

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

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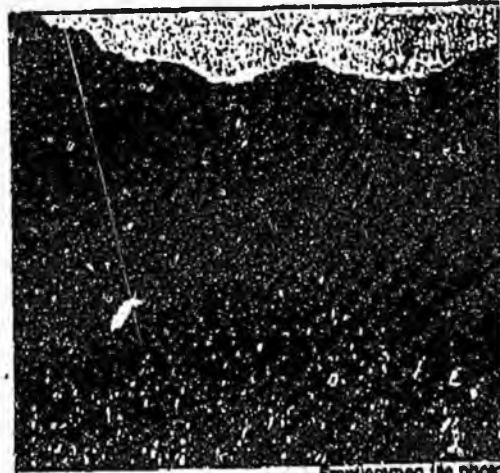
Lyda Green agriculture-protection bill

By ERIC BURKETT
Frontierman reporter

MAT-SU — A bill presently making its way through the Alaska Senate could go a long way in helping preserve agricultural lands in the Matanuska Valley.

Senate Bill 60, introduced last week by Sens. Lyda Green, R-Wasilla, and Robin Taylor, R-Wrangell, is modeled after a similar law passed by the Pennsylvania legislature, according to Larry DeVilbiss, a Lazy Mountain farmer. A similar measure has been introduced in the House by Rep. John Harris, R-Valdez.

"SB 60 is the number-one legislative priority of the Alaska Farm Bureau," DeVilbiss, who also represents District 1 on the Matanuska-Susitna Borough Assembly, said Friday.



Senate Bill 60, introduced by Sens. Lyda Green and Robin Taylor, could help preserve agricultural lands in the Matanuska Valley.

See BILL, Page A4

To: Pete Fellman
 From: Rob Wells

BILL: Aimed at protecting farmers from lawsuits

Continued from Front Page

DeVilbiss was in Juneau last week with the Alaska Farm Bureau to push for passage of the bill.

"Basically, the intent is to preserve a rural ambiance, especially in developing areas," he said. "This valley's where the legislation is most needed and most critical right now."

The bill seeks to protect agricultural properties by granting

them grandfather rights, especially when they may come up against complaints by neighboring housing developments.

While it hasn't been a huge problem in Alaska so far, in other parts of the United States, many farmers have found themselves and their farms the subjects of lawsuits filed by their neighbors.

"In the Lower 48, you see people moving into farming areas and realizing manure stinks, and

tractors make noise at all hours," Hans Neldig, chief aide to Sen. Green, said.

"They end up suing the farmers, and they've actually won in some cases," he said.

The bill requires sellers to notify their buyers with a written notice that they are purchasing property within a mile of an agricultural facility.

"The property you are about to acquire is located within one mile of an agricultural operation," the notice would read. "Lawful application of pesticides, herbicides, and fertilizers occur in agricultural operations."

The notice goes on to warn potential homeowners they may be subject "at any time to odor, fumes, dust, smoke, burning, vibrations, insects, rodents" and other potentially unpleasant occurrences.

"It's kind of a two-way protection," DeVilbiss said. "It serves as a way for people moving into an area to let them know there are farms there."

The bill has been referred to the Senate Judiciary Committee.

The Farm Bureau is also looking for legislative support in two other areas this session, DeVil-

biss said. Farmers are hoping to see the passage of a law which would allow them to hire adolescents.

Rep. Scott Ogan, R-Palmer, supports the effort, DeVilbiss said, and has drawn up legislation that would let children pick vegetables and do other agricultural work with the signed, written permission of both parents or a guardian, or in the presence of a parent or guardian. The legislation has not yet been introduced in the House.

Presently, children who work have to produce identification, which must be presented to state officials in person.

During haying season, farmers must be able to move quickly to bring hay in, and they need to be able to hire help as soon as possible. A single day's rain can easily destroy a farmer's hay crop.

The permits would be for agricultural work only, DeVilbiss said.

"When we made the rounds in Juneau, that was very well received," he said.

Another bill would limit the liability to farmers for livestock that are set free by the actions of trespassers.

CITY OF WASILLA

CITY OF WASILLA
NOTICE OF PUBLIC HEARING SEWER ASSESSMENT DISTRICT

The Wasilla City Council will hold a public hearing on the Monday, February 26, 2001, at 7 p.m. in the Wasilla City Council Chambers, 290 E. Heming Avenue, Wasilla, Alaska, on the special assessment roll for the following sewer assessment district:

BROADVIEW SEWER SPECIAL ASSESSMENT DISTRICT, 9981

The properties to be assessed are all lots and parcels within the sewer assessment district listed above. The improvements constructed by the sewer assessment district, which are the subject of the special assessment roll include the necessary engineering design, construction of sewer mains, treatment facilities, inspection and other equipment and appurtenances necessary to the completion of the sewer project within the sewer assessment district. The purpose of the hearing is to:

- Consider objection to the assessment roll.
- Confirm the special assessment roll of the paving assessment district.
- Establish a schedule of dates when installment payments become due.
- Establish the method of determining the interest rate on installment payments.
- Establish delinquency dates.
- Establish a penalty of 6% for delinquent payments.
- Establish that delinquent assessment installments and penalties shall draw interest at a rate of 3% per annum higher than the rate payable on assessment installments until paid.

The assessment may be financed over 10 years at an interest rate equal to the

House bill protects state farms

■ **ESSENCE:** New neighbors would have to accept that pesticides and odors come with the territory.

The Associated Press

FAIRBANKS — Alaska farmers are lining up in support of legislation seeking to ensure that newcomers to an area cannot sue a neighboring farm because of a distaste for the smell or noise.

The Right to Farm bill is sponsored by Rep. John Harris, R-Valdez, who represents Delta Junction.



Legislature in session

“
This really protects anybody who sells land. Because there is not only a possibility of the farmer being sued but also the person who sold the land.”

— Pete Fellman, Delta Junction dairy farmer

The legislation, HB 82, is a priority of the statewide Farm Bureau. It would prevent people who move next to a farm from seeking to declare it a nuisance.

“We need to protect our farms,” said Alaska Farm Bureau president Bob Franklin, who operates B-Y Farms between Fairbanks and North Pole.

He said people could move to Delta Junction to work on a national missile defense project and buy property next to a farm. It is quite possible that the new property owner could then decide that the smell is intolerable.

“We’re looking at future (land) use,” Franklin said.

Harris’ bill is modeled on Lower 48 farm laws that have withstood court challenges, said Pete Fellman, a Delta Junction dairy farmer and a legislative aide to Harris.

To meet the legal requirements, Harris wants to add a provision that requires anyone selling land within a mile of an agricultural facility to disclose to the buyer the existence of the operation.

The buyer would have to be warned that pesticides, herbicides and fertilizers

are legally used in agriculture and that noise and odors could be present.

“This really protects anybody who sells

BILL: Measure seeks to protect farmers from suits

Continued from B-1

only a possibility of the farmer being sued but also the person who sold the land.”

Lower 48 legal issues have also focused on how the courts can determine whether the farmer in question is a responsible individual who is farming in a safe manner.

Harris’ bill requires that to qualify for protection from nuisance lawsuits, farmers must have a soil and water conservation plan, available free through consultation with the state.

“I think most farms have a soil and water conservation plan anyway,” Franklin said.

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MICHIGAN FARM NEWS

July 15, 1999



New York court decision mirrors Michigan's Right-to-Farm ruling

by Jennifer Vincent

As urban sprawl continues to carve out random pieces of farmland, the proximity between farm owners and rural homeowners closes. Neighbors began to complain about odor, property values and so-called infringements on their property rights, while challenging the farmers' right to continue operating -- despite the appropriate ag zoning in the area.

While no farm is exempt from nuisance lawsuits, New York and Michigan farmers can take note of two recent court rulings that back their rights to continue if they are following good management guidelines as defined by the states.

The New York Supreme Court recently ruled that its right-to-Farm law is constitutional, similar to a recent ruling in Michigan.

"Both these rulings give farmowners, who are following these stringent guidelines, the right and ability to continue to do business, knowing that they will not lose their operations because of unfounded challenges from neighbors," said Kevin Kirk, Michigan Farm Bureau livestock and right-to-farm specialist. "Everyone has rights -- on both sides of the road. But both Michigan and New York have now said that producers, if operating in compliance with those set guidelines, will be protected from nuisance lawsuits."

Stoneman Cattle Inc. in Gratiot County garnered a victory for Michigan agriculture in late March, when a lengthy bench trial ended with a ruling in favor of the family farm operation's 3,910-head feedlot facility near Breckenridge.

The plaintiffs in the Stoneman case said that flies, increased traffic and odor created a nuisance and, therefore, a taking of their property values. Circuit Court Judge Randy Tahvonen disagreed, however, after listening to many hours of expert testimony -- including that from Kirk -- which found the operation to be in compliance with Michigan's Generally Accepted Agricultural and Management Practices (GAAMP). Tahvonen also said the farm was not a source of flies, farm traffic did not harm the plaintiffs, nor did property values decrease because of the operation.

New York's decision was almost identical.

Pure Air and Water Inc. (PAW), citing environmental concerns for the suit, challenged Trengo Farms (a confinement hog operation), as well as the Commissioner of Agriculture and Markets.

Trengo Farms received a "Sound Agricultural Practice Opinion" from the agricultural commissioner prior to the lawsuit. However, PAW, a group of neighbors, said the Trengo operation and the ag commissioner's opinion caused an improper "taking" of private property by allowing the Trengos to maintain a nuisance over neighboring property. The suit centered on manure management practices.

The case went all the way to the New York State Supreme Court, where the court handed down a decision declaring the state's Right to Farm law and Opinion to be constitutional.

NEW YORK 7/26/01 10:50 AM

Illinois Farm Nuisance Suit Act

By Allison Gordon and Beth Phipps

Is your farm operation a nuisance to your neighbors or the general public?

Municipalities, factories, subdivisions, and other uses of land may create conditions that invade the rights of farmers and hence amount to nuisance.¹ Negligence in regards to sanitation, air quality, or noise levels can all lead to becoming a nuisance. Rather than be a victim to a possible suit from an angry neighbor claiming bodily discomfort or mental distress from obnoxious odors, noises, or other conditions arising from your farming practices, be informed about your rights to farm in Illinois.

Common law and statutory principles provide a resolution for claims of property nuisance. The Illinois Farm Nuisance Suit Act, also known as the "Right to Farm Law," provides farmers protection from nuisance suits under certain circumstances. The Act became effective July 29, 1981:

It is the declared policy of the state to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products.....the purpose of the Act is to reduce the loss to the State of its agricultural resources by limiting the circumstances under which farming operations may be deemed a nuisance.²

Nuisance can be defined as using one's property in such a way to **substantially and unreasonably interfere** with the use and enjoyment of another person's property. Nuisances can be classified as either private or public. A private nuisance is a dispute over land use between two parties. The injured individual must personally sue the person creating the nuisance. A public nuisance involves a dispute between more than two individuals. In a case where many people are affected by a nuisance, they may sue individually or the state's attorney may sue on behalf of the injured parties.

Facts and circumstances are the key determinants in pinpointing existence of a nuisance. An act, occupation, or structure which creates **continuous** obnoxious conditions is a **nuisance per se**. This is factual regardless of circumstance, location, or surroundings. These nuisances are obviously crude and are commonly regarded as "on their face." Offensive disposal of waste for the public to see is an example of nuisance per se. A **nuisance in fact** is also an act, occupation, or structure but is determined by location, surroundings, or circumstances. It can be defined as **unreasonable conduct in its context**. An example of a nuisance in fact would be the establishment of a livestock feeding operation 50 feet from an elementary school. A nuisance in fact can eventually become a nuisance per se.

How can you defend yourself against nuisance suits that arise from changing conditions around your farming operation? Development of areas surrounding farmland can often lead to nuisance suits due to incompatibility of certain land uses. Livestock operations and subdivisions do not make good neighbors. The Illinois Farm Nuisance Suit Act provides protection to farm operators against changing conditions:

No farm...shall be or become a private or public nuisance because of any changed conditions in the surrounding area occurring after the farm has been in operation for more than one year,...provided, that the provisions of this Section shall not apply whenever a nuisance results from the negligent or improper operation of any farm or its appurtenances.³

The Illinois Farm Nuisance Suit Act deals only with nuisance suits and may not be used in defense against lawsuits whose basis is The Environmental Protection Act.⁴ The Environmental Protection Act provides statutory definition of water, air, and noise pollution. Suits against farm operations can be brought on the grounds that one or more of these types of pollution are occurring.

In conclusion, to ensure your farm operation is not a nuisance to your neighbors or the general public, take into consideration the size and nature of the enterprise, the manner in which it is operated, as well as proximity to residential property. Avoid operating your farm in a negligent manner and properly

ILLINOIS

maintain in all aspects of your farm (animals, equipment, and structures, etc.).

The state of Illinois is committed to conserving and encouraging the improvement of its agricultural land. To reduce farmer vulnerability to nuisance suits, the state has enacted the Illinois Farm Nuisance Suit Act. This Act allows farmers protection from nuisance suits under certain circumstances. A farm may not be deemed a nuisance if the locality of the farm is subject to change (for example, development of a golf course) provided two criteria are met: 1) the farm has been in operation for more than one year, and 2) the farm was not a nuisance when it was established. An exception to both of these criteria occurs if the farm is being operated in a negligent manner. The Illinois Farm Nuisance Suit Act cannot protect your operation in every situation, but it does offer a possible defense against a suit from an angry neighbor or passerby.

For more information consult the following web sites:

www.law.utexas.edu/dawson/nuisance/nuisance.htm

<http://farm.fic.niu.edu/fic-ta/tafs-rtf.html>

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1. Looney and Uchtmann. Agricultural Law: Principles and Cases. New York: McGraw- Hill, 1994.
 2. 740 ILCS 70/1 www.law.utexas.edu/dawson/nuisance/il_nuis.htm
 3. 740 ILCS 70/3
 4. 415 ILCS 5/1
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Agriculture Policy Project

Issue Paper: Nuisance and Right-to-Farm Laws

Many urban residents move to the rural countryside because of its aesthetic qualities and open space, amenities which exist in great part because of the presence of farming. As exurbanites move into rural areas, however, they often clash with farmers over common farming activities and their off-site impacts. Aerial spraying and pesticide drift, animal odors, dust, food processing operations, and other common agricultural activities that had not been questioned previously, are perceived as nuisances by the new residents (Lisansky and Clark 1987). (See Issue Paper: Agriculture on the Urban Interface for more information about other concerns associated with development pressures in rural areas).

Strategies have been developed at the state and local level to help farmers and their neighbors resolve these conflicts. Two such strategies are (1) nuisance lawsuits brought against farmers by their neighbors, and (2) right-to-farm laws which seek to protect farmers from these nuisance lawsuits. Common law nuisances are classified as private or public: a public nuisance impairs the health, safety, morals, and comfort of a community without necessarily harming particular property rights while private nuisance unreasonably interferes with the use and enjoyment of another's lands (Lapping and Leutwiler 1987). Nuisance lawsuits may help protect rural residents from unwanted agricultural practices and development. For example, they may be used to establish restraints on established farming practices such as spraying and hours of operation. In some cases, rural citizens have used nuisance suits to deal with problems related to large hog farms (DeVore 1997). In these cases, nuisance complaints can act as a reminder to farmers of the need to monitor the impact of their farming practices on the environment. However, these disputes can also result in driving farmers off their land or out of business (AFT 1993; Lapping and Leutwiler 1987). Widely adopted around the country, right-to-farm laws seek to offset nuisance complaints by nonfarming neighbors by statutorily declaring that standard farming practices are reasonable land uses, despite their perceived adverse impacts on neighboring lands (Lapping and Pfeffer 1997). Although they vary in content in different localities and states, right-to-farm laws generally attempt to supersede the common law of nuisance and favor agricultural uses of land above all others (Lapping and Leutwiler 1987).

The issues surrounding nuisance and right-to-farm laws are difficult to reconcile. Some producers may have difficulty understanding the legitimacy of their neighbor's concern about the unwanted, but unintentional effects of their farming practices (Lapping and Pfeffer 1997). Simultaneously, farm neighbors may not respect the practical needs of farmers to use certain practices that are necessary to make a living (AFT 1993), and may not understand that farms create many of the landscape and amenity values that attracted them there in the first place (Lapping and Pfeffer 1997). This impasse promises to continue in many places, but farmers and rural residents could also be encouraged to look at some of the win-win solutions now available in Europe where farmers are becoming actively involved in the management and development of the environment and landscape. For example, in the Netherlands, farmers are entering into cooperative agreements with various governmental and non-governmental organizations to manage waterways, develop wetlands, landscape their farms, develop bird habitats, etc. They receive subsidies for this, in return for enhancing water quality, wildlife, habitat and landscapes and reduce the grounds for conflict with their neighbors (see Broekhuizen et al., 1997).

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Last updated on 8 February 2000



*Assuring Michigan Agriculture
Producers the Right to Farm
while Promoting
Environmental Stewardship*

The Right to Farm Act Affects Everyone

Michigan agriculture is a \$37.5 billion industry involving every county of the state. A wide variety of crop and livestock production strengthens our farm economy and helps to enhance the natural environment.

The Michigan Right to Farm Act, P.A. 93, was enacted in 1981 to provide farmers with protection from nuisance lawsuits. This state statute authorizes the Michigan Commission of Agriculture to develop and adopt Generally Accepted Agricultural and Management Practices (GAAMPs) for farms and farm operations in Michigan. These voluntary practices are based on available technology and scientific research to promote sound environmental stewardship and help maintain a farmer's right to farm. The GAAMPs cover five specific areas of production agriculture, including:

- Manure Management/Utilization
- Pesticide Utilization/Pest Control
- Nutrient Utilization
- Care of Farm Animals
- Cranberry Production

These agricultural and management practices are protective of the environment and have been designed to serve the needs of Michigan farmers and non-farm residents alike. The practices are reviewed annually and may be revised as necessary by the Michigan Commission of Agriculture.

Manure Management and Utilization

For Michigan's animal agriculture industry to remain viable and competitive, it must have the flexibility and the opportunity to change with market conditions and adopt new technology. With an increase in the scale of commercial livestock production comes new management challenges to control odors and handle agricultural wastes such as livestock manure, poultry litter, milkhouse wastewater, and barnyard runoff.

Sound manure management practices can lower production costs for farmers. Careful storage, handling, and application of farm animal manure will help control odors and protect our water resources. When properly utilized, livestock and poultry manure supplies nutrients for growing crops and reduces commercial fertilizer needs.

GAAMPs for Manure Management and Utilization were first adopted in June 1988. They are written to help assure that reasonable farm management practices are implemented to protect our natural environment, and allow our livestock and poultry industry to remain profitable and competitive.

These practices include recommendations for:

- Runoff Control
- Odor Management
- Manure Storage Facility Design
- Manure Application to Land

**Generally Accepted Agricultural and Management Practices for Manure Management and Utilization
Pesticide Utilization and Pest Control**

American agriculture has been able to meet consumer demands for a reliable and abundant food supply through the use of improved technology. For over 50 years now, this technology has included the use

PAGE 1



Right To Farm Law Changes!

After studying the draft amendments to AS 09.45.235 and studying other state's 'Right To Farm laws' that have been found constitutional, two weaknesses were found:

- No relief for the Alaska farmer under Section 2, AS 09 45.235(b) – The following needs to be added:

(2) Flooding caused by the agriculture operation Except in cases of unusual weather events 25 yr flood – unusual downpours etc.

- ♦ Nowhere in these changes is mentioned notification to realtors, home buyers or other interested parties. I believe a pamphlet should be printed and made available to Title Companies, Realty Boards Etc. By taking a proactive stance right from the beginning, a lot of possible litigation can be avoided. Most of all a proactive statement from the State government under the Seal of Alaska would work wonders compared to a numbered line containing stiff language in a law review.

Included in this Fax are other views on what works and what doesn't, including law reviews.

Jimmie R. Ellison, Publisher/Farmer
Contact; Phone 488 1970, Fax 488-4789, Mail: POB 55590, North Pole, AK 99705

Cc by fax:
Harris
Felmen

INTERESTED PARTIES

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Are Right-to-Farm Statutes in Danger?

By Joe Miller

Livestock Policy Specialist & Regulatory Legal Analyst
Public Policy Division
American Farm Bureau Federation

May 3, 1999

Are Right-to-Farm Statutes in Danger?

The short answer to that question, in my opinion, is no. Now for the long explanation.

Recently the Iowa Supreme Court struck down that state's right-to-farm statute as being unconstitutional. The U.S. Supreme Court refused to hear the case, which means that the Iowa ruling stands. That has brought about discussions in other states as to whether their right-to-farm statutes are in danger of being struck down in the courts.

It is important to understand what right to farm statutes are and what they are not. Most of the right-to-farm statutes in the U.S. are set up to be a defense to a nuisance lawsuit. That means the first thing that has to happen is for someone to claim that an operation is causing a nuisance. The general definition of a nuisance is when someone causes an unreasonable interference with another person's comfortable use and enjoyment of his land.

Once a nuisance has been established by the complaining party the agricultural operation then raises the defense proved by the right-to-farm statute. Most right-to-farm statutes require the producer to comply with very specific requirements to receive protection from a nuisance claim. The person bringing the complaint then has to prove that the agricultural operation is not within one of those exemptions. Right-to-farm statutes changed common law nuisance by creating this protection from what would otherwise be a nuisance.

Most right-to-farm statutes do not protect agricultural operations if they were operated in a negligent or illegal manner. Negligence is generally defined as a failure to exercise that degree of care required by the circumstances. Hence, most of these types of lawsuits state that the operation was being operated negligently.

The Iowa statute went farther than most other states in trying to protect agricultural operations. The Iowa statute stated that "a farm operation - shall not be found to be a nuisance regardless - of the agricultural activities of the farm or farm operation." The argument to the court was that this gave agricultural producers the right to "create or maintain a nuisance over the neighbors property, in effect creating an easement in favor of the applicants." The challenge was based on the Fifth Amendment of the U.S. Constitution as a "taking" of property rights.

The Iowa court reasoned that the Iowa statute was in fact an easement because it gave agricultural operations the right to do things that could affect neighboring landowners and it also prohibited those landowners from bringing a legal action against the agricultural operation as a matter of law. This meant that Iowa agricultural operations could in fact create a nuisance and that adjoining landowners could do nothing about it. And that the creation of the easement took away the property right of being able to defend that property by lawsuit and that this was done without just compensation to the adjoining landowner.

It was this final step that made the Iowa law unconstitutional. Most other states allow a lawsuit to be brought against an agricultural operation if they could prove that the operation did not fit within the narrow protected items in the statute. In Iowa, as long as the agricultural operation was not breaking any state or federal law, adjoining landowners could not sue for nuisance. In other states they can.

The Iowa court concluded by saying that the "legislature exceeded its authority by authorizing the use of property in such a way as to infringe on the rights of others by allowing the creation of a nuisance without the payment of just compensation."

In summary, most states should not have a problem with their right-to-farm laws because they allow adjoining landowners to sue for nuisance against agricultural operations. The Iowa statute stated that no agricultural operation shall not be a nuisance and thereby prevented adjoining landowners from bringing a nuisance suit.

This is what created an easement and that easement was not paid for. Therefore it was a "taking". As long as your state statute allows adjoining landowners to bring a nuisance suit and the right-to-farm statute only offers a defense, not a prohibition against a lawsuit, it should withstand any test of its constitutionality.

AM FARM BUREAU FEDERATION

PAGE 3

Court upholds Michigan farm law

By Sue Stuever Battel

Neighbors were pitted against farming neighbors in a recent Gratiot County (Mich.) legal battle that challenged the state's Right-to-Farm Act. In a precedent-setting case, a circuit court judge upheld the constitutionality of the act, ruling that a feedlot operation near Breckenridge, Mich., causes no nuisance.

The Stoneman family, who operates the 3,000 head feedlot facility, said they are relieved the case is over, but are frustrated they had to endure a two-year-plus legal battle. "We always felt we would win because we knew we were doing nothing wrong," said Dave Stoneman.

The Stonemans said they kept neighbors informed about their new cattle facility and took odor and other factors into consideration when selecting the site and building the barn. They also kept detailed records and followed a written manure-management plan.

But the plaintiffs in the case who live within a mile of the cattle barn alleged that flies, increased traffic and odor constituted a nuisance and, therefore, a "taking" because they lived in the area before a cattle barn was added and were not compensated for what they believed to be losses. But the judge dismissed the claim.

While acknowledging that the case was favorable for Michigan agriculture, state Department of Agriculture Director Dan Wyant said he expects similar suits in the future as urban populations encroach on rural land.

"We do know agriculture is at a crossroads with respect to being challenged in this case," Wyant said. He contends that Michigan's Right-to-Farm Act is solid enough to stand up to challenges and will likely serve as a model for other states. All 50 states have right-to-farm laws, but none are as stringent as Michigan's.

"This verdict sets us on the course of moving into the 21st century with some assurance that we can have modern-day, friendly agriculture in the state of Michigan," said Jack Laurie, Michigan Farm Bureau president and a Tuscola County dairy farmer.

"The Stonemans have an undeniable record of utilizing best management practices, and their operation is truly environmentally friendly."

Sue Stuever Battel is editor of member publications for Michigan Farm Bureau.

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by Mike Kroll

One month ago, the U.S. Supreme Court refused to review the appeal of an Iowa Supreme Court ruling overturning that state's "right to farm" law. The court's action, or rather inaction, was done without comment and remains open to speculation over why the case was not heard. This offers little solace for farmers and their allies in Iowa who now fear widespread legal challenges to their way of life.

Iowa legislators tried to deal with the anticipated problems or conflicts between rural neighbors by passing the "right to farm" law in 1982. It was designed to protect farmers from the threat of lawsuits brought by neighbors. Many modern agricultural practices, such as mega-hog farms or chemical spraying, are often viewed as nuisances by neighbors. This legal immunity protected Iowa farmers from lawsuits over the "operation or expansion of the agricultural activities of [a] farm" located "within an agricultural area" as long as the nuisance does not result from a violation of a federal statute, regulation, state statute, or rule" and the farm owner or operator was not found negligent. "Additionally, there is no immunity from suits because of an injury or damage to a person or property caused by the farm or farm operation before the creation of the agricultural area."

The law allowed local county officials to designate "agricultural areas" for protection. This is part of Iowa's statewide effort aimed at "agricultural land preservation" in the face of developmental pressures on behalf of nonagricultural residents in traditional farming communities. Specifically, a person could not buy land adjacent to a farm, build a new home and then take his farmer neighbor to court over issues such as odor or dust associated with farming.

Officials in Kossuth County designated approximately 960 acres of farmland as an agricultural area subject to protection under this law in January 1995. Three months later, a group of neighbors filed suit in Iowa District Court claiming that this action violated their rights under both the Iowa and U.S. Constitutions. They said such a law denied them the right to protect their property from *potential* actions by neighbors that could adversely affect the value or marketability of that property without fair compensation. An interesting feature of this lawsuit is that while both sides agreed that no such nuisance had yet occurred, the fear was that the immunity protection removed the option of legal redress from the nonagricultural neighbors. Initially, the Iowa District Court threw out the lawsuit but the Iowa Supreme Court heard the matter on appeal and reversed the lower court in September 1998. In effect, they agreed with the plaintiffs that the Iowa "right to farm" law was unconstitutional under both the state and federal Constitutions. This infuriated farm groups across Iowa who attempted to take the case before the U.S. Supreme Court.

In their brief to the high court, the coalition of farm groups claimed that if the Iowa Supreme Court decision was allowed to stand more than 100,000 farmers in that state could face the prospect of costly nuisance lawsuits just because "they look and sound and smell like farms." The brief also warned that action by the Iowa Supreme Court posed a legal threat to "right to farm" laws in numerous other states as well. Iowa's new Governor Tom Vilsack was quoted by the Associated Press as saying that the U.S. Supreme Court's ruling made it very likely that Iowa state lawmakers would revisit this issue.

Iowa farmers and officials aren't the only ones shocked and surprised by this set of events. Scott Jensen, State Assembly Speaker in neighboring Wisconsin, immediately announced that he was asking that legislature's legal counsel to review the Iowa decision and evaluate its likely impact in Wisconsin. Jensen, a Republican from Waukesha, said he was proud of the Wisconsin "right to farm" law—among the first legislation passed when the Republicans assumed the majority in the Assembly in 1995.

Illinois does not have a similar "right to farm" law but the recent controversy over regulating large livestock operations touches on some of the same issues and concerns. The crux of Knox County's ongoing case against Jim & Doug Baird and their Highlands hog farm near Williamsfield is due to be presented to the Illinois Supreme Court. In that case Knox County State's Attorney Paul Mangieri has argued that there must be some logical limitations on the Illinois law that prohibits local governmental control of agricultural land use. Knox County attempted to enforce zoning restrictions to block construction of the Highlands' large scale hog farrowing operation contending that the very size of this operation takes it out of the realm of traditional agriculture. While Mangieri has been unsuccessful so far in both the Circuit and Appellate courts, a strong dissenting opinion by one member of the three-judge Appellate Court panel has offered him some reason for optimism.

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Asked if the Iowa court drama may have some impact on Knox County's legal battle, Mangieri was blunt and to the point. "While the ruling is amazing in a state as agriculturally-based as Iowa it has no standing whatsoever here in Illinois. The relevant laws in Iowa are totally different from those in Illinois and the facts of our case differ as well. This decision will undoubtedly have significant impact within Iowa but little direct legal application outside of that state. Things could have been much different had the U.S. Supreme Court heard the case and issued an opinion supporting the Iowa Supreme Court. It is impossible to interpret meaning into a refusal to hear this case."

While the Iowa ruling will have little effect on the specific Knox County case, it may have far reaching effect on Illinois. Operators of mega farms and their corporate parents will logically migrate to the least restrictive states such as Illinois. As recently as this week, Illinois legislators failed to strengthen the Illinois Livestock Facilities Management Act.

Posted to Zephyr Online March 27, 1999

Return to the Zephyr home page: <<http://www.thezephyr.com>>

Phil Nagley

New York's Right to Farm Law Found "Constitutional"

On May 25, Justice Thomas Keegan of Albany County Supreme Court issued a landmark decision for New York State agriculture in the case of PAW v. Davidsen, in which the Court declared the New York State Right to Farm Law (RTFL) constitutional. The RTFL provides nuisance suit protection to farming operations that have received a "Sound Agricultural Practice Opinion" from the Commissioner of Ag and Markets, which Trengo Farms, a confinement hog operation in Chemung County, received in 1997. PAW, a small environmental group, claimed that New York's RTFL was unconstitutional because it caused an improper "taking" of private property, alleging that the opinion allowed the Trengos to maintain a nuisance over neighboring property, creating an easement in the Trengos' favor. The creation of that "easement," PAW argued, resulted in a "taking" of private property. The Court decided that the RTFL did not authorize the Trengos' to create a nuisance, nor does the RTFL provide blanket immunity from nuisance suits. Thus, the statute does not create a property right in favor of the farm in the neighboring property, so no taking of private property occurred under the RTFL. Look for further details on this momentous decision in the next issue of the Advocate.

Alaska's Right To Farm Law Needs Overhaul

By Jim Ellison

Good well written laws make for good Neighbors

During the last several decades, more and more city and Lower forty-eight people have migrated into rural areas to pursue their Alaska dream. They seek a peaceful place in the country, away from the pollution, noise, and crime of cities and suburbs. Many choose homes in modest (some times not so modest) subdivisions that press into former and future agricultural lands.

This intrusion of urban life into rural life results in an inevitable conflict. How surprised some neighbors are to wake up one spring morning to roaring machinery, buzzing flies, the stench of manure and a mist of pesticides in the air. And how angry many become when they learn that they can't do anything about it.

The Legal 'Right to Farm' States now gives farmers a basic "right to farm" without the fear of lawsuits brought by offended neighbors. As one judge remarked while dismissing a lawsuit against a hog farmer, "pork production generates odors that cannot be prevented, and so long as the human race consumes pork, someone must tolerate the smell."

Before the right-to-farm laws were enacted (most of them in the 1980s), courts shut down many a farmer's operation because it was a nuisance to the neighbors. For example, a group of annoyed neighbors, whose homes had sprung up around a Massachusetts hog farm, sued and closed it in 1963. Some judges tried to strike a middle ground and ended up applying restrictions that would let the farming operation continue.

A Florida court, for example, allowed a hog farm to stay in business but limited how many hogs the farmer could have. The judge also issued instructions on how to store and feed the garbage the hogs were accustomed to eating.

These two illustrations prove the wrong-head-a-ness of judges being farm managers - neither hog operation could continue and remain economically viable.

In another case, retirees at Sun City in Arizona discovered that they had traded their frigid climates for warm breezes laced with the odor of a cattle feedlot. A resulting lawsuit closed down the feedlot, but the judge ordered the developer of the community to pay the cost of relocating the cattle operation. The action all but broke the developer.

The right-to-farm laws supposed to take judges out of the farm management business and protect farmers from the nuisance laws that apply to ordinary neighbors.

Every state in the country has passed a right-to-farm law.

North Carolina's law is typical. It declares that an agricultural operation, which has existed for a year without being a nuisance, is presumed not to be a nuisance even when new neighbors move in. If the farm operations are conducted in a reasonable manner, the new neighbors can't legally complain.

Several states list specific annoyances that are not considered a legal nuisance to neighbors. The lists include odor, noise, dust and the use of pesticides--the very conditions which, without the laws, could lead to a lawsuit by a neighbor.

Right-to-farm laws do not give farmers complete freedom to do as they please. Farmers must operate in a legal and reasonable manner to be eligible for the law's protection.

Some states -- New York, for example -- do not allow a protected farming operation to undergo a large increase in size. Many don't allow farmers to substantially change what they are doing if they are to remain protected under the law and this law's limiting factor has driven several livestock operation out of business. In farming as any business -- the farmer must adjust his operation to fit the ever-changing economic conditions. Thus in some cases a farm must grow or die, in others, maybe a complete change in operations including value added products or go from grain crops to animals.

No law should protect a farmer who does not follow normal procedures or who deliberately annoys neighbors.

Alaska's "Right To Farm" (see side bar - subsection 09.45.235) law is simple and easily understood as written and that could be the rub; it has holes in it that any capable lawyer could drive a D-10 Cat through sideways even if he didn't even know what a dozer looked like.

For example look at section (a); If some one moved in next to a farmer that was just beginning to clear fields and setup, the new neighbor wouldn't consider the farmer a threat to his bliss until he looked out one morning and seen the crop duster flying by or maybe the farmer's kid out spraying thistle on his four-wheeler. Two ways to cure this - change from three years to one and require notification from sellers to buyers that the property is close to farming operations.

Now if you think that was bad look at section (b) 1 and 2; that part is clearly open to interpretation; for example; Farmer clears off a couple a hundred acres - levels it to 1:60 grading for flood irrigation but not yet planted, along comes a frog choking rain - say a couple inches in a hour - oops small flood right in our new neighbor's door. Could be interpreted as the farmer's fault.

I believe by rewriting the law and writing a new law governing notification to real estate buyers "Sniff Before You Leap Law" and requiring that land deeds in agriculture and farmable areas be so restricted by such notification "I told you so law", would make for good neighbors. Other states have these laws already in place

I have written such laws based on other state's laws, read them and if you agree pass them along to your local lawmaker. This is for our own protection.

Jim



Law of the Land Review

An Occasional Report to Local Government Officials
Regarding Rules and Regulations
For Natural Resources Use or Management

Additional Information Available From:

MARCH, 1994

RIGHT TO FARM LAW: DEFENDING AGAINST NUISANCE LAWSUITS BY NONFARM OWNERS

Owners of nonfarm residences sometimes file lawsuits to limit livestock production or farmland cultivation practices which they believe threaten their health, safety, or welfare. Several states have "right to farm" laws to protect farmers from complaints from noise, odor, and dust arising from normal farming practices. While the words "right to farm" do not appear in state law, Wisconsin statutes do afford a farmer some protection against a nuisance action brought by a neighboring landowner. Also, towns and counties are authorized to develop land use plans, to adopt exclusive agricultural zoning, and to support farmer participation in the farmland preservation program. Such approaches can be used to discourage building of nonfarm residences in productive agricultural areas.

INTRODUCTION. Around the nation, where nonfarm residences have intruded into agricultural areas, land use disputes have arisen. Farmers, who are accustomed to operating farm machinery at any time, are receiving noise complaints from persons who buy country homes in pursuit of "peace and quiet." Other farming practices that sometimes generate nuisance complaints are manure handling, concentrated livestock housing, and chemical applications.

FARM NUISANCE CASE STUDIES. Contra Costa County, California has produced apricots, grapes, and livestock products for more than a century. Yet, many persons working in nearby San Francisco have been attracted to the county by its affordable housing. Prospective new owners consider the county's green farm fields to be like urban park land. Because they have little knowledge of farming, newcomers seldom consider how the need to plow, plant, cultivate, and harvest may affect their lives. Faced with a growing number of complaints and nuisance suits, county officials proposed a right to farm ordinance. The

measure would discourage nuisance actions against farmers and would require realtors to inform prospective nonfarm owners about possible "inconveniences" caused by necessary agricultural practices. Some local residents are challenging the proposed ordinance and will seek to overturn it if it is adopted.

Near Alliance, Ohio, a nonfarm family was offended by the construction of a facility that houses more than 100,000 chickens. The family contends that property values have been adversely affected by the farm operation. It has repeatedly complained about odors to the Stark County Health Department. Inspections by county officials and state natural resources staff have uncovered no air quality or manure handling violations. Nonetheless, a lawsuit is likely to ensue.

ADVENT OF RIGHT TO FARM LAWS. One approach used to minimize the threat of nuisance lawsuits has been the passage of state "right to farm" laws. For instance, Michigan enacted a right to farm law more than ten years ago.

Chapter 286 of Michigan law states that a farm operation shall not be found to be a nuisance if it "existed before a change in the land use or occupancy of land within 1 mile of the boundaries of the farm land" and if the farming operation would not have been considered a nuisance before the nearby residences were built. Also, an operation cannot be considered a nuisance if it "conforms to accepted agricultural and management practices." "Acceptable" practices are annually reviewed and listed by the state's agriculture commission in consultation with state university, state agency, and USDA officials.

Laws specifying a right to farm also are present in Florida, Hawaii, Idaho, Louisiana, Michigan, Nebraska, New Jersey, New Mexico, New York, Rhode Island, Tennessee, and Virginia.

ARE RIGHT TO FARM LAWS FAIR OR EFFECTIVE? Neil D. Hamilton wrote a book titled What Farmers Need to Know About Environmental Law (Drake University Agricultural Center, Des Moines, IA, 1990). Hamilton claimed that some right to farm laws do not adequately protect farmers from nuisance lawsuits. He cited a case in which a hog farmer spent \$50,000 to contest a suit filed against him. His neighbor had objected to a proposed expansion. The farmer "won" the suit yet lost financially because he could not recover his defense costs.

In New York, one attorney argued that right to farm law afforded farmers too much protection. He claimed it was unfair to give farmers protection from legal action by another class of citizens. The attorney represented a town board in a Niagara County case where a dairy farmer wanted to increase his herd from 500 to 850 cows. The board refused to grant a building permit for a new barn when nonfarm residents complained to town officials about nuisances at the "factory-sized" farm.

WISCONSIN STATUTES AND FARM NUISANCES: State law allows a person or local government unit to ~~also~~ abate a public nuisance. This statutory authority can be applied when a citizen complaint is brought forward against a farm

(or nonfarm) property owner.

Note: In the 1981 case of State v. Quality Egg Farm, Inc., nuisance was defined by the courts as unreasonable activity or use of property that interferes substantially with comfortable enjoyment of life, health, or safety of others.

Wisconsin law does not contain the words "right to farm." However, it does say (Wisconsin Statutes, 823.08) that, "to the extent possible consistent with good public policy, the law should not hamper agricultural production." When a farm zoned for exclusive agricultural use is subject to a nuisance action, similar farming is allowed to continue unless the court decides it would endanger health or safety. If not so zoned, the court may order the farmer to use alternative practices to reduce the nuisance. If a court finds that the farming practice is a nuisance and if the person complaining moved into an area where the farming activity considered to be a nuisance was consistent and ongoing, then the court may assess only nominal damages. A farmer may recover the legal costs for his defense if a nuisance action is dismissed by the court.

THE NEED TO SEPARATE FARM AND RESIDENTIAL USES. Conflicts between farm and nonfarm landowners often can be avoided in areas where some land is set aside for agricultural use while other land is reserved for residential use.

Town and county government can help reduce the threat of nuisance lawsuits when they: [1] prepare a local land use plan and [2] support their plan by encouraging farmland preservation program participation and by adopting exclusive agricultural zoning to limit the construction of nonfarm residences within farmland areas.

Note: This information is not intended as a substitute for legal advice from a licensed attorney.

Prepared by:
Donald Last
Extension Natural Resource Policy Specialist
University of Wisconsin-Stevens Point
715-346-2386

**Board of Agriculture & Conservation (BAC)
Resolution 2001-1**

**Resolution in Support of Agricultural Legislation Pending in the 22nd
Alaska Legislature**

Whereas one of the principal functions of the Board of Agriculture and Conservation (BAC) is to address issues affecting agriculture in Alaska; and

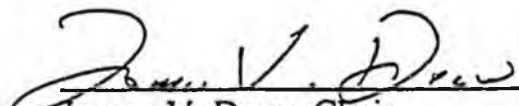
Whereas there is currently legislation pending before the 22nd Alaska Legislature which pertains to agriculture in Alaska; and

Whereas the Board of Agriculture and Conservation supports in concept HB 82 "An Act relating to agricultural facilities and operations as private nuisances; and to disclosures in transfers of real property located within one mile of an agricultural facility or an agricultural operation"; and

Whereas the Board of Agriculture and Conservation supports in concept HB 128 "An Act relating to employment of certain minors in agriculture";

Now therefore be it resolved that the Board of Agriculture and Conservation requests that the 22nd Alaska Legislature, after appropriate committee referral and review, support and approve HB 82 and HB 128.

Board of Agriculture and Conservation


James V. Drew, Chair

02-26-01
Date

RESOLUTIONS

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF AGRICULTURE

TONY KNOWLES, GOVERNOR

CENTRAL OFFICE
1800 GLENN HIGHWAY, SUITE 12
PALMER, ALASKA 99645-6736
PHONE: (907) 745-7200
FAX: (907) 745-7112

NORTHERN REGION OFFICE
3700 AIRPORT WAY
FAIRBANKS, ALASKA 99709-4699
PHONE: (907) 451-2780
FAX: (907) 451-2751

PLANT MATERIALS CENTER
HCO4 BOX 7440
PALMER, ALASKA 99645-9706
PHONE: (907) 745-4469
FAX: (907) 746-1568

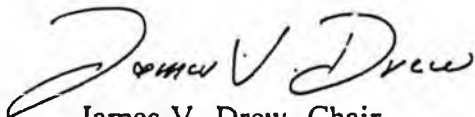
March 2, 2001

Dear Legislator:

At the Board of Agriculture and Conservation meeting on February 20, 2001, the board unanimously approved a resolution on agricultural legislation pending in the 22nd Alaska Legislature. The resolution supports, in concept, HB 82, "An Act relating to agricultural facilities and operations as private nuisances; and to disclosures in transfers of real property located within one mile of an agricultural facility or an agricultural operation;" and HB 128, "An Act relating to employment of certain minors in agriculture".

One of the principal functions of the newly created Board of Agriculture and Conservation (BAC) is to address issues affecting agriculture in Alaska. Therefore the BAC requests that the 22nd Alaska Legislature, after appropriate committee referral and review, support and approve HB 82 and HB 128. Thank you for your consideration.

Sincerely,



James V. Drew, Chair
Board of Agriculture and Conservation

Board of Agriculture & Conservation (BAC)
Resolution 2001-1

Resolution in Support of Agricultural Legislation Pending in the 22nd
Alaska Legislature

Whereas one of the principal functions of the Board of Agriculture and Conservation (BAC) is to address issues affecting agriculture in Alaska; and

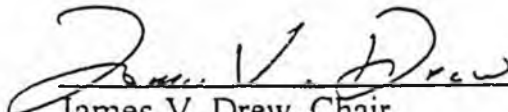
Whereas there is currently legislation pending before the 22nd Alaska Legislature which pertains to agriculture in Alaska; and

Whereas the Board of Agriculture and Conservation supports in concept HB 82 "An Act relating to agricultural facilities and operations as private nuisances; and to disclosures in transfers of real property located within one mile of an agricultural facility or an agricultural operation"; and

~~Whereas~~ the Board of Agriculture and Conservation supports in concept HB 128 "An Act relating to employment of certain minors in agriculture";

Now therefore be it resolved that the Board of Agriculture and Conservation requests that the 22nd Alaska Legislature, after appropriate committee referral and review, support and approve HB 82 and HB 128.

Board of Agriculture and Conservation



James V. Drew, Chair

02-26-01
Date

Adopted: 02/20/01

**MATANUSKA-SUSITNA BOROUGH ASSEMBLY
RESOLUTION NO. 01-007**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY IN SUPPORT OF HOUSE BILL 82, AN ACT RELATING TO AGRICULTURAL FACILITIES AND OPERATIONS, AND TO DISCLOSURES IN TRANSFERS OF REAL PROPERTY LOCATED WITHIN ONE MILE OF AN AGRICULTURAL FACILITY OR AN AGRICULTURAL OPERATION.

WHEREAS, the legislature is considering House Bill 82 relating to agricultural facilities and operations, and to disclosures in transfers of real property located within one mile of an agricultural facility or an agricultural operation; and

WHEREAS, the Matanuska-Susitna Borough has a long history of agricultural operations; and

WHEREAS, the majority of agricultural activities in the state take place in the Matanuska-Susitna Borough; and

WHEREAS, in 1999 over 57 percent of the value of agricultural production in the state came from the Matanuska-Susitna Borough; and

WHEREAS, the Matanuska-Susitna Borough is the fastest growing community in the state; and

WHEREAS, the majority of that growth is residential; and

WHEREAS, House Bill 82 proposes that prior to real property being transferred, notification will be provided indicating the property is within one mile of a defined agricultural facility or operation, and that the purchaser should be prepared to accept that the by-products and activities of agricultural facilities and

operations are a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector.

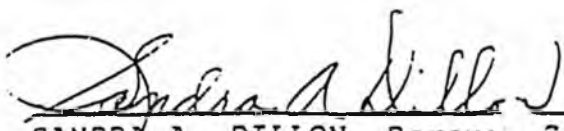
NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Assembly supports the a'option of House Bill 82.

ADOPTED by the Matanuska-Susitna Borough Assembly this 20 day of February, 2001.



TIMOTHY L. ANDERSON, Borough Mayor

ATTEST:



SANDRA A. DILLON, Boroug.. Clerk

(SEAL)

Sharon Davies
1510 "P" Street
Anchorage, AK 99501
Telephone 277-5547 Fax 277-5502

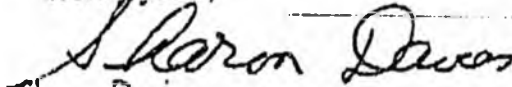
Representative John Harris
Alaska State Legislature
FAX 465-3799

Dear Mr. Harris:

I strongly support the concept of HB 82. I have read several times of farmers having legal problems from people who had moved into new housing near them and decided they did not like some of the practical aspects of farms such as odors, noises and agricultural chemicals. I did not and do not find this fair nor reasonable.

It is beneficial for all Alaskans to protect our farms and farmers because we all need to eat.

Sincerely yours,


Sharon Davies

CORRESPONDENCE



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY
committee name

Committee on HB 82, dated 4/4/01
bill # / subject

SEC 4. AS 34.70.050 AMEND - UNDER SEC.
34.70.050.

ADD:

(4) WHERE INFORMATION ABOUT LOCATION
OR AGRICULTURAL FACILITIES / OPERATIONS
CAN BE OBTAINED.

~~NOTABLY~~ NOTABLY - THE LOCAL SOIL &
WATER CONSERVATION ~~OF~~ DISTRICT.

Signed:

Testifier

BARBARA A. NARO

KENAI ASSOCIATION OF REALTORS - CHAIR

Representing (optional) INDUSTRY ISSUES

105 SWADY LN SELWENNA, AK 99669

Address

907 262 3958

Phone number



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name
 committee on HB 82 . dated 4-4-01
bill/subject

I am in favor of this bill. I have a small (30 acre) farm on the outskirts of Homer. The area is rapidly becoming subdivided into smaller and smaller residential lots. This bill would protect my right to continue my farm operation (cattle - horses - chickens, etc.) which has been a farm since the 1950's!

Signed: Mavis Kilchen
Testifier
Seaside Farms
Representing (Optional)
40904 SEASIDE FARM RD, HOMER, AK 99603
Address
907 - 235 - 7540
Phone No.

HB

93

Master/Library

WORK DRAFT

WORK DRAFT

WORK DRAFT

22-LS0431\C
Utermohle
2/27/01

CS FOR HOUSE BILL NO. 93()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE LANCASTER

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing the permit fee for the personal use dip net fisheries for the Kenai**
2 **River and the Kasilof River; and providing for an effective date."**

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

4 *** Section 1. AS 16.05.340(a) is amended by adding a new paragraph to read:**

5 **(25) Personal use dip net fishing permit for the Kenai River and**
6 **the Kasilof River.....\$10.**

7 *** Sec. 2. This Act takes effect July 1, 2001.**

March 26, 2001

Amendment offered by Rep. Scalzi

House Resources Committee

CS FOR HOUSE BILL NO. 93 ()

22-LS0431\C

Add to (25) – line 5

A sport fish license is not required to purchase the dip net permit. Proof of Alaska residency is required.

Alaska State Legislature

SESSION ADDRESS:
State Capitol
Juneau, Alaska 99801-1182
Phone (907) 465-2693
Toll Free 800-463-2693
Fax 907-465-3835

INTERIM ADDRESS:
35477 Suite 101-B Spur Hwy
Soldotna, Alaska 99669
Phone 907-260-5236
Fax 907-260-3044

Representative Ken Lancaster
District 8

*Ken
copy*

March 19, 2001

MEMORANDUM

To: Representative ^{Drew} Drew Sculzi, Co-chairman
Representative Beverly Masek, Co-chairman
House Resources Committee

Subject: House Bill 93 – "An Act relating to the permit fee for the personal use dip net fisheries for the Kenai River and the Kasilof River"

I would like to request a committee hearing on House Bill 93. I have attached the information concerning this bill along with the original fiscal note that was prepared when the bill was heard in Fisheries. If you have any questions, let me know.

I will look forward to the bill being heard in your committee!

Ken

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

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Alaska State Legislature

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State Capitol
Juneau, Alaska 99801-1182
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Toll Free 800-463-2693
Fax 907-465-3835



INTERIM ADDRESS:
35477 Suite 101-B Spur Hwy
Soldotna, Alaska 99669
Phone 907-260-5236
Fax 907-260-3044

Representative Ken Lancaster District 8

SPONSOR STATEMENT

For

HOUSE BILL 93

“Establishing the permit fee for the personal use dip net fisheries for the Kenai River and the Kasilof River”

The piece of legislation will require a \$10.00 charge to dip net fish on the Kenai River and the Kasilof River. Being the largest sockeye salmon producer in the State of Alaska, there is a real abuse to this fishery.

Annually, there are approximately 10,000 to 15,000 permits issued. At \$10.00 per permit, roughly \$100,000 to \$150,000 could be generated annually. The fishery opens on July 10 and runs until the end of the month. It is opened for 21 days. With this many fishermen in the area, there is complete disregard for habitat, environment, and the banks of these rivers. In addition, there have been complaints of trespassing on private property (those people trying to get access to the rivers). Costs of clean up on these two rivers have increased over the years due to the lack of enforcement. It has been reported that some fishermen are fishing without licenses, taking more than the 25 fish they are allocated to harvest, an abuse of this fishery. Temporary enforcement officers need to be hired for this 21-day period. It is the intent of this legislation that the monies raised will be used for enforcement. In addition dollars would be used for habitat protection and bank area cleanup. The program should pay for itself. Additionally, it has been reported that non-residents are illegally participating in this fishery, as they are not allowed by Alaska Statute 16.05.340.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 93 (FSH)
 () Publish Date: _____

Revision Date/Time (Note if correction): 3/15/01 10:00 AM Dept. Affected: Fish and Game
 Title: Kenai Dip Net Fishery Permit Fee BRU: Sport Fisheries
 Component: Sport Fisheries
 Sponsor: Representative Lancaster
 Requester: House Fisheries Component Number: 464

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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES	65.0	65.0	65.0	65.0	65.0	65.0
---------------------------	-------------	-------------	-------------	-------------	-------------	-------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other -- Fish and Game Fund (1024)						
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)

To calculate the potential revenue change by passage of HB 93 as written the following information was collected and assumptions made.

1. In calendar year 2000, Division of Sport Fish issued 16,100 personal use permits for the Cook Inlet area.
2. In calendar year 2000, 1,385 permits were reported as actively fished in the Kaslof River and 6,721 actively fished in the Kenal River.
3. For calendar year 2001 and beyond, these participation numbers were rounded to 1,500 and 7,000 respectively for purposes of this analysis.
4. Approximately 10% of the active dip net fishers participate in both the Kenal and Kaslof fisheries.
5. A total of 7,650 permits would be issued for both Kenal and Kaslof River fisheries.
6. Revenue is estimated to total \$65,025 (\$76,500 less vendor fees of approximately \$11,475).

Prepared by: Kelly Hepler, Director Phone 465-4180
 Division: Sport Fish Date/Time 3/15/01 10:00 AM
 Approved by: Gordy Williams for Commissioner Frank Rue Date 03/15/2001
 Agency: Alaska Department of Fish and Game

For distribution information, call the Governor's Legislative Office

Alaska State Legislature

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State Capitol
Juneau, Alaska 99801-1182
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Toll Free 800-463-2693
Fax 907-465-3835



INTERIM ADDRESS:
35477 Suite 101-B Spur Hwy
Soldotna, Alaska 99669
Phone 907-260-1236
Fax 907-260-3044

Representative Ken Lancaster District 8

March 14, 2001

A handwritten signature in cursive script that reads "John".

John Williams, Mayor
Kenai City Council Members
City of Kenai
210 Fidalgo Avenue Suite 200
Kenai, Alaska 99611-7794

Dear John and Council Members:

I want to thank you for the City of Kenai Resolution 2001-12 supporting House Bill 93. The bill had its first hearing on Monday, March 14 and I used the resolution and the costs as part of my testimony. The bill did pass out of committee and will next surface in Resources.

I appreciate the support from you and the City Council. If I can be of further assistance, let me know.

Cordially,

A handwritten signature in cursive script that reads "Ken".

Ken Lancaster, Representative

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

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CITY OF KENAI

" Oil Capital of Alaska "

210 FIDALGO AVE., SUITE 200 KENAI, ALASKA 99611-7794
TELEPHONE 907-283-7535
FAX 907-283-3014



March 8, 2001

Representative Ken Lancaster
Alaska State Legislature
State Capitol (MS3101) Room 421
Juneau, AK 99801-1182

Fax: 465-3835

Dear Representative Lancaster:

Subject: HB 93

Enclosed is City of Kenai Resolution No. 2001-12 supporting HB 93 entitled "Kenai Dip Net Fishery Permit Fee." This resolution passed our City Council by unanimous vote on March 7, 2001.

Also enclosed is a detailed description and justification of the City of Kenai's request for a State grant for "State of Alaska Dip Net Fishery Projects." The City of Kenai appreciates your support for these badly needed projects.

Sincerely,

A handwritten signature in cursive script that reads "Keith Kornelis".

Keith Kornelis
Public Works Manager

KK/jet
Enclosures

Suggested by: Council

**CITY OF KENAI
RESOLUTION NO. 2001-12**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, SUPPORTING HB 93 ENTITLED "KENAI DIP NET FISHERY PERMIT FEE."

WHEREAS, Representative Ken Lancaster is sponsoring HB 93, which is an act establishing the permit fee of \$10 for the personal use dip net fisheries for the Kenai River and the Kasilof River with an effective date of July 1, 2001; and,

WHEREAS, the City of Kenai has listed "State of Alaska Dip Net Fishery Projects" for \$900,000 as one of its top CIP requests for State Grant funds in 2001-2002; and,

WHEREAS, the projects consist of the following:

a.	Dock Area Paving	\$425,000
b.	New Launch Ramps	275,000
c.	New Dock Access Road	200,000
	TOTAL	\$900,000

;and,

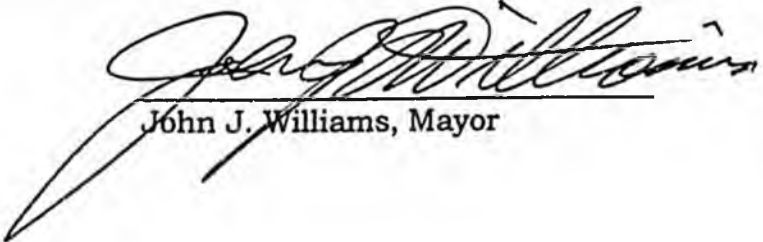
WHEREAS, the State should provide grant funds to the City to cover the costs of the impact of the dip net fishery since the State governs or regulates this fishery on City-owned lands; and,

WHEREAS, there is an estimated 15,000 dip net permits issued each year; and therefore, a \$10 permit fee would increase State revenue by approximately \$150,000 per year; and,

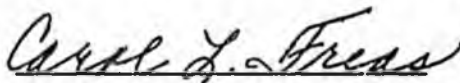

WHEREAS, it would take the State only six years of \$150,000/year permit revenues to recoup the \$900,000 capital costs that are needed for the dip net fishery project listed above.

NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF KENAI, ALASKA, supports HB 93 entitled "Kenai Dip Net Fishery Permit Fee."

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 7th day of March 2001.


John J. Williams, Mayor

ATTEST:


Carol L. Freas, City Clerk
Approved by Finance 

**CITY OF KENAI
REQUEST FOR STATE GRANT
2001 – 2002 CAPITAL IMPROVEMENT PROJECT**

NAME: STATE OF ALASKA DIP NET FISHERY PROJECTS

TOTAL PROJECT COST: \$900,000

PROJECT DESCRIPTION: (See Drawing)

a. Dock Area Paving \$425,000

This part of the project is to rebuild the Boat Launch Road and a portion of the Boating Facility parking lot, which is presently gravel. The project includes asphalt paving, parking striping, and signage.

b. New Launch Ramps \$275,000

This part of the project is to add two new launch ramps with a floating dock between the ramps. It would be similar to the existing launch ramps.

c. New Dock Access Road \$200,000

This part of the project is to add a new road as an exit access to the boating facility.

PROJECT JUSTIFICATION:

The Boat Launch Road, Parking Lot, and Launch Ramps are heavily used by personal dip net fishermen using the Boating Facility. Over 15,000 dip net permits for households are issued each year, and over 100,000 fish are caught in this Kenai River fishery. The City Boat Facility handles most of this fishery. This project will improve the Boating Facility operation and make it a lot cleaner.

This project will greatly enhance the health and quality of life of its users. At the present time, users of the Boating Facility use staging areas that are gravel surfaced and often dirty and unsanitary. Dust in the area is a problem since dust retardants cannot be used due to the closeness to the water. Users spend time in staging areas getting their boats ready to load and unload onto their trailers and in parking. This project would definitely enhance recreational opportunities for dip net fishermen. Informational signs would also enhance the understanding of the area.

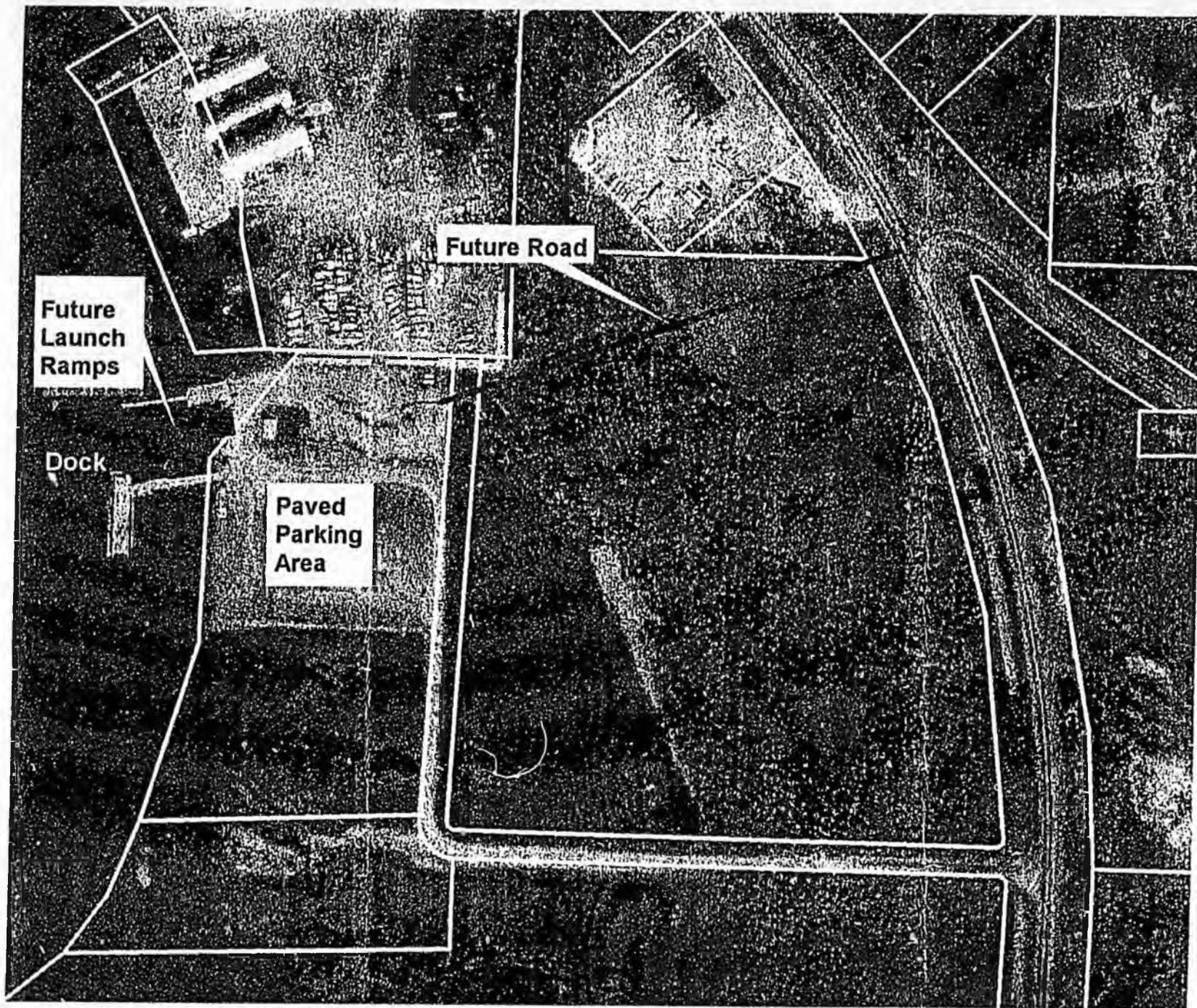
The biggest bottleneck that restricts the number of dip net users is having only two launch ramps. This project would provide users an additional two ramps allowing more users and faster access to the river. Under the present conditions, sometimes

there is a two-hour wait to get a boat into the water plus another two-hour wait to get the boat out of the water.

At times, the line of vehicles with boats or trailers extends down Boat Launch Road almost to Bridge Access Road. This presents many problems of access on this narrow road. Users often have to exit the facility and drive down Bridge Access Road to find a place to turn around and then back to Boat Launch Road to get in line to retrieve their boats. A new one-way exit from the facility would allow users with their boats to exit directly or allow vehicles with a trailer to make a loop to the line on Boat Launch Road to retrieve their boats.

The three parts of this project are very badly needed, and they are a direct result of the heavy use of dip net fishermen. Since the dip net fishery is governed or regulated in this area by the State of Alaska, the City of Kenai is requesting funds to help relieve some of the costs caused by the impact of this fishery. That is also why this project is entitled "State of Alaska Dip Net Fishery Projects."

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES



AMENDMENT

House Resources Committee

CS For HB 93 () 22-Ls0431\C

March 26, 2001

Amendment offered by Rep. McGuire

ADD:

Line 5,

amended to follow Scalzi's #1 which was adopted.
(25) ~~A sport fish license is not required to purchase the dip net permit, but~~
if applicant shows proof of a resident sport fish license, fee is waived.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 93 (FSH)
 () Publish Date: _____

Revision Date/Time (Note if correction): 3/15/01 10:00 AM Dept. Affected: Fish and Game
 Title: Kenai Dip Net Fishery Permit Fee BRU: Sport Fisheries
 Component: Sport Fisheries
 Sponsor: Representative Lancaster
 Requester: House Fisheries Component Number: 464

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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES	65.0	65.0	65.0	65.0	65.0	65.0
---------------------------	-------------	-------------	-------------	-------------	-------------	-------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other -- Fish and Game Fund (1024)						
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)

To calculate the potential revenue change by passage of HB 93 as written the following information was collected and assumptions made.

1. In calendar year 2000, Division of Sport Fish issued 16,100 personal use permits for the Cook Inlet area.
2. In calendar year 2000, 1,385 permits were reported as actively fished in the Kasilof River and 6,721 actively fished in the Kenai River.
3. For calendar year 2001 and beyond, these participation numbers were rounded to 1,500 and 7,000 respectively for purposes of this analysis.
4. Approximately 10% of the active dip net fishers participate in both the Kenai and Kasilof fisheries.
5. A total of 7,650 permits would be issued for both Kenai and Kasilof River fisheries.
6. Revenue is estimated to total \$65,025 (\$76,500 less vendor fees of approximately \$11,475).

Prepared by: Kelly Hepler, Director Phone 465-4180
 Division: Sport Fish Date/Time 3/15/01 10:00 AM
 Approved by: Gordy Williams for Commissioner Frank Rue Date 03/15/2001
 Agency: Alaska Department of Fish and Game

For distribution information, call the Governor's Legislative Office

Alaska State Legislature

SESSION ADDRESS:
State Capitol
Juneau, Alaska 99801-1182
Phone (907) 465-2693
Toll Free 800-463-2693
Fax 907-465-3835



INTERIM ADDRESS:
35477 Suite 101-B Spur Hwy
Soldotna, Alaska 99669
Phone 907-260-5236
Fax 907-260-3044

Representative Ken Lancaster District 8

SPONSOR STATEMENT

For

HOUSE BILL 93

“Establishing the permit fee for the personal use dip net fisheries for the Kenai River and the Kasilof River”

The piece of legislation will require a \$10.00 charge to dip net fish on the Kenai River and the Kasilof River. Being the largest sockeye salmon producer in the State of Alaska, there is a real abuse to this fishery.

Annually, there are approximately 10,000 to 15,000 permits issued. At \$10.00 per permit roughly \$100,000 to \$150,000 could be generated annually. The fishery opens on July 10 and runs until the end of the month. It is opened for 21 days. With this many fishermen in the area, there is complete disregard for habitat, environment, and the banks of these rivers. In addition, there have been complaints of trespassing on private property (those people trying to get access to the rivers). Costs of clean up on these two rivers have increased over the years due to the lack of enforcement. It has been reported that some fishermen are fishing without licenses, taking more than the 25 fish they are allocated to harvest, an abuse of this fishery. Temporary enforcement officers need to be hired for this 21-day period. It is the intent of this legislation that the monies raised will be used for enforcement. In addition dollars would be used for habitat protection and bank area cleanup. The program should pay for itself. Additionally, it has been reported that non-residents are illegally participating in this fishery, as they are not allowed by Alaska Statute 16.05.340.

Alaska State Legislature

SESSION ADDRESS:
State Capitol
Juneau, Alaska 99801-1182
Phone (907) 465-2693
Toll Free 800-463-2693
Fax 907-465-3835



INTERIM ADDRESS:
35477 Suite 101-B Spur Hwy
Soldotna, Alaska 99669
Phone 907-260-5236
Fax 907-260-3044

Representative Ken Lancaster
District 8

March 14, 2001

A handwritten signature in cursive script, appearing to read "John".

John Williams, Mayor
Kenai City Council Members
City of Kenai
210 Fidalgo Avenue Suite 200
Kenai, Alaska 99611-7794

Dear John and Council Members:

I want to thank you for the City of Kenai Resolution 2001-12 supporting House Bill 93. The bill had its first hearing on Monday, March 14 and I used the resolution and the costs as part of my testimony. The bill did pass out of committee and will next surface in Resources.

I appreciate the support from you and the City Council. If I can be of further assistance, let me know.

Cordially,

A handwritten signature in cursive script, appearing to read "Ken".

Ken Lancaster, Representative

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

Cooper Landing • Bear Creek • Funny River • Hope • Moose Pass • Ridgeway • Seward • Soldotna • Sterling
Listening to you – Getting things done.



CITY OF KENAI

" Oil Capital of Alaska "

210 FIDALGO AVE., SUITE 200 KENAI, ALASKA 99611-7794
TELEPHONE 907-283-7535
FAX 907-283-3014



March 8, 2001

Representative Ken Lancaster
Alaska State Legislature
State Capitol (MS3101) Room 421
Juneau, AK 99801-1182

Fax: 465-3835

Dear Representative Lancaster:

Subject: HB 93

Enclosed is City of Kenai Resolution No. 2001-12 supporting HB 93 entitled "Kenai Dip Net Fishery Permit Fee." This resolution passed our City Council by unanimous vote on March 7, 2001.

Also enclosed is a detailed description and justification of the City of Kenai's request for a State grant for "State of Alaska Dip Net Fishery Projects." The City of Kenai appreciates your support for these badly needed projects.

Sincerely,

A handwritten signature in cursive script that reads "Keith Kornelis".

Keith Kornelis
Public Works Manager

KK/jet
Enclosures

Suggested by: Council

**CITY OF KENAI
RESOLUTION NO. 2001-12**

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	TOTAL	\$900,000

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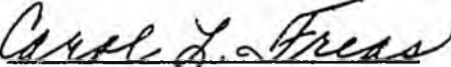

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PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 7th day of March 2001.


John J. Williams, Mayor

ATTEST:


Carol L. Freas, City Clerk
Approved by Finance 

**CITY OF KENAI
REQUEST FOR STATE GRANT
2001 – 2002 CAPITAL IMPROVEMENT PROJECT**

NAME: STATE OF ALASKA DIP NET FISHERY PROJECTS

TOTAL PROJECT COST: \$300,000

PROJECT DESCRIPTION: (See Drawing)

a. Dock Area Paving \$425,000

This part of the project is to rebuild the Boat Launch Road and a portion of the Boating Facility parking lot, which is presently gravel. The project includes asphalt paving, parking striping, and signage.

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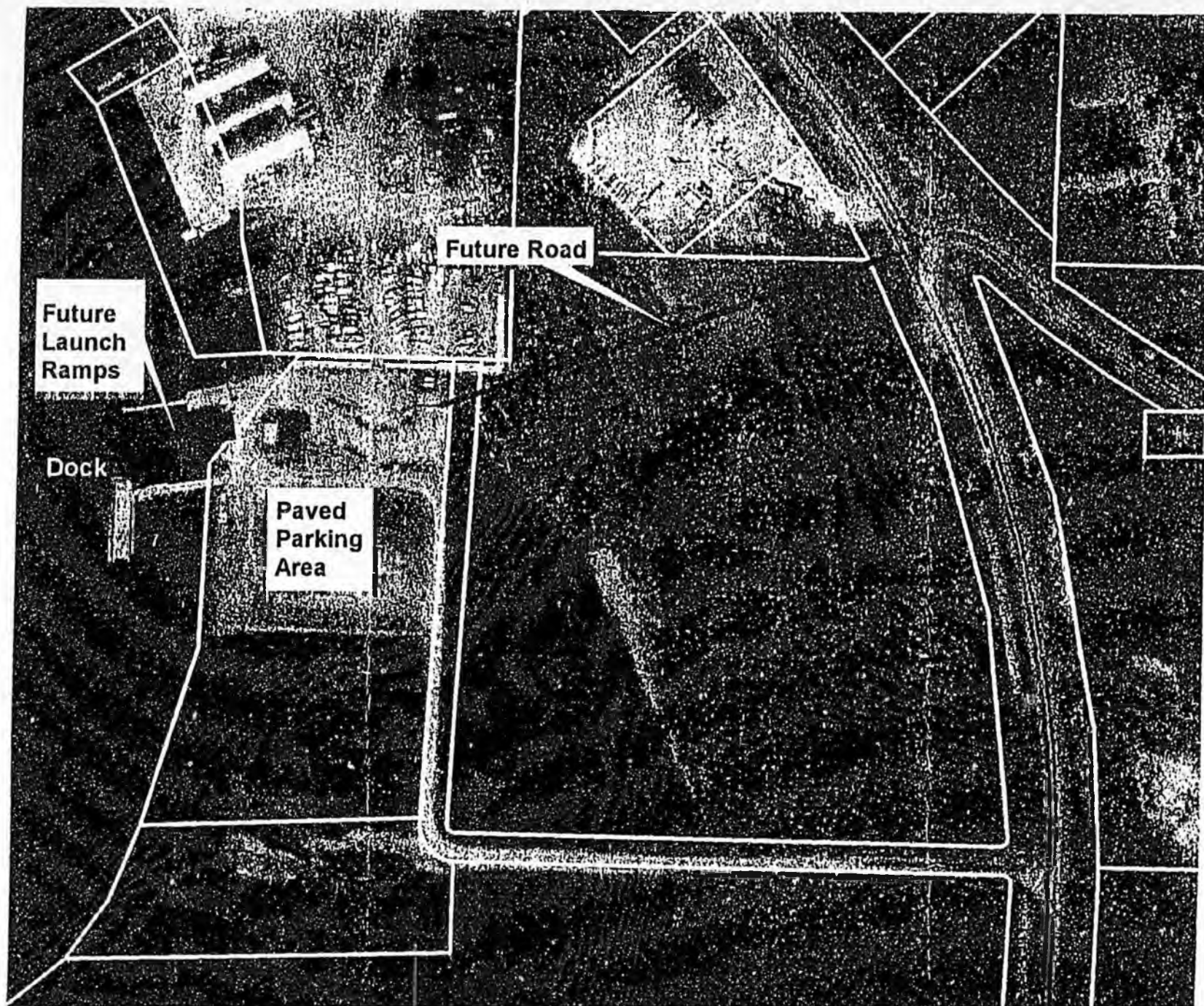
Dip Net Fishery Projects

Page 2

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500 0 500 1000 Feet

HB

108

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1

Bill Version: HB 108

(H) Publish Date: 2/5/01

Dept Affected: Natural Resources

BRU: Information/Data Management

Component: Recorder's Office/UCC

Revision Date/Time:

Title: Recorder's Office Receipt Supported Services

Sponsor: Rules Committee

Requestor: Governor

Component No. #802

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
PERSONAL SERVICES	20.0	20.0	20.0	20.0	20.0	20.0
TRAVEL						
CONTRACTUAL	115.0	115.0	115.0	115.0	115.0	115.0
SUPPLIES	15.0	15.0	15.0	15.0	15.0	15.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	150.0	150.0	150.0	150.0	150.0	150.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0
---------------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	(2,388.9)	(2,388.9)	(2,388.9)	(2,388.9)	(2,388.9)	(2,388.9)
1037 GF/Mental Health						
1156 Receipt Supported Services	2,538.9	2,538.9	2,538.9	2,538.9	2,538.9	2,538.9
TOTAL	150.0	150.0	150.0	150.0	150.0	150.0

Estimate of any current year (FY2001) cost: \$

0.0

POSITIONS

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

ANALYSIS:

(Attach a separate page if necessary)

This legislation will switch the funding source for the Recorder's Office from 1005/General Fund Program Receipts to 1156/Receipt Supported Services category. There will be no operational change as a result of this legislation.

\$150.0 Increase in Operational Costs:

The component continues to place increased emphasis on the critical need to preserve its historic records dating back to the 1800's. At the same time the component is moving into newer technologies and applications that will make access to new recordings faster and easier than it has ever been before. Both of these demands are draining existing component resources to unprecedented levels.

..... continued on next page

Prepared by: Sharon Young

Phone: 907-269-8882

Division: Support Services Division

Date: 13-Nov-00

Approved by Commissioner:

Pat Pourchol

Date: 13-Nov-00

Agency: Natural Resources

For distribution information, call the Governor's Legislative Office

COMMITTEE COPY

Continuation of fiscal note for:

Recorder's Office Receipt Supported Services

Repetitive status quo operational funding over a number of years, coupled with significant increases in contractual and supply costs, has required the component to forego or limit expenditures in several areas, including equipment maintenance and repairs, postage, archiving, and equipment replacement. Due to such cost increments and increased demands for the component's services, the component will not be able to continue status quo operations into FY02 without added funding.

DNR has requested a fund source change in FY02 relating to the accounting and appropriation of fees for recording and related services provided by the component. The change would allow the component's program receipts to be accounted for separately and would allow for more appropriate budgeting for the needs of the department. This fiscal note reflects an increase of \$150.0 over the Governor's budget request for this component. This additional funding is necessary to cover the component's increased operating expenses in a number of areas related to technology and records preservation – the two major forces currently impacting the component's operations. Specifically, this increase includes:

\$15.0 to cover increased lease costs associated with acquisition of additional historical records from various magistrate offices throughout the state and to cover space needs for thousands of plat mylars that are expected to be returned to the component for permanent storage;

\$30.0 to cover increased maintenance costs for reader/printers and other equipment in recording offices throughout the state;

\$20.0 to cover off-site records storage and costs associated with accessioning permanent film records to State Archives in Juneau;

\$20.0 to cover increased postage and courier expense;

\$5.0 to cover increased phone line expense to support WAN connections in all recording offices statewide;

\$20.0 to provide non-perm or intern staffing to address mailout backlogs in various offices;

\$15.0 to cover supply needs associated with new technology and new equipment, including archive film, CDs, labels, bar code software, bar code printers, etc.;

\$25.0 to address digital conversion of film records in various locations.

All of these expenditures are necessary for continuation of basic recording functions as mandated by statute. This increase is necessary to facilitate the component's basic mission: to provide and maintain a secure and impartial place of record for legal documents affecting real and personal property in the manner prescribed by Alaska law and to protect, preserve and enhance the permanent public record for the benefit of present and future generations.

Bill History/Action Display



BILL: HB 108

SHORT TITLE: DEPT NATURAL RESOURCES RECORDING FEES

BILL VERSION:

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

CURRENT STATUS: (H) RES

STATUS DATE: 02/05/01

THEN FIN

HEARING: (H) RES Mar 14 1:00 PM CAPITOL 124 First Hearing

TITLE: "An Act relating to the accounting for and appropriation of fees for recording and related services by the Department of Natural Resources; and providing for an effective date."

[Full Text](#)

[Fiscal Notes](#)

[Committee Action with Bill History](#)

Jrn-Date	Jrn-Page	Action
02/05/01	0239	(H) READ THE FIRST TIME - REFERRALS
02/05/01	0239	(H) RES, FIN
02/05/01	0240	(H) FN1: (DNR)
02/05/01	0240	(H) GOVERNOR'S TRANSMITTAL LETTER
02/05/01	0240	(H) REFERRED TO RESOURCES

Similar Subject Match or Exact Subject Match

BUSINESS

DEEDS

LAND

PUBLIC FINANCE

PUBLIC RECORDS

RESOURCES

UNIFORM ACTS

Bill Root:

[Display Bill Root](#)

BASIS HAS BEEN RE-PROGRAMMED THIS YEAR



TO REPORT PROBLEMS WITH BASIS INQUIRY

[Return to Basis Main Menu \(22 Legislature\)](#)

[Return to Legislature Home Page](#)

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

- 400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FAX: (907) 465-3886
- 550 WEST 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431
FAX: (907) 269-8918

February 13, 2001

The Honorable Drew Scalzi, Co-Chair
House Resource Committee
Room 13
Alaska State Capitol
Juneau, Alaska 99811

Dear Representative Scalzi,

The Department of Natural Resources requests a hearing on HB108(RES) " An Act relating to the accounting for and appropriation of fees for the recording and related services by the Department of Natural Resources: and providing for an effective date."

This bill will provide a stable source of funds for appropriation from the fees paid by the customers of the Recording Offices. The Recording Offices' customers pay in excess of \$4.0 million in fees on an annual basis and the Recording Offices operations is authorized to expend \$2.4 million of these receipts. There are services in the Recording Offices that the customers pay for but because of the current budget process the agency is limited in their request to expand the services. Having a "Fees for Services" budget will make the organization more accountable to its customers and allow the State to demonstrate the full cost of the program to the customers.

I look forward to working with you on this bill. If you have any questions or if I can provide further information, please call my legislative staff, Carol Carroll at 465-4730, or Nico Bus, our Administrative Service Manager at 465-2406. Thank you for this opportunity to address your committee.

Sincerely,



Pat Pourchot,
Commissioner

Cc: Sharon Young, State Recorder

Component Detail - FY 02 Operating Budget - Governor Structure

Numbers AND Language Sections!

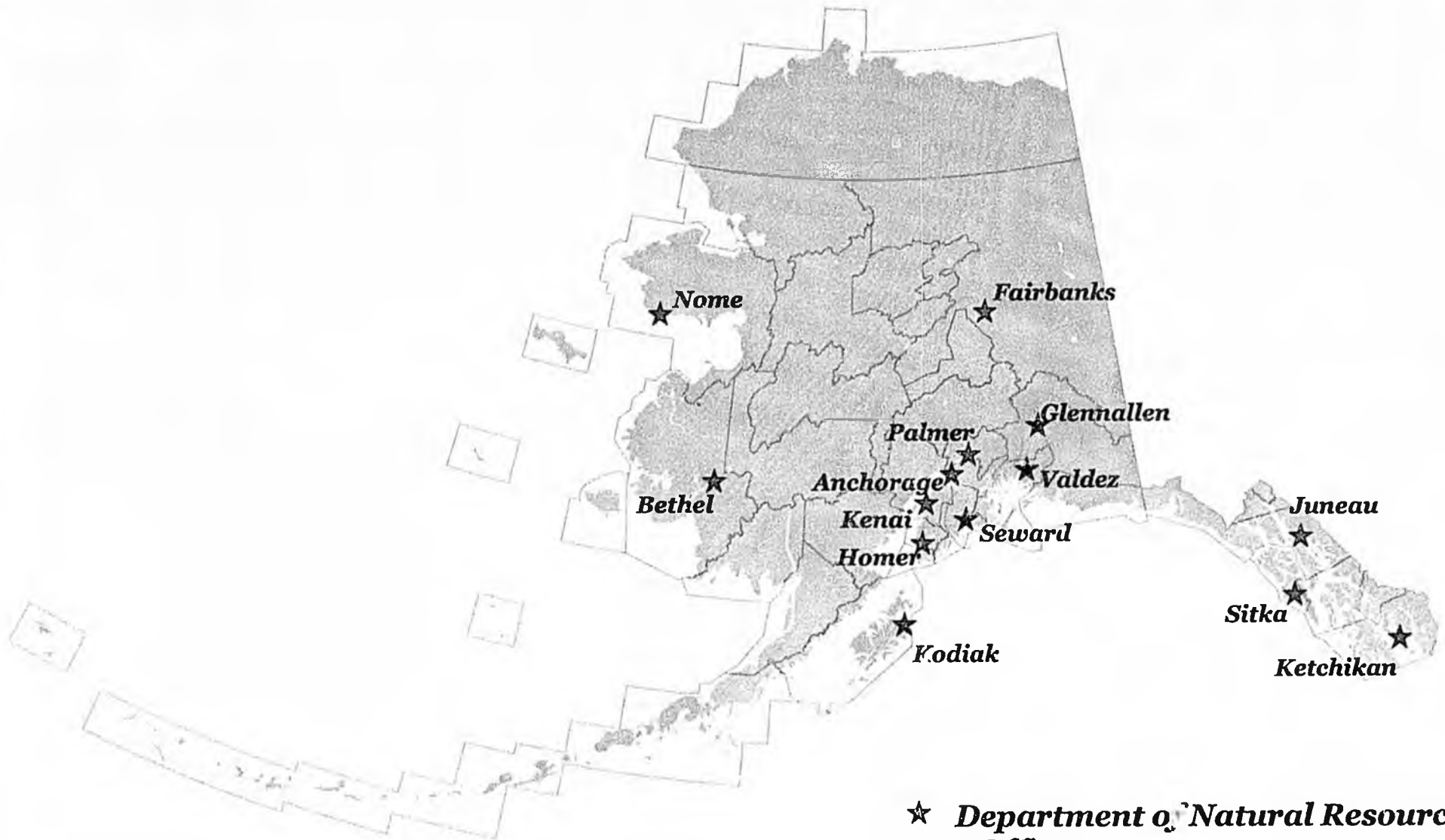
Component: **Recorder's Office/Uniform Commercial Code**
 BRU: **Information/Data Management**

Agency: **Department of Natural Resources**

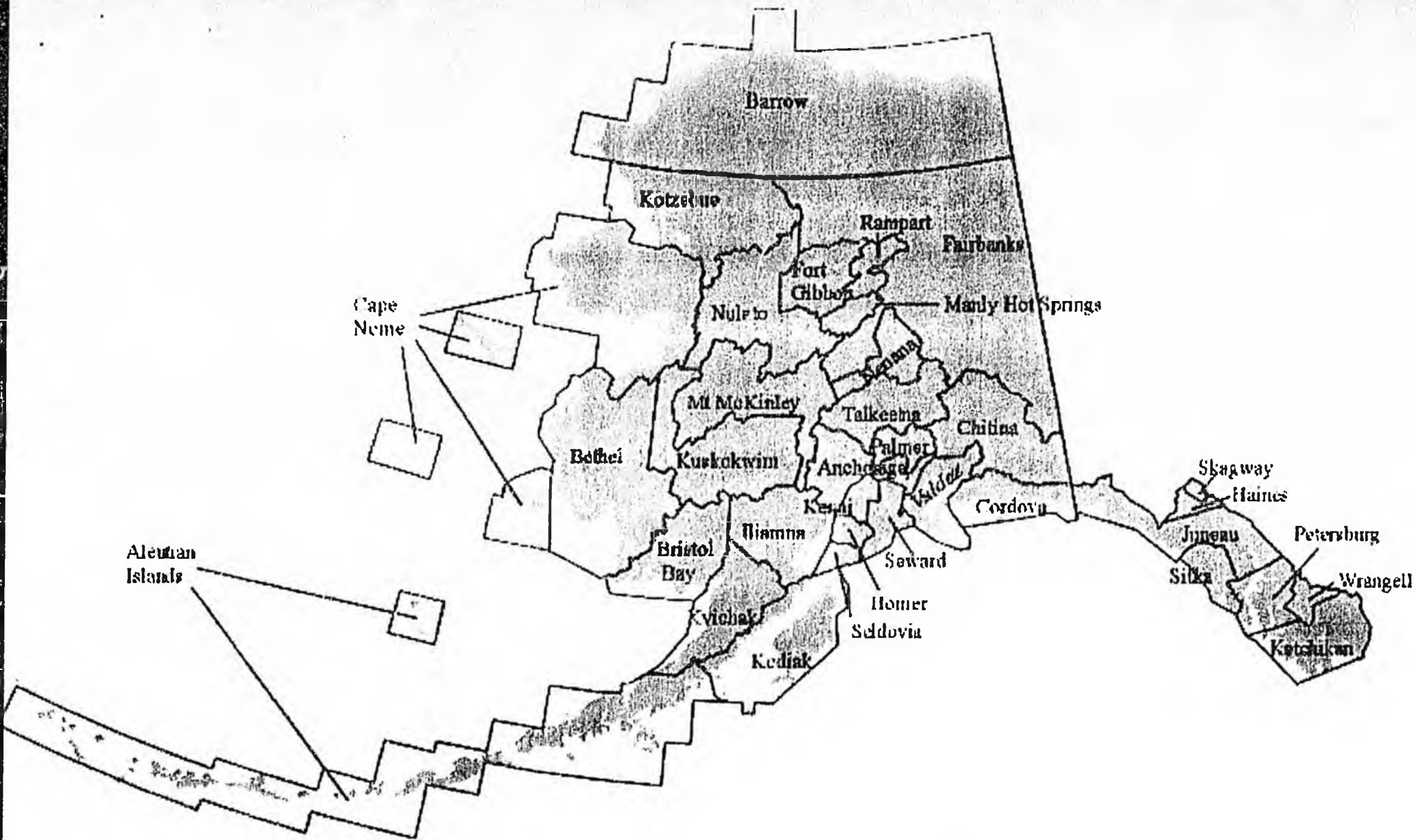
	<u>FY00 Act</u>	<u>FY01 CC</u>	<u>FY01Auth</u>	<u>01MgtPln</u>	<u>Adj Base</u>	<u>Gov</u>	<u>01MgtPln to Gov</u>	
Total	2,295.9	2,295.3	2,390.9	2,390.9	2,324.8	2,392.2	1.3	0.1 %
<u>Objects of Expenditure:</u>								
Personal Services	1,952.8	1,992.8	2,062.4	2,062.4	1,998.3	2,065.7	3.3	0.2 %
Travel	12.2	11.8	13.3	13.3	11.8	11.8	-1.5	-11.3 %
Contractual	255.8	203.3	219.8	219.8	227.3	227.3	7.5	3.4 %
Commodities	54.6	47.4	49.4	49.4	47.4	47.4	-2.0	-4.0 %
Equipment	20.5	40.0	46.0	46.0	40.0	40.0	-6.0	-13.0 %
Lands/Buildings	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0 %
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0 %
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0 %
<u>Funding Sources:</u>								
1005 GF/Prgm	2,295.9	2,295.3	2,323.5	2,323.5	2,324.8	2,392.2	68.7	3.0 %
1053 Invst Loss	0.0	0.0	67.4	67.4	0.0	0.0	-67.4	-100.0 %
<u>Positions:</u>								
Perm Full Time	43.0	43.0	43.0	43.0	43.0	43.0	0.0	0.0 %
Perm Part Time	5.0	5.0	5.0	5.0	5.0	5.0	0.0	0.0 %
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0 %

State of Alaska

Recording District Offices & Boundaries

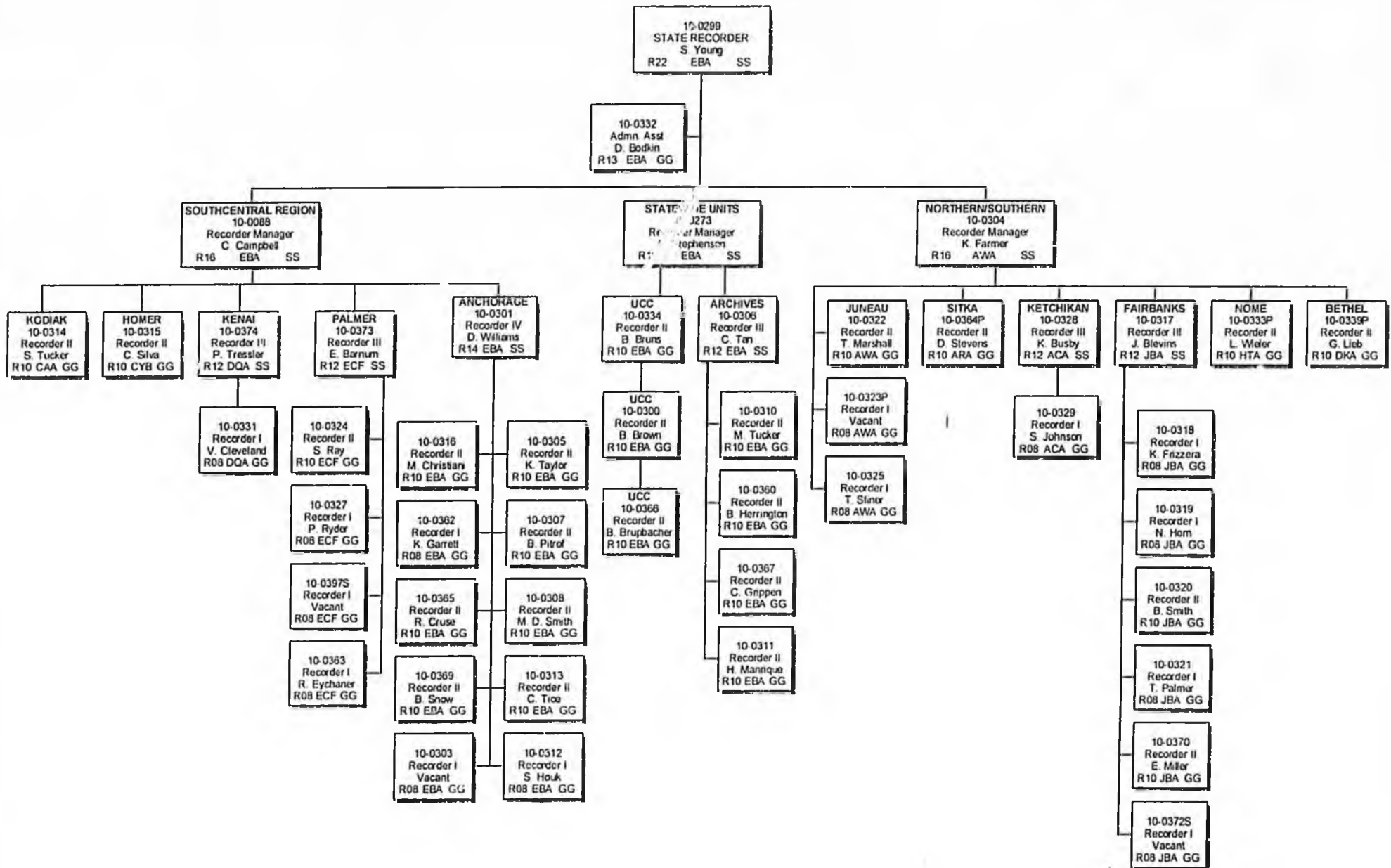


- ★ *Department of Natural Resources Offices*
- ★ *Alaska Court System Offices*



ALASKA'S 34 RECORDING DISTRICTS

RECORDER'S/UCC STAFF CHART
Effective 02/01/01



FY 00

TYPES OF DOCUMENTS RECORDED BY OFFICE

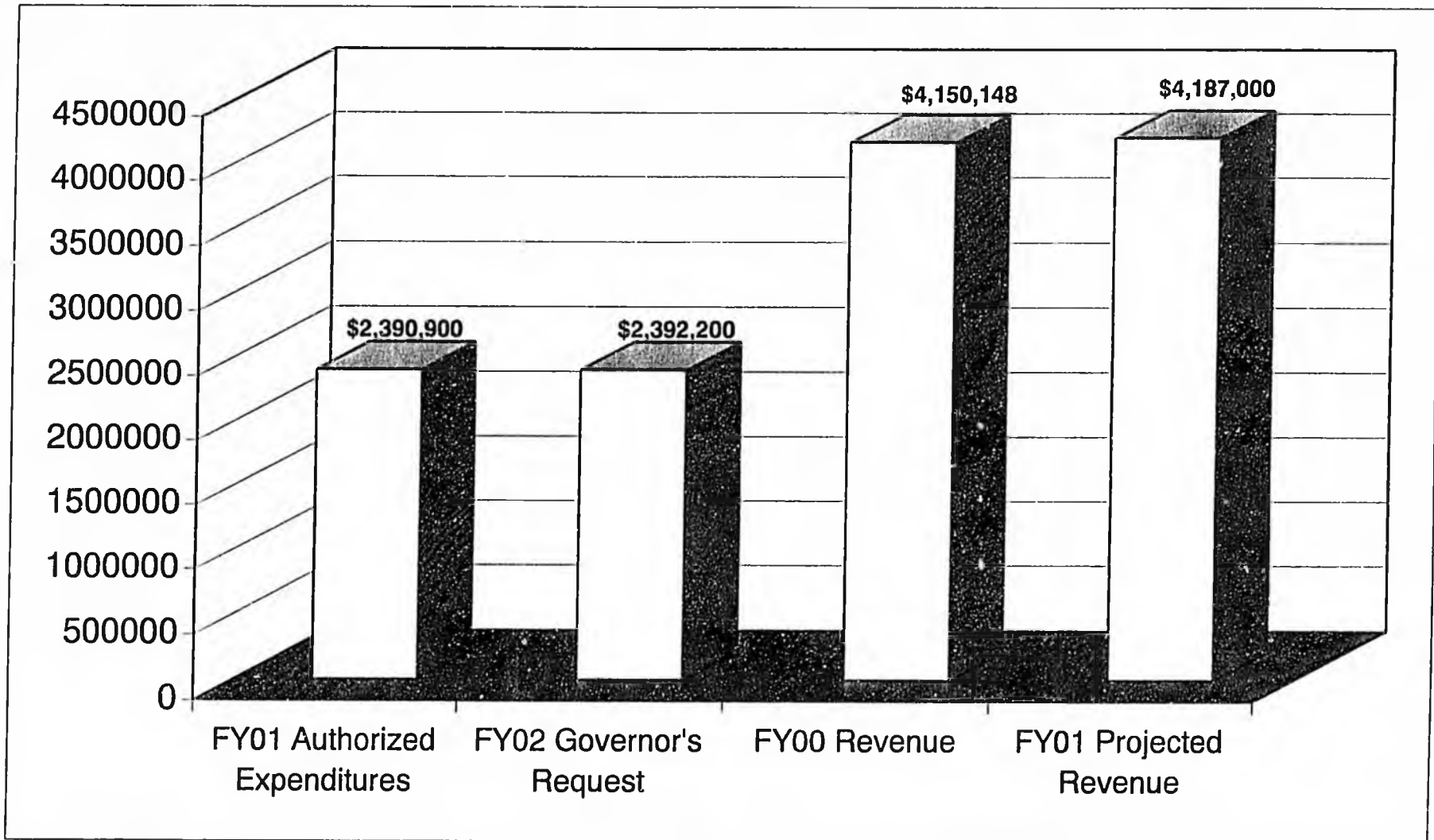
<u>LOCATION</u>	<u>DEEDS</u>	<u>LIENS</u>	<u>MORTGAGES</u>	<u>MINING</u>	<u>UCC'S</u>	<u>MISC.</u>	<u>TOTALS</u>
JUNEAU	1,690	799	4,252	109	1,030	1,238	9,118
KETCHIKAN	1,232	429	2,688	553	1,216	1,118	7,236
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ANCHORAGE	11,314	8,069	35,527	82	7,196	9,767	71,955
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SEWARD	380	167	815	235	162	284	2,043
HOMER	1,327	498	2,390	0	408	859	5,482
VALDEZ	213	129	422	58	251	213	1,286
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CHITINA	331	95	251	413	132	300	1,522
BETHEL	592	293	469	130	1,571	385	3,440
NOME	251	199	351	277	604	191	1,873
FAIRBANKS	5,089	2,127	9,907	14,570	5,682	5,321	42,696
TOTALS:	32,129	17,572	75,847	17,311	22,238	25,600	190,697
UCC CENTRAL					21,471		21,471
TOTAL:	32,129	17,572	75,847	17,311	43,709	25,600	212,163

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TOTAL	8339	3550	2273	1148	717	858	28829	4231	3645	2235	1610	57,435

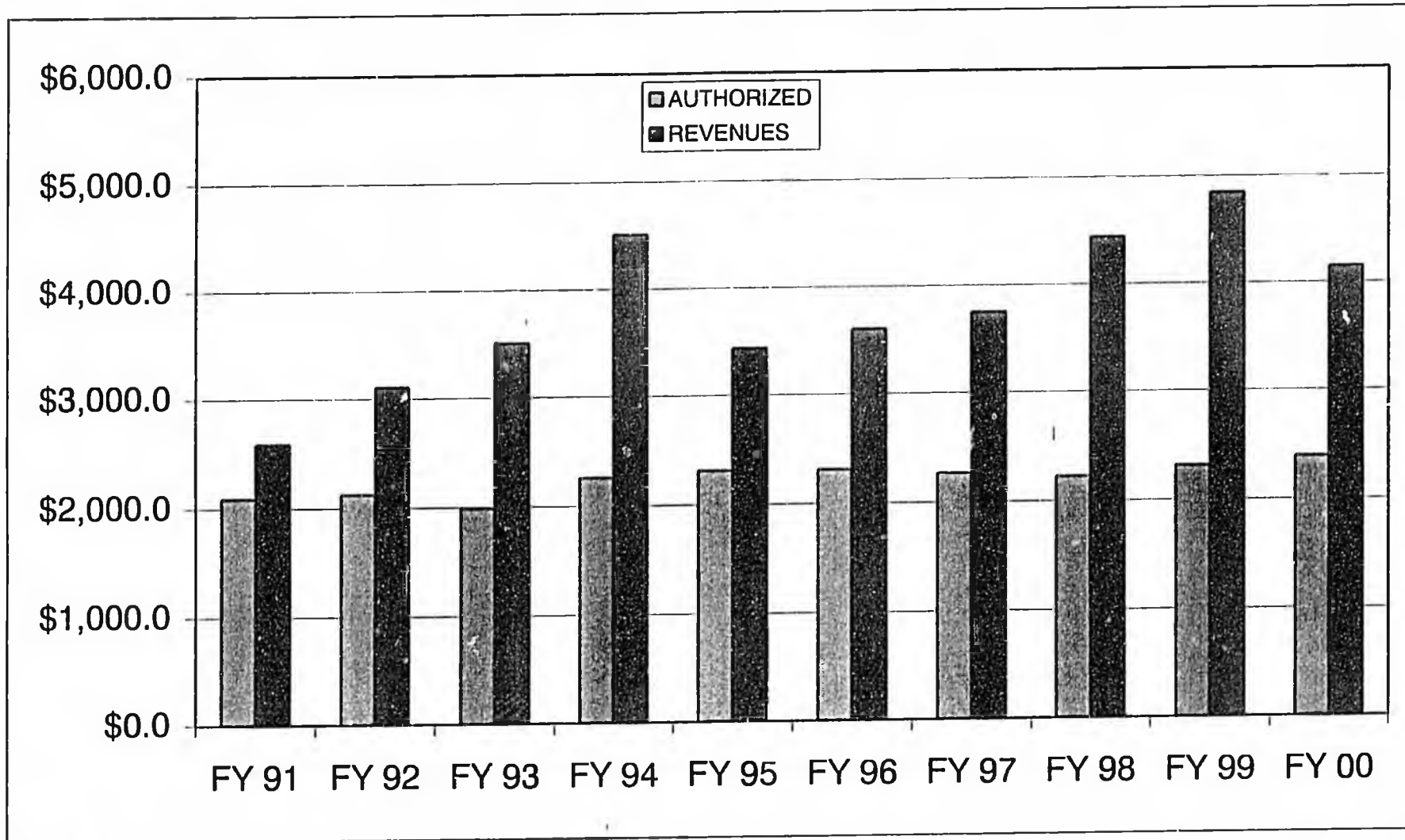
Recorder's/UCC Section

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RECORDER'S/UCC SECTION

BUDGET TO REVENUE COMPARISON



TOTAL AUTHORIZED: \$22276.6

TOTAL REVENUES: \$37934.8

TOTAL EXCESS REVENUES = \$15,658.2

(FY 91 THROUGH FY 00)

RECORDER'S/UCC SECTION BUDGET TO REVENUE COMPARISON

	AUTHORIZED	REVENUES
FY 91	\$2,090.0	\$2,585.3
FY 92	\$2,125.2	\$3,107.7
FY 93	\$1,987.2	\$3,506.1
FY 94	\$2,256.9	\$4,510.2
FY 95	\$2,311.0	\$3,436.1
FY 96	\$2,311.0	\$3,602.9
FY 97	\$2,265.9	\$3,748.3
FY 98	\$2,224.2	\$4,440.6
FY 99	\$2,314.3	\$4,847.5
FY 00	\$2,390.9	\$4,150.1
TOTAL	\$22,276.6	\$37,934.8

TOTAL EXCESS REVENUES = \$15,658.2

RECORDER'S/UCC
Comparison of REVENUE & OPERATING COSTS by Location

Location	Staff	FY01 Annual Lease	FY01 Pers. Svcs. Auth	FY01 Oper. Costs (200-500) Auth	Total Exp By Loc	FY00 Volume	FY00 Revenue	Revenue/ Expense Comparison
Juneau	3.5	\$28,860	\$162,300	\$16,800	\$207,960	9,118	\$200,202	(\$7,758)
Ketch*	2.0		\$81,700	\$10,800	\$92,500	7,236	\$153,794	\$61,294
Sitka	0.5	\$8,591	\$30,700	\$5,800	\$45,091	2,073	\$42,212	(\$2,879)
Anchorage**	12.0	\$93,413	\$509,100	\$38,000	\$640,513	71,955	\$1,537,851	\$897,338
Kodiak*	1.0		\$48,400	\$6,500	\$54,900	3,191	\$64,523	\$9,623
Seward*	-			\$166	\$166	2,043	\$41,773	\$41,607
Homer	1.0	\$9,509	\$42,500	\$6,500	\$58,509	5,482	\$117,721	\$59,212
Valdez*	-			\$167	\$167	1,286	\$23,240	\$23,073
Kenai	2.0	\$14,496	\$93,000	\$10,500	\$117,996	10,856	\$221,014	\$103,018
Palmer***	4.5	\$30,000	\$196,600	\$15,500	\$242,100	27,926	\$568,000	\$325,900
Chitina*	-			\$167	\$167	1,522	\$24,596	\$24,429
Bethel	0.5	\$10,800	\$45,300	\$7,800	\$63,900	3,440	\$53,515	(\$10,385)
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Admin**	3.0	\$38,344	\$198,600	\$83,200	\$320,144		\$0	(\$320,144)
Arch**	5.0	\$45,971	\$231,700	\$59,000	\$336,671		\$0	(\$336,671)
UCC**	3.0	\$27,902	\$127,800	\$9,000	\$164,702	21,471	\$232,264	\$67,562
MISC Fees								
Totals	45.5	\$376,008	\$2,062,400	\$302,500	\$2,740,908	212,168	\$4,150,148	\$1,409,240

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The entire \$40.0 equipment replacement allocation for this section has been reflected in the Admin/Arch line item. These funds are utilized annually to replace large ticket items which are non-repairable for the office(s) with the most critical need.

Beginning in October 1998, miscellaneous fees are included in individual office totals. Previously, miscellaneous fees for all offices were added together as a separate component of total revenues. FY99 revenues reflect these miscellaneous fees separately.

***Lease estimate based on new space with Division of Agriculture; pending.

TONY KNOWLES
GOVERNOR
governor@gov.state.ak.us

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB108
P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532
www.gov.state.ak.us

February 2, 2001

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

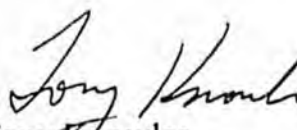
Dear Speaker Porter:

I am transmitting this bill to help ensure the state recorder's office can do the best possible job in its task as depository of vital documents related to real estate and secured personal property transactions throughout Alaska.

Under this bill the customers who use the recorder's office, well over 50,000 contacts annually, will directly support its operations. Receipts for recording and other fees of this office will be accounted for separately and intended for appropriation to run the recording functions of the state. This funding method should provide the recorder's office with the resources needed to maintain and improve operations, including upgrading recording office systems to stay abreast of technological advances in the field, as well as to permanently preserve the millions of records in its custody.

The state recorder's office is responsible for recording and preserving more than 200,000 documents per year. It is necessary to the health of Alaska's economy that this office functions efficiently and offers excellent service to its users.

Sincerely,


Tony Knowles
Governor

Back-up Material

HB108

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

- 400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FAX: (907) 465-3886
- 550 WEST 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431
FAX: (907) 269-8918

February 13, 2001

The Honorable Drew Scalzi, Co-Chair
House Resource Committee
Room 13
Alaska State Capitol
Juneau, Alaska 99811

Dear Representative Scalzi,

The Department of Natural Resources requests a hearing on HB108(RES) " An Act relating to the accounting for and appropriation of fees for the recording and related services by the Department of Natural Resources: and providing for an effective date."

This bill will provide a stable source of funds for appropriation from the fees paid by the customers of the Recording Offices. The Recording Offices' customers pay in excess of \$4.0 million in fees on an annual basis and the Recording Offices operations is authorized to expend \$2.4 million of these receipts. There are services in the Recording Offices that the customers pay for but because of the current budget process the agency is limited in their request to expand the services. Having a "Fees for Services" budget will make the organization more accountable to its customers and allow the State to demonstrate the full cost of the program to the customers.

I look forward to working with you on this bill. If you have any questions or if I can provide further information, please call my legislative staff, Carol Carroll at 465-4730, or Nico Bus, our Administrative Service Manager at 465-2406. Thank you for this opportunity to address your committee.

Sincerely,



Pat Pourchot,
Commissioner

Cc: Sharon Young, State Recorder

Component Detail - FY 02 Operating Budget - Governor Structure

Numbers AND Language Sections!

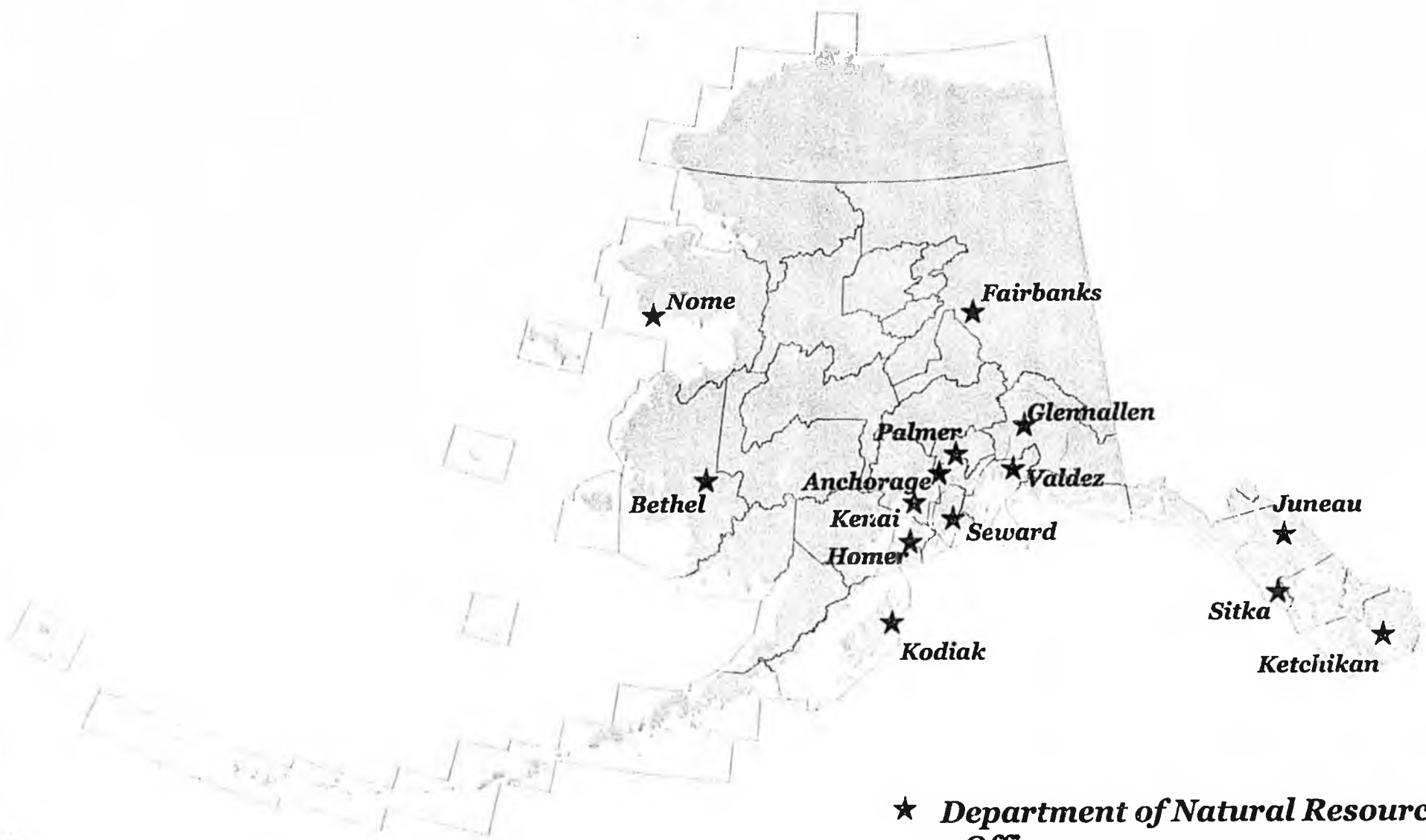
Component: **Recorder's Office/Uniform Commercial Code**

Agency: **Department of Natural Resources**

BRU: **Information/Data Management**

	<u>FY00 Act</u>	<u>FY01 CC</u>	<u>FY01Auth</u>	<u>01MgtPln</u>	<u>Adj Base</u>	<u>Gov</u>	<u>01MgtPln to Gov</u>	
Total	2,295.9	2,295.3	2,390.9	2,390.9	2,324.8	2,392.2	1.3	0.1 %
<u>Objects of Expenditure:</u>								
Personal Services	1,952.8	1,992.8	2,062.4	2,062.4	1,998.3	2,065.7	3.3	0.2 %
Travel	12.2	11.8	13.3	13.3	11.8	11.8	-1.5	-11.3 %
Contractual	255.8	203.3	219.8	219.8	227.3	227.3	7.5	3.4 %
Commodities	54.6	47.4	49.4	49.4	47.4	47.4	-2.0	-4.0 %
Equipment	20.5	40.0	46.0	46.0	40.0	40.0	-6.0	-13.0 %
Lands/Buildings	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0 %
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0 %
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0 %
<u>Funding Sources:</u>								
1005 GF/Prgm	2,295.9	2,295.3	2,323.5	2,323.5	2,324.8	2,392.2	68.7	3.0 %
1053 Invst Loss	0.0	0.0	67.4	67.4	0.0	0.0	-67.4	-100.0 %
<u>Positions:</u>								
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State of Alaska
***Recording District Offices
& Boundaries***

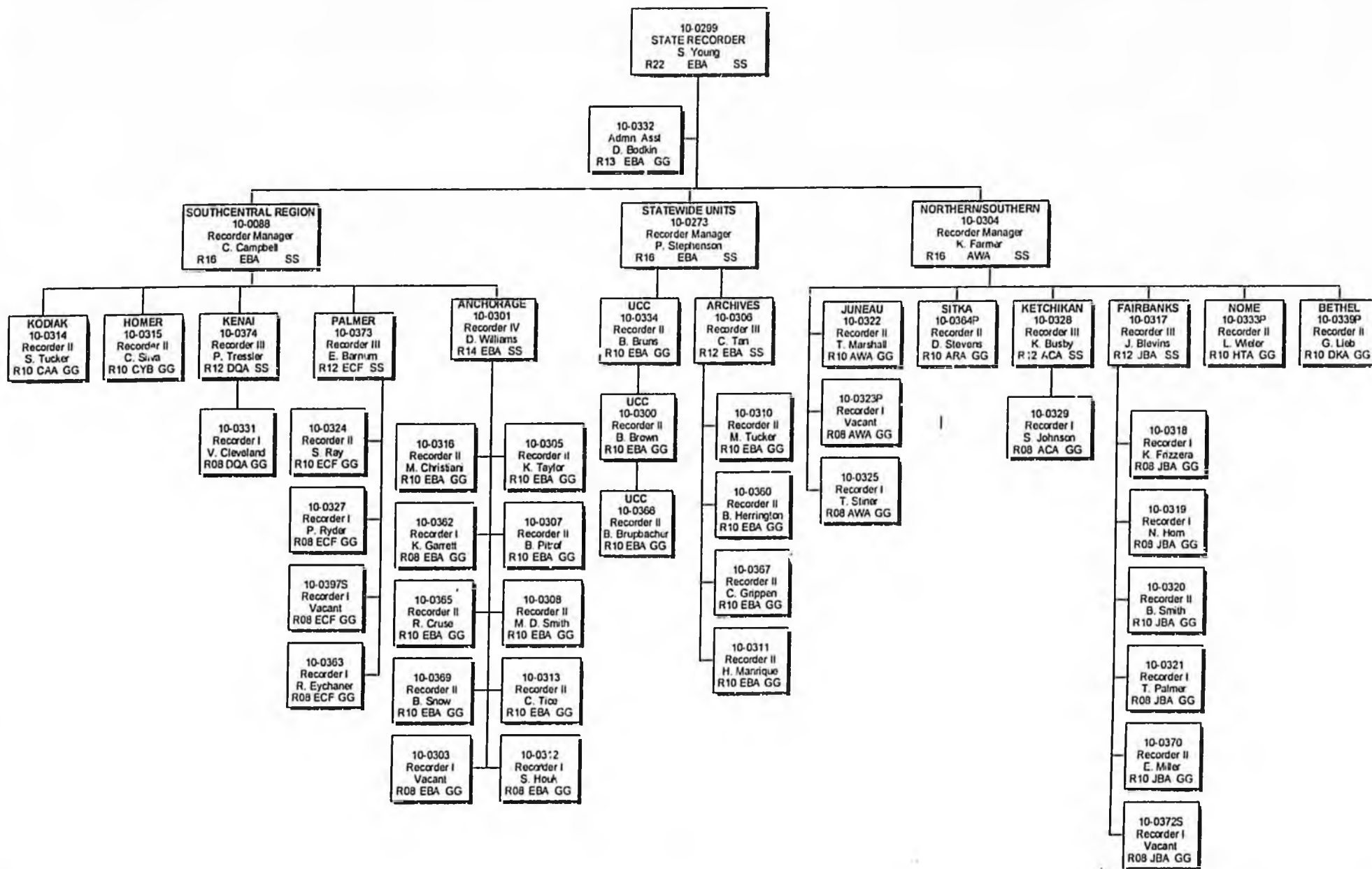


- ★ *Department of Natural Resources
Offices*
- ★ *Alaska Court System Offices*



ALASKA'S 34 RECORDING DISTRICTS

RECORDER'S/UCC STAFF CHART
Effective 02/01/01



FY 00

TYPES OF DOCUMENTS RECORDED BY OFFICE

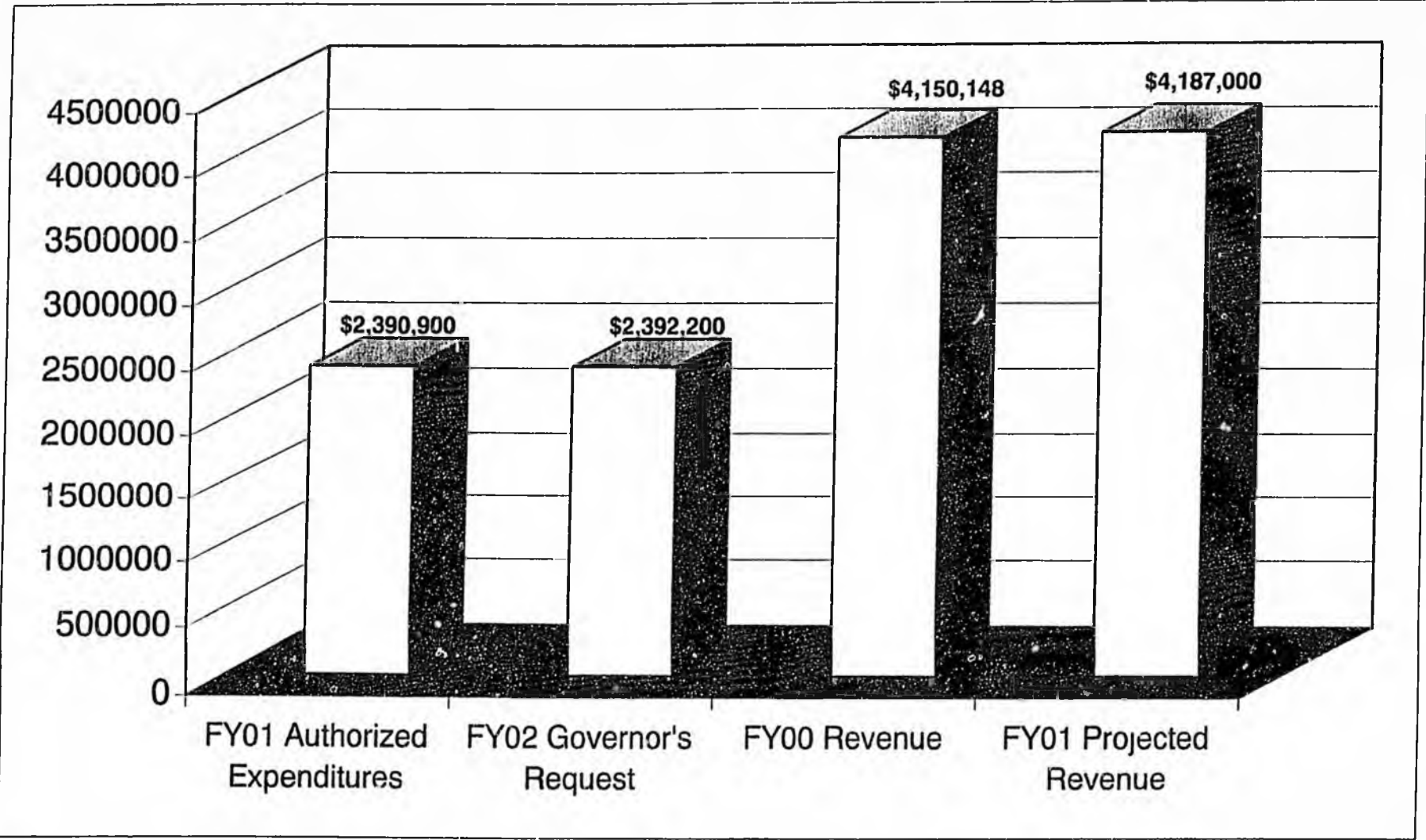
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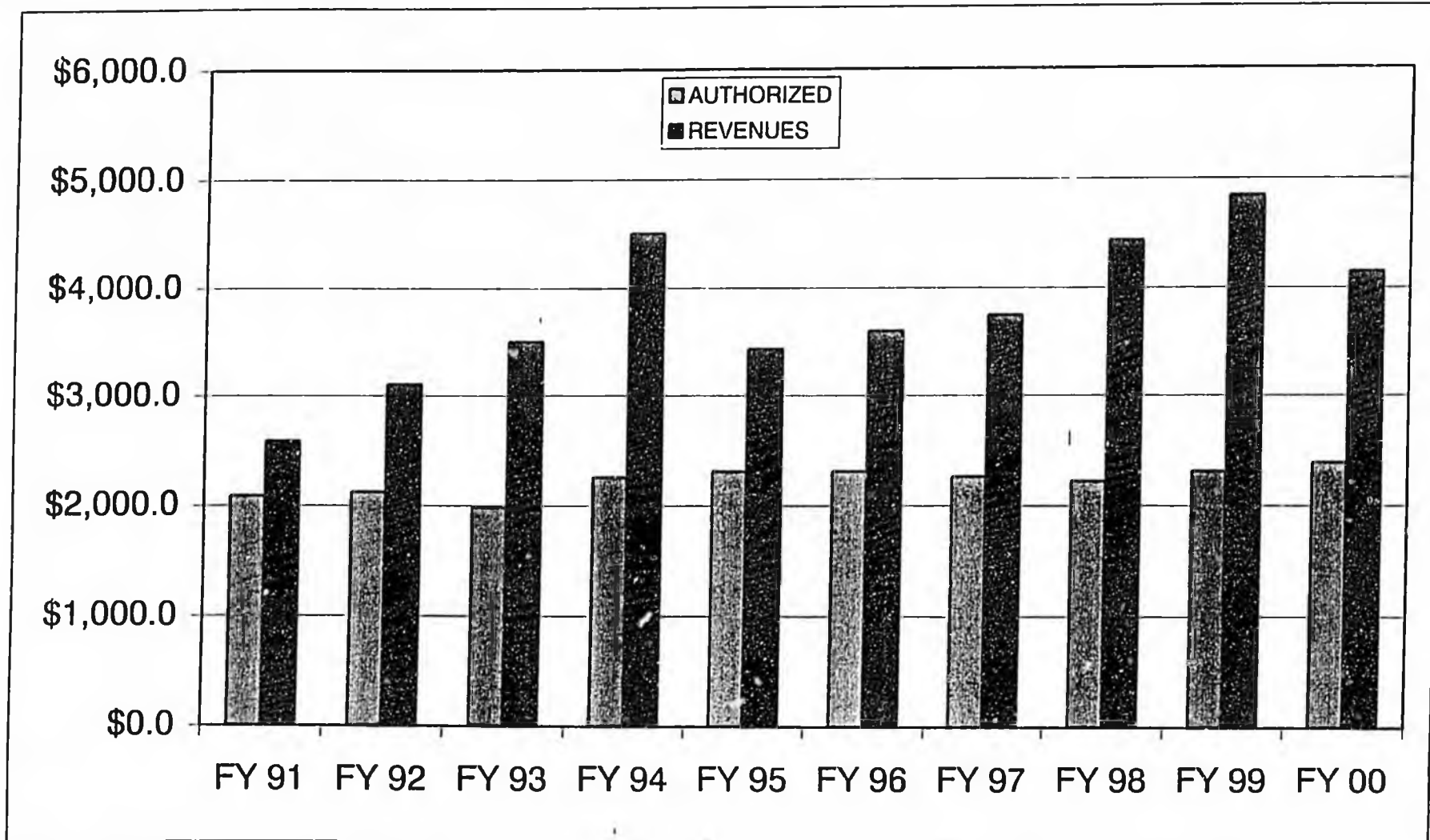
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