An act relating to abuse inhalants BRU: Alcohol & Drug Abuse Svcs
Component: Alcohol/Drug Abuse Grants
Sponsor: Rep. Kapsner
Requester: House (JUD) Component Number: 1239

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual	75.0	75.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims	289.0	289.0	289.0	239.0	289.0	289.0
Miscellaneous						
TOTAL OPERATING	364.0	364.0	289.0	289.0	289.0	289.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	364.0	364.0	289.0	289.0	289.0	289.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	364.0	364.0	289.0	289.0	289.0	289.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CS HB 114(HES) mandates treatment for persons convicted of inhalant abuse and that is not available in many areas of the state. ADA estimates that no more than 30 adults and 30 juveniles would be required to enter treatment and have their sentence suspended in any given year. In a survey of persons in substance abuse treatment in August 1998 they found that 175 (31%) of 550 clients had a history of use of inhalants. It is difficult to determine from this how many might be arrested and sent to treatment in a given year. We feel that the numbers above represent a reasonable estimate.

Based on this number we would estimate a cost of 289.0 a year in added treatment costs. This is based on using intensive outpatient level of care and mandating contact with the person for at least one year. On the next page is the calculation for this cost.

Prepared by: Ernest J. Turner, Director Phone (907) 465-2071
Division: Alcoholism and Drug Abuse Date/Time 4/18/01 9:57 AM
Approved by: Elmer A. Lindstrom, Special Assistant Date _____
Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

Contractual Line 300 -

In addition, many programs would need specific training for providing this level of care to adult inhalant abusers. The estimated costs would be \$75.0 for training/year for a two year period to bring someone with appropriate expertise in both adult and adolescent treatment to Alaska, provide training in several rural sites and cover costs of follow-up visits to reinforce training. This would also leave us with trained persons, a developed curriculum and allow for future training to be done by persons already trained in Alaska.

Grants Line 700 -

Phase I Intensive Outpatient 6 weeks

Assessment	\$100
10 Hours intensive outpatient/week @\$45	\$2,700
Two written reports for courts	\$60
Total Phase I costs	\$2,860

Phase II Continuing Care 20/weeks

1 group per week @\$20	\$400
Five care coordination of 30 min.	\$75
Five written reports for courts	\$150
Total Phase II costs	\$625

Phase III Extended Continuing Care 26 weeks

1 group every 2 weeks @\$20	\$260
Six care coordination of 30 min.	\$90
Six written reports for courts	\$180
Total Phase III costs	\$530

Total 12 month costs including indirect costs @20% \$4,818/person

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS HB 114 (HES)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: Relating to abuse of inhalants BRU: Juvenile Justice
 Component: Probation Services
 Sponsor: Representative Kapsner
 Requester: House (JUD) Component Number: 2134

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This version of the bill makes inhalant abuse a violation rather than a misdemeanor and would result in a zero fiscal impact to the Division of Juvenile Justice.

Prepared by: George Buhite Phone 465-2212
 Division: Juvenile Justice Date/Time 4/18/01 9:53 AM
 Approved by: Elmer A. Lindstrom, Special Assistant Date 4/18/01 9:53 AM
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB114(HES)
 () Publish Date: _____
 Dept. Affected: Administration
 BRU: Legal & Advocacy Service
 Component: Public Defender Agency
 Component Number: 1631

Revision Date/Time (Note if correction): _____
 Title: "An Act relating to abuse of inhalants."
 Sponsor: Representative Kapsner
 Requester: (H) Judiciary

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill is not expected to have any fiscal impact on the Public Defender Agency.

Prepared by: Barbara Brink, Director Phone 334-4414
 Division: Public Defender Agency Date/Time April 18, 2001
 Approved by: Jim Duncan, Commissioner Date 4/18/01
 Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

States with Current Inhalant Statutes

Confirmed as of January 1999

Arizona	13-3403—Possession and sale of a vapor releasing substance containing a toxic substance; regulation of sale; exceptions; classification.
Arkansas	5-64-12—Nitrous Oxide-possession, distribution, exemptions.
California	Penal Code. Title 10. Sec 380-1.—Regulates toluene.
Colorado	18-18-412—Abusing toxic vapors-prohibited.
Florida	877.111—Inhalation, ingestion, possession, sale purchase or transfer of harmful chemical substances; penalties.
Hawaii	712-1250—Promoting intoxicating compounds.
Idaho	18-1502B—Possession of inhalants by minors.
Indiana	35-46-6—Glue Sniffing.
Kentucky	217.900—Volatile substance defined-Inhalation unlawful. 217.902—Repackaging volatile substances.
Louisiana	§93.1—Model glue; use of; abuse of toxic vapors; unlawful sales to minors; penalties.
Maine	22§2383-C—Unlawful use or possession of inhalants.
Maryland	27-301—"It is unlawful for any person to deliberately smell or inhale substances or chemicals..."
Massachusetts	270-18— Substances having property off releasing toxic vapors; sale, possession and use; 270-19—Sale of glue or cement to minors; smelling deterrent ingredients; register.
Nebraska	28-419—Inhaling or drinking certain compounds; unlawful. 28-420—Selling and offering for sale certain compounds; use; knowledge of seller; unlawful. 28-421—Act, exceptions. 28-422—Selling or offering for sale certain compounds; register; maintain for one year. 28-423—Inducing or enticing; violation. 28-424—Violations; penalty.

Nevada	454.346—Use or possession with intent to use drug, chemical, poison or organic solvent to induce euphoria or hallucinations unlawful; exception.
New Hampshire	644.5a—Inhaling toxic vapors for effect.
New Jersey	2C:35-10.4—Toxic chemicals.
North Carolina	90-113.8A through 113.14—North Carolina Toxic Vapors Act
Ohio	2925.31—harmful intoxicant 2925.32—nitrous oxide
Oregon	1999 Ch. 229. (HB 3276)—Relating to inhalants; and declaring an emergency.
Rhode Island	Ch. 11-48—Substances releasing toxic vapors.
Texas	Health and Safety Code Chapter 484—Inhalants. Chapter 485—Abusable glues and aerosol paints.
Virginia	18.2-264—Inhaling drugs or other noxious chemical substances or causing, etc., others to do so.
Wisconsin	134.63—Nitrous oxide; restrictions on sales; records of certain sales; labeling. 346.935—Intoxicants in motor vehicles. 941.315—Possession, distribution or delivery of nitrous oxide.

STATE INHALANT LEGISLATION

NOTE: The following information was compiled by the National Conference on State Legislatures and may not be a complete report on legislative efforts.

* indicates state which provides a fine, jail time or treatment option for violation of inhalant laws

State	Law Prohibits	Substances Prohibited	Fine	Jail	Treatment
Arizona	sale, transfer, or offer to sell to minor	vapor releasing substance containing toxic substance	*	*	
California	sale, distribution, dispensation, possession to minor	toluene, materials containing toluene, nitrous oxide	*	*	
Colorado	inhaling certain compounds for intoxication	general prohibition of inhalable compounds			
Connecticut	sale, distribution to minor	nitrous oxide, including "whippet kits"	*		
Georgia	general inhalants; also prosecutes inhalants under DUI law	general prohibition of inhalable compounds	*	*	
Florida	inhaling certain compounds for intoxication	general prohibition of inhalable compounds			
Hawaii	knowingly selling toluol or inhalable compounds to minors	liquid/chemical containing toluol, inhalable substances			
Idaho	possession by minors or use of inhalant for intoxication	aerosol spray, other inhalant	*	*	
Illinois	knowingly sell, offer or deliver to minor	liquid/chemical containing toluol, inhalable substances			
Iowa	sale, distribution or use for the purpose of intoxication	nitrous oxide	*	*	
Kentucky	inhaling certain compounds for intoxication	general prohibition of inhalable compounds			
Louisiana	prohibits sale or transfer of possession to minor	model glue, inhalable toluene substances	*	*	
New Mexico	sale to minors; inhaling or possessing for intoxication	model glue, aerosol spray, & chemicals for intoxication	*	*	*

Maine	inhaling toxic vapors for effect; sale or distribution for purpose of intoxication to minor	general prohibition of inhalable compounds	*	*
Maryland	distribution, instruction to minor; sale or distribution to minor	drugs/noxious substances, including butyl nitrite & butane	*	*
Massachusetts	retailers must require ID for sale and maintain register of minors which is available for police inspection; inhalants are required to have noxious deterrents against intoxication	glue or cement	*	*
Michigan	inhaling certain compounds for intoxication	general prohibition of inhalable compounds		
Minnesota	sale to minors; use and possession for intoxication; businesses must post signs stating it is illegal to sell butane/butane lighters to minors	general inhalable compounds, butane/butane lighters		
Mississippi	inhaling certain compounds for intoxication	general prohibition of inhalable compounds		
Nebraska	nhaling certain compounds for intoxication; retailers must maintain registry of sale	general inhalable compounds		
New Hampshire	inhaling certain compounds for intoxication	toxic vapors, not including anesthesia		*
New Jersey	sell or offer to sell to minors	product containing chlorofluorocarbon that is used in refrigerant		
Nevada	sale or offer to give to minors	aerosol paint, glue, cement containing toluene	*	
North Carolina	inhaling certain compounds for intoxication	general prohibition of inhalable compounds		
North Dakota	inhaling certain compounds for intoxication	general prohibition of inhalable compounds		
Ohio	inhaling certain compounds for intoxication	general prohibition of inhalable compounds		

Oklahoma	inhaling certain compounds for intoxicification	general prohibition of inhalable compounds		
Oregon	inhaling certain compounds for intoxicification	general prohibition of inhalable compounds		
Pennsylvania	inhaling certain compounds for intoxicification	general prohibition of inhalable compounds; butane/canisters		
Rhode Island	inhaling certain compounds for intoxicification	general prohibition of inhalable compounds		
South Carolina	inhaling certain compounds for intoxicification	general prohibition of inhalable compounds		
South Dakota	inhaling certain compounds for intoxicification	general prohibition of inhalable compounds		
Tennessee	inhaling certain compounds for intoxicification	general prohibition of inhalable compounds		
Texas	possess, sell or buy; businesses required to post warning signage & pay license fees designated for prevention fund	abusable volatile chemicals	*	*
Utah	inhaling certain compounds for intoxicification	general prohibition of inhalable compounds		
Vermont	inhaling fumes for effect	certain hazardous inhalants, glues	*	
Virginia	inhaling certain compounds for intoxicification	general prohibition of inhalable compounds		

 HOME PAGE



INHALANTS & POISONS
THEY'RE UNDER YOUR NOSE.

Inhalants FACT SHEET
February 20, 2001

<ul style="list-style-type: none">▼ Inhalants are not drugs. They are toxic chemicals that when used inappropriately, such as by sniffing or "huffing" the vapors, can cause toxic effects, similar to the "high" obtained with drugs.▼ Inhalants can kill the very first time they are used. Death is usually from heart failure or suffocation.▼ Inhalant highs are the result of intensive penetration of toxic chemicals into the brain tissue, where they are capable of causing irreversible damage.▼ In addition to brain, liver, lung and bone marrow damage, there is evidence that chronic abuse of some inhalants causes chromosome and fetal damage.▼ Inhalants are the fourth most abused substance after alcohol, tobacco, and marijuana among high school students.▼ A 1999 nationwide survey of students indicates that 19.5% of eighth graders have used inhalants compared to 22% who have used marijuana/hashish.▼ However, there are Alaska communities where it is reported that up to 90% of the elementary school students have tried or are using inhalants.▼ Chronic inhalant users can suffer severe and permanent brain damage; some die the first time they try it; other possible risks include loss of consciousness and irreversible damage to the liver, kidneys and bone marrow.	<ul style="list-style-type: none">▼ Inhalants are often a "gateway" to the abuse of other illicit substances. 70% of one group of substance abusers, in treatment, indicated they had started with inhalants and 50% of those indicated they would go back to inhalants (primarily gas) if alcohol was not available.▼ More than 1,400 common, useful and legal household, office and classroom products can be used to "get high".▼ Every year kids die from inhalant use, but many parents and educators remain ignorant of this silent epidemic.▼ Because the chemicals in inhalants enter the lungs in such high concentrations, they have a more formidable toxic profile than other types of abused drugs.▼ Inhalant treatment is significantly more complex than most drug abuse treatment. The toxic chemicals remain in the body tissues for extended periods of time, resulting in the need for a four to six week period of detoxification, prior to actual intensive treatment having much positive effect.▼ Youth with a history of chronic inhalant use have strikingly high rates of relapse. Because of the difficult problems associated with inhalant abuse treatment, these youth are often excluded from some drug abuse programs.▼ Chronic inhalant users may suffer withdrawal symptoms, including: hand tremors, chronic headaches, nervousness, anxiety and excessive sweating.
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<i>Signs of Use</i>	<i>Harmful Effects</i>
<p>There is a common link between inhalant abuse and problems in school – failing grades, chronic absences and general apathy. Other signs include the following:</p>	<p>Potential long-term effects of inhalant use include:</p>
<ul style="list-style-type: none"> ▼ Paint or stains on body, clothing, rags or bags ▼ Spots or sores around the mouth ▼ Red or runny eyes or nose ▼ Chemical breath odor ▼ Drunk, dazed or dizzy appearance ▼ Nausea, loss of appetite ▼ Anxiety, excitability, irritability ▼ Restlessness or unexplained moodiness and anger outbursts ▼ Missing abusable household items ▼ Slurred or disoriented speech 	<ul style="list-style-type: none"> ▼ Short-term memory loss ▼ Hearing loss ▼ Limb spasms ▼ Permanent brain damage ▼ Bone marrow damage ▼ Liver and kidney damage ▼ Possible fetal effects similar to fetal alcohol syndrome ▼ Intoxication ▼ Death
<i>Typical Profile of an Inhalant Abuser</i>	<i>RESOURCES</i>
<p>There is no typical profile of an inhalant abuser. Sniffers and huffers are represented by both sexes and all socioeconomic groups throughout the country and Alaska. It is not unusual to see elementary and middle-school age youth involved with inhalant abuse. Although often typified as a “rural” problem, the misuse of inhalable products, besides gas, is, unfortunately, very common in schools and homes throughout both urban and rural Alaska.</p>	<p>Local Substance Abuse Programs</p> <p>Local Community Mental Health Services Programs</p> <p>Yukon-Kuskokwim Health Corporation Inhalant Intervention Project, Bethel, Alaska</p> <ul style="list-style-type: none"> - Jim Henkelman, Statewide Outreach Coordinator - Toll Free: 866-HUFFING [483-3464] - Or: 907-230-6693 <p>National Inhalant Prevention Coalition 1-800-269-4237, or on the World Wide Web at: http://www.inhalants.org</p> <p>National Drug and Alcohol Treatment Referral Service – 1-800-662-HELP</p> <p>National Clearinghouse for Alcohol and Drug Information – 1-800-729-6686 http://www.health.org</p>

Inhalant Abuse in Alaska Fast Facts

- The Division on Alcoholism and Drug Abuse convened an Inhalant Abuse Steering Committee March 12, 1998. The Committee was composed of representatives from, The Alaska Rural and Native Drug and Alcohol Programs (ARANDAP), the Substance Abuse Directors Association (SADA), the Yukon Kuskokwim Health Corporation, the Advisory Board on Alcoholism and Drug Abuse, the Department of Education, and the Division of Alcoholism and Drug Abuse. The Committee submitted its Preliminary Report and Recommendations, October 30, 1998.
- Potential data sources were identified, including The Alaska Trauma Registry, Vital Statistics-Death Certificates, the Youth Risk Behavior Survey, and ADA's Management Information System - Treatment Client Admission data. Additionally, data was sought from the Tribal Courts and the Youth Courts within the State of Alaska. All data sources had limitations.
- The Alaska Trauma Registry collects information on all injuries resulting in admission to an Alaska hospital. Therefore it does not include patients stabilized without hospitalization or those served by clinics. The data goes back to 1991. However, they only began collecting poisoning data as of July 1993. For the time period July 1993 - December 1996 for people under the age of 20, only two cases were found. They were, one 12-year-old sniffing gas in 1993, and one 15-year-old huffing gas with friends in 1995.
- Vital Statistics data from Death Certificates indicated 9 deaths attributable to inhalants in the past ten years. Age at time of death ranged from 12 to 62 years. The major limitation of the Death Certificate data is the manner in which deaths are coded. For example if someone inhaled gasoline while in a boat, got high, fell overboard, and drowned, it would be coded as a drowning accident.
- The Youth Risk Behavior Survey (YRBS) for 1995 indicates that 22.2% of high school students indicated that they had ever sniffed glue, breathed the contents of spray cans or inhaled paints or sprays to get high, as compared to 20.3% nationally. Middle School (7-8th grade) students surveyed indicated that 19.6% of students reported ever using inhalants.
- Client Treatment Admission data for the past six years was reviewed for primary, secondary, and tertiary problem. The data for FY 98 indicates that 46 admissions had inhalants as a primary problem, 18 as a secondary problem, and 34 as a tertiary problem upon admission to treatment. The major limitation of this Treatment Admission data is that up until July 1998 only the Primary Problem data field was required. Up until that time a secondary or tertiary problem with inhalants might not have been indicated.
- To supplement the existing data, the Steering Committee designed two separate survey instruments, one for youth and one for adults. The protocol called for the survey to be

distributed to all division funded treatment programs for administration to all active clients during one seven day period. The week selected (by convenience) was August 9-15, 1998. This was a "snap shot" sample, which can be compared to data gathered in the future. From the distribution of the surveys, 550 adult and 91 youth responses were captured, representing better than 80% of active clients during the survey week.

- Of the 550 adults responding (age 18 and above), 175 (31.8%) said they had used an inhalant at some time. Of those who had said yes to use, 16 (9.1%) reported having used an inhalant within the past 12 months. The youngest reported age of use was four and the oldest reported age of use was 61. The average number of years using an inhalant reported was 5.8, with a range of using from less than 1 year to using inhalants for 28 years. Also, of the adults who reported having used an inhalant (175) at some point, only 41 (23.4%) reported using only one or two times. Leaving 134 (76.6%) with a reported history of use beyond experimentation.
- Of the 91 youth (age 17 and below) responding, 48 (52.7%) said they had used an inhalant at some time. Of those who had said yes to use, 29 (60.4%) reported having used an inhalant within the past 12 months. The youngest reported age of use was eight and the oldest reported age of use was 17. Of all those who responded to the survey (whether answering yes or no to use) 67.8% reported having friends who used inhalants, and 32.2% reported having friends who were experiencing problems related to inhalant use.
- July 1, 1989 the powers and duties of the Division of Alcoholism and Drug Abuse were extended to include programs and activities relating to the misuse of hazardous volatile substances by inhalant abusers. This was done through an amendment to Title 47. Since that time, the Division has funded three public information campaigns designed specifically to educate parents and children about the harmful effects of inhalants.
- The Division does not fund any treatment programs that address inhalant abusers only. Several of the treatment programs however, have internal expertise for this population and address these client needs in the larger milieu. There are only two specialized treatment programs in the nation, both of which were initially federally funded as demonstration projects. One is for adults (Texas) and the other is for adolescents (South Dakota).
- The Steering Committee had four recommendations addressing the need for good data upon which to make better-informed decisions.

The prevention recommendations included:

- In partnership with the Department of Education, local school districts, the Alaska Association of School Boards, SADA, and ARANDAP support the implementation of age appropriate education and skill building curricula for preschool and elementary students.
- Support initiatives that educate parents and enhance local communities' capacity for local problem solving.

- Develop and distribute educational materials for merchants, including strategies on product placement of commonly abused products.
- In partnership with the Department of Public Safety, support the implementation of training for Village Public Safety Officer's and Alaska State Troopers on the signs and symptoms of inhalant use and on reporting of use in investigations where not currently included, such as accidents and drowning.

In regard to treatment there were two recommendations:

- Support the development and dissemination of in-service training materials on inhalants and inhalant abuse for clinical and diagnostic use at the regional and local program level.
- Enhance the knowledge and skill level of current practitioners (both prevention and treatment) through the inclusion of inhalant abuse training at statewide training events.

The Steering Committee is scheduled to reconvene in the Spring of 2000 to review the recommendations and progress made.



CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

OFFICE OF THE MAYOR

Telephone: (907) 586-5240;
Facsimile: (907) 586-5385
Sally Smith@ci.juneau.ak.us

April 9, 2001

Honorable Mary Kapsner
Representative
Alaska State Legislature
State Capitol, Rm. 424
Juneau, AK 99801-1182

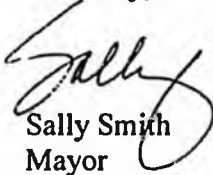
Subject: Resolution of the City & Borough of Juneau, Serial No. 2091
A Resolution Supporting Adoption by the Alaska Legislature of Inhalant Abuse
Legislation

Dear Representative Kapsner:

Enclosed is a copy of a resolution adopted at the April 2, 2001 meeting of the City and Borough of Juneau, Alaska Assembly, in support of House Bill 114, addressing the problem of inhalant abuse in Alaska.

The City and Borough of Juneau unanimously supports the adoption and enactment of House Bill 114, and appreciates your support of the Legislature's leadership on this issue. I would be happy to discuss this with you at your convenience.

Sincerely,


Sally Smith
Mayor

cc: Honorable Kim Elton, Senator
Honorable Bill Hudson, Representative
Honorable Beth Kerttula, Representative
Jim Ayers, Chief of Staff, Governor's Office
Clark Gruening

Presented by: Assemblymember
Wheeler
Introduced: 04/02/2001
Drafted by: J.R. Corso

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2091

**A Resolution Supporting Adoption by the Alaska Legislature of
Inhalant Abuse Legislation.**

WHEREAS, a national survey of 45,000 teenagers has found that for students after the eighth grade, inhalant abuse is the fourth most common intoxicant, ranking after alcohol, tobacco, and marijuana, and

WHEREAS, the percentage of youths who use marijuana increases as they age, from 16% of eighth graders to 38% of twelfth graders, and

WHEREAS the pattern is reversed for inhalants, which are used by 10% of eighth graders but only 6% of twelfth graders, making inhalants the only class of drugs which younger children are using more heavily than older ones, and

WHEREAS, The Center for Disease Control reports that 27% of troubled youth abuse inhalants, and more than half of these do so at least once a month, and

WHEREAS, inhalants are abused by Juneau youths in all cultural and economic groups, and

WHEREAS, the compounds inhaled by these children include cooking spray, disinfectants, furniture polish and wax, hair spray, nail polish remover, oven cleaner, spray deodorant, butane, gasoline, glues and adhesives, paint and paint thinner and rust remover, and

WHEREAS, ingestion of these chemicals can dissolve fatty tissues, arrest breathing, cause cardiac seizure and irreversibly damage the brain, liver, kidneys, and other organs, and

WHEREAS, the risk of sudden death, known as "sudden sniffing death" or SSD is particularly acute with this form of substance abuse, and

WHEREAS, prevention of inhalant abuse requires involved parents, alert educators, and a society that shows its children there is more to life than getting by and getting high, and

WHEREAS, legislative action is an essential part of the solution, with at least 37 states having enacted legislation to address the problem of inhalant abuse, and

WHEREAS, the Alaska Legislature is considering adoption of inhalant abuse legislation, presently before the House as HB 114, and

WHEREAS, the Assembly proposes to defer action on any municipal inhalant policy until the legislature has exercised its leadership on this issue;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. The Assembly endorses HB 114 and respectfully urges the Alaska Legislature to enact it and the Governor of Alaska to enforce it in a manner that will preserve for municipalities an opportunity to implement solutions for local aspects of the inhalant abuse problem.

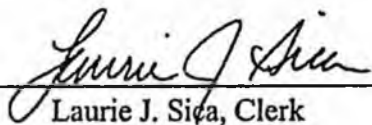
Section 2. Effective Date. This resolution shall be effective immediately upon adoption.

Adopted this 2nd day of April, 2001.



Sally Smith Mayor

Attest:



Laurie J. Sica, Clerk



April 4, 2001

The Honorable Mary Kapsner
Room #424
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Kapsner:

On behalf of all Alaskan School Districts, thank you for initiating HB 114. Because of your commitment to the health and safety of Alaska's children, you addressed the statutory need for protective custody and admission to an approved treatment facility for those persons who appear to be incapacitated by alcohol, inhalants, or other drugs.

As you are well aware, drug related problems, including inhalant, alcohol, tobacco, and other drug use, are major debilitating influences on the lives of youth in Alaska. They have also proven to be the primary contributing factor in the alarming number of youth suicides in the State.

Too many children are harmed each year by inhalant use, and inhalants are the third most abused substance among those in their early teens. Furthermore, after some effective prevention in the 1980's, studies show that inhalant abuse is on the rise.

To address some of the manifestations of these problems, law enforcement officials and other professionals must be given the power to protect the health and safety of our children. In our opinion, HB 114 does just that. This bill represents a straightforward approach to providing the necessary tools for intervention and treatment of abuse of all types by our young people. Thank you for your advocacy on behalf of Alaska's children.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Rose", is written over the "Sincerely," line.

Carl Rose
Executive Director
Association of Alaska School Boards



AASB POSITION PAPER HB 114, AN ACT RELATING TO ABUSE OF INHALANTS

While there are laws concerning alcohol and other drug use, there is to date, nothing in Alaska statute which addresses the issue of inhalant abuse.

AASB believes that we must acknowledge the seriousness of the inhalant abuse problem among our youth, and equip our law enforcement with the ability to take action. Although the problem of inhalant abuse is widespread, there are no laws to restrict inhaling dangerous substances and there are no residential treatment facilities within the State for those young people who are addicted to inhalants.

AASB supports legislation that would:

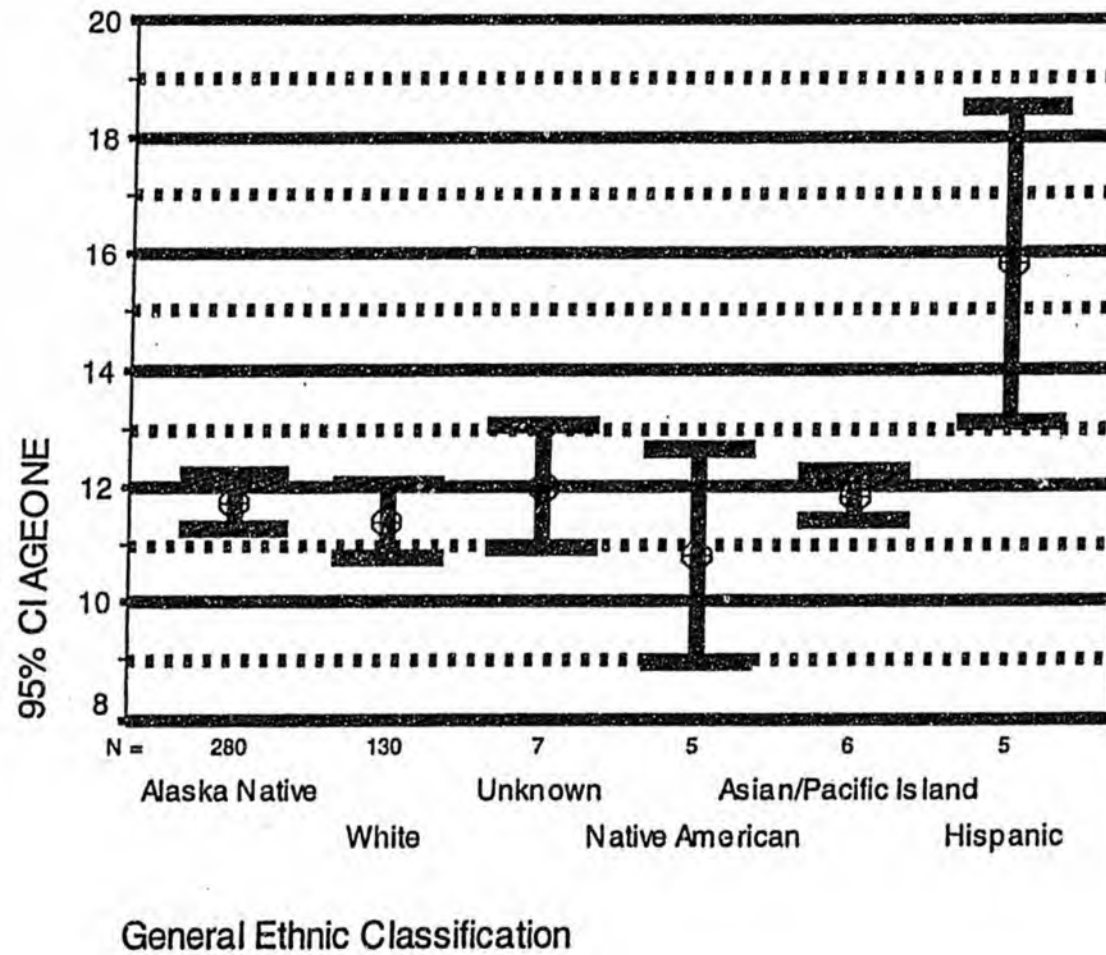
- Enable law enforcement officials to place persons who appear to be incapacitated by inhalants in protective custody;
- Compel admission to an approved treatment facility;
- Provide for a 30-day involuntary commitment of an inhalant abuser to an approved treatment facility, if said person has threatened, attempted to inflict, is likely to inflict, or has inflicted harm on another person, or is incapacitated by inhalants;
- Provide for at least a 180-day involuntary commitment of the inhalant abuser by the director of the treatment facility during the initial 30-day commitment if the director deems the extended treatment necessary.

AASB supports the efforts of the legislature to address the problem of inhalant abuse among the youth of Alaska. With this legislation, we can provide a basic level of protection to our young people and provide treatment for those who are in need.

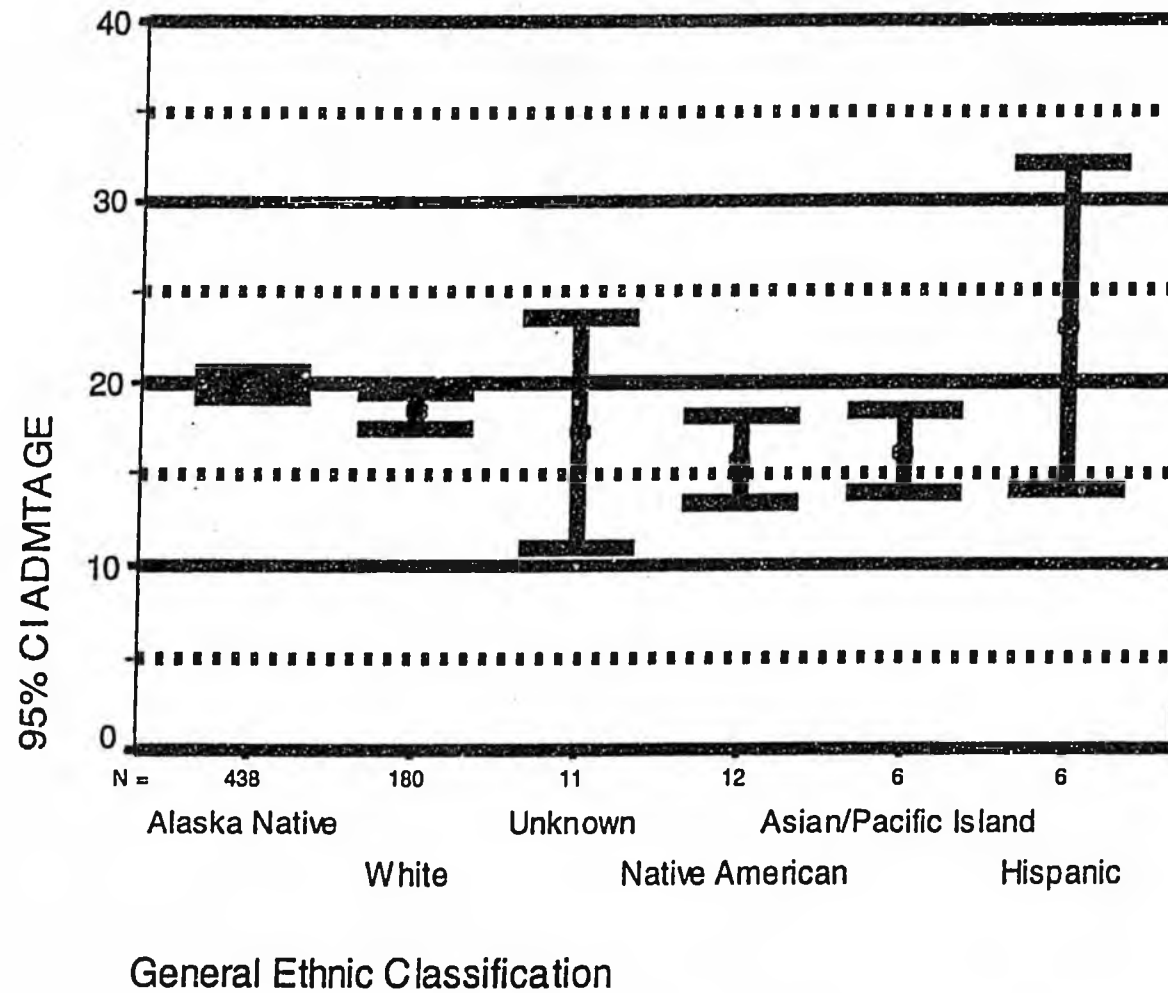
It is not enough to stop the pain and repair the damage that is caused by inhalants. What we must do is strive to prevent all kids from ever beginning to use inhalants in the first place. The book, *Helping Kids Succeed-Alaskan Style*, shows what we each can do to protect the health and safety of all our children and youth. The graphs on pages four and five of the book, show that the more assets a youth has, the less likely she/he is to use inhalants (and participate in other risk behaviors).

It is far easier to start building assets than it is to stop inhalant use. To this end, Alaskans have identified common sense and practical things that each of us can do to help all our kids be successful and healthy. How can the Alaska Legislature use its power and voice to ensure that Alaskan youth have the assets necessary to be healthy, strong, and successful?

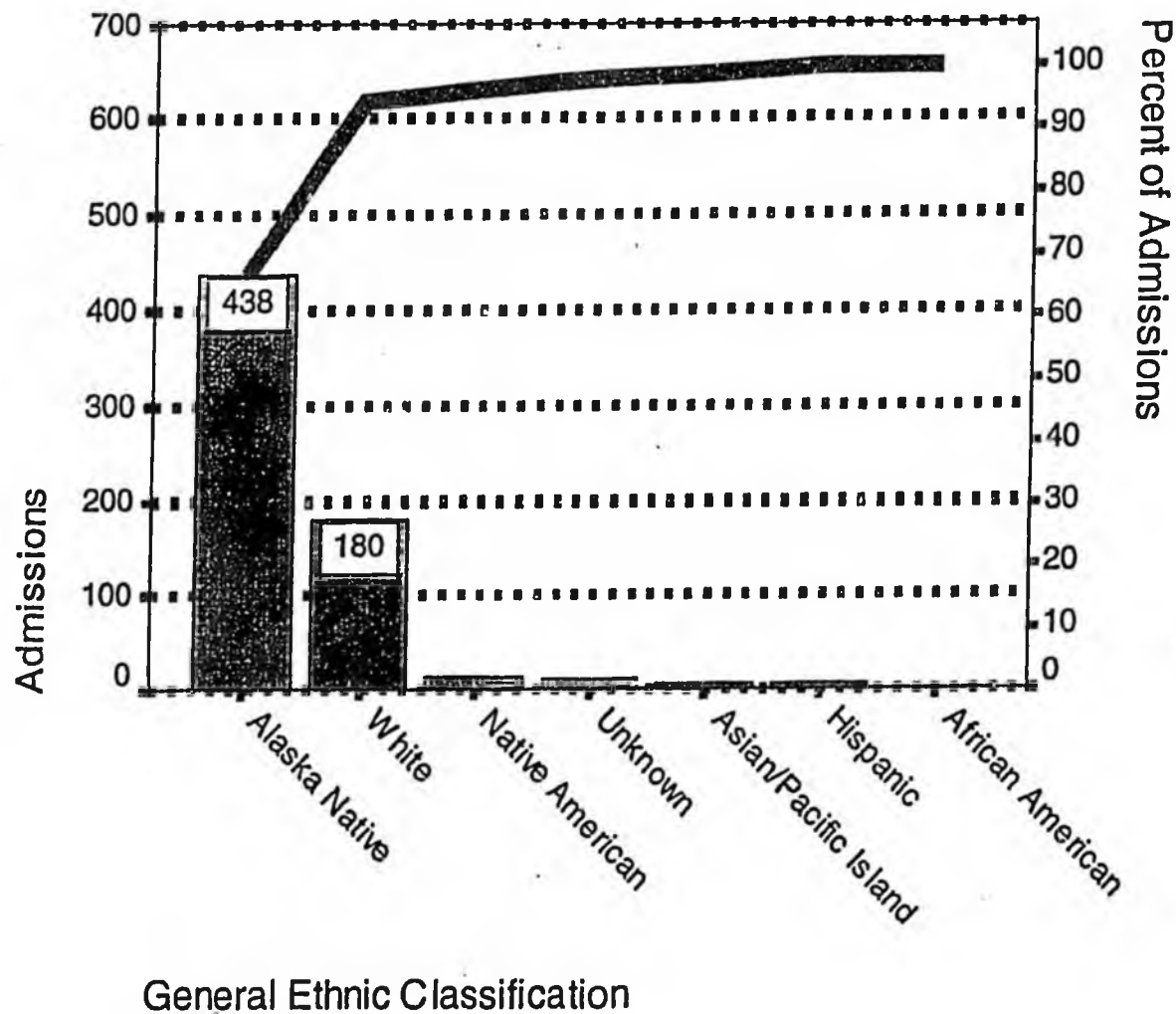
Inhalant Abuse: Average Age of First Use - Alaska MIS 1988-1999



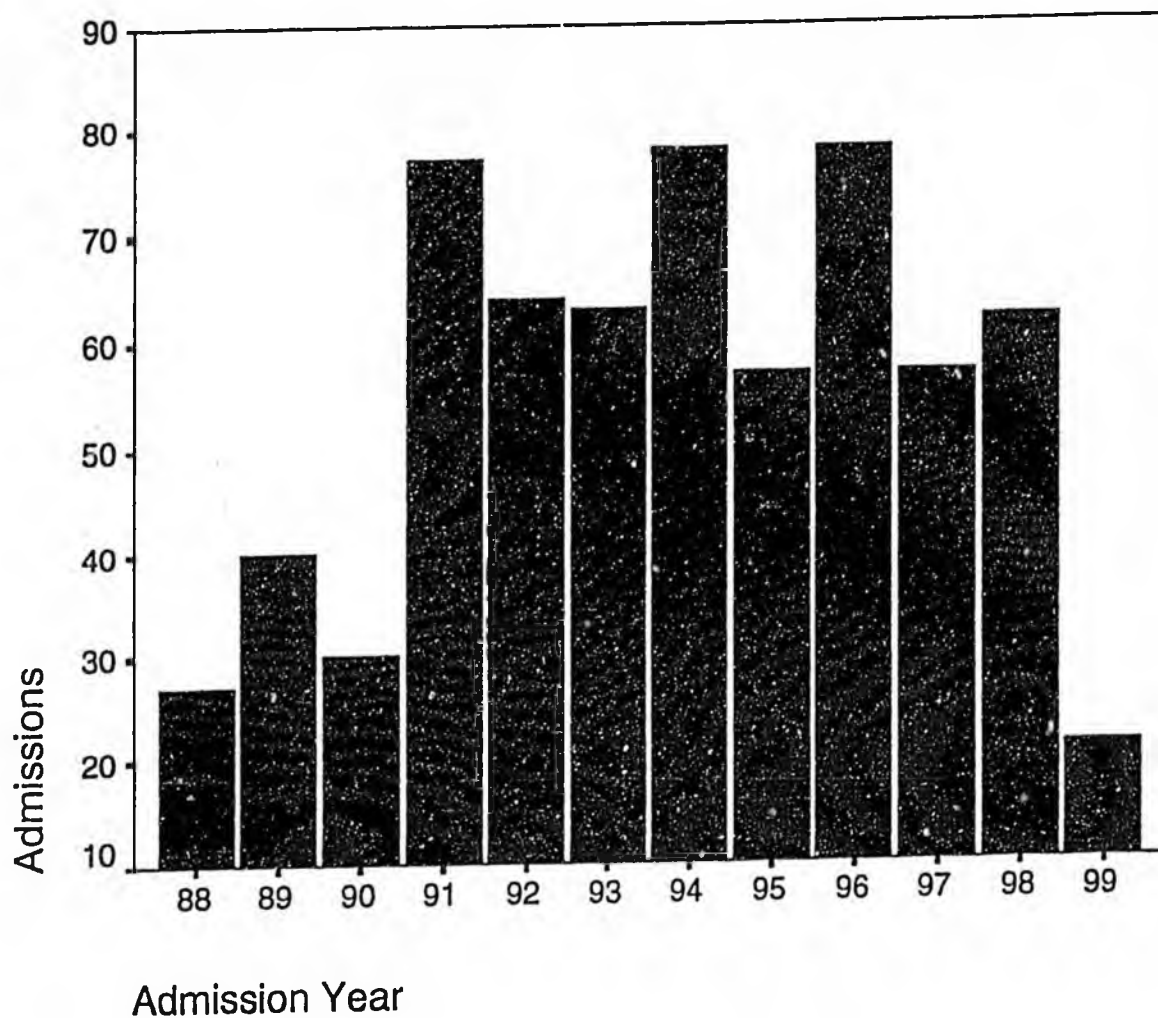
Inhalant Abuse: Average Age at Admission - Alaska MIS 1988-1999



Inhalant Abuse: Frequency of Admissions - Alaska MIS 1988-1999



Inhalant Abuse: Total Admissions Per Year - Alaska MIS 1998-1999



STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

January 31, 2002

Representative Norman Rokeberg
State Capitol
Juneau, AK 99801-1182

Dear Representative Rokeberg:

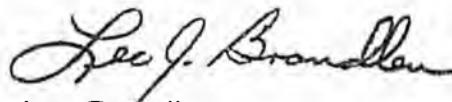
On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you as the chair of the House Judiciary Committee for introducing the CS for House Bill 114 (22-LS0130L) relating to the abuse of inhalants and to minors under the influence of alcohol, inhalants, or drugs.

The APOA State Board of Directors recently met and after discussing proposed legislation, decided to unanimously support this bill.

Inhalant abuse is a very serious problem in Alaska, particularly amongst school-age children. The long-term effects of inhalant, alcohol and/or drug abuse by school-age children can be devastating. We believe that this proposed legislation helps law enforcement and social service agencies help these children in need.

Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,



Leo Brandlen
State President

cc: House Finance Co-Chairs, Reps. Eldon Mulder and Bill Williams
Reps. Mary Kapsner

Albert Kookesh
Joe Hayes
Beth Kerttula
Gretchen Guess
Gary Stevens
Lisa Murkowski

Bud Fate
Fred Dyson
Sharon Cissna
Reggie Joule
Kevin Meyer
John Coghill Jr.

Business Manager

Joseph Young
Anchorage

Board of Directors

Leo Brandlen, President
Anchorage

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Kenai
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Anchorage
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Lonnie Hatman, Member
Fairbanks
Pres. Farthest North Chapter

Jerry Nankervis, Member
Juneau
Pres. Capital City Chapter

Andrea Jacobson, Member
Ketchikan
Pres. First City Chapter

James See, Member
Craig
Pres. Prince of Wales Chapter

John Lucking Jr., Member
Unalaska
Pres. Aleutian Islands Chapter

Thecla Lalonde, Member
Wrangell
Pres. Wrangell Chapter

HB

119

ALASKA STATE LEGISLATURE
House of Representatives

Committee Assignments:

Judiciary Committee, Chairman
Labor & Commerce Committee, Member
Legislative Council, Member
Special Committees:
Economic Development, Member



Interim:

716 West 4th Avenue, Suite 350
Anchorage, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION:

State Capitol
PHONE: (907) 465-4968
FAX: (907) 465-2040

REPRESENTATIVE NORMAN ROKEBERG

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

FAX COVER SHEET

DATE: 2.26.01

TO: Legal Services

FAX: 2029 VOICE: 2450

RE: 22-LS0528/F

MESSAGE: Please create a committee substitute

for House Judiciary with the following amendments.

These amendments have been adopted, so

we just need a final.

Thanks.

Heather x4990

TOTAL NUMBER OF PAGES SENT, INCLUDING COVER SHEET: 2

#1

Suggested Amendments to CSHB 119 and CSSB 84:

clarity purposes of section

Page 3, line 15:

Following "utility" insert "or the state"

Page 3, line 18:

Following "utility" insert "or the state"

goes with subsection (4) pg. 3, line 24

Page 3, line 30:

Following "(5)" insert "in addition to the powers of eminent domain in AS 42.05.631,"

Page 3, line 31:

Following "materials" insert "within the boundaries of the power project purchased by the agency from the Alaska Energy Authority"

Page 4, line 1:

Following "agency" delete "within the boundaries of the power project purchased by the agency from the Alaska Energy Authority"

This language has been suggested by the Attorney General's office.



Alaska State Legislature

*Representative Peggy Wilson
Putting Alaska's Families First*

SPONSOR STATEMENT HB 119

Last spring, the Legislature passed truly historic legislation creating the Power Cost Equalization Endowment and authorizing the sale of the Four Dam Pool Projects to the local utilities and communities. The PCE Endowment was funded by an appropriation from the Constitutional Budget Reserve and from proceeds from the sale of the Four Dam Pool projects. These bills (HB 446 & HB 447) were signed into law by Governor Knowles last May.

The Four Dam Pool Utilities and the State have been diligently working to complete this complex transaction by December 31, 2001. At closing, the proceeds from this sale will be deposited into the Power Cost Equalization Endowment.

The Four Dam Pool communities and utilities have created a Joint Action Agency (JAA), which will become the owners of the Four Dam Pool Projects. However, during the legal review of this new organization, a variety of technical issues were raised concerning the tax and regulatory status of the JAA, the powers of the JAA, and the relationship between the JAA and its member utilities.

HB 119 will resolve these issues so that the sale of the Four Dam Pool projects can be completed as envisioned and the Power Cost Equalization Endowment can be fully funded.

More specifically HB 119 addresses the following four issues.

1. Federal Tax Status of Joint Action Agency

Although the Joint Action Agency was formed by specific authorizing legislation, because its members are both municipal and cooperative utilities its characterization for federal tax purposes is uncertain. Obtaining favorable federal tax status as a "government entity" is essential for the Joint Action Agency to operate on a tax-exempt basis and have the ability to issue tax-exempt bonds and to provide maximum flexibility to allow local ownership of the individual projects in the future. A key factor relied on by the Internal

Revenue Service in determining whether an entity has governmental status is the nature and scope of the entity's condemnation or eminent domain powers. Currently the Joint Action Agency legislation is silent as to the Joint Action Agency's condemnation powers. To achieve the necessary federal tax treatment for the Joint Action Agency, Section 6 of HB119 amends AS 42.45.310 to specifically grant to the Joint Action Agency the eminent domain powers granted to the State and municipalities in order to carry out the Joint Action Agency's authorized purposes. This expanded condemnation power may be exercised, however, only within the boundaries of the power projects the Joint Action Agency purchases from the State.

2. State Tax Status of Joint Action Agency

The Joint Action Agency's tax status under Alaska law is a central factor to determining the federal tax status of the Joint Action Agency. State law currently provides that the Joint action Agency is "subject to state and local taxes to the extent any of the public utilities forming the agency is subject to that particular tax." The impact of this provision and the tax status of the Joint Action Agency under Alaska law are not clear, as the JAA is comprised of both cooperative member utilities and municipal member utilities. Section 9 of HB119 amends AS 42.45.310 to exempt the Joint action Agency from all forms of state and local taxation, other than amounts that are payable under the electric cooperative tax as a result of retail power sales by the Joint Action Agency.

3. Potential Liability of Member Utilities for Claims against the JAA

State law currently provides that the Joint Action Agency will have "a separate and distinct legal existence from the public utilities" that form the Joint Action Agency. However neither AS 42.45.300 or AS 42.45.310 includes language that specifically insulates the public utilities that form the JAA from liability for claims against the Joint Action Agency. Given reported Alaska case law on shareholder liability and the absence of specific protections in the Joint Action Agency statute, there is some risk that claims against the JAA might also be asserted against the member utilities. To ensure that the Joint Action Agency is treated for all purposes as a separate and distinct legal entity from its member utilities, Section 6 of HB 119 amends AS 42.45.310 to include provisions similar to those contained in other Alaska statutes to expressly protect the member utilities from any liabilities of the Joint Action Agency. Section 13 of HB 119 also adds a new section AS 42.45.320 to the JAA statute to limit the individual liability of directors and officers of the Joint Action Agency, consistent with other Alaska statutory provisions.

4. Exemption from Regulatory Commission of Alaska Regulation

Because the JAA is granted the powers of a "public utility" under AS 42.05, it is not entirely clear whether the JAA is fully or only partially exempt from regulation by the RCA under AS 42.05. To create consistency within AS 42.05 with respect to the regulation of the Joint Action Agency, Sections 1, 2, 3, and 4 of HB 119 make conforming amendments to existing statutory provisions and add a new subsection (o) to

AS 42.05.711 to provide that the Joint Action Agency is exempt from all RCA regulation with respect to its ownership and operation of and the power sales from the existing Four Dam Pool projects. This general regulatory exemption is, however, limited in duration and stays in place only until such time as the indebtedness incurred by the Joint Action Agency to the State in connection with the acquisition of the projects is retired.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 119(L&C)
 () Publish Date: _____

Revision Date/Time (Note if correction): 02/21/2001 8:45 a.m. Dept. Affected: DCED
 Title: Public Utility Joint Action Agencies BRU: RCA
 Component: RCA
 Sponsor: Representative Wilson
 Requester: House Labor & Commerce Component Number: 2417

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

POSITIONS	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The proposed legislation will not cause any increase to the agency's budget.

Prepared by: G. Nanette Thompson Phone 907-276-6222
 Division: Chair, RCA Date/Time 02/21/2001 8:45 a.m.
 Approved by: Commissioner Deborah B. Sedwick Date 2/21/2001
 Agency: Department of Community & Economic Development

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 119(L&C)
 () Publish Date: _____

Revision Date/Time (Note if correction): 02/21/2001 8:45 a.m. Dept. Affected: DCED
 Title: Public Utility Joint Action Agencies BRU: AEA
 Component: AIDEA O&M
 Sponsor: Representative Wilson
 Requester: House Labor & Commerce Component Number: 1948

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill provides amendments to 2000 legislation that authorized the sale of the Four Dam Pool projects. The bill will have no fiscal impact on AIDEA or AEA.

Prepared by: Robert G. Poe, Jr., Executive Director Phone 907-269-3000
 Division: AIDEA & AEA Date/Time 02/21/2001 8:45 a.m.
 Approved by: Commissioner Deborah B. Sedwick Date 2/21/2001
 Agency: Department of Community & Economic Development

For distribution information, call the Governor's Legislative Office

ATERWYNNE LLP
ATTORNEYS AT LAW

Suite 1800
222 S.W. Columbia
Portland, OR 97201-6618
503-226-1191
Fax 503-226-0079

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DATE: February 23, 2001

TO: Laura Glazer
COMPANY: Senator Pete Kelly's Office
CITY/STATE: Anchorage, AK

FAX NUMBER: 1-907-465-5241

FROM: Michael E. Schrader

DOCUMENT: Section by Section Summary of HB 119 and SB 84
Four Dam Pool Power Agency

PAGES: 3 (including cover)

AN ORIGINAL OF THIS FAX WILL ___ WILL NOT XX FOLLOW.

Forwarded to you at the request of Bob Evans.

P O R T L A N D
S E A T T L E

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Section 1 amends the state municipal code to provide that joint action agencies established under AS 42.45.310 are not subject to municipal regulation as utilities even though they are exempt from regulation under AS 42.05.

Section 3 makes a conforming amendment to AS 42.05.711(1) by adding a reference to the new subsection (o) enacted in Section 4.

Section 4 adds a new subsection (o) to AS 42.05.711 to provide that joint action agencies established under AS 42.45.310 are exempt from RCA regulation with respect to the ownership, operation and power sales from a power project purchased from the AEA. The exemption from RCA regulation is, however, limited in duration and stays in place only so long as the joint action agency's wholesale power sales agreement is not subject to RCA review under AS 42.05.431. **Section 2** makes a conforming amendment to AS 42.05.711(b) by adding a reference to new subsection (o) in AS 42.05.711.

Section 5 is a clerical amendment to correct an omission in last year's bill.

Section 6 amends AS 42.45.310(c) to provide that debts, obligations and liabilities of a joint action agency are not the responsibility of any of the public utilities that form the agency or the State. The amendment also provides that a joint action agency has the powers of a public utility and the immunities of a public utility. New paragraph (c)(5) provides that a joint action agency may, in addition to its condemnation powers as a public utility under AS 42.05.631, exercise the power of eminent domain and a declaration of taking under AS 09.55.240 to 09.55.460 to acquire land or materials to carry out the authorized purposes of the agency within the boundaries of the power project purchased from the State.

Section 7 amends AS 42.45.310(d) to require that the board of directors of a joint action agency file the joint action agency agreement with the Department of Community and Economic Development.

Section 8 amends AS 42.45.310(e) to be consistent with other changes made in the bill.

Section 9 repeals and reenacts AS 42.45.310(f) to address the tax-exempt status of bonds and other obligations of the joint action agency and of real and personal property and the assets, income and receipts of a joint action agency. Provision, as reenacted, provides exemption to joint action agency from all State and local taxation other than amounts payable under electric cooperatives tax (AS 10.25.540 to 10.25.570) based on retail power sales by agency.

Section 10 makes editorial changes to AS 42.45.310(g), including changing reference from "financial aid" to "financial assistance."

Section 11 amends AS 42.45.310(h) to remove the limitation that a joint action agency is a political subdivision only for purposes of AS 38.05.810.

Section 12 adds a definition of "agency agreement" or "agreement" to AS 42.45.310.

Section 13 adds a new section concerning liability, indemnification and insurance for officers, directors, employees and agents of joint action agencies.

Subsection (a) provides that a protected person (defined as a director, officer, employee or agent of a joint action agency in (d)(4) of this section) is not individually liable for conduct within the scope of the person's duties unless the person's belief that the conduct was in the agency's best interest is unreasonable.

Subsection (b) requires the agency to indemnify a protected person who is a party to a contested matter arising out of the person's duties for the joint action agency unless the person's belief that the conduct was in the agency's best interest is unreasonable.

Subsection (c) permits a joint action agency to purchase liability insurance.

Subsection (d) defines "agency," "conduct," "contested matter," "expenses" and "protected person."

ATERWYNNE
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FEB 21 2001

Page 1

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**BACKGROUND AND SUMMARY
RELATED TO HOUSE BILL 119 AND SENATE BILL 84 CONCERNING
FOUR DAM POOL POWER AGENCY**

Background

Alaska House Bill 446, signed in to law by Governor Knowles in May, 2000 (ch 60, SLA 2000, effective July 1, 2000), created the Power Cost Endowment and authorized the sale of the Four Dam Pool projects to a joint action agency ("JAA") to be funded by the utilities that purchase power from the projects (the "Member Utilities"). Upon enactment of House Bill 446, the representatives to the Four Dam Pool's Project Management Committee ("PMC"), Ater Wynne LLP as counsel to PMC, counsel to the individual utilities and other professional advisors to the PMC commenced work on a number of fronts and began working with representatives of the Alaska Energy Authority and others on behalf of the State of Alaska to complete the sale and transfer of the Four Dam Pool Projects and the funding of the PCE endowment by the December 31, 2001 closing date.

House Bill 446 included provisions which created a new section AS 42.45.310 in Article 6, Chapter 45 of Title 42 of the Alaska Statutes. This new section supplemented an existing section AS 42.45.300 (which allowed public utilities to form joint action agencies) to allow the Four Dam Pool purchasing utilities to form a JAA to acquire, own, operate and manage the Four Dam Pool projects. The five Member Utilities have, pursuant to these statutory provisions, now entered into a JAA Agreement creating the "Four Dam Pool Power Agency." During the negotiation of the terms of the JAA Agreement among the Member Utilities a variety of issues were raised concerning the legal and tax status of the JAA, the powers of the JAA and the relationship between the JAA and its Member Utilities. While most of these issues were addressed by specific provisions in the JAA Agreement, others resulted from the absence of specific legal authority or general uncertainty under Alaska or federal law and, therefore, could not be resolved by agreement among the Member Utilities. These remaining legal issues are addressed by the provisions contained in House Bill 119 and Senate Bill 84 (collectively referred to herein as the "JAA Bill").

The House Labor and Commerce Committee held an initial hearing on the JAA Bill on Monday, February 12th. A number of issues were raised and concerns were expressed regarding certain provisions of the JAA Bill at the hearing, including the absence of testimony in support of the JAA Bill by the AEA or the Regulatory Commission of Alaska ("RCA"). Following the February 12th Committee hearing, members of the Labor and Commerce Committee, representatives of the PMC, the AEA, the RCA, the Attorney General's Office and Legislative Counsel have worked together to address and resolve issues raised by the initial form of the JAA Bill, resulting in a revised JAA Bill in the form of the attached Committee Substitute. It is the understanding of the PMC and its representatives that this revised JAA Bill is supported by the AEA, the RCA and the Attorney General's Office.

The corrections and additions to existing law contained in the JAA Bill are intended to clarify the federal and state tax status of the JAA, ensure that the JAA is a limited liability entity and confirm the nature

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P O R T L A N D
S E A T T L E

FEB 21 2001

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ATERWYNNE_{LL}

and extent of the RCA's authority to regulate the JAA. A detailed explanation of these corrections, additions and issues follows:

Federal Tax Status of JAA

Although the JAA has been formed pursuant to specific authorizing legislation, because the Member Utilities are both municipal and cooperative utilities its characterization for federal tax purposes is uncertain. Obtaining favorable federal tax status as a "governmental entity" is essential for the JAA to operate on a tax-exempt basis and to provide maximum flexibility to allow local ownership of the individual projects in the future.

A review of the business objectives of the Member Utilities is important to understanding why the JAA's attainment of governmental status is important. The business objectives of the Member Utilities are as follows:

1. Avoidance of a JAA level tax on income of the JAA derived from operation of the Four Dam Pool projects.
2. Avoidance of a JAA level tax on income of the JAA derived from sale of any of the Four Dam Pool facilities.
3. Avoidance of any pass-through of income of the JAA to the cooperative Member Utilities.
4. Avoidance of any restrictions on the terms and price of a sale of any of the Four Dam Pool facilities to any of the Member Utilities.
5. Avoidance of any restrictions on the ability of the JAA to distribute its assets to the Member Utilities on dissolution in a manner that would be decided by the Member Utilities at a subsequent date.

Treasury Regulations define a "political subdivision" as "any division of any State or local government unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the units." Regulations Section 1.103-1(b). By ruling, the Service has held that limited amounts of a sovereign power are insufficient to confer governmental status; the Service has refused to view entities as governmental that possess the limited eminent domain powers frequently conferred on investor-owned utilities and certain quasi-public universities, particularly if there are any private interests involved, as is the case with the JAA because of the cooperative Member Utilities. The private letter ruling in which the Service's position was most clearly articulated specifically held that the private involvement of members in the actions of an exempt electric cooperative precluded the coop from being treated as a governmental agency, despite the possession of certain powers of eminent domain. See Private Letter Ruling 9149007. The Service has been more inclined to conclude that eminent domain powers are substantial if title to the property passes on commencement of the action (as it does under Alaska's declaration of taking proceeding) than when it passes only at the conclusion of the legal proceeding. Compare PLR 9725038 with *Philadelphia National Bank v. United States*, 666 F.2d 834 (3rd Cir. 1981), cert den. 457 U.S. 1105. Given that the Service more closely scrutinizes entities in which private interests are involved, it is particularly important that the JAA have full eminent domain powers. See PLR 9725038.

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Under AS 42.45.300, a joint action agency, such as the JAA, is granted the powers of a public utility under AS 42.05, which include a limited power of eminent domain under AS 42.05.631 but not the full powers of eminent domain possessed by the state and by municipalities under AS 09.55.240 through 09.55.460 (which include the authority to file a declaration of taking under AS 09.55.420). Both AS 42.45.300 and AS 42.45.310 are silent as to the Agency's eminent domain powers. AS 42.45.310(d) does authorize the members forming the JAA to define its powers, and there is some possibility that this provision would allow the members to delegate their powers of eminent domain to the JAA, but it is unclear, under Alaska law and local law, whether the city Member Utilities have the power to make such a delegation. As a result, the JAA arguably possesses only the eminent domain powers of public utilities. In a request to the Service asking it to rule that the JAA is governmental, there is significant risk that it might refuse to do so because the facts presented would be extremely close to those analyzed in Private Letter Ruling 9149007.

If, however, it were possible to obtain, by statute, full eminent domain power, either by an express grant of such power by the Legislature or by delegation of such powers to the JAA from the city Member Utilities, then the JAA would have a much better chance of obtaining a favorable private letter ruling from the Service. A change in AS 42.45.310 would present a stronger case than a delegation of eminent domain power by the city Member Utilities, because even if it can be concluded (i) that current AS 42.45.310 implicitly authorizes the cities to delegate their powers of eminent domain to the JAA, and (ii) that such powers can permissibly be delegated under state and local law, these powers, by statute, may only be exercised within the boundaries of the cities themselves (AS 29.35.030), and the Service could view these limitations as precluding governmental status, given the location of the generating facilities and the expected scope of operations of the JAA.

If the JAA is, by statute, given the same powers of eminent domain that are possessed by political subdivisions of the State of Alaska, the JAA has an excellent chance of receiving a private letter ruling from the Internal Revenue Service that the JAA will be treated as a governmental unit for federal tax purposes and federal tax law should not interfere with the accomplishment of any of the business goals. To enhance the ability of the JAA to achieve the necessary federal tax treatment, Section 6 of the JAA Bill amends AS 42.45.310 to specifically grant to the JAA the eminent domain powers granted to the State and municipalities by AS 09.55.240 to 09.55.460.

Proposed JAA Eminent Domain Powers

As noted above, under AS 42.45.300, a joint action agency, such as the JAA, is granted the powers of a public utility under AS 42.05. These powers include the limited power of eminent domain under AS 42.05.631, but not the full powers of eminent domain possessed by the state and by municipalities under AS 09.55.240 through 09.55.460. The difference in the eminent domain powers granted to public utilities and those granted to the state and municipalities is procedural in nature i.e., the state and municipalities can exercise their condemnation powers through the filing of a declaration of taking under AS 09.55.420. To address concerns regarding the scope of the JAA condemnation powers, in granting state and municipal eminent domain powers to the JAA, Section 6 of the JAA Bill limits the exercise of those powers to the acquisition of land and materials necessary "carry out the authorized purposes of the joint action agency within the boundaries of the power project purchased by the agency from the Alaska Energy Authority."

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State Tax Status of JAA

Paragraph (f) of AS 42.45.310 currently provides that the JAA is "subject to state and local ad valorem, income, or excise taxes that may be assessed or levied against property, assets, income, and receipts . . . [and] the electric cooperative tax" only to the extent "any of the public utilities forming the agency is subject to the particular tax." This provision was intended to maintain the *status quo* with respect to the tax treatment of the JAA and its Member Utilities, given the different tax treatment under Alaska law of the cooperative Member Utilities and the municipal Member Utilities. The impact of this provision and the tax status of the JAA under Alaska law, however, is not clear. The JAA's tax status under Alaska law is also a central factor in determining the federal tax status of the JAA.

Section 9 of the JAA Bill amends AS 42.45.310 to exempt the JAA from all forms of state and local taxation, other than the electric cooperative tax. It is the understanding of the PMC that the Member Utilities are currently exempt from state and local taxation, other than the electric cooperative tax, in the case of the cooperative Member Utilities. Under Section 9 of the JAA Bill, only JAA revenues derived from the retail sale of electric power would be subject to the electric cooperative tax contained in AS 10.25.540 to 10.25.570.. The exempt status of the JAA is consistent with the tax treatment of Alaska port authorities under AS 29.35.670.

Potential Liability of Member Utilities for Claims Against JAA

Paragraph (c) of AS 42.45.310 currently provides that the JAA will have "a separate and distinct legal existence from the public utilities" that form the JAA. Unlike other Alaska statutes that provide for the formation of corporations and other limited liability entities, however, neither AS 42.45.300 or AS 42.45.310 includes language that specifically insulates the public utilities that form the JAA from liability for claims against the JAA. Given reported Alaska case law on shareholder liability and the absence of specific protections in the JAA statute, there is some risk that claims against the JAA might also be asserted against the Member Utilities. To ensure that the JAA is treated for all purposes as a separate and distinct legal entity from its Member Utilities, Section 6 of the JAA Bill amends AS 42.45.310 to include provisions similar to those contained in other Alaska statutes to expressly protect the Member Utilities from any liabilities of the JAA. The language contained in Section 6 of the JAA Bill is similar to that contained in AS 29.35.605(c) and AS 29.35.650 relating to port authorities. *See also, e.g.,* AS 42.40.690(a) (providing that the debts and liabilities of the Alaska Railroad Corporation are to be paid from ARC assets and are not obligations of the State).

Section 14 of the JAA Bill also adds a new section AS 42.45.320 to the JAA statute to limit the individual liability of directors and officers of the JAA. The language of Section 14 is consistent with other Alaska statutory provisions and, specifically, is based on AS 10.25.145 defining the liability of officers and directors of electric and telephone cooperatives.

Tax-Exempt Bonding Authority

If the JAA is classified as a "governmental entity" for federal tax purposes, the JAA would have the ability to issue tax-exempt bonds if the bonds satisfied each of the many requirements imposed by the Internal Revenue Code of 1986 (the "Code"). The enabling legislation does not give the JAA any priority rights, over other Alaska entities, to issue tax-exempt debt.

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ATERWYNNE LLP

The Code generally permits the issuance of two distinct types of tax-exempt bonds to finance power generation, transmission, and distribution assets: (1) governmental bonds, which may finance facilities that are owned by governmental entities and may provide power or transmission services only to governmental entities and the general public, and (2) local furnishing bonds, which may finance facilities that are owned either by governmental or non-governmental entities and may provide power and transmission services to private entities, such as for-profit corporations and non-profit cooperatives.

Governmental bonds do not require a location of bond volume cap and are not limited by federal tax law as to the amount that can be issued, either on a state-by-state or on a national basis.

Local furnishing bonds do, however, require an allocation of volume cap. If the JAA were to conclude in the future that the Code permits it to issue local furnishing bonds for certain purposes and desires to issue tax-exempt bonds for those purposes, it would be able to do so only if it applied for, and received, an allocation of bond volume cap from the State's private activity bond allocating committee. The JAA enabling legislation does not give the JAA any preferential rights to a volume cap allocation. The JAA would be required to stand in line with other Alaska issuers and be subject to the same standards as other issuers and projects for a volume cap allocation.

Exemption from RCA Regulation

Because the JAA is granted the powers of a "public utility" under AS 42.05, it is not entirely clear whether the JAA is fully or only partially exempt from regulation by the RCA under AS 42.05. Under the Alaska Public Utilities Regulatory Act, AS 42.05, the RCA is granted broad powers to regulate public utilities engaging or proposing to engage in a utility business in the State of Alaska. This regulatory authority is not unlimited, however, and the AEA and certain utilities are, or may elect to become, exempt from regulation by the RCA.

Pursuant to the Regulatory Act's exemption provisions, four of the five Member Utilities are currently exempt from most types of regulation by the RCA. AS 42.05.711(b) & (g). The Regulatory Act also exempts the Long-Term Power Sales Agreement between the State and the Member Utilities ("PSA") and any amendments thereto from review and approval by the RCA. This PSA exemption, as provided for in last year's enabling legislation, stays in place until such time as all indebtedness incurred by the JAA in connection with the acquisition of the Four Dam Pool projects is retired. AS 42.05.431(e).

To create consistency within the Regulatory Act with respect to the regulation of the JAA, Sections 1, 2, 3 and 4 of the JAA Bill make conforming amendments to existing statutory provisions and add a new subsection (o) to AS 42.05.711 to provide that the JAA is exempt from all RCA regulation with respect to its ownership and operation of and the power sales from the existing Four Dam Pool projects. This general regulatory exemption is, however, like the PSA exemption from RCA review and approval, limited in duration and stays in place only until such time as the indebtedness incurred by the JAA to the State in connection with the acquisition of the projects is retired. Upon final payment of the JAA indebtedness, the JAA will be required to obtain a certificate of public convenience and necessity and amendments to the PSA will be subject to RCA review and approval.



**City of
Ketchikan**

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Ketchikan, Alaska 99901
Phone 907-225-3111
Fax 907-225-5075

FEB 19 2001

February 9, 2001

Representative Norman Rokeberg
State of Alaska, House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

Re: House Bill No. 119 - Joint Action Agency Legislation

I am writing in support of the above referenced legislation, which would correct several deficiencies in Alaska Statutes relative to the operation of the Joint Action Agency (JAA) created to operate hydroelectric projects purchased from the State of Alaska.

As you are aware, landmark legislation that provides for the energy needs of tens of thousands of Alaskans was adopted during the 2000 legislation when House Bills 446 and 447 were enacted by the Legislature and signed into law by Governor Knowles last May. The bills provided for the sale of the Four Dam Pool hydroelectric projects to the Purchasing Utilities (including the City of Ketchikan d/b/a Ketchikan Public Utilities) and the creation of a \$187,000,000 endowment to generate funding for Power Cost Equalization (PCE) programs. The legislation provided for the creation of a JAA comprised of the Purchasing Utilities to manage the hydroelectric projects and established a closing date of December 31, 2001.

Since the date that this critically important legislation was signed into law by Governor Knowles, the Purchasing Utilities have expended significant time and resources in anticipation of the closing. During the negotiation of the terms of the JAA Agreement among the Purchasing Utilities, a variety of issues were identified concerning the legal status of the JAA; the powers of the JAA; and the relationship between the JAA and its member utilities. These issues are addressed below.

Although the JAA has been established pursuant to the specific authorizing legislation, its classification for federal tax purposes is unclear due to its members being both municipal and cooperative utilities. Obtaining favorable tax status as a "governmental entity" is essential for the JAA to operate on a tax-exempt basis and to provide flexibility to sell individual projects in the future if it is determined appropriate to do so.

One of the key factors relied on by the Internal Revenue Service in determining whether an entity has governmental status is the nature and scope of the entity's condemnation or eminent domain powers. Currently the JAA legislation is silent as to whether the JAA's condemnation powers are limited to those granted generally to public utilities by AS 42.05.631, or whether they extend to those granted to its member municipal utilities. In order to achieve the necessary federal tax treatment for the JAA, legislation is required to specifically grant to the JAA the eminent domain powers granted to the State and municipalities by AS 09.55.240 to 09.55.460. Section 7 of HB 119 achieves this desired effect.

Secondly, the authorizing legislation provides that the JAA is "subject to state and local ad valorem, income, or excise taxes that may be assessed or levied against property, assets, income, and receipts . . . [and] the electric cooperative tax" only to the extent "any of the public utilities forming the agency is subject to the particular tax." Given the different tax treatment under Alaska law of the cooperative member utilities and the municipal member utilities, the impact of this provision and the tax status of the JAA under Alaska law are not clear. The uncertainty of the JAA's tax status under Alaska law is also a factor in determining the federal tax status of the JAA. As a result, legislation is necessary to provide the JAA a broad exemption from all forms of state and local taxation. Section 10 of HB 119 accomplishes this intent.

The statute authorizing the formation of the JAA provides specifically that the JAA will have a "separate and distinct legal existence from the public utilities" that form the JAA. However, unlike other Alaska statutes that provide for the formation of corporations and other legal entities, the statute authorizing the formation of the JAA did not include broad language that specifically insulates the public utilities that form the JAA from liability for claims against the JAA. Given recent reported Alaska case law on shareholder liability and the absence of specific protections in the JAA statute, there is some risk that claims against the JAA might also be asserted against member utilities. In order to ensure that the JAA is treated for all purposes as a separate and distinct legal entity from its member utilities, Section 14 of HB 119 includes provisions similar to those contained in other Alaska statutes which would expressly protect the member utilities from any liabilities of the JAA.

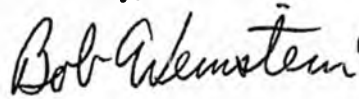
Lastly, as a result of the JAA being granted the powers of a "public utility" under AS 42.05, it is not clear that the JAA is exempt from regulation by the Regulatory Commission of Alaska (RCA). Because of the relationship of the JAA to its member utilities and the fact that the member utilities are either regulated (Kodiak Electric Association, Inc.) or exempt from regulation (Copper Valley Electric Association, Inc. and the Cities of Ketchikan, Petersburg and Wrangell) it is necessary to confirm that the JAA is not subject to RCA regulation under AS 42.05 and is not required to obtain a certificate of need and convenience under AS 42.05.221. Sections 1, 2, 3 and 4 of HB 119 accomplish this objective.

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If the goals established by the Legislature and the Governor as set forth in House Bills 446 and 447 are to be accomplished, the provisions of HB 119 discussed above are required to insure a successful divestiture of the Four Dam Pool hydroelectric projects and the establishment of a long-term, viable PCE Endowment. On behalf of the Ketchikan community, I strongly urge your support of this legislation.

Should you have any questions on this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Bob Weinstein".

Bob Weinstein
Mayor

cc: Governor Tony Knowles
Senator Robin Taylor
Representative Bill Williams
Ketchikan City Council Members



Copper Valley Electric Association, Inc.

P.O. Box 45 • Glennallen, Alaska 99588 • Telephone: 907-822-3211 • Facsimile: 907-822-5586 • Valdez: 907-835-4301

February 9, 2001

Representative Lisa Murkowski
Chair, Labor and Commerce Committee
State Capitol
Juneau, AK 99801-1182

Dear Representative Murkowski:

Copper Valley Electric Association, Inc., is a member of the Four Dam Pool Project Management Committee and a party to the Joint Action Agency that will be purchasing the Project from the state of Alaska.

House Bill 119 introduces necessary technical amendments to the original legislation to allow divestiture to move forward. Divestiture of the Four Dam Pool Projects and the creation and funding of the Power Cost Equalization Endowment Fund are vital to the economic future of the state.

Copper Valley Electric Association encourages the Labor and Commerce Committee to support and move this important legislation forward so the many benefits of HB 446 and HB 447 may be realized.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul M. Kildal".

Paul M. Kildal, President
CVEA Board of Directors

CVEA's Mission: Be the energy supplier of choice.

Goals and Objectives: Reduce power cost to Customers, Increase energy sales, Develop new income producing products and services, and Build member relations through Customer satisfaction and grassroots support.



CITY OF PETERSBURG

P.O. BOX 329 • PETERSBURG, ALASKA 99833

TELEPHONE (907) 772-4511

TELECOPIER (907) 772-3759

February 9, 2001

Representative Lisa Murkowski, Chair
Labor & Commerce Committee
State Capital
Juneau, AK 99801-1182

Dear Ms. Murkowski:

The City of Petersburg supports passage of HB 119, short titled Public Utility Joint Action Agencies. This bill will fix deficiencies in divestiture legislation passed into law with the Four Dam Pool Sales Agreement of 2000. We urge your favorable attention to this legislation.

Thank you very much for your efforts.

Sincerely,

Theodore M. Smith
Mayor



SOUTHEAST CONFERENCE

Working for strong economies, healthy communities, and a quality environment in Southeast Alaska

February 16, 2001

Representative Peggy Wilson
Room 409
State Capitol
Juneau, AK 99801-1182

Dear Representative Wilson:

This is to offer support for House Bill 119, which will address certain technical problems with prior legislation authorizing Joint Action Agencies, the vehicle by which the Four Dam Pool will be sold to the member utilities. We agree that the ambiguities in the law could create problems for The Four Dam Pool JAA, and we support a smooth transition of that entity into a Joint Action Agency. We know time is of the essence for the Four Dam Pool to conclude their transition by the end of this year, so we are hopeful you will be successful in this effort to pass legislation this session.

Thank you for your efforts on behalf of member communities.

Sincerely,



Loren Gerhard
Executive Director



VALDEZ CONVENTION & VISITORS BUREAU

P.O. Box 1603 • Valdez, Alaska 99686 • Ph.: 907-835-2984 • Fax: 907-835-4845 • E-mail: valdezak@alaska.net

February 5, 2001

Senator Georgianna Lincoln
Alaska State Legislature
Juneau, Alaska

Dear Senator Lincoln:

Last year the 21st Alaska Legislature passed HB 446 which authorized the sale of the Four Dam Pool and created an endowment fund for Power Cost Equalization.

I understand from speaking with Robert Wilkinson at Copper Valley Electric Association that certain technical amendments to the legislation are required prior to the time the utilities can close on the purchase of the projects.

Further, I understand these amendments are to overcome federal and state tax issues, liability protections for the utilities, and finally to clarify to what extent the Regulatory Commission of Alaska provides oversight.

I urge you to support these technical amendments so the intent of this historic legislation may be realized.

Respectfully submitted,

Lisa Von Barga
Executive Director



OFFICE OF THE MAYOR

February 9, 2001

Representative Lisa Murkowski
Chair, Labor and Commerce Committee
State Capitol
Juneau, AK 99801-1182

Dear Representative Murkowski:

The City of Valdez, its residents and businesses rely on Copper Valley Electric Association to provide safe, reliable electric service. Last year, the Alaska Legislature passed legislation that Governor Knowles signed in April 2000, authorizing the state to divest of the Four Dam Pool hydroelectric facilities and create an endowment fund to support the Power Cost Equalization Program.

Recently, House Bill 119 has been introduced and is scheduled to be heard by the Labor and Commerce Committee on Monday, February 12. The purpose of HB 119 is to make technical amendments to the original legislation (HB 446 & HB 447), and that these amendments must transpire prior to the Utilities consummating the purchase of the Four Dam Pool Projects.

As we understand it, these amendments are designed to overcome federal and state tax issues, liability protections for the utilities, and finally to clarify to what extent the Regulatory Commission of Alaska provides oversight.

The City of Valdez urges the Labor and Commerce Committee to move HB 119 forward so the benefits of divestiture may be realized.

Sincerely,

Bert Cottle, Mayor
City of Valdez

**CITY OF CRAIG
RESOLUTION NO. 01-04**

THAT THE REGULATORY COMMISSION OF ALASKA ENSURES THAT THE SALE OF THE FOUR DAM POOL INITIAL PROJECT IS SUCCESSFUL AND ENSURES THAT THE POWER COST EQUALIZATION PROGRAM IS FULLY FUNDED AS INTENDED

WHEREAS, the City of Craig, Alaska, is concerned about the cost of electric power faced by its citizens;

WHEREAS, the cost to generate electric power for the citizens of the City of Craig is three to five times greater than the cost in urban communities of Alaska;

WHEREAS, the State of Alaska has provided financial assistance to rural Alaskan communities such as the City of Craig to cope with the substantially higher cost of electric power, to encourage Alaska's economic growth and to bring a modern standard of living to all Alaskans beginning with the enactment in 1980 of the Power Production Cost Assistance Program;

WHEREAS, the citizens of the City of Craig benefit from the financial assistance from the State of Alaska provided to offset the higher cost of electric power;

WHEREAS, the financial assistance from the State of Alaska is presently provided through a Power Cost Equalization (PCE) Program;

WHEREAS, the PCE Program does not have a permanent source of funds;

WHEREAS, the Alaska Legislature has enacted House Bill 446 and Governor Knowles has signed House Bill 446 which authorizes the Alaska Energy Authority to sell the Four Dam Pool Initial Project and which authorizes the establishment of a Trust Fund that will provide a permanent source of funds for the PCE Program;

WHEREAS, the Alaska Legislature has enacted House Bill 447 and Governor Knowles has signed House Bill 447 which appropriates the funds from the sale of the Four Dam Pool Initial Project to the Trust Fund;

WHEREAS, the municipalities of Ketchikan, Wrangell and Petersburg and the cooperatives of Kodiak Electric Association, Inc., and Copper Valley Electric Association, Inc., have informed the Regulatory Commission of Alaska (RCA) that the sale of the Four Dam Pool Initial Project and the permanent funding for the PCE Program may be in jeopardy if the RCA does not take immediate action on behalf of Kodiak Electric Association, Inc.; and

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Glennallen Alaska 99558-0009
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Mile 115, Richardson Highway
Glennallen Alaska



Phone 907-822-5001
Fax 907-822-5009
E-Mail cvedc@alaska.net
Web: www.alaskaeconomicdevelopment.org

February 5, 2001

Senator Georgianna Lincoln
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Senator Lincoln,

In 2000, the Alaska Legislature passed legislation, that was signed Governor Knowles, that authorized the State to divest of the Four Dam Pool hydroelectric facilities and create an endowment fund to support Power Cost Equalization.

According to Robert Wilkinson, CEO at Copper Valley Electric Association, there are certain technical amendments required to that legislation that must transpire prior to the utilities consummating the purchase of the projects.

Further, these amendments are to overcome federal and state tax issues, liability protections for the utilities and finally to clarify to what extent the Regulatory Commission of Alaska provides oversight.

On behalf of the Copper Valley Economic Development Council, I urge you to support these technical amendments so the intent of this historic legislation may be realized.

Sincerely,

Larry Dickerson
Executive Director