

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10660 SENATE RESOURCES

**HB**

**298**

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 298(TRA)  
 (H) Publish Date: 2/1/02

Revision Date/Time (Note if correction): 01/30/2002 Dept. Affected: ARRC  
 Title An Act relating to Legislative Approval BRU \_\_\_\_\_  
of Railroad land leases Component \_\_\_\_\_  
 Sponsor Representative Murkowski  
 Requester House Transportation Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 HB 298 will not have a fiscal impact on the State of Alaska. This change in statute will make large commercial and residential development on Alaska Railroad lands more viable by making it easier for the Railroad to lease lands that are currently underdeveloped in Seward, Anchorage, Healy and Fairbanks.

Prepared by: Wendy Lindskoog, Director of External Affairs Phone 907-265-2498  
 Division Alaska Railroad Corporation Date/Time 1/30/02 10:59 AM  
 Approved by: Deborah B. Sedwick, Commissioner Date 1/30/2002  
 Agency Department of Community & Economic Development

**CS FOR HOUSE BILL NO. 298(L&C)**

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

**TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY THE HOUSE LABOR AND COMMERCE COMMITTEE**

**Offered: 2/6/02  
Referred: Rules**

**Sponsor(s): REPRESENTATIVES MURKOWSKI, Mulder**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to authorizing the Alaska Railroad Corporation to lease land for a  
2 period of up to 55 years."

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

4 \* Section 1. AS 42.40.285 is amended to read:

5 **Sec. 42.40.285. Legislative approval required.** Unless the legislature  
6 approves the action by law, the corporation may not

7 (1) exchange, donate, sell, or otherwise convey its entire interest in  
8 land;

9 (2) issue bonds;

10 (3) extend railroad lines; this paragraph does not apply to a spur,  
11 industrial, team, switching, or side track;

12 (4) lease land for a period in excess of 55 [35] years unless the  
13 corporation reserves the right to terminate the lease if the land is needed for railroad  
14 purposes;

1                   (5) apply for or accept a grant of federal land within a municipality;  
2 before approving an action under this paragraph, the legislature must determine that  
3 the federal land is required for essential railroad purposes; this paragraph does not  
4 apply to the application for or acceptance of a grant of federal land associated with

5                   (A) the Anchorage-Wasilla line change project on Elmendorf  
6 Air Force Base and Fort Richardson;

7                   (B) the Fairbanks intermodal rail yard expansion project;

8                   (C) a conveyance of rail properties of the Alaska Railroad  
9 under the original Alaska Railroad Transfer Act of 1982 as set out in Title VI,  
10 P.L. 97-468; in this subparagraph, "rail properties of the Alaska Railroad" has  
11 the meaning given in 45 U.S.C. 1202(10).

# ALASKA STATE LEGISLATURE

*Chair:*  
LABOR AND COMMERCE

*Member:*  
MILITARY AND VETERANS AFFAIRS  
COMMUNITY AND REGIONAL AFFAIRS  
LEGISLATIVE COUNCIL  
JOINT ARMED SERVICES



**REPRESENTATIVE LISA MURKOWSKI**  
Government Hill • Elmendorf • East Anchorage

*Session:*  
ALASKA STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE: (907) 465-3783  
FAX: (907) 465-2293  
Representative\_Lisa\_Murkowski@legis.state.ak.us

*Interim:*  
716 WEST 4TH AVENUE  
ANCHORAGE, AK 99501-2133  
PHONE: (907) 269-0174  
FAX: (907) 269-0177

## Sponsor Statement

### HB 298

### “An Act relating to authorizing the Alaska Railroad Corporation to lease land for a period of up to 55 years”

At the request of the Alaska Railroad Corporation, I have introduced House Bill 298, extending the length of time the Alaska Railroad Corporation (ARRC) can lease lands from the current 35 years to 55 years.

This change in statute will help cultivate economic development in communities along the Railbelt by making commercial and residential development on Alaska Railroad lands more viable. On any existing ARRC lease with a term longer than 35 years, an option to extend leases beyond that time includes a termination clause. This clause allows the ARRC to terminate any lease after 35 years in the event the land is needed for railroad purposes.

While the 35-year lease limit is adequate for most of ARRC's tenants, it is an obstacle in leasing lands to large commercial and residential developers who need to secure long-term financing for their investments. Financial lenders are reluctant to invest in large-scale projects requiring substantial equity participation when there is no guarantee the land will be available beyond 35 years. It will also make ARRC's leasing practices more consistent with other state agencies. Both the University of Alaska and the Department of Natural Resources can lease land for up to 55 years.

The proposed extension of allowable lease term is supported by the following businesses, individuals and organizations: Anchorage Historic Properties, Anchorage Neighborhood Housing Services, Mel Tipton (Ship Creek tenant and commercial developer), Seward Ship's Drydock, Inc., Dowl Engineers, Northrim Bank, AIDEA, Yukon Fuel, Kantishna Holdings, Inc., A&A Construction and Development, Inc., the Anchorage Chamber of Commerce, City of Seward, Anchorage Assembly, and Fairbanks Chamber of Commerce. I urge your support of this legislation.

## **House Bill 298, Railroad Leasing Policy Frequently Asked Questions**

### **How much land does the Alaska Railroad own?**

The Alaska Railroad Corporation (ARRC) owns approximately 36,000 acres of real estate.

Total right-of-way acres =	12,415
Total "reserve" acres =	23,813

Of the 23,813 acres of reserve land, 17,970 are available for lease, which represents about 49.6% of the land owned by the Railroad. The remaining 5,843 acres within the reserves is used for operating purposes including yards, tracks etc. The Railroad has approximately 260 tenants scattered from Fairbanks to Seward and even in Valdez.

### **Why are the Anchorage, Fairbanks, Seward, and Healy terminal Reserves the only lands subject to the lease extension?**

While the Alaska Railroad would prefer the flexibility to lease all of its reserve lands for longer terms, the reserve lands identified in this legislation are those most apt to draw large commercial and residential projects, and therefore more deserving of legislative attention.

These four reserves represent about 36 percent of the Railroad's land available for lease.

### **What is considered reserve land?**

"Reserve" is a federal term of art – in this case it refers to land originally set aside or "reserved" by the federal government for use of the Alaska Railroad. These lands are larger parcels (i.e. not a skinny right-of-way strip) sited in strategic locations for both operational and non-operational purposes. These uses have historically included rail, yards, railroad facilities and lease by third parties. Most of the railroad's lands available for lease lie in these contiguous land areas called reserves.

### **What are considered rail right-of-way and operating lands?**

More than half of ARRC's land is dedicated to supporting and maintaining the corporation's primary activity – freight and passenger transportation services. These lands encompass the railroad's 200-foot right-of-way (100 feet on either side of the track) as well as lands containing spurs, industrial track, yard, dock, and depot facilities.

### **What is the total acreage of land affected by this legislation?**

Approximate available acres available for lease in August 2001

Anchorage:	587 lease acres,	187 vacant
Fairbanks:	260 lease acres,	160 vacant
Healy:	5,541 lease acres,	4,097 vacant
Seward:	64 lease acres,	26 vacant

### **Does this legislation affect ROW leases?**

This legislation does not affect right-of-way and other operating lands that lie within the reserve areas. Most operating lands are located in our reserves. Right-of-way lands are rarely leased, and even then are restricted to terms of less than 18 years to avoid triggering certain onerous provisions in the federal transfer act.

### **Why were the leases originally set at 35 years before being subject to a termination clause?**

The answer is not clear. Discussions regarding the lease terms and rates took place in legislative work sessions that were not officially recorded meetings. These sessions took place during the time the Railroad was being transferred from the federal government to the State of Alaska and the Alaska Railroad Corporation enabling legislation was being drafted.

At the time of transfer there was much debate regarding the development of a consistent and reasonable policy for leasing railroad land. People involved in discussions during the transfer time don't remember a specific reason for reducing the maximum lease length for railroad land but said the decision could have been influenced by the following issues.

At the time of transfer, there was a pending lawsuit from the "Alaska Railroad Leaseholders Association" many who asserted that certain leases were sweetheart deals and others were not. There were concerns within the legislature and administration that the railroad's practice was to issue long-term leases at rental rates that were below Fair Market Value (FMV). Lastly, there was considerable sentiment in the legislature to privatize the railroad within a fairly short time, which might well have fueled the desire for shorter lease terms. Out of these concerns, came a statutory requirement for Fair Market Value leases and legislative approval for any lease longer than 35 years.

### **Who supports this bill?**

The proposed extension of allowable lease terms to 55 years is supported by the following businesses, individuals and organizations:

Anchorage Historic Properties  
Anchorage Neighborhood Housing  
Mel Tipton (*Anchorage business man and Railroad lessee*)  
Seward Ship's Drydock  
Dowl Engineers  
Northrim Bank  
AIDEA  
Yukon Fuel  
Kantishna Holdings

A&A Construction and Development  
Alaska State Chamber of Commerce  
Anchorage Chamber of Commerce  
City of Seward  
Anchorage Assembly  
Fairbanks Chamber of Commerce

### **Who opposes this bill?**

As of December 2001, there has been no expressed opposition to this proposal.

### **What commercial and residential developments are driving this legislation?**

- Ship Creek Development in Anchorage
- Chena Landings Development in Fairbanks
- Anchorage Neighborhood Housing project using HUD financing that requires a 50-year lease.
- Major hotel, restaurant, office space, retail space or commercial development such a convention center.

### **Wasn't legislation recently passed allowing for longer leases in Healy?**

House Bill 344 was passed during the 2000 legislative session giving the Railroad flexibility to issue a lease in the Tri-Valley subdivision in excess of 35 years without reserving the right to terminate the lease if the land is needed for railroad purposes. The long-term lease affecting the Tri-Valley subdivision enabled families in Healy to qualify for more affordable loans. This bill applied only to the Tri-Valley subdivision area and not to the entire Railroad Healy Reserve.

### **How does a lease differ from a permit?**

Leases give tenants the exclusive use of the property, precluding even railroad use. If for five or more years in length, they must be approved by the Alaska Railroad Corporation Board of Directors. Public notice must be given

before a lease is issued, and the Board's action approving or disapproving is taken at a public meeting.

Permits are a non-exclusive right to be on railroad land. They run the gamut from short-term entries by people like surveyors or customers needing temporary storage space, to longer, more intensive uses like utilities, roadways, pipelines or fiber optics facilities. Typically, more than half of our permits can be cancelled on short notice, are issued for less than five years, and are for uses not involving a significant investment of capital. These kinds of permits do not require Board approval or public notice. However, permits that represent a considerable investment by the permittee or are of a nature that makes them functionally irrevocable (such as a public utility line) do require public notice. The most significant of these are "corridor permits", where the user installs a longitudinal facility taking advantage of the right-of-way as a utility corridor. These not only require public notice and Board approval, but also are also longer term and charge a FMV rate of compensation.

#### **How is the public assured proper input in the Railroad's long-term leasing decisions?**

- All Alaska Railroad Board of Directors meetings are open to the public and offer an opportunity for public comment. These meetings are advertised at least five days in advance in at least three newspapers of general circulation along the Railroad. The Railroad typically advertises in the Anchorage Daily News, Fairbanks News Miner and Seward Phoenix Log.
- All leases are subject to a public notice process: Previously issued leases that don't alter use are subject to a minimum 15-day public notice period. Property that has not been leased before or is being leased again but with changed zoning is subject to a minimum 30-day public notice period. The notice is published in a local newspaper (or posted in a public location if there is no newspaper). It invites comment up to the expected date of Board action.

Introduced By: Governmental Affairs  
 Other Review: Transportation  
 Date Introduced: November 5, 2001  
 Date Passed: December 10, 2001  
 Date Transmitted: December 11, 2001

**RESOLUTION 01-1210**

**A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF  
 COMMERCE SUPPORTING LEGISLATION AUTHORIZING THE  
 ALASKA RAILROAD TO LEASE LAND FOR 55 YEARS**

WHEREAS legislation authorizing the Alaska Railroad Corporation (ARRC) to lease land for 55 years will cultivate economic development in Alaska communities along the railbelt by making commercial and residential development on ARRC lands more feasible; and

WHEREAS ARRC's current statutory limit is a 35-year lease. Proposed legislation would amend AS 42.40.285 (4) enabling the Alaska Railroad Corporation (ARRC) to lease lands within its Anchorage, Fairbanks, Seward and Healy Terminal Reserves for up to 55 years rather than 35 years without first gaining legislative approval; and

WHEREAS today, ARRC can extend leases beyond 35 years subject to a termination clause defined by AS 42.40.285 (4). The clause states ARRC can terminate any lease with a term in excess of 35 years in the event the land is needed for railroad purposes after the initial 35 years; and

WHEREAS financial lenders are reluctant to lend on large-scale projects requiring substantial equity when there is no guarantee the land will be available beyond 35 years; and

WHEREAS ARRC's statutory constraints limit the ability for developers of large-scale commercial and residential projects to secure financing because certain banking regulations require ground lease maturity to exceed loan maturity by 10 years; and

WHEREAS when developers provide significant infrastructure or operational improvements, it is beneficial to have a lengthened lease term allowing companies to amortize debt over a longer span of time; and

WHEREAS increasing the lease term to 55 years would increase financing options and, therefore, investor interest; and

**Benefactors**

- Alaska Airlines
- Alaska Communications Systems
- Alaska Railroad
- Alaska Pipeline Service Company
- AT&T Alascom
- BP Exploration (Alaska) Inc.
- CellularOne
- Denali State Bank
- Design Alaska
- Fairbanks Building & Construction Trades Council "The Unions"
- Fairbanks Natural Gas, LLC
- Fairbanks Urgent Care Center
- First National Bank Alaska
- Flowline Alaska
- Fort Knox Mine
- Golden Heart Utilities
- Golden Valley Electric Association
- K Janitorial
- Key Bank of Alaska
- McKinley Bank
- North Star Computing
- Northrim Bank
- Phillips Alaska, Inc.
- Sarina's Flowers & Gifts
- Tanana Valley Clinic
- Third Sector Technologies, Inc.
- Totem Ocean Trailer Express
- Usibelli Coal Mine
- WebWeavers
- Wells Fargo Bank Alaska
- Wendy's
- Westmark Fairbanks Hotel & Conference Center
- Williams Alaska Petroleum

GREATER \* FAIRBANKS  
**CHAMBER**  
OF COMMERCE

250 Cushman St., Suite 2D, Fairbanks, AK 99701-4665  
phone: (907) 452-1105, fax: (907) 456-6968

e-mail: [staff@fairbankschamber.org](mailto:staff@fairbankschamber.org)  
website: [www.fairbankschamber.org](http://www.fairbankschamber.org)

WHEREAS this change would result in increased business activity on railroad property by making improvements more attractive to investors/users. This also creates long term benefits to the surrounding communities by providing an economic and tax base; and

WHEREAS the proposed legislation would make ARRC's leasing practices more consistent with other state agencies. The University of Alaska and the Department of Natural Resources can both lease land for up to 55 years:

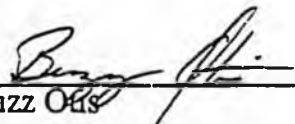
NOW THEREFORE BE IT RESOLVED that the Greater Fairbanks Chamber of Commerce views legislation authorizing ARRC to lease land for 55 years as an important step toward promoting economic development in railbelt communities where certain high value Railroad lands are currently underdeveloped.

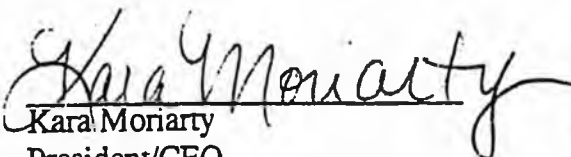
BE IT FURTHER RESOLVED that the Greater Fairbanks Chamber of Commerce supports and seeks to assist ARRC in obtaining legislative approval to lease land for up to 55 years in its Seward, Anchorage, Healy and Fairbanks Reserve Lands.

BE IT FURTHER RESOLVED that this resolution be distributed to:

Governor Tony Knowles  
Interior Delegation  
Senator Loren Leman  
Alaska Railroad Corporation

PASSED in Fairbanks, Alaska this 10th day of December, 2001 by the Greater Fairbanks Chamber of Commerce Board of Directors.

  
\_\_\_\_\_  
Buzz Oles  
Board Chair

  
\_\_\_\_\_  
Kara Moriarty  
President/CEO

**Benefactors**

Alaska Airlines

Alaska  
Communications  
Systems

Alaska Railroad

Alaska Pipeline  
Service Company

AT&T Alascom

BP Exploration  
(Alaska) Inc.

CellularOne

Denali State Bank

Design Alaska

Fairbanks Building &  
Construction Trades  
Council "The Unions"

Fairbanks Natural  
Gas, LLC

Fairbanks Urgent  
Care Center

First National Bank  
Alaska

Flowline Alaska

Fort Knox Mine

Golden Heart Utilities

Golden Valley  
Electric Association

Janitorial

Key Bank of Alaska

McKinley Bank

North Star Computing

Northrim Bank

Phillips Alaska, Inc.

Prima's Flowers & Gifts

Sumana Valley Clinic

Third Sector  
Technologies, Inc.

Totem Ocean  
Trailer Express

Urbelli Coal Mine

WebWeavers

Wells Fargo Bank Alaska

Wendy's

Westmark  
Fairbanks Hotel &  
Conference Center

Williams Alaska  
Petroleum

Alaska State Chamber of Commerce

Priority 2002 - 32

Authorization for the Alaska Railroad to lease land

The Alaska State Chamber of Commerce urges the Administration and Legislature to support a change allowing authorization of the Alaska Railroad to lease land for 55 years within its Anchorage, Fairbanks, Seward and Healy Terminal Reserves. The Alaska Railroad needs the flexibility to offer 55-year lease terms on a variety of Railroad properties to promote economic development in railbelt communities where certain high value Railroad lands are currently underdeveloped.

Rationale:

The Alaska Railroad Corporation's (ARRC) current statutory limit is a 35-year lease. The ARRC can extend leases beyond 35 years subject to a termination clause defined by AS 42.40.285 (4). The clause states the ARRC can terminate any lease with a term in excess of 35 years in the event the land is needed for railroad purposes after the initial 35 years.

Financial lenders are reluctant to lend on large-scale projects requiring substantial equity when there is no guarantee the land will be available beyond 35 years. Increasing the lease term to 55 years would allow companies to amortize debt over a longer span of time and increase financing options.

The ARRC's statutory constraints limit the ability for developers of large-scale commercial and residential projects to secure financing because certain banking regulations require ground lease maturity to exceed loan maturity by 10 years. The change to 55 year leases from 35 also creates long-term benefits to surrounding communities by providing an economic and tax base.

ADOPTED

November 1, 2001

BY Pamela La Bolle  
Pamela La Bolle  
President

BY Helvi K. Sandvik  
Helvi Sandvik  
Chair



Anchorage • *Star of the North*  
Chamber of Commerce

**A Resolution Supporting Legislation  
Authorizing the Alaska Railroad to Lease Land for 55 years  
Resolution 01/02 - 04**

WHEREAS, legislation authorizing the Alaska Railroad Corporation (ARRC) to lease land for 55 years will cultivate economic development in Alaska communities along the railbelt by making commercial and residential development on ARRC lands more feasible; and

WHEREAS, ARRC's current statutory limit is a 35-year lease. Proposed legislation would amend AS 42.40.285 (4) enabling the Alaska Railroad Corporation (ARRC) to lease lands within its Anchorage, Fairbanks, Seward and Healy Terminal Reserves for up to 55 years rather than 35 years without first gaining legislative approval; and

WHEREAS, the Alaska Railroad owns 36,000 acres of land. Of that, the proposed legislation would apply to approximately 8,000 acres of reserve land: some 300 acres in Seward, 1000 acres in Anchorage, 6,000 acres in Healy and 450 acres in Fairbanks; and

WHEREAS, today, ARRC can extend leases beyond 35 years only if it subjects the lessee to a termination clause defined by AS 42.40.285 (4). The clause states ARRC can terminate any lease with a term in excess of 35 years in the event the land is needed for railroad purposes after the initial 35 years; and

WHEREAS, financial lenders are reluctant to lend on large-scale projects requiring substantial equity when there is no guarantee the land will be available beyond 35 years; and

WHEREAS, ARRC's statutory constraints limit the ability for developers of large-scale commercial and residential projects to secure financing because certain banking regulations require ground lease maturity to exceed loan maturity by 10 years; and

WHEREAS, when developers provide significant infrastructure or operational improvements, it is beneficial to have a lengthened lease term allowing companies to amortize debt over a longer span of time; and

WHEREAS, increasing the lease term to 55 years would increase financing options and, therefore, investor interest; and

WHEREAS, this change would result in increased business activity on railroad property by making improvements more attractive to investor/users. This also creates long term benefits to the surrounding communities by providing an economic and tax base; and

WHEREAS, the proposed legislation would make ARPC's leasing practices more consistent with other state agencies. The University of Alaska and the Department of Natural Resources can both lease land for up to 55 years; and

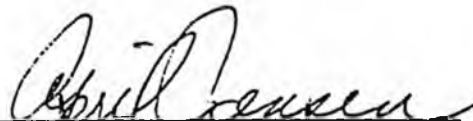
NOW THEREFORE BE IT RESOLVED, that the Anchorage Chamber of Commerce views legislation authorizing ARRC to lease land for 55 years as an important step toward promoting economic development in railbelt communities where certain high value Railroad lands are currently underdeveloped.

BE IT RESOLVED, that the Anchorage Chamber of Commerce supports and seeks to assist ARRC in obtaining legislative approval to lease land for up to 55 years in its Seward, Anchorage, Healy and Fairbanks Reserve Lands.

Approved this 2<sup>nd</sup> day of November 2001.



Eric Britten, 2001-2002 Chair



April Jensen, President

Sponsored by: Janke

**CITY OF SEWARD, ALASKA  
RESOLUTION 2001-136**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEWARD,  
ALASKA, SUPPORTING LEGISLATION AUTHORIZING THE ALASKA  
RAILROAD TO LEASE LAND FOR 55 YEARS**

**WHEREAS**, legislation authorizing the Alaska Railroad Corporation (ARRC) to lease land for 55 years will cultivate economic development in Alaska communities along the railbelt by making commercial and residential development on ARRC lands more feasible; and

**WHEREAS**, ARRC's current statutory limit is a 35-year lease. Proposed legislation would amend AS 42.40.285 (4) enabling the ARRC to lease lands within its Anchorage, Fairbanks, Seward and Healy Terminal Reserves for up to 55 years rather than 35 years without first gaining legislative approval; and

**WHEREAS**, today, ARRC can extend leases beyond 35 years subject to a termination clause defined by AS 42.40.285 (4). The clause states ARRC can terminate any lease with a term in excess of 35 years in the event the land is needed for railroad purposes after the initial 35 years; and

**WHEREAS**, financial lenders are reluctant to lend on large-scale projects requiring substantial equity when there is no guarantee the land will be available beyond 35 years; and

**WHEREAS**, ARRC's statutory constraints limit the ability for developers of large-scale commercial and residential projects to secure financing because certain banking regulations require ground lease maturity to exceed loan maturity by 10 years; and

**WHEREAS**, when developers provide significant infrastructure or operational improvements, it is beneficial to have a lengthened lease term allowing companies to amortize debt over a longer span of time; and

**WHEREAS**, increasing the lease term to 55 years would increase financing options and, therefore, investor interest; and

**WHEREAS**, this change would result in increased business activity on railroad property by making improvements more attractive to investor/users. This also creates long term benefits to the surrounding communities by providing an economic and tax base; and

**WHEREAS**, the proposed legislation would make ARRC's leasing practices more consistent with other state agencies. The University of Alaska and the Department of Natural Resources can both lease land for up to 55 years.

CITY OF SEWARD, ALASKA  
RESOLUTION 2001-136

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NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEWARD, ALASKA, that:

Section 1. The City of Seward views legislation authorizing ARRC to lease land for 55 years as an important step toward promoting economic development in railbelt communities where certain high value railroad lands are currently underdeveloped.

Section 2. The City of Seward supports and seeks to assist ARRC in obtaining legislative approval to lease land for up to 55 years in its Seward, Anchorage, Healy and Fairbanks Reserve Lands.

Section . This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Seward, Alaska, this 22nd day of October, 2001

THE CITY OF SEWARD, ALASKA

*E. Blatchford*

Edgar Blatchford, Mayor

AYES: Blatchford, Brossow, Branson, Calhoon, Clark, Orr, Shafer  
NOES: None  
ABSENT: None  
ABSTAIN: None

ATTEST:

*Patrick Reilly*

Patrick Reilly  
City Clerk

(City Seal)





**Yukon Fuel Company**

7941 Sandwood Pl  
Anchorage, AK 99507  
Tel: (907) 777-5505  
Fax: (907) 777-5550  
www.yukonfuel.com

Monday, April 23, 2001

Mr. James Kubitz, Vice President Real Estate  
Alaska Railroad  
327 W Ship Creek Ave  
P.O. Box 107500  
Anchorage, AK 99510-7500

Dear Mr. Kubitz:

We support the Alaska Railroad plan to seek the ability to offer longer-term real-estate leases. As you know we have been working with the Railroad to develop some new industrial areas.

Longer terms would be more attractive to our company because we will be able to amortize our investments over a longer span.

Please feel free to use this letter if this will help to allow the Railroad to extend its lease contracts beyond the current levels.

Yours truly,

Clayton Shelver  
VP Assistant General Manager

## A & A CONSTRUCTION & DEVELOPMENT, INC.

202 East Trent Avenue, Suite 400, Spokane, Washington 99202

(509) 624-1170 fax (509) 624-1255

April 25, 2001

Alaska Railroad Corporation  
Attn: Karen Morrissey  
Real Estate Department  
Fax: 907-265-2450

Ladies and Gentlemen:

A & A Construction & Development, Inc. has developed and built four (4) hotels in the state of Alaska. Three of those are in Anchorage and one is in Fairbanks. The Anchorage Comfort Inn and the Fairbanks Comfort Inn are both on land leased from the Alaska Railroad Corporation pursuant to a ground lease.

When these leases were negotiated, the maximum initial term which we were told was available was only 35 years. Building a major improvement such as a hotel on a parcel of leased ground with only a 35 year duration presents significant problems. These include realizing the rate of return necessary to amortize the necessary debt over the term of the lease while at the same time providing an internal rate of return necessary to attract investors.

Although agreements can be reached for an extension of the original term, our experience has been that such extensions are difficult to obtain because of the mind set that the initial maximum term should be sufficient. Additional concerns arise with the potential failure to give notice for any extension that is typically required even when an extension is available.

There would seem to be little justification in limiting a ground lease for a major improvement to 35 years. The presumption would almost seem to be that the owner of the ground, as Lessor, would hope to receive a windfall by an early termination of the lease with the improvements then vesting in the Lessor.

My partner and I would very much like to construct further improvements on ground owned by the Alaska Railroad Corporation. We are reluctant to do so, however, unless the lease term can be increased.

Very Truly Yours,

A & A Construction & Dev., Inc.

  
Christopher R. Ashenbrenner  
CORPORATE COUNSEL

CRA:sf



April 26, 2001

Chris Anderson  
Leasing Supervisor  
Alaska Railroad Corporation  
PO Box 107500  
Anchorage, Alaska 00510-7500

VIA FACSIMILE 265-2450

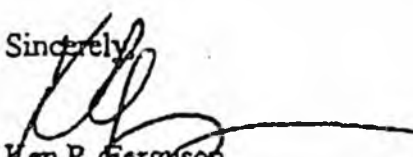
Dear Chris:

I am writing to support your efforts to amend AS 42.40.285(4) allowing Alaska Railroad Corporation (ARC) to lease land for 55 years.

This change would allow greater flexibility for lenders as regulations require ground lease maturity exceed loan maturity by 10 years. It will also make purchase and improvement more attractive to investor/users, which should result in increased business activity on railroad property.

Longer-term ground leases will increase financing options, investor interest and business development. Northrim Bank fully supports and commends your efforts.

Sincerely,



Ken R. Ferguson  
Vice President

Bayview Commercial Building, LLC  
619 E. Ship Creek Ave., Suite 250  
Anchorage, Alaska 99501  
Phone 907-279-7654  
Fax 907-278-0685

April 23, 2001

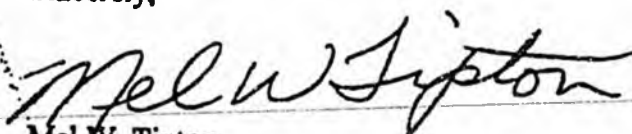
Jim Kubitz, Vice President Real Estate  
Alaska Railroad Corporation  
327 W. Ship Creek Avenue  
Anchorage, Alaska 99510-7500

Dear Mr. Kubitz:

As the owner of the Bayview Commercial Building located at 619 E. Ship Creek Avenue, I want to support the efforts you have been making to eliminate obstacles to create a more developer friendly process in leasing Alaska Railroad land. One of the obstacles still remaining is the restriction you have to leasing land beyond 35 years. Businesses and developers need to have a longer-term lease available in order to reinvest and find the financing to make major investments on railroad land. We support your efforts to extend your lease term from 35 to 55 years.

If you have any questions or would like to discuss this further, please call me at 279-7654.  
Thank you.

Sincerely,



Mel W. Tipton  
Manager

cc: Reading file  
Karen Morrissey



## SEWARD SHIP'S DRYDOCK, INC.

P.O. Box 944  
Mile 7 Nash Road  
Seward, Alaska 99664-0944

Tel: (907) 224-3198  
Tel: (907) 224-5640  
Fax: (907) 224-5376

April 24, 2001

Jim Kubitz, Vice president Real Estate  
Alaska Railroad Corporation  
327 W. Ship Creek Avenue  
Anchorage, Alaska 99510-7500

Dear Mr. Kubitz,

As the owner of three companies in Seward, I would like to extend my support to the efforts to obtain legislation to extend the land lease terms of the Alaska Railroad Corporation from 35 years to 55 years.

To obtain financing and make major investments on Alaska Railroad property this extension is critical to businesses and developers.

We are extremely supportive of your efforts in this obtaining this legislation.

Sincerely,

James T. Pruitt  
President



April 23, 2001

Jim Kubitz, Real Estate Division  
Alaska Railroad Corp.  
P.O. Box 107500  
Anchorage, AK 99510

Dear Jim:

Anchorage Historic Properties was founded 15 years ago as a non-profit organization dedicated to identifying and preserving structures of historical significance to Anchorage. Our board of directors and membership believe that we can only build a strong future for our city by recognizing the importance of its past.

To effectively accomplish our mission, the Alaska Railroad needs to be able to extend its property leases beyond the currently ineffective 35-year term. We strongly support the passage of AS 42.40.285, extending Railroad land leases to a 55-year term. This would greatly enhance the ability of organizations like ours to preserve structures situated on railroad property, and make long-term financing feasible.

We appreciate the Alaska Railroad's continued commitment to helping Anchorage Historic Properties and our vital role in the community.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. R. Harpel'.

Craig Harpel  
Executive Director  
Anchorage Historic Properties

CC Reading File  
Karen Morrissey



April 24, 2001  
W.O. D01100

Mr. Jim Kubitz  
Vice President, Real Estate  
Alaska Railroad Corporation  
P.O. Box 107500  
Anchorage, Alaska 99510-7500

Subject: Real Estate Leasing

Dear Mr. Kubitz:

As you are aware, DOWL Engineers (DOWL), deals with a large number of developers and development projects throughout Alaska.

DOWL has been involved with many projects on leased land. Historically, most developers have desired "fee simple" ownership as a first choice. However, when that option is not available and leasing is the only option, the key issue is the "duration" of the lease. Obviously, the longer the lease term, the more financially feasible the project usually becomes. Thirty-five year leases have been shown to be inadequate for many projects.

Longer-term leases can be a significant incentive to promote development. Lease rates will presumably have a market based escalator so that the Alaska Railroad Corporation (ARRC) would get a market-based return over the life of the lease. Fifty-five year leases are not uncommon, especially where developers are asked to provide significant infrastructure/operational improvements.

I would strongly recommend that the ARRC consider 55-year leases for its properties. I believe the flexibility associated with this added incentive will promote major investments throughout the railbelt, resulting in favorable economic growth and a more financially viable Alaska Railroad.

If you have any specific questions or need additional information, please contact me at your convenience.

Very truly yours  
DOWL Engineers

A handwritten signature in cursive script that reads 'Timothy C. Potter'.

Timothy C. Potter  
Director of Planning

D01100.Kubitz.TCP.042401.kms



Anchorage Neighborhood Housing Services, Inc.

~~3002 Third Street, Suite 1000 Anchorage, Alaska 99501~~ • (907) 243-1558 • Fax (907) 243-3214 • www.akanhs.org  
480 West Tudor Road, Anchorage, Alaska 99503

April 20, 2001

Ms. Karen J. Morrissey  
Director of Real Estate  
327 W. Ship Creek Avenue  
Anchorage, Alaska 99501

Dear Ms. Morrissey:

On behalf of Anchorage Neighborhood Housing Services, Inc., I would like to express our support of the Alaska Railroad Corporation's efforts to obtain legislation that would extend the land lease term from 35 years to 55 years.

Anchorage Neighborhood Housing Services, Inc. is working on the development of a 20 unit senior housing complex on Alaska Railroad property located in the Government Hill area. The housing would be developed utilizing Housing and Urban Development (HUD) 202 senior housing funds. HUD requirements for site control require a 50-year lease period in order to be eligible for financing. Therefore, changes in the land lease term are crucial to the development of future senior housing in Government Hill community.

We are highly supportive of your efforts in obtaining this legislation.

Sincerely,

Mary Jane Michael  
CEO and Executive Director



Mr. James W. Kubitz  
Vice President, Real Estate & Project Planning  
327 Ship Creek Avenue,  
Anchorage, Alaska 99501  
April 23, 2001

Re: Lease term or length

Dear Jim:

I have recently learned that the Alaska Railroad Corporation (ARC) is considering the extension of lease term length from 35 years to 55 years.

This is an outstanding proposal that will be applauded by everyone seeking to develop any major project on ARC lands.

The financial markets will be exceedingly receptive to such an increase in term length as the additional term allows for the aggregation of capital that would not be ordinarily available for the shorter term and is seeking the added security a 55 year lease offers.

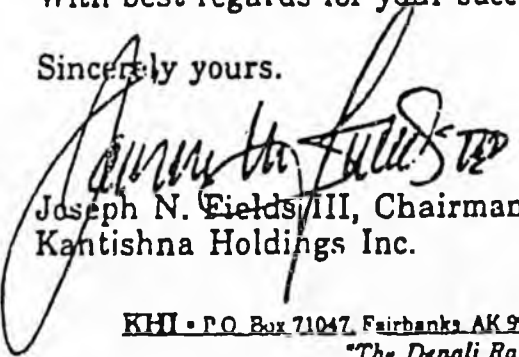
Major projects developers in Europe, like Eurotunnel PLC, creators of the rail link under the English Channel (chunnel) utilized the longer terms to aggregate the equivalent of USD 26 Billion in refinancing with over 200 participating banks, and that is exclusive of the high speed rail links from Calais to Paris and Brussels. The same can be said for financings in mining in Kalamantan (Borneo) and on the rail link from Blackpool, England to Edinburgh, Scotland.

The extended lease term is not limited to Europe or Asia but also is utilized in all parts of NAFTA to secure financing for major projects that have the capability of generating return over a longer period while creating long term benefits to the communities they are developed in. In some cases, the intent is to create a local cultural mainstay industry in the economy, a place where several generations will work and prosper. It is called economic stability.

I strongly urge you to adopt this very good, "Common Sense", policy at the earliest opportunity.

With best regards for your success I remain,

Sincerely yours,

  
Joseph N. Fields III, Chairman  
Kantishna Holdings Inc.



ALASKA INDUSTRIAL DEVELOPMENT  
AND EXPORT AUTHORITY



813 WEST NORTHERN LIGHTS BLVD. • ANCHORAGE, ALASKA 99503 • 907 / 269-3000 • FAX 907 / 269-3044  
TOLL FREE (ALASKA ONLY) 888 / 300-8534

April 23, 2001

Chris Anderson  
Leasing Supervisor  
Alaska Railroad Corporation  
PO Box 107500  
Anchorage, AK 99510-7500

VIA FACSIMILE 265-2450

Dear Chris:

This letter is in support of Alaska Railroad Corporation's (ARC) efforts to amend AS 42.40.285(4), which would allow ARC to lease land for a period of up to 55 years without prior legislative approval.

As you are aware, Alaska Industrial Development and Export Authority (AIDEA) provides financial assistance to Alaskan businesses through a loan participation program, whereby AIDEA purchases a portion of a loan originated by a financial institution. The benefit of this program is long-term financing, up to 40 years for certain projects, and fixed interest rates.

As the statute currently reads, if AIDEA was to participate in a project that qualified for a 40-year term, the maximum lease term would preclude AIDEA from establishing a 40-year term. Current AIDEA regulations require the term of a ground lease to extend 10 years beyond the term of the loan.

A change to the statute as ARC proposes would provide the flexibility needed for AIDEA to participate in all types of projects on ARC leased land.

Please let me know if I can be of any further assistance.

Sincerely,

  
James A. McMillan  
Deputy Director-Credit

X  
CLERK'S OFFICE

APPROVED

Date 11-13-01

Submitted by: Assemblymember TESCHE

Prepared by: Department of Assembly

For reading: November 13, 2001

ANCHORAGE, ALASKA

AR NO. 2001-328

1  
2  
3  
4  
5  
6  
7  
8 A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUPPORTING  
9 SENATE BILL 209, AUTHORIZING THE ALASKA RAILROAD TO LEASE LAND FOR  
10 55 YEARS.

11  
12  
13 WHEREAS, a proposed bill - Senate Bill 209 - would authorize the Alaska Railroad  
14 Corporation (ARRC) to lease land for 55 years; and

15  
16 WHEREAS, this proposed legislation will cultivate development in Alaska  
17 communities along the railbelt by making commercial and residential development on  
18 ARRC lands more feasible; and

19  
20 WHEREAS, ARRC's current statutory limit is a 35-year lease - the proposed  
21 legislation would amend AS 42.40.285(4) enabling the ARRC to lease lands within its  
22 Anchorage, Fairbanks, Seward, and Healy Terminal Reserves for up to 55 years rather  
23 than 35 years without first gaining legislative approval; and

24  
25 WHEREAS, today, ARRC can extend leases beyond 35 years subject to a  
26 termination clause defined by AS 42.40.285(4) - the clause states ARRC can terminate  
27 any lease with a term in excess of 35 years in the event the land is needed for railroad  
28 purposes after the initial 35 years; and

29  
30 WHEREAS, financial lenders are reluctant to lend on large-scale projects requiring  
31 substantial equity when there is no guarantee the land will be available beyond 35 years;  
32 and

33  
34 WHEREAS, ARRC's statutory constraints limit the ability for developers of large-  
35 scale commercial and residential projects to secure financing because certain banking  
36 regulations require ground lease maturity to exceed loan maturity by 10 years; and

37  
38 WHEREAS, when developers provide significant infrastructure or operational  
39 improvements, it is beneficial to have a lengthened lease term allowing companies to  
40 amortize debt over a longer span of time; and

41  
42 WHEREAS, increasing the lease term to 55 years would increase financing options  
43 and, therefore, investor interest; and

44  
45


2  
3  
4 WHEREAS, this change would result in increased business activity on railroad  
5 property by making improvements more attractive to investor/users. This also creates long  
6 term benefits to the surrounding communities by providing an economic tax base.

7  
8 NOW, THEREFORE, the Anchorage Municipal Assembly resolves:

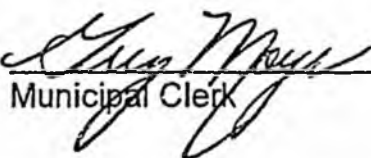
9  
10 Section 1: That the Assembly supports Senate Bill 209 authorizing ARRC to lease  
11 land for 55 years.

12  
13 Section 2: That the Assembly views this legislation as an important step toward  
14 promoting economic development in railbelt communities where certain high value railroad  
15 lands are currently underdeveloped.

16  
17 PASSED AND APPROVED by the Anchorage Assembly this 13<sup>th</sup> day of  
18 November, 2001.

19  
20  
21  
22   
23 Chair

24  
25 ATTEST:

26  
27  
28  
29   
30 Municipal Clerk  
31  
32

**HB**

**302**

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 302  
 (H) Publish Date: 4/8/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title Alaska Gas Corporation BRU Administration and Support  
 Component Commissioner's Office  
 Sponsor Representative Whitaker  
 Requester House Oil and Gas Committee Component No. 123

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation directs the Joint Committee on Natural Gas Pipelines to submit a project plan by January 2003 on "whether the construction and operation of a natural gas transmission pipeline project ... by a public corporation is feasible." The plan would include findings, recommendations and conclusions from engineering and consulting firms on a detailed list of gas supply, financial, regulatory, market, local-hire and local-buy matters. If the project is judged feasible, the legislation directs that a new entity within Revenue, the Alaska Gas Corporation, would be responsible for one or more of the following: design, construction, operation and maintenance of the pipeline.

Because a legislative committee would pay for and manage the feasibility study, that portion of this legislation would not effect the department's operating budget.

And because the feasibility of the project, and the state's possible role in construction and/or operation of the project, would be determined by the feasibility study, it is premature at this time for the department to estimate any budgetary needs for the new public corporation.

Prepared by: Larry Persily, Deputy Commissioner Phone 465-5469  
 Division Department of Revenue Date/Time 4/1/02 7:20 PM  
 Approved by: Wilson Condon, Commissioner Date 4/1/2002  
 Agency Department of Revenue

# Alaska State Legislature

Representative Jim Whitaker  
House of Representatives  
District 31



Session  
Capitol Building, Room 411  
Juneau, Alaska 99801  
Phone: (907) 465-3004  
Fax: (907) 465-2070

Interim  
119 N. Cushman St. Suite 213  
Fairbanks, AK 99701  
Phone: (907) 452-1088  
Fax: (907) 452-1146

## Sponsor Statement House Bill 302 – Alaska Gas Corporation

Article VIII, Section 2 of the Constitution of the State of Alaska specifies that, “the legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.” For many years, the State of Alaska has relied heavily on the production of oil to foster its livelihood, provide opportunities for its people, and generate revenues to ensure continued prosperity. We have all seen and enjoyed the positive effects of oil development. However, oil price fluctuations and reduced competition resulting in reduced production have adversely affected the State’s ability to provide a secure economic future. As we face an enormous budget deficit, we must look beyond our reliance on oil production, budget cutting, and taxation as the only means of ensuring a long-term fiscal solution. It is incumbent upon the leaders of this state to recognize that further resource development is critical in order to secure an additional and substantial revenue stream to the State of Alaska. Conservatively, 100 trillion cubic feet of natural gas is stranded on the North Slope, and the failure to recognize this vital resource as a valuable commodity is in direct conflict with the provisions of the Constitution of the State of Alaska.

In order to facilitate the extraction and sale of natural gas, House Bill 302 establishes the Alaska Gas Corporation. The prime responsibility of the corporation is to provide for a basic commodity transportation system: a natural gas pipeline system; open to all potential competitors, and open to all realistic market access opportunities.

Overcoming a number of impediments is essential in order for a project of this nature to become a reality. We have extensively studied the economics, market viability, financial needs, and regulatory obstacles associated with the construction and operation of this project. However, in order to truly understand the economic viability of the Alaska Gas Corporation, we must turn to professionals in the engineering, financial and market sectors in order to establish absolute economic feasibility, and an associated project plan.

House Bill 302 requires a natural gas pipeline feasibility study and plan be completed and presented to the twenty-third Alaska State Legislature and the Governor. This report shall contain specific information pertaining to technical, financial, regulatory and market access matters relating to the project. The passage of HB 302 is of paramount importance in order to move forward and develop our natural resources in the maximum best interest of the citizens of the State of Alaska.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 2, 2002

**SUBJECT:** House Bill 302 -- sectional analysis  
(Work Order No. 22-LS1205\C)

**TO:** Representative Jim Whitaker

**FROM:** Jack Chenoweth  
Assistant Revisor of Statutes

The principal purpose of this measure is to establish the Alaska Gas Corporation as a public corporation and to define the structure, management, responsibilities, and operation of the corporation. The chief mission of the Alaska Gas Corporation is to facilitate the commercial development of the state's North Slope natural gas reserves.

**Bill section 1**, an uncodified provision, sets out the findings and intent that have influenced development of the legislation.

**Bill section 2:** These provisions set out in a new chapter of title 41 of the Alaska Statutes (AS 41.41) the corporate structure, powers, and responsibilities of the Alaska Gas Corporation. The chapter is arranged by articles.

### *Article 1.*

The sections identified as AS 41.41.010 - 41.41.130 are set out to define the organization of the corporation:

AS 41.41.010 establishes the corporation, enumerates its purposes, and affirms that it is intended to be a public corporation of the state.

AS 41.41.020 creates the corporation's board of directors, a board composed of six public members. The general qualifications of persons to serve as members are stated, and the corporation's obligation to establish its organization is set out.

AS 41.41.030 sets overlapping four-year terms for the members and authorizes reappointment.

AS 41.41.040 circumscribes the governor's authority to remove members and sets out procedures to be followed relating to removal and filling of the vacancy created.

AS 41.41.050 defines quorum and voting requirements.

AS 41.41.060 prescribes compensation for members and authorizes payment of per diem and travel expenses comparable to those provided to state employees for members.

AS 41.41.070 authorizes the board to employ an executive director who, in turn, is assigned responsibility for selection and employment of additional staff "with the approval of the board." The concluding subsection authorizes the corporation to contract for specialized services.

AS 41.41.080: Provisions of law requiring disclosure of financial and business interests (AS 39.50) are made applicable to members of the board. In addition, provision is made for specific disclosure of information concerning a board member's or employee's involvement in an entity or project "in which assets of the corporation are invested."

AS 41.41.090 sets out the budgetary and financial relationship between the corporation and the state's budget and fiscal procedure acts.

AS 41.41.100 authorizes the Legislative Budget and Audit Committee to undertake post audit and performance evaluation of corporate obligations.

AS 41.41.110 prescribes publication of an annual report of the corporation and the contents of the report.

AS 41.41.120 bars the corporation from using its resources to finance or influence political activities.

AS 41.41.130 defines information in the corporation's possession that is or is not to be treated as a public record under AS 40.25.110 - 40.25.140 and sets limits on the use or disclosure of confidential, non-disclosable information.

#### *Article 2.*

The one section in this article, AS 41.41.200, enumerates general powers of the corporation.

#### *Article 3.*

The sections identified in AS 41.41.300 - 41.41.410 generally bear upon the corporation's issuance of securities (bonds and notes and other evidence of debt). Much of the material

is technical boilerplate and is included so that, as a public corporation, under article IX, section 11 of the state constitution, the corporation enjoys full authority to contract debt based on its ability to repay out of its anticipated future revenues:

AS 41.41.300: This section authorizes issuance of revenue bonds and related evidence of debt, using provisions not unlike those included in chapters establishing other public corporations of the state to facilitate the use of debt obligations.

AS 41.41.310 prescribes permissible covenants that the corporation's board may make in conjunction with issuance of revenue bond debt.

AS 41.41.320 makes the level of the corporation's authorized debt subject to legislative authorization.

AS 41.41.330 permits the board to contract for the services of an independent financial advisor in conjunction with private sale of debt instruments.

AS 41.41.340 describes the nature of the corporation's pledge of its assets or revenues to payment of principal and interest on corporation-issued debt.

AS 41.41.350 details use of "capital reserve funds" to meet repayment obligations in conjunction with the corporation's indebtedness.

AS 41.41.360 addresses remedies available to holders of debt obligations and their representatives to enforce the timely payment of an obligation or a related obligation.

AS 41.41.370 makes the corporation's obligations negotiable instruments.

AS 41.41.380 explicitly makes the corporation's obligations permissible investments for public officers and for others handling surplus funds as identified in the section's text.

AS 41.41.390 authorizes use of refunding bonds as a device to adjust the corporation's bond obligations to obtain the benefit of more advantageous terms and conditions.

AS 41.41.400 affirms that, because the corporation's obligations are revenue-based debt instruments, the credit of the state is not pledged. Liability on the debt instrument is limited to the assets and revenues of the corporation.

AS 41.41.410 releases the corporation's officers from personal liability with reference to action taken by the corporation with respect to a debt obligation.

*Article 4.*

The one section in this article, AS 41.41.450, authorizes the Alaska Gas Corporation to acquire and hold property and interests in property "necessary or convenient for the financing of the [Trans Alaska Gas Pipeline] project."

*Article 5.*

The article contains general provisions:

AS 41.41.900 reaffirms the blanket immunity from taxation that the Alaska Gas Corporation enjoys and provides a general tax exemption provision: the corporation and its operations and earnings are exempt from taxes and assessments in the state; bonds and security instruments are exempted from taxes and assessments made by the state.

AS 41.41.990 sets out a series of definitions for terms used in the chapter.

**Bill section 3** amends AS 39.25 to add employees of the Alaska Gas Corporation as members in the exempt service under the State Personnel Act.

**Bill section 4** amends AS 39.50.200 to add the Alaska Gas Corporation's board of directors and executive director as persons who are subject to the state's general conflict of interest law (AS 39.50).

**Bill section 5:** This uncodified provision directs the preparation and delivery of a "project plan" or feasibility study for planning, design, construction, and operation of a gas transmission pipeline. The specific points that are to be covered or addressed in the feasibility study and a time line for its presentation are set out.

**Bill section 6** prescribes initial terms of office for the initially appointed members of the corporation's board of directors in order to establish overlapping terms of office.

JBC:med  
02-343.med

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
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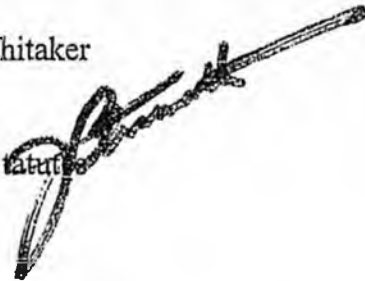
## MEMORANDUM

January 21, 2002

**SUBJECT:** Applying the standard applicable under article XI, section 4, Constitution of the State of Alaska, is House Bill 302 ("An Act establishing the Alaska Gas Corporation . . . ") "substantially the same measure" as Initiative 01GSLN ("The All-Alaskan Gasline Initiative")? (Work Order No. 22-LS1205/C)

**TO:** Representative Jim Whitaker

**FROM:** Jack Chenoweth  
Assistant Revisor of Statutes



### *Question presented:*

You have asked whether House Bill 302, "An Act establishing the Alaska Gas Corporation . . . ", would be found to be "substantially the same measure" as Initiative 01GSLN, the "All-Alaskan Gasline Initiative." A determination that the bill, passed by the current legislature and enacted into law, is substantially the same measure as the initiative would void the initiative petition thereby requiring the lieutenant governor to order the initiative, if properly filed, removed from the November general election ballot.

### *Short answer:*

For the reasons considered and discussed below, in my judgment the differences between the initiative and the bill should not be sufficient to defeat a determination by the lieutenant governor that the bill and the initiative are substantially the same.

### *Discussion:*

The applicable constitutional provision is set out in the last sentence of article XI, section 4 of the state constitution:

**Initiative Election.** An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. *If, before the election, substantially the same measure has been enacted, the petition is void.*

The provision is supplemented by a statute, AS 15.45.210:

**Determination of void petition.** If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.

The test for invalidating the petition under the "substantially the same measure" standard is considered by the Alaska Supreme Court in *Warren v. Boucher*, 543 P.2d 731 (Alaska 1975). The nub of the test appears in the following two paragraphs:<sup>1</sup>

---

<sup>1</sup> To accommodate analysis in the text of this memo, I want to set out the extent of the court's discussion in its entire context:

. . . In order to interpret this language [i.e. the meaning of "substantially the same measure"] we must analyze its functional relationship to other constitutional provisions. We must infer the purposes and intentions of the framers from the language of the constitution itself, with careful regard for the apparent aims which the framers had in mind.

The words "substantial" or "substantially" are relative, inexact terms. Their meaning is quite elusive. *Application of Scroggin*, 103 Cal. App. 2d 281, 229 P.2d 489 (1951). The meaning of such terms can be derived only [by] reference to all the circumstances surrounding the context in which they are used. *Atchison, T. & S.F. Ry. v. Kings County Water District*, 47 Cal.2d 140, 302 P.2d 1, 3 (1956). So here, we believe that the term "substantially the same measure" must be viewed against the total structure contemplated in Art. XI of our constitution in the matter of direct legislation.

. . .

. . . By providing that the legislative enactment of substantially the same measure could have the effect of voiding an initiative, the framers empowered the legislature to cut off initiated legislation from consideration and vote by the general public. The manner in which Art. XI, Sec. 4, was amended in the constitutional convention makes this clear. The original proposal at the convention would have required that an initiative could be voided only by legislative enactment of "the measure initiated". Read literally, this would require that the language of both measures be identical. However, as discussed above, the final constitutional language requires merely that "substantially the same

measure" be enacted by the legislature in order to void an initiative petition.

*It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.*

*Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative.*

. . .

The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital governmental functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.

What is significant to us here is the effect which the amendatory power of the legislature has upon our interpretation of the words "substantially the same measure." For if the legislature has broad power of amendment, it follows that it has broad power to change an initiative by an enactment covering the same subject as the initiated measure. In short, we must interpret Art. XI, Sec. 4, broadly and not narrowly as to the scope of legislative power. . . .

It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.

Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative.

*Warren v. Boucher*, 543 P.2d 731, at 736.

Dissimilarities in the statement of findings and intent of the respective measures aside, House Bill 302 differs substantively from the initiative<sup>2</sup> in these significant aspects:

- (1) the description of the "services and functions" of the corporation, coupled with the definition of the term "project" and the manner of treatment of the obligation to develop a "project plan";
- (2) the size of the board, qualifications of its members, duration of terms of the members' board service, and compensation due members for their services;
- (3) the issue of legislative confirmation of board members;
- (4) differences in treatment of the corporation's/authority's legal representation;

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*Warren v. Boucher*, 543 P.2d 731, at 735 - 736 (emphasis added; notes omitted).

<sup>2</sup> If the initiative appears on the ballot and is approved by the voters, it has to be codified. Just to have it on record, assuming that the text of the initiative set out on the state Internet entry is accurate, there are several minor editorial matters that need attention: in AS 41.41.310(8), the word "provide" was omitted and should be reinserted before "for"; the section catchline for AS 41.41.410 duplicates the catchline for the preceding section, is inappropriate as to the section's contents, and should be revised to read "Officers not liable."

(5) the matter of the disposition of corporate/authority earnings "in excess of future operating needs";

(6) the explicit handling in the initiative, omitted from the bill, of the subjects of "project term agreements with labor organizations," employment opportunities for state residents, and the use of experienced Alaska businesses; and

(7) the express power given to the authority (but not to the corporation) to "acquire natural gas supplies."

I'll briefly discuss each in order.

**1. The description of the "services and functions" of the corporation, coupled with the definition of the term "project" and the manner of treatment of the obligation to develop a "project plan":**

The initiative assigns the authority a different mandate than does the bill. In the description of the "services and functions" set out in the initiative's AS 41.41.010, in the initiative's definition of "project" for the new chapter, and in the description of the project plan in an uncodified section at the end of the initiative, the scope of the project incorporates reference to a pipeline system to tidewater and a spur line to southcentral Alaska, and makes reference to gas (as LNG) distribution to Yukon River and coastal communities. The bill, as you know, addresses only the delivery to the interior and then along the Alaska Highway to Canada or to tidewater, or both.

The initiative and the bill both include provisions applicable to early development of a project plan. Though the elements that the plan is to address are not congruent, there is overlap. What differs, of course, is the identity of the entity to undertake the plan--a legislative joint committee under the bill and the new authority under the initiative--and the requirement of the bill that the project plan determine "whether the construction and operation of a natural gas transmission pipeline project by a public corporation is feasible," while the initiative seems to presuppose the project's feasibility and the board of directors of the proposed authority is directed to begin by producing a development plan.

These differences are not insignificant. The bill, clearly, reflects an immediate concern by the legislature that the North Slope's reserves be made available overland to domestic North American and overseas markets, while the initiative omits overland domestic North American market considerations and focuses on overseas shipments and opportunities for instate use. Because of the magnitude of the financing attending construction of one or two pipelines, the legislature is understandably more cautious about the project's feasibility and requires evidence of operational success rather than starting from the assumption, as the initiative does, that the project's success may be inferred.

But, while not insignificant, the differences do not seem to me to be fatal to a determination that the bill is "substantially the same measure" as the initiative. *Warren v. Boucher* acknowledges the opportunity of the legislature to "vary from the particular features of the initiative" while achieving the same general purpose. That, arguably, is exactly what is happening. The approach used in the bill is more conservative in its initial approach and takes cognizance of circumstances (specifically, overland transportation of natural gas to domestic North American markets) that may not have been commercially viable when the initiative was crafted. These differences should not, in my view, be regarded as sufficient to defeat a determination that the bill and the initiative are substantially the same.

**2. The size of the board, qualifications of its members, duration of terms of the members' board service, and compensation due members for their services:**

Differences between the initiative and the bill relating to six versus seven board members, qualifications of appointees, duration of service, and compensation payable are technical matters and should not, in my judgment, be sufficient to defeat a determination that the bill and the initiative are substantially the same.

**3. Legislative confirmation of board members:**

The state constitution does not now authorize legislative confirmation of members of public corporations (by whatever name denominated). The initiative requires legislative confirmation of board members; the bill omits the requirement. The bill avoids the constitutional argument and, consistent with language in *Warren v. Boucher* speaking to the authority of the legislature to take corrective action, improves (legally speaking) the content of the initiative on this point. The difference is not, in my judgment, sufficient to defeat a determination that the bill and the initiative are substantially the same.

**4. The corporation's/authority's legal representation:**

The initiative expressly assigns legal representation to the attorney general; the bill omits the express provision and adds selection of legal counsel as a discretionary power of the board. While, under the bill, the attorney general may nevertheless assert authority to represent the proposed corporation under powers spelled out in AS 44.23.020, the difference in treatment of this issue as between the initiative and the bill is not, in my judgment, sufficient to defeat a determination that the bill and the initiative are substantially the same.

**5. The matter of the disposition of corporate/authority earnings "in excess of future operating needs":**

The bill, but not the initiative, provides that

Earnings of the corporation in excess of future operating needs shall accrue and be transferred to the state general fund once each year, not later than January 15, after the first full year of operation.

Its inclusion in the bill is arguably a reflection of the third paragraph of the bill's statement of findings ("the production of oil and gas from state land is an important source of revenue to the state and job opportunities for all people of the state;") and is not inconsistent with inclusion of similar approaches in other chapters establishing and defining the powers and duties of state public corporations requiring disclosure (if not actual transfer) of fund balances in excess of operating requirements. Again, under the analysis of *Warren v. Boucher*, the court acknowledges that the legislature has latitude to vary from the content of an initiative if the subject matter is "necessarily complex". Identifying the corporation's activities as a potential general fund revenue source is surely a matter of more concern to the legislature than to sponsors of the initiative. *Warren v. Boucher* allows this variance, it seems to me, and the difference in treatment of this issue as between the initiative and the bill is not, in my judgment, sufficient to defeat a determination that the bill and the initiative are substantially the same.

**6. Explicit handling in the initiative, omitted from the bill, of the subjects of "project term agreements with labor organizations," employment opportunities for state residents, and the use under contract of experienced Alaska businesses:**

As between the initiative and the bill, treatment of these matters differ. The initiative adds mandatory no-strike "project term agreements," resident hire, and business contractor and supplier preference provisions; the bill omits mandatory language but does require documentation of compliance or expected compliance with related requirements in conjunction with development of the project plan expected to make a determination that "construction and operation of a natural gas transmission pipeline project . . . is feasible." Moreover, the bill's approach arguably starts from recent legislative experience in this area wherein some substantially similar requirements were not directly addressed in law but were required to be added as contract terms. So, for example, the Stranded Gas Development Act, ch. 104, SLA 1998, directs the commissioner of revenue to address use of Alaska businesses and state residents as a condition of a contract providing incentives under that Act to encourage investment to develop stranded gas resources, while, earlier, legislation authorizing amendment of the Northstar Unit oil and gas leases, ch. 139, SLA 1996, addressed resident employment and instate business contracting requirements by legislative intent statements attending legislative approval of the measure.

Admittedly these differences are also material. In contrast to the mandatory language of the initiative, the legislature's approach is, understandably, relatively more cautious, and may simply reflect its appreciation of the constitutional constraints that do attach to state-initiated mandatory resident hire or local action requirements. To that end, substitution of the approach set out in the bill is defensible under that part of the *Warren v. Boucher* analysis that expresses legislative power to address initiative provisions that were "ill-

advised" or that might be "[legally] impracticable." On that basis, difference in treatment of this issue as between the initiative and the bill should not, in my judgment, be sufficient to defeat a determination that the bill and the initiative are substantially the same.

**7. The express power given to the authority (but not to the corporation) to "acquire natural gas supplies."**

Both the initiative and the bill permit the corporation/authority to acquire property. The initiative adds, at its AS 41.41.200(6), language by which the board, "in furtherance of its corporate purposes," may "acquire natural gas supplies." If the bill is enacted, presumably the board of the corporation would not have need of this express authority--the bill contemplates operation and maintenance of the natural gas pipeline system would involve third-party contracts. On the other hand, if it becomes clear that the corporation must own natural gas if construction and operation of the project are to be successfully undertaken, the absence of language expressly permitting acquisition of gas supplies should not defeat the exercise of general authority by the corporation to acquire gas supplies as "property." Presumably, the project plan development provisions will provide guidance as to whether or not state intervention and acquisition of gas supplies would be essential to successful development and operation of the completed project.

This provision frames what I believe may be the chief characteristic difference between the approach set out in the initiative and the one proposed in the bill. The initiative sponsors' statement declares that the authority is established for the purpose that it would "acquire and condition North Slope natural gas." In contrast, the bill directs use of third parties for the development and operation of the natural gas pipeline system contemplated. Again, the difference in approach may simply reflect an appreciation that the measure proposed and enacted should reflect the state's role as a project facilitator rather than assuming active development and operational responsibility. The legislature understands--the initiative sponsors may not--that the state Right-of-Way Leasing Act and federal legislation favoring expanded development of a domestic North American natural gas system for Alaska North Slope gas already provide guidance to and incentive for private, not state-directed, design, construction, and operation of either a tidewater delivery system, an overland delivery system, or both. While I recognize that this characteristic difference is important, nothing in the *Warren v. Boucher* analysis compels the conclusion that, as to a matter that is "necessarily complex" and that surely requires "comprehensive treatment," the legislature may not exercise its discretion and "substitute its judgment for that of the proponents of the initiative." As to a project of this size, the legislature surely has latitude to determine the manner in which limited state resources may be committed to achieve the outcome sought by you and the initiative sponsors. Differences in this treatment as between the initiative and the bill should not, in my judgment, be sufficient to defeat a determination that the bill and the initiative are substantially the same.

Representative Jim Whitaker  
January 21, 2002  
Page 9

The constitutional provision and statute first cited assign determination of whether or not an enacted bill represents "substantially the same measure" as a valid initiative to the lieutenant governor. My reading of the test and its application to HB 302 and Initiative 01GSLN lead me to conclude that the proposed legislation has the same general purpose as the initiative and is fairly comparable in its choice of means or system to what has been described in the initiative. Some of the differences do not seem to me to be material. Insofar as the differences are material, because the bill's variant provisions arguably serve to sidestep possible legal and practical shortcomings of the initiative as submitted, they should be regarded as consistent with the legislature's authority to substitute its judgment and to take corrective action.

On that basis, then, it is my judgment that differences between the initiative and the bill as introduced should not be sufficient to defeat a determination by the lieutenant governor that the bill and the initiative are substantially the same. Whether or not she would make the determination that the bill and initiative are, under the standard of *Warren v. Boucher*, substantially the same measure is not for me to say.

JBC:med  
02-029.med

Walter J. Hickel

Box 101700  
Anchorage, Alaska 99510-1700  
907-276-7400

*Distributed By*  
*Representative Scott Ogan*  
*District 27*

March 23, 2001

The Honorable Scott Ogan  
Alaska State House of Representatives  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

FAX 907-465-3265

Dear Representative Ogan,

While I had hoped to visit you and the House Special Committee on Oil and Gas before the end of March, I'm not able to do so because I'm traveling to Moscow for a meeting of Northern Forum leaders. Nevertheless, I want to compliment you and the Committee on its efforts to understand where Alaska stands in world markets for natural gas.

Any successful gas project requires willing buyers, willing sellers, willing transporters, and financing. My work in this area has been to try to bring those elements together, and I hope your committee can do the same.

If I were there, I would make three points.

First, Alaska has to look out for its own interests. In the late 1970s, an overland project failed – but not before Alaska's efforts helped Canadian reserves get to market. If overland was the best way to go, we would have an oil pipeline to Bellingham today. We don't. Tidewater gives us the most options, and while we can pursue an overland route, we can't allow the tidewater option to be ignored by the state or the producers. We must aggressively pursue Asian markets, and that means ensuring that a gas supply is independently offered for sale. So far, that has not been done. Instead, we're telling the Asian market we're not ready to sell.

Second, I've attached an excerpt from a talk the late Senator Bob Bartlett gave to Alaska's Constitutional Convention. He warned about companies with assets Outside Alaska warehousing assets they acquire in Alaska. Of course, no oil company would admit that they are warehousing gas, or keeping it out of the market because it has other supplies available. But a state owner of such a large resource has to protect itself, because it could happen. It is clear to me we haven't protected ourselves.

What do we do? We must be tough. Our options range from a reserve tax to taking back the resource for non-performance. Neither of these options would

be necessary if a sufficient gas supply to serve the LNG route were committed to an independent marketing effort.

Third, we must learn our lessons from the oil line: Unless structured correctly, a pipeline owned by producers is likely to result in tariff, royalty, and tax disputes because of a conflict in incentives between profits from transportation and profits from wellhead production. Since TAPS began, the state has had to collect close to \$10 billion in dispute because of the way the Trans-Alaska Pipeline was structured. Two options could help head off similar disputes on gas. First may be requiring an independent transportation company to carry the gas. Second may be having the state take an ownership interest in the pipeline at least equal to its royalty interest in the gas. Ken Thompson's trading hub idea also has merit in heading off this kind of conflict.

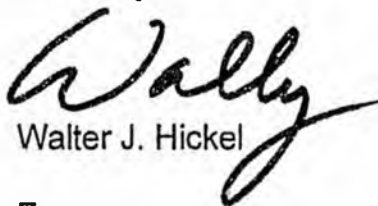
At least two transport companies have invested millions of dollars designing and permitting systems to deliver North Slope gas. The state is doing nothing I'm aware of to help bring these investors together with the producers.

I look forward to further discussion with you on my return. I'm doing what I can, as an individual, to urge producers, transporters, buyers, and financiers to get together. The state must help to do the same.

If this letter is presented to your Committee in my absence, Mead Treadwell – who works with me – can attempt to answer any questions you have.

With best regards.

Sincerely,

  
Walter J. Hickel

Enc.

Excerpt from

MEETING THE CHALLENGE

By

Delegate E. L. Bartlett

Alaska Constitutional Convention

University of Alaska

November 8, 1955

... The various bills for statehood enabling legislation which have been introduced in the Congress in recent years have uniformly called for large grants of land from the United States public domain to be made to the State of Alaska. The figure mentioned has been in excess of 100 million acres, an area roughly equal to the total land area of the State of California. The 100 million acre figure would appear to be approximately the figure which will finally be adopted.

The State of Alaska would choose almost all this acreage from the lands not included in present federal reservations and withdrawals, or which is otherwise unappropriated. The 100 million plus acres represent a veritable empire, a wealth of land and resources never before conferred on any state, saving only Texas which, upon its entry into the Union, was allowed to retain all its public lands. Alaska will receive also, in addition to the 100 million acre plus grant, an uncounted but tremendous acreage of submerged lands, land which under decisions of the Supreme Court of the United States have been held in trust for the future state. These submerged lands include lands under the beds of navigable rivers, lakes, and streams; the tidelands proper; and the submerged soils of the marginal sea out to the three-mile limit.

... Two very real dangers are present. The first, and most obvious, danger is that of exploitation under the thin disguise of development. The taking of Alaska's mineral resources without leaving some reasonable return for the support of Alaska governmental services and the use of all the people of Alaska will mean a betrayal in the administration of the people's wealth. The second danger is that outside interests, determined to stifle any development in Alaska which might compete with their activities elsewhere, will attempt to acquire great areas of Alaska's public lands in order NOT to develop them until such time as, in their omnipotence and the pursuance of their own interests, they see fit. If large areas of Alaska's patrimony are turned over to such corporations the people of Alaska may be even more the losers than if the lands had been exploited.

**HB**

**307**

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 307  
 (H) Publish Date: 2/1/02  
 Dept. Affected: Natural Resources  
 BRU: Oil and Gas Developmen  
 Component: Oil and Gas Developmen  
 Component Number: 439

Revision Date/Time (Note if correction): \_\_\_\_\_  
 Title: Oil/Gas Exploration Incentive Credit  
 Sponsor: Rep. Fate  
 Requester: (H) Oil and Gas

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	0 to -30 mil	0 to -30 mil	0 to -30 mil	0 to -30 mil	0 to -30 mil
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2002) cost: none  
 Check this box (X) if funding for this bill is included in the Governor's FY2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 This bill extends the deadline for completion of activity qualifying for exploration incentive credits under AS 41.09.010 until July 1, 2007. The credits may be applied against royalties, rentals, taxes, and bonus bids. These credits may also be assigned to other companies so that they may be applied to their royalties, rentals, taxes, and bonus bids. However, under AS 41.09.010(f), a credit may not exceed \$5 million per eligible project and the entire program may not exceed \$30 million. Within one basin a single exploration program could cost as much as \$30 million.

Prepared by: Mark D. Myers, Director Phone 269-8800  
 Division: Oil and Gas Date/Time 30-Jan-02  
 Approved by: Pat Pourchot Date 30-Jan-02  
 Agency: Natural Resources

ANALYSIS: (continued) HB 307 FN#1

The DNR Commissioner has discretion whether to grant EICs. If he does decide to grant EICs, he may grant anywhere between 10 percent and 50 percent on state land and between 10 percent and 25 percent on non-state lands.

\*If the program is fully utilized, the state could grant as much as \$30 million in credits that would normally be deposited in the general fund.

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 307  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title Oil / Gas Exploration BRU Revenue Operations  
Incentive Credit Component Tax Division  
 Sponsor Representative Fate  
 Requester House Committee on Oil and Gas Component No. 2476

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The exploration incentive credit in statute is designed to accelerate the exploration of state oil and gas leases and to acquire geological and geophysical information on state, federal and private land. This credit is approved at the discretion of the Commissioner of Natural Resources. The credit is transferable, so that it would have value to entities that do not have current royalty obligations or tax liabilities as well as to those that do.

This bill would delay the sunset provision in the current law from an expiration date of June 30, 2004 to June 30, 2007. No exploration credits have been applied against corporate income tax (AS 43.20) or royalties under the current law. The maximum amount of credits that can be taken is \$30 million. The revenue effect of this bill would therefore be between \$0 and \$30 million.

Prepared by: Chuck Logsdon, Petroleum Economist Phone 269-1019  
 Division Tax Division Date/Time 1/30/02 3:25 PM  
 Approved by: Larry Persily, Deputy Commissioner Date 01/30/2002  
 Agency Department of Revenue

REPRESENTATIVE  
**HUGH "BUD" FATE**

Mailing Address:  
119 N. Cushman, Suite 101  
Fairbanks, AK 99701  
(907)488-0862  
Fax: 488-4271

## Alaska State Legislature



House Of Representatives

While in session:

State Capitol  
Juneau, Alaska  
99801-1182  
(907)465-4976  
Fax: (907)465-3883

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House District 33

## SPONSOR STATEMENT

HB 307

### OIL/GAS EXPLORATION INCENTIVE CREDIT

House Bill 307 will extend the exploration incentive credit for petroleum for an additional three (3) years. This will allow for further exploration into the possibility of natural gas and oil in the Tanana River Drainage Basin.

There is presently renewed interest in exploring for natural gas in the above described basin near Nenana. This simply extends its sunset provision from 2004 to 2007.

CURRENT INCENTIVES	CONVENTIONAL LEASES	UNLEASED STATE LAND	LICENSED LAND	SNG LEASES	FEDERAL & PRIVATE LAND
<b>Exploration Incentive Credits (EIC)</b>					
AS38.05.180(i) -- no sunset	up to 50% of drilling costs	up to 50% of seismic costs	N/A	up to 50% of drilling costs	N/A
AS41.09.010 -- expires 7-1-2004	N/A	up to 50% of drilling & seismic costs	up to 50% of drilling & seismic costs	N/A	up to 25% of drilling & seismic costs
<b>Royalty Reduction AS38.05.180(j)</b> expires 7-1-2015	as low as 5% if not yet in production as low as 3% if producing or shut-in	No* No*	(Applies after conversion to Lease) (Applies after conversion to lease)	as low as 5% if not yet in production as low as 3% if producing or shut-in	N/A N/A
<b>Discovery Royalty</b>					
For Cook Inlet only AS38.05.180(f)(4) no sunset	5% royalty for 10 yrs	No*	(In limited area after conversion: T18N)	(Applies to limited area: T18N)	N/A
For the following fields only: AS38.05.180(f)(5) Falls Creek, Nicolai Creek, North Fork, Point Starichkof, Redoubt Shoals, & West Foreland expires 1-1-2004	5% on 1st 25 MM bbls for 10 yrs 5% on 1st 35 BCF for 10 yrs	N/A N/A	N/A N/A	N/A N/A	N/A N/A
Pre-1969 leases only, statewide	5% royalty for 10 yrs	N/A	N/A	N/A	N/A
ELF (Economic Limit Factor) -- AS43.55.013	Yes	No*	(Applies after conversion to Lease)	Yes	Yes
<b>Contract Gas Price With a Utility vs Royalty Value AS38.05.180(aa)</b>	Value of state's royalty share equals gas contract price	No*	(Applies after conversion to Lease)	Value of state's royalty share equals gas contract price	Value of state's royalty share equals gas contract price
<b>INCENTIVES AS PART OF A PROGRAM</b>					
Exploration Licensing AS38.05.132	N/A	N/A	Up to 500,000 acres per license No bonus bids One-time \$1/acre license fee No annual rentals	N/A	N/A
Shallow Gas Leasing AS38.05.177	N/A	N/A	N/A	\$500 application fee \$.50/acre annual rental 6.25% royalty	N/A
<b>PROPOSED CHANGES TO INCENTIVES</b>					
HB307 -- Extending Expiration Date for EICs Under AS41.09.010 to 7-1-2007	N/A	Yes	Yes	N/A	Yes
HB308 -- Extending Discovery Royalty under AS38.05.180(f)(4) to Tanana River basin	Yes	No*	(Applies after conversion to lease)	Yes	N/A
HB220 -- Corporate Income Tax Credit Incentive Under AS43.20. expires 1-1-2012	Credit = 10% of CapInvest.& 100% of cost incurred (labor, seismic & assoc. services), up to 50% of annual tax liability for expl.& develop. of less than 150 bbls/day or unlimited amt. of gas.	Credit = 10% of CapInvest.& 100% of cost incurred (labor, seismic & assoc. services), up to 50% of annual tax liability for expl.& develop. of less than 150 bbls/day or unlimited amt. of gas.	Credit = 10% of CapInvest.& 100% of cost incurred (labor, seismic & assoc. services), up to 50% of annual tax liability for expl.& develop. of less than 150 bbls/day or unlimited amt. of gas.	Credit = 10% of CapInvest.& 100% of cost incurred (labor, seismic & assoc. services), up to 50% of annual tax liability for expl. & develop. of unlimited amt. of gas.	Credit = 10% of CapInvest.& 100% of cost incurred (labor, seismic & assoc. services), up to 50% of annual tax liability for expl.& develop. of less than 150 bbls/day or unlimited amt. of gas.
HB394 -- Royalty Reduction under AS38.05.180(j): Removes sunset provision	Reduces royalty floor from 5% to 3.125% and from 3% to 1.25%	No*	(Applies after conversion to Lease)	Reduces royalty floor from 5% to 3.125% and from 3% to 1.25%	N/A
NOTE: No* -- means Not In Production; This chart does not reflect all tax incentive programs or proposed changes to incentives -- Consult DOR for additional information.					

**HB**

**358**

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 358(CRA)  
 (H) Publish Date: 2/22/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Exemption From Proper Tax: Timber BRU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor Rep. Chenault \_\_\_\_\_  
 Requester \_\_\_\_\_ Component No. \_\_\_\_\_

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: Bill Lawrence Committee Aide Phone 465-3882  
 Division HCRA Date/Time 2/21/02 3:08 PM  
 Approved by: Representative Morgan, Co-chair Date 2/21/02  
 Agency HCRA

# STATE OF ALASKA

REPRESENTATIVE  
MIKE CHENAULT



Interim:  
145 Main St. Loop, Second Floor  
Kenai, Alaska 99611  
(907) 283-7223  
Fax: (907) 283-3075

HOUSE OF REPRESENTATIVES

Official Business

Session:  
Capitol Building, Room 432  
Juneau, Alaska 99801-1182  
(907) 465-3779  
Toll Free: (800) 469-3779  
Fax: (907) 465-2833

## SPONSOR STATEMENT House Bill No. 358 EXEMPTION FROM PROPERTY TAX: TIMBER

HB358 - "An Act relating to an optional exemption from municipal property taxes for certain land from which timber is harvested and for certain improvements used in or necessary to the harvest of timber."

The Kenai Peninsula Borough contains about 1.1 million acres of land consisting of trees that are dying due to infestation by the Spruce Bark Beetle. These areas have been identified as a high fire threat, with limited access for firefighting resources and inadequate emergency evacuation sites.

Harvesting the infested timber is one of the best devices for managing this threat. To encourage continued and expanded operations of harvesting timber resources, HB 358 allows the option to all municipalities to offer land owners a tax exemption to harvest beetle infested timber, or timber that is at risk of being infested or to make improvements, such as clearing roads to gain access to the properties.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF FORESTRY

TONY KNOWLES, GOVERNOR

Kenai-Kodiak Area Office  
42499 Sterling Highway  
Soldotna, AK 99669  
Phone: (907) 262-4124  
FAX: (907) 260-4263

February 8, 2002

Representative Mike Chenault  
State Capitol, Room 432  
Juneau, AK 99801-1182

RE: State Timber Sales on the Kenai Peninsula

Dear Representative Chenault:

We received a request from your office for an update on our recent timber sale offering on the Kenai Peninsula. The Division of Forestry offered four spruce beetle-killed salvage sales on January 7, 2002. The offering was by sealed bid. Two of the sales were in the Clam Gulch area, one near Anchor Point, and one near Moose Pass. Two of the sales received bids at the bid opening and were awarded. The same purchaser submitted the two bids and they were the only bids received. They purchased one of the sales near Clam Gulch and the sale near Anchor Point. The other two sales were then posted as available over the counter. Since January 7<sup>th</sup>, we have received a bid for the sale near Moose Pass. The other sale has not as yet received a bid, but we have had some discussions with potential interested parties and expect a bid sometime next week. Below is a quick summary on the sales.

Sale Name	Volume	General Location	Advertised Price	Bid Price
Trail	132 MBF	Clam Gulch	\$5/MBF	\$7.87/MBF
Cottonfield	250 MBF	Anchor Point	\$13/MBF	\$22.30/MBF
Towson	385 MBF	Moose Pass	\$5/MBF	\$5/MBF
Small Lake I	1,620 MBF	Clam Gulch	\$5/MBF	No bids yet

Timber markets worldwide have declined substantially over the last several of years. The resultant impact on the Kenai Peninsula and particularly on our State timber sales is a substantial reduction in stumpage value. On some of our previous sales sold just a few years ago, we were able to have the purchaser complete reforestation, including the purchasing and planting of trees on the sale areas following their harvest operations. Due to the decline in the timber markets, the value of the salvaged trees do not offset the reforestation costs, therefore, the State is now assuming the reforestation responsibility. The State is committed to reforesting these beetle-killed stands to ensure continuation of the sustainability of the State forests. We will be reforesting the above sales through a combination of natural regeneration, where a live seed source is present and has survived the infestation, and planting using funds appropriated by the legislature in the past.

Reforestation of the State's beetle-killed stands is primary goal. We are committed to reforesting all our harvest areas with native tree species grown from local seed sources. Our goal is to use natural reforestation and planting to accelerate re-growth of mixed forests on State lands. Funding to assist with reforestation has been limited.

With the change in timber markets and the movement of the spruce beetle from the more remote areas of the peninsula into our communities and along the road system, we are redirecting our focus to State lands located in the urban-interface. Removal of the beetle-killed trees will assist in reducing fuel loading and the potential for large, difficult to control wildfires.

In 1997, the legislature provide a capital project appropriation to fund the sale and administration of four large salvage sales on the Kenai. The sales were originally designed to feed timber into the chip market, which was active at the time of passage of the legislation. However, due to the economic changes mentioned above, it is no longer feasible to proceed with the original intent language without a major increase in funding for reforestation. We are requesting a revision in the intent language so that the balance

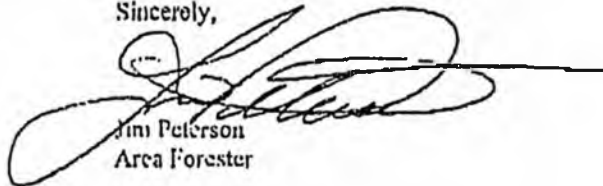
*Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans*

in this appropriation can be used to prepare, administer, and reforest smaller sales located in the higher hazard areas near residential development and communities. The remaining funds in the appropriation total approximately \$310,000 and would go a long ways towards defraying reforestation costs, assist with road maintenance, and provide funding for preparation and administration of these smaller salvage sales. If you have any questions regarding the technical aspects of this reappropriation, please contact Nico Bus at 465-2406. We would like to solicit your support on this proposed reappropriation.

We are committed to doing our part to reduce the fire hazards near Kenai Peninsula communities and to offer salvage timber sales where the wood fiber can be utilized. We recognize the significant benefits that these actions can have on our quality of life on the Kenai.

If we can provide further assistance or if you have any additional questions, feel free to contact us.

Sincerely,



Jim Peterson  
Area Forester

Cc: Jeff Jahnke, State Forester  
Roy Josephson, Acting Regional Forester  
Nico Bus, DNR, Support Services



# Summary of Final Action Plan Recommendations

## Introduction

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## Grant

Concerns regarding the infestation's impact to Alaska's forests, public safety, and the ecosystem prompted the Senate Appropriation Committee to direct the U.S. Forest Service to establish a multiparty task force to prepare an action plan to manage spruce beetle infestations in Alaska and rehabilitate the infested areas.

## Task Force Formation

The Kenai Peninsula Borough (KPB) was designated as the lead agency in the Task Force effort with the Borough Mayor, Mike Navarre, designated as the Task Force Chair. The initial public meeting was held in Soldotna, Alaska on January 15, 1998 with public comment and exchange regarding the infestation, nominations for task force membership, and the approach for the Task Force.

## Task Force and Public Meetings

The Task Force met on 10 occasions and conducted public meetings in Soldotna, Homer, and Moose Pass.

## Area Impacted and Ownership

The Kenai Peninsula Borough encompasses 9.9 million acres of land with 22% (2.2 million acres) forested with about 1.1 million acres infested. Experts suggest that 6.6% contains commercial quality forest lands (650,000 acres) with over a third of these commercial forest areas in national parks, wilderness areas and wildlife refuges. The net availability for commercial harvest is estimated to be approximately 375,000 acres (3.8% of the total Borough land area).

Land on the Kenai Peninsula is owned by multiple entities as would be expected; however there are large portions owned by government and native interests; (i.e. State of Alaska 1.6 Million acres; Cook Inlet Region, Inc. 467,820 acres; Ninilchik Native Association 64,206 acres; Kenai Peninsula Borough 90,701 acres; Kenai National Wildlife Refuge 1,200,000; and Chugach National Forest 900,000.

## Task Force Plan

The Task Force's recommendations represent consensus of each of the members. A summary by general category follows:

### Fire Prevention & Public Safety

**Emergency Notification and Evacuation.** The Task Force supports providing safe evacuation routes and sites of human refuge. A prompt examination should be made to identify areas with insufficient evacuation routes. Necessary access for fire fighting resources as well as breaks in the continuity of fuel are required. In addition there is a need to identify sites of refuge in the event of a fire emergency and to assure emergency communications to residents takes advantage of modern technologies.

### Identification of Evacuation Routes and Sites of Refuge and Establish a Budget for Work.

**Responsibility:** Alaska Department of Natural Resources Division of Forestry (ADNR/DOF), Kenai Peninsula Borough (KPB), local fire agencies. Target completion date is July 1, 1998 to be conducted using existing personnel.

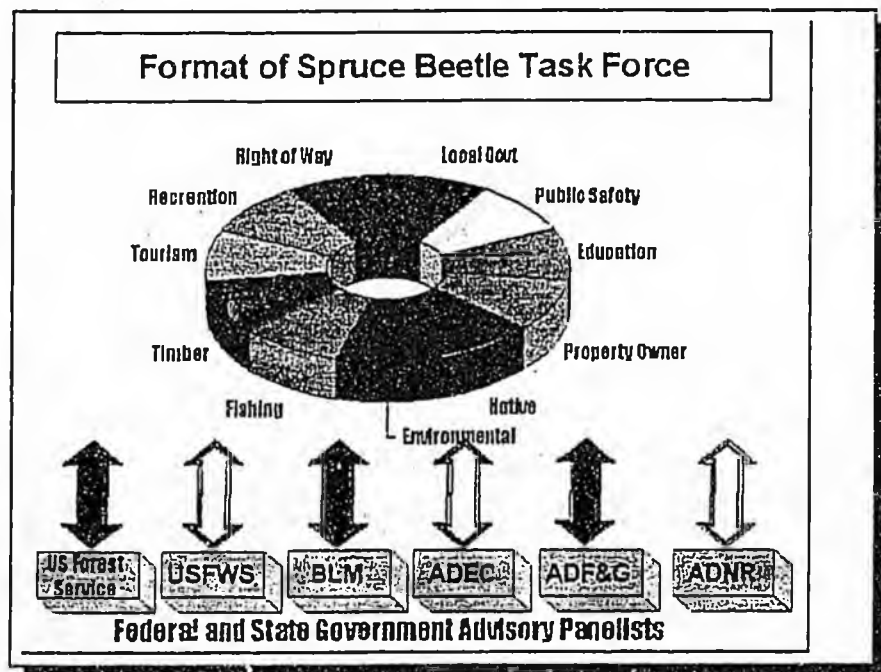
**Emergency Notification.** Expand existing "Community Activation Net" (CAN) to include coverage for evacuation routes and sites of refuge. Essentially, the CAN system should be overlaid on the evacuation plan. **Responsibility:** Kenai Peninsula Borough.

**Homer East End Road Pilot Project** between Miles 8 and 20. The East End Road in Homer has been identified as a high fire threat urban interface area due to fire hazards, limited access, and potential for loss. The proposed initiative is intended to reduce the hazards and improve emergency ingress/egress in the area. State improvements to East End Road presently scheduled for 2003 will include widening the road and clearing additional right of way. A determination should be made about the feasibility and funding needed to accelerate already planned right of way clearing in 1998; however the Task Force is not suggesting expenditure of requested funds on previously planned and budgeted activities. In addition, the Task Force does not suggest a wider right of way clearing than already planned. The necessary sites of refuge should be identified and necessary preparations of the sites completed. The pilot project should include testing the "C.A.N." communication system as well as provide information and assistance to private landowners that compliment the emergency preparedness effort.

▪ **Responsibility:** ADNR/DOF, KPB, and Department of Transportation and Public Facilities.

▪ **Funding Required:** \$75,000.00

**Regulatory Impediments to Timely and/or Effective Response.** An examination of existing Borough regulatory impediments to rapid response should be examined as well as standards imposed on new subdivision developments in fire risk areas.



f. Assisting in the implementation of prescribed fire projects; and

g. Identification of additional funding sources for these projects.

**Use of Organized Emergency Fire fighting Crews for Fuel Reduction Projects.** The Alaska Interagency Coordination Center (AICC) maintains a roster of emergency fire fighting crews from across the State including crews from the Kenai Peninsula and from small Native villages which have high unemployment rates. Many of the projects identified for implementation, including fuel reduction, fuel break construction and prescribed fire, are very labor intensive and require skills similar to those found in trained fire fighting crews. The crews identified by the AICC could be utilized on a rotating basis to work on projects on Borough, State, National Forest, and National Wildlife Refuge Lands. The use of the crews is expected to generate the following benefits:

- Availability of trained fire fighting resources for wildfire suppression on the Peninsula;
- Availability of resources for prescribed fire projects;
- Training for the crews;
- Economic stimulus to disadvantaged communities across the State; and
- Ready availability of crews who are organized and trained to implement many of the proposed projects.

Funding for the crews would be tied to individual projects. ADNR/DOF would take the lead on the coordination and use of the crews.

## Fuel Modeling and Risk/Hazard/Behavior Assessment

**Urban Interface Fire Hazard Assessment.** Using the National Wildland Urban Interface Advisory Group methodology, identify, adopt and implement a wildland/urban interface fire hazard assessment to prioritize resources and efforts in high fire potential areas of the Kenai Peninsula. The work product could serve as a model for potential use in other areas of Alaska. The assessment is envisioned to include on-site surveys in the Borough's urban interface and high hazard area of fuels and fire behavior, physical characteristics, and potentials for ignition. Responsibility: ADNR/DOF in cooperation with local fire agencies. Recommend allocation of \$15,000 for the project.

**Fuel Modeling and Risk/Hazard/Behavior Assessment -** Fuel loading and the associated potential for fire in specific forested areas must be understood and considered in developing management practices related to forest health and practices. The Task Force recommends that two initiatives be completed as tools to Forest management with specific assistance envisioned for preparedness planning, and for prescribed burning to regenerate forests or to reduce fuel loading.

▪ **Fuel Model Map.** Create a fuel model map for the Kenai Peninsula that will serve as the basis for developing a plan to identify areas where management practices can enhance forest resources including wildlife populations. The map should help predict fire behavior and is not the same as a vegetation map. Suggest designation of one DOF fire manager and one USDA FS Manager to lead the effort.

▪ **Actions Prior to Fuel Load Reduction Efforts.** The Task Force recognizes that fuel load reduction and management practices (including prescribed burns) is a potential management tool. A Borough-wide Geographic Risk and Hazard Assessment is recommended. This project would complement management planning and identification of areas where wildland burning within prescription or prescribed fire (or alternative fire load reduction techniques) could enhance various forest resources. The hazard assessment would evaluate the fuel complex defined by type, moisture, arrangement, volume, etc. The risk assessment would determine the likelihood of fire ignition in examined areas. The behavior assessment would examine fire behavior under alternative weather scenarios as patterned on John See's 1990 Cooper Landing Spruce Bark Beetle Fire Behavior Analysis.

**Support for Risk Mitigation Effort.** Additional support is required for the state's Fire Risk Mitigation and Education Project. Funding is requested to extend the present two ADNR/DOF Training and Prevention positions to 10 months per year to enable training for volunteer fire departments and public to take place during winter months in advance of the fire season when people can attend.

## Timber Management and Re-forestation

**Reexamine Feasibility of an Instate Seedling Nursery.** The issue of seedling availability is a concern to both large and small entities. The high demand customers such as CIRI and Circle DE experience logistical challenges during periods when hundreds of thousands of trees are being brought in for replanting. There is also considerable demand by small landowners that may not be currently met. A number of organizations have current interest in this subject including the Reforestation Council and potentially local native corporations. ADNR/DOF is requested to conduct a study to determine the merits and economic feasibility of establishing a seedling nursery in Alaska. The Task Force, in designating ADNR/DOF as lead agency for this effort, is not suggesting that the Nursery should be a state facility. The suggested funding for the effort is \$5,000.

**Consideration of Fire Hazard Reduction and Public Safety in Timber Sales.** Government and major land owners are encouraged to design and locate their timber sales in a manner that complements efforts to reduce fire and public safety

hazards and risk of ignition in the urban interface. The recommended policy is considered as complementary to fire hazard minimization with reductions in fuel loading and potential catastrophic fires. The potential for fire loss should be a high priority in existing and future sales programs.

**Spruce Seeds.** A genetically diverse source of spruce seeds for future regeneration of infested areas should be collected from different subpopulations of parent trees before they all die. ADNR/DOF should oversee a broad and systematic collection and proper storage of spruce tree seeds from infested and at risk areas on the Kenai Peninsula. **Immediate Action:** The Task Force recommends \$25,000 for collection to begin in September 1998. Additional parameters recommended include:

- Collect and store 500 pounds of seed as soon as possible beginning in the fall of 1998. Based on past experience it is understood that the collection effort will take between 3 and 7 years.
- Collect Borough wide utilizing cooperative agreements with all land holders where possible and encourage public assistance in collection of seeds.
- Periodically reassess the collection goal and process.
- Make seed available at whatever price necessary to recover cost.
- Projected cost is \$200 per pound for collection (\$100,000) and \$50,000 for storage freezer utilities.

**Limited Examination of Forest Practice Act Regulations.** Convene a technical group (subject matter experts including representatives of the Timber Industry and major land owners) to review 11 AAC 95.195 ("Clearing of Spruce Trees") and 11 AAC 95.370 ("Slash") for adequacy in preventing or controlling beetle infestation in Alaska and make specific recommendations to review the regulations or develop internal DNR staff guidance as needed.

**Slash and Debris Disposal.** The KPB, in cooperation with ADEC and private interests, should conduct an evaluation of the feasibility of acquiring and/or leasing large volume grinders and/or incinerators to be operated at KPB landfills and transfer sites to dispose of stumps or other debris from fuel reduction efforts in areas where burning is unsafe or must be limited. These facilities, if feasible, are expected to facilitate hazard mitigation efforts, protect air quality, and may have a secondary benefit of enhancing land development as well as extending the life of the landfills.

**Fuel Breaks.** All landowners (including government, trusts, large land owners, and other institutions) should be encouraged to break up the continuity of fuels and make an effort to connect natural fuel breaks in and around developed areas. All agencies should adopt this policy and encourage

# CORRECTION

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



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



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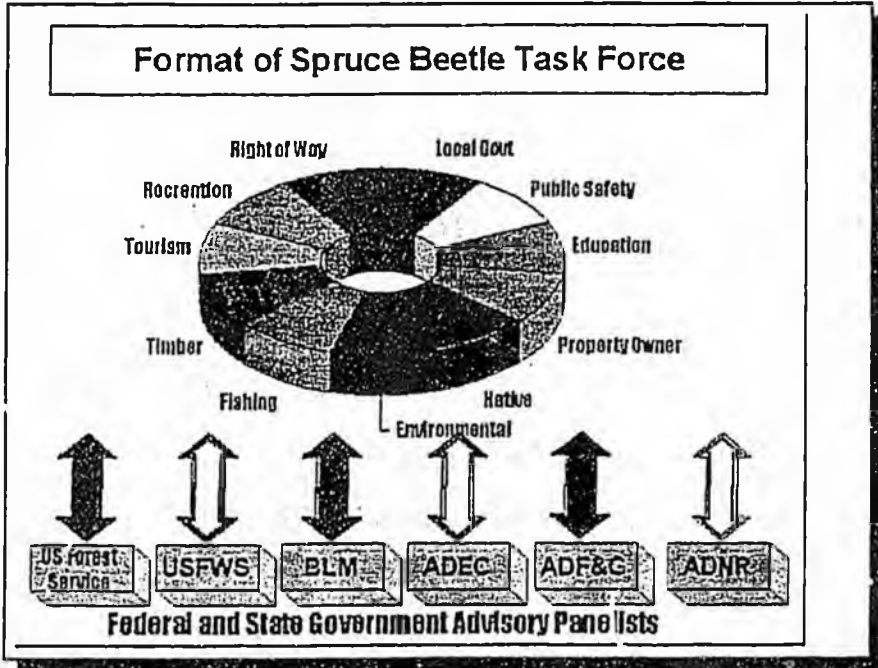
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▪ **Funding Required:** \$75,000.00

**Regulatory Impediments to Timely and/or Effective Response.** An examination of existing Borough regulatory impediments to rapid response should be examined as well as standards imposed on new subdivision developments in fire risk areas.



Identify and streamline regulatory processes. The Borough is requested to examine current impediments to a rapid clearing of right of way in critical areas where emergency evacuation routes are being implemented as well as where actions are necessary to protect public health and safety.

Road Development in Subdivisions. There is a need to evaluate Borough road standards and identify fire threat as one of the considerations in establishing standards for new roads. The objective is to avoid creating transportation impediments (or traps) in emergency response and assure that the access standards as well as roadway standards do not add to the existing risks. National Fire Protection Association (NFPA) 299 or similar standards are suggested for guidance in application of new standards for new subdivision roads in identified high threat wildland urban interface areas.

Incident Command System (ICS) Team and Seasonal Fire Fighter Availability and Training. Establish a KPB Type III ICS Team using existing personnel and resources. This would be a rapid response ICS team of local resources that would respond to support local fire agencies when requested. Intent is for the Team to manage incidents that can be handled locally and/or until a Type II or Type I team arrives. Responsibility: KPB and local fire agencies.

Coordinate Availability of State Forestry Support to Coincide with Local Fire Season. Encourage state forestry to staff the KPB commensurate with the danger and with the local fire season. For example, there is presently an approximate 30-day lag between the start of the fire season on the lower Peninsula and arrival of adequate fire fighting personnel and equipment (such as helicopters and water buckets). Due to the

additional hazard associated with the spruce bark beetle infestation and the increase in population on the Kenai the State should increase the number of wildland firefighters assigned to the Kenai Peninsula during the fire season. Responsibility: ADNR/DOF.

Assistance Identifying Programs for Small Local Fire Agencies. State Division of Forestry should take the lead in identifying programs that are intended to assist local fire agencies that do not have sufficient fire fighting equipment and resources. Additional assistance requested in helping these local agencies qualify for the programs.

Fire Training. Currently there is a lack of access to wildland fire training for smaller communities' fire protection efforts. Wildland fire fighting training should be made available to local fire service jurisdictions and/or organizations. Responsibility: ADNR/DOF, USFS, BLM and Local Fire Agencies. Immediate Action: Develop a training plan identifying the number of individuals and their location as well as cost projection. Target for training plan completion: June 1, 1998. Responsibility: Kenai Peninsula Borough and Borough Fire Departments.

Fire Equipment Caches and Supplies. Provide fire caches of loaned fire equipment to local fire districts. Fully utilize the State Forestry Fire Stores program to assist local jurisdictions with loaned caches of equipment. Assist local jurisdictions with the purchase of wildland fire protection equipment and supplies through state and federal contracts. Responsibility: ADNR/DOF.

Locate and distribute federal excess property to local fire districts. This will require an effort to locate suitable equipment throughout the country and may require making "spruce bark beetle fire risk mitigation" a high priority in the federal excess

property program. Coordination of property screening services and transportation of useful excess property to Alaska may be required. Responsibility: KPB, ADNR/DOF, and USFS.

Coordination of Hazard Tree Removal Around Public Facilities Including rights-of-way clearing. There is an immediate need to initiate a tree removal effort that will eliminate the current and projected hazards of dead or dying trees to existing public facilities such as schools, campgrounds, roads, and rights-of-way. The effort should include an educational component which 1) encourages the public and land owners to coordinate efforts to safely remove hazard trees near power lines to reduce the risk of electrocution, fire, and power interruption; and 2) educate landowners on the importance of cutting back hazard trees from near residences, public areas, and power lines.

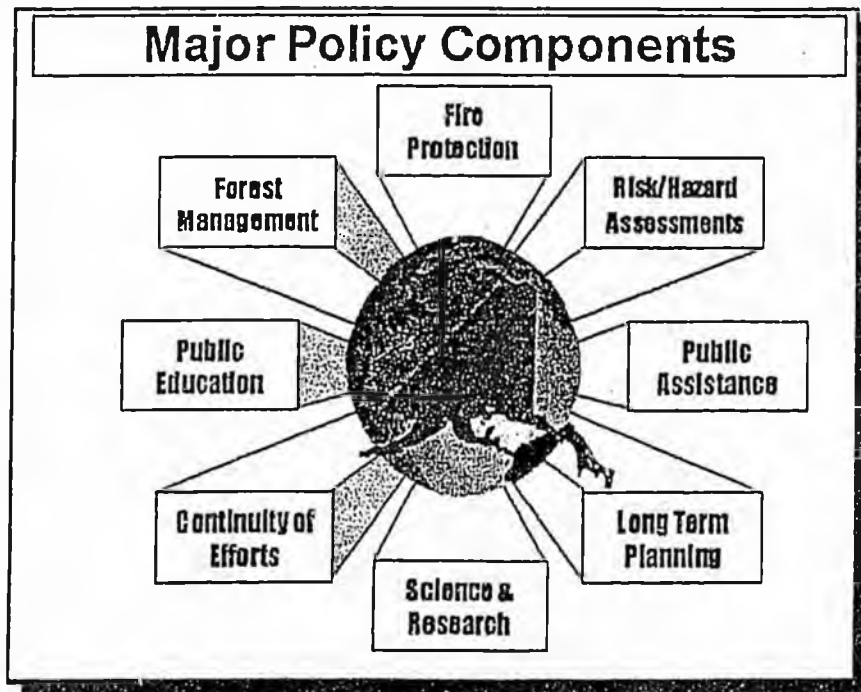
Projected Costs and Timing: \$ 5.2 Million over 5 years. (Cost based on projected 6,000 acres of power line right of way plus 500 acres of hazard trees threatening existing public facilities.)

Use of Fire as a Management Tool. There should be a plan that identifies the opportunities to use prescribed fire, or wildfires which can be managed to meet fuel reduction and wildlife habitat objectives, which may potentially enhance various forest resources and remain acceptable to the public. Project components include:

- Identification of smoke management issues and applicable air quality standards.
- Designation of one ADNR/DOF Manager and one USDA FS Manager to obtain or enhance advanced prescribed burn qualifications.
- Develop burning prescriptions for selected blocks of land.

Working Group for Use of Fire as a Management Tool. The Chugach National Forest, Kenai National Wildlife Refuge, KPB, and the three state agencies (ADNR/DOF, Alaska Departments of Environmental Conservation (ADEC) and Fish and Game (ADFG)) collectively the "Alaska Resource Agencies" are encouraged to create an interagency prescribed fire working group to coordinate prescribed fire activities on the Kenai Peninsula including the following:

- a. Developing plans which identify areas where prescribed fire, or wild fire burning in prescription, could enhance various forest resources while remaining acceptable to the public;
- b. Improving prescribed burning qualifications for agency personnel;
- c. Planning for the availability of resources, including overhead, for prescribed fires;
- d. Identifying smoke management and air quality issues;
- e. Educating the public about the beneficial use of fire;



f. Assisting in the implementation of prescribed fire projects; and

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- Ready availability of crews who are organized and trained to implement many of the proposed projects.

Funding for the crews would be tied to individual projects. ADNR/DOF would take the lead on the coordination and use of the crews.

## Fuel Modeling and Risk/Hazard/Behavior Assessment

**Urban Interface Fire Hazard Assessment.** Using the National Wildland Urban Interface Advisory Group methodology, identify, adopt and implement a wildland/urban interface fire hazard assessment to prioritize resources and efforts in high fire potential areas of the Kenai Peninsula. The work product could serve as a model for potential use in other areas of Alaska. The assessment is envisioned to include on-site surveys in the Borough's urban interface and high hazard area of fuels and fire behavior, physical characteristics, and potentials for ignition. Responsibility: ADNR/DOF in cooperation with local fire agencies. Recommend allocation of \$15,000 for the project.

**Fuel Modeling and Risk/Hazard/Behavior Assessment -** Fuel loading and the associated potential for fire in specific forested areas must be understood and considered in developing management practices related to forest health and practices. The Task Force recommends that two initiatives be completed as tools to Forest management with specific assistance envisioned for preparedness planning, and for prescribed burning to regenerate forests or to reduce fuel loading.

▪ **Fuel Model Map.** Create a fuel model map for the Kenai Peninsula that will serve as the basis for developing a plan to identify areas where management practices can enhance forest resources including wildlife populations. The map should help predict fire behavior and is not the same as a vegetation map. Suggest designation of one DOF fire manager and one USDA FS Manager to lead the effort.

▪ **Actions Prior to Fuel Load Reduction Efforts.** The Task Force recognizes that fuel load reduction and management practices (including prescribed burns) is a potential management tool. A Borough-wide Geographic Risk and Hazard Assessment is recommended. This project would complement management planning and identification of areas where wildland burning within prescription or prescribed fire (or alternative fire load reduction techniques) could enhance various forest resources. The hazard assessment would evaluate the fuel complex defined by type, moisture, arrangement, volume, etc. The risk assessment would determine the likelihood of fire ignition in examined areas. The behavior assessment would examine fire behavior under alternative weather scenarios as patterned on John See's 1990 Cooper Landing Spruce Bark Beetle Fire Behavior Analysis.

**Support for Risk Mitigation Effort.** Additional support is required for the state's Fire Risk Mitigation and Education Project. Funding is requested to extend the present two ADNR/DOF Training and Prevention positions to 10 months per year to enable training for volunteer fire departments and public to take place during winter months in advance of the fire season when people can attend.

## Timber Management and Re-forestation

**Reexamine Feasibility of an Instate Seedling Nursery.** The issue of seedling availability is a concern to both large and small entities. The high demand customers such as CIRI and Circle DE experience logistical challenges during periods when hundreds of thousands of trees are being brought in for replanting. There is also considerable demand by small landowners that may not be currently met. A number of organizations have current interest in this subject including the Reforestation Council and potentially local native corporations. ADNR/DOF is requested to conduct a study to determine the merits and economic feasibility of establishing a seedling nursery in Alaska. The Task Force, in designating ADNR/DOF as lead agency for this effort, is not suggesting that the Nursery should be a state facility. The suggested funding for the effort is \$5,000.

**Consideration of Fire Hazard Reduction and Public Safety in Timber Sales.** Government and major land owners are encouraged to design and locate their timber sales in a manner that complements efforts to reduce fire and public safety

hazards and risk of ignition in the urban interface. The recommended policy is considered as complementary to fire hazard minimization with reductions in fuel loading and potential catastrophic fires. The potential for fire loss should be a high priority in existing and future sales programs.

**Spruce Seeds.** A genetically diverse source of spruce seeds for future regeneration of infested areas should be collected from different subpopulations of parent trees before they all die. ADNR/DOF should oversee a broad and systematic collection and proper storage of spruce tree seeds from infested and at risk areas on the Kenai Peninsula. **Immediate Action:** The Task Force recommends \$25,000 for collection to begin in September 1998. Additional parameters recommended include:

- Collect and store 500 pounds of seed as soon as possible beginning in the fall of 1998. Based on past experience it is understood that the collection effort will take between 3 and 7 years.
- Collect Borough wide utilizing cooperative agreements with all land holders where possible and encourage public assistance in collection of seeds.
- Periodically reassess the collection goal and process.
- Make seed available at whatever price necessary to recover cost.
- Projected cost is \$200 per pound for collection (\$100,000) and \$50,000 for storage freezer utilities.

**Limited Examination of Forest Practice Act Regulations.** Convene a technical group (subject matter experts including representatives of the Timber industry and major land owners) to review 11 AAC 95.195 ("Clearing of Spruce Trees") and 11 AAC 95.370 ("Slash") for adequacy in preventing or controlling beetle infestation in Alaska and make specific recommendations to review the regulations or develop internal DNR staff guidance as needed.

**Slash and Debris Disposal.** The KPB, in cooperation with ADEC and private interests, should conduct an evaluation of the feasibility of acquiring and/or leasing large volume grinders and/or incinerators to be operated at KPB landfills and transfer sites to dispose of stumps or other debris from fuel reduction efforts in areas where burning is unsafe or must be limited. These facilities, if feasible, are expected to facilitate hazard mitigation efforts, protect air quality, and may have a secondary benefit of enhancing land development as well as extending the life of the landfills.

**Fuel Breaks.** All landowners (including government, trusts, large land owners, and other institutions) should be encouraged to break up the continuity of fuels and make an effort to connect natural fuel breaks in and around developed areas. All agencies should adopt this policy and encourage

landowners to implement this practice on private lands.

**Landscaping.** All landowners should consider fire resistant landscaping as a priority when making planting and regeneration decisions (including the selection of fire resistant landscape materials) around or near improvements including buildings, roads, and utilities.

**Forest Practices Act Implementation.** There is presently inadequate state funding to support the implementation of the Forest Practices Act regulations which negatively impacts efforts to manage the beetle infestation. The Task Force urges adequate funding to the Alaska Resource Agencies charged with implementing the Forest Practices Act and Regulations.

**Native Species.** If artificial revegetation is selected for landscape level treatment of beetle impacted areas, revegetation should be with native species. This includes planting spruce trees but does not preclude planting other native species.

**Reforestation Incentives.** Across the Kenai Peninsula the loss of the spruce trees to the spruce bark beetle epidemic has resulted in many tens of thousands of acres which are in need of reforestation. The parcels affected range in size from a few acres to thousands of acres. There are currently some 22,000 acres which have been harvested, but exempted from reforestation under the State Forest Practices Act. There is also concern about that timber sale revenues would be insufficient to pay for reforestation on state lands that need to be cleared of dead spruce to reduce fire danger. The need to reduce the risk of future wildfire and insect epidemics by planing with more fire resistant species and creating a forest mosaic is also an important consideration.

**Recommendation:** The need is recognized for forest stewardship across all ownerships and the potential interest in reforestation of lands where reforestation costs cannot be supported through the timber sale and harvest process and where substantial benefit is to be gained from accelerated reforestation. To encourage the reforestation on the Kenai Peninsula, the Task Force recommends the following:

**1. Address the Areas Presently Exempted from Reforestation under the Alaska Forest Practices Act.** Establish a fund in the amount of \$1,250,000 to be used for reforestation on those acres exempted from reforestation under the State Forest Practices Act and harvested before 1998. This fund would be administered by the KPB.

**2. Reforestation in the Urban Interface.** Establish a fund in the amount of \$750,000 for reforestation on land in the urban interface that has been or will be cleared to reduce fuels. Emphasis for reforestation in the interface should be placed on fire resistant species such as birch, aspen and other native hardwoods, or a mixture of fire resistant

species and spruce. This fund would be administered by the KPB.

**3. Reforestation of State Timber Sales with Objective of Fuel Reduction within 5 Miles of Urban Interface.** Establish a fund in the amount of \$1,000,000 to be used for reforestation on State timber sale lands where the objective is to reduce fire danger to human life and property. Consideration will be given to provide benefits to fish and wildlife, as advised by the ADFG. The need for fuel reduction will be based on fuel modeling and a fire hazard and risk analysis.

**4. Reforestation of High Value Public Lands.** Establish a fund in the amount of \$1,000,000 for reforestation of high value public lands impacted by the beetle with an objective of restoring public benefits associated with these lands. One-half of funding would be dedicated to federal lands and remaining half to state and local lands and administered by the U.S. Forest Service's State and Private Forestry through a grant process.

## Public Education

**Publicize Tree Seedling Sources.** Make it easier for small landowners to locate tree seedlings should they wish to replace trees. ADNR/DOF should maintain a list of sources of small quantities of seedlings and produce simple publications for the public on where and how to acquire the seedlings. This effort is anticipated to be possible without additional costs and the Task Force recommends that the Division of Forestry should work with the KPB and the USFS to coordinate printing of the publication(s). It is noted that the Task Force is not suggesting elaborate and costly publications - just the basic information in a brief format.

**Longer Term Technical Assistance.** Recommendation for addition of one position to the UA Cooperative Extension Unit at \$75,000 per year with \$40,000 per year budgeted for publications and communications. A 5-year project is suggested with an assessment of the project merits by the end of year 4. The effort is envisioned to be proactive and community oriented with a majority of the work conducting workshops and making other public contacts out side of an office.

## Communications

The following recommendation reflect the Task Force's view that the beetle problem is part of a natural ecological process that takes a long time to cycle and that tourists and residents should be educated as to the context of the infestation and what is being done.

**Improve Public Access to Information.** Establish an electronic clearinghouse that provides descriptions of how to deal with beetles with responsibility for implementation shared by the Co-op Extension Unit and DNR. The information should keep public advised of what is being done.

**Immediate Action.** KPB to develop and maintain a coordinated Home Page that will contain information expected to be most frequently sought by land owners. Access to more advanced or specialized information will be made available via links to existing and future federal, state, local and private sources. Recommended funding of \$10,000 for implementation by July 1, 1998.

**Public Education.** Implement a proactive approach to public education that considers methods to enhance the tourist and resident opportunities including trail restoration, signage, and access. Specific projects are intended to educate tourists (and residents) on natural forest systems.

**Immediate Action.** Create an interpretive brochure that describes the infestation, including its historical context, and the actions that are being taken for distribution to tourism and public organizations. Efforts should be made to include the information in popular tourist publications such as the Kenai Peninsula Visitor's Guide, the Anchorage Daily News Visitor's Guide, the Milepost, and a page in the Alaska Sport fishing regulation booklet made available each year to anglers. In addition, the Task Force recommends that at least two (2) locations with view of infested areas receive interpretive signage describing the infestation. Initial funding of \$30,000 is recommended.

**Interpretive Displays; part of Longer Term Action.** A more extensive interpretive display regarding the infestation should either be established at an existing facility in the Borough or appropriate financial support should be made available in coordination with other groups or agency initiatives with similar objectives.

**Tourism.** Recommendation is for a longer term project for a Demonstration Forest Area to study and illustrate the results of alternative silviculture treatments. Project would provide public viewing areas as to what the beetle infestation looks like as well as the actions that are being taken in different areas.

**Public Education on Role of Fire:** Provide public information taking advantage of current work products such as the Fish and Wildlife Service's program "The Role of Fire in Alaska" and other published materials that improves the public's understanding of the beneficial uses of fire. Projected Cost: \$20,000

**Community Planning and Involvement.** Encourage the establishment of community planning and local action groups to provide an ongoing local effort in support of the Beetle Infestation management.

**Notices to Absentee Property Owners.** The Kenai Peninsula Borough's existing communications with absentee property owners should be augmented with relevant information regarding the beetle infestation and programs underway that may impact the property owner.

## Continuity of Efforts

**Spruce Bark Beetle Coordinator.** There is a need to assure continuity of the response effort and coordination of the implementation of the Task Force recommendations. There is consensus that additional effort should be made to assist urban communities' related efforts (including volunteers, grants, and planning) for community and urban forest areas in view of the importance of urban trees to Alaskan communities. The Coordinator duties would include assisting communities in qualifying for grants such as the "Trees USA" program which requires a tree inventory, identification of a responsible person for the program, a long term plan for urban tree health, and an annual "Arbor Day Celebration." The projected annual costs for the added position is \$85,000.

**Spruce Bark Beetle Coordinating Committee.** The committee would be facilitated by the Spruce Bark Beetle Coordinator and would monitor the effectiveness the actions, oversee the implementation of the Task Force recommendations, and make recommendations to the KPB Mayor on funding and other issues. The committee would include the six resource agencies participating in the Task Force as well as other interested parties.

## Public Assistance

**State Stewardship Program.** The Task Force recognizes the valuable contribution of the ADNR/DOP's Stewardship Program and agrees that there should be increased support for the program in Alaska with an objective of improving and expanding public access to reforestation advice and support. Recommendation is for one State position stationed in the Kenai Borough with funding support for planning and reforestation of private lands. The projected budget is suggested to be \$75,000 per year for personnel plus funds for silviculture treatment and increased cost-shared treatment of \$100,000 per year for a 5-year period with a reassessment before the end of this period.

**Tree Removal Clearinghouse.** Recommend that the Borough establish a clearinghouse where property owners can obtain a listing of individuals and companies who have indicated an interest in removing trees from similar sized land tracts. This activity is expected to be one of the services provided by the Borough's Spruce Bark Beetle coordinator.

## Long Term Planning

**Transportation Study. Project Objective:** Provide a comprehensive landscape level transportation planning tool by consolidating information on the existing and projected transportation infrastructure into a GIS-based, Kenai Peninsula-wide mapping system. The information will be used to evaluate Task Force recommendations on access and transportation system development as they relate to fire threat,

public safety, emergency evacuation routes, timber harvest and other activities. In addition, the mapping will be used to evaluate the anticipated cumulative effects on fish, wildlife and other resources from road improvements, timber harvest related road construction and other transportation system developments that may occur in beetle-infested or at risk areas.

### Major Project Actions:

A. To facilitate local fire planning for fire prevention, fire fighting actions and emergency evacuation efforts in response to the increased fire threat associated with spruce bark beetle infestations, major public and private landowners and managers will provide information on existing transportation systems such as the Borough's logging road maps and the 911 emergency response maps and consolidate it into GIS map(s). Over time, both improved and unimproved easements will be identified.

B. Prevention measures or response actions in interface or other areas may require upgrading roads or construction of new roads for timber harvest or fuel reduction. The mapping will provide a basis for a landscape level evaluation of the direct and indirect, long-term and cumulative effects to fish and wildlife and other resources, associated with task force recommendations that lead to road construction or improvement. Based on an analysis of fire hazards and risk and fish and wildlife and other concerns, the evaluation may result in recommendations on alternative access options and mitigation measures.

C. The mapping can be used to assist in determining the location of appropriate road corridors by avoiding or mitigating both short-term and long-term impacts to fish and wildlife and other resources.

**Responsibility:** The KPB will take the lead in coordinating and inputting data into its GIS system and then creating the map(s). This will be a collaborative effort including all major public and private landowners and managers affected by recommendations made by the spruce bark beetle task force.

**Estimated Project Costs:** Projects costs for the creation of the initial maps are nominal as most of the information is currently available and included in various GIS formats from the KPB, ADNR, U.S. Forest Service and U.S. Fish and Wildlife data bases. The Borough would be impacted with computer and personnel time. Additional work includes the ground-proofing of the mapped roads on Borough and private lands. This would be accomplished through a combination of GPS data gathering, field notes and orthographic photo interpretation. The map(s) would be continually updated, but will take about a year to complete the initial "ground proofing" and photo work at an estimated cost of \$50,000.

**Land and Vegetation Cover Mapping for the Kenai Peninsula.** The Task Force recommend making a \$25,000 contribution to Phase I of the Land and Vegetation Cover Mapping for the Kenai

Peninsula, recognizing the existing funding commitment of \$65,000 already in place from other sources outside the Task Force for this phase of the project.

Additionally, the Task Force supports federal funding for Phase 2 of this project in order to support such activities as site specific fire risk assessment, tracking and predicting spruce bark beetle infestation, and detailed analysis of individual timber stands. Maps would be based on aerial photographic interpretation, or recently declassified military technology, and would cover selected portions of the Kenai Peninsula. Federal funding for Phase 2 is expected to not exceed \$200,000. The Task Force understands that the USDA Natural Resources Conservation Service (NRCS) is developing a vegetation map for their current soil inventory. Phase II efforts should be coordinated with the NRCS mapping.

**Wildlife Maintenance.** Maintaining wildlife is important to the economy and quality of life on the Kenai Peninsula. Research suggests that habitat changes related to the spruce bark beetle infestation tend to benefit some species and harm others. Some wildlife species are sensitive to human responses to the infestation. The Task Force agreed that the brown bear population in particular is sensitive to human activities and it is vulnerable due to its geographic isolation on the Kenai Peninsula. The health of the brown bear population was also considered a good indicator for the health of many other wildlife species due to both its habitat requirements and its sensitivity to human activities.

**Objective.** It is the intent of the Task Force to provide for human health and safety needs while maintaining wildlife habitat to the extent possible. Understanding and maintaining brown bear corridors and other significant units of bear habitat near human development are important elements of planning and implementing actions recommended by the Spruce Bark Beetle Task Force. Determining and recognizing public opinion is necessary during the process of finding an appropriate balance between wildlife conservation and development.

**Action Recommended.** The Task Force recommends that the state and federal governments collaborate to establish a Kenai Brown Bear Planning Team that will operate on a consensus basis. The team should be composed of the Alaska Resource Agencies and the Alaska Department of Transportation & Public Facilities and their federal counterparts. The team should also include representatives of key public interests including environmental, fishing, oil and gas, tourism, timber, property owners, and other private interests deemed appropriate. The Planning Team is to develop a brown bear conservation plan which can be utilized in planning for health and safety and other infestation related issues. No recommendation is made on funding.

**Recommended Resource Utilization for Implementing Task Force's Recommendations.** The Task Force reached consensus on the most economical manner to achieve several of the preceding recommendations via several early actions that extend the State's employment season of the Fire Management Officer to 12 months; the Training and Prevention Positions to ten months; the two Instructor/Technician positions to 6 months; and the Warehouse position to 8 months at a cost of \$65,000 enabling completing of the following recommendations:

- Develop evacuation routes and sites of refuge.
- Urban Interface fire hazard assessment.
- Support the Spruce Bark Beetle Coordinator.
- Provide year round public education resources.
- "Longer Term Technical Assistance" including presenting defensible space workshops and fuel reduction interventions.
- Support risk mitigation efforts; and
- Provide technical assistance and training to local fire service.

In addition the Task Force recommends adding a Fire Risk Management/Fire Behavior Position to support all other aspects of the Task Force recommendations and to take the lead on the Fuel Modeling and Fuel Map projects. Projected cost of \$90,000.

### Science & Research

Understanding and maintaining healthy ecosystems is important. Management and rehabilitation of impacted forests must be based on the best available science. While a large amount of information on the effects of spruce bark beetle epidemics and associated management options currently exists, there are both short and long-term needs for

additional research. The Task Force reached consensus that increased emphasis be placed on adequately funding research programs that will investigate disturbance regimes and their effect on ecosystem health. Specific areas of emphasis should include the effects of spruce bark beetle outbreaks and management activities on:

- Hydrology
- Fish and wildlife populations and habitat
- Fuel conditions
- Regeneration, with and without management activities such as logging and prescribed fire

In addition, it is important to continue vegetation mapping efforts and research on silviculture and vegetation management prescriptions.

**Support for USFS/Pacific Northwest (PNW) Station's Disturbance Initiative.** The Task Force understands that, if funded, up to \$1 million per year for 5 years may be available for south-central Alaska through the Forest Service's PNW Station's "Improving Forest Health and Productivity by Managing Forest Fire, Insects and Diseases as Natural Ecosystem Disturbance Processes" Initiative. This initiative would involve research and development of techniques for the management of hazard and risk to ecosystem health and would meet many of the above noted research needs. The Task Force urges Congress to appropriate the necessary funding for this initiative.

For additional information contact the Kenai Peninsula Borough at 907 262-4441 or check the Spruce Bark Beetle Home page at <http://www.bo.ough.kenai.ak.us/beetle.htm>

### Task Force Members

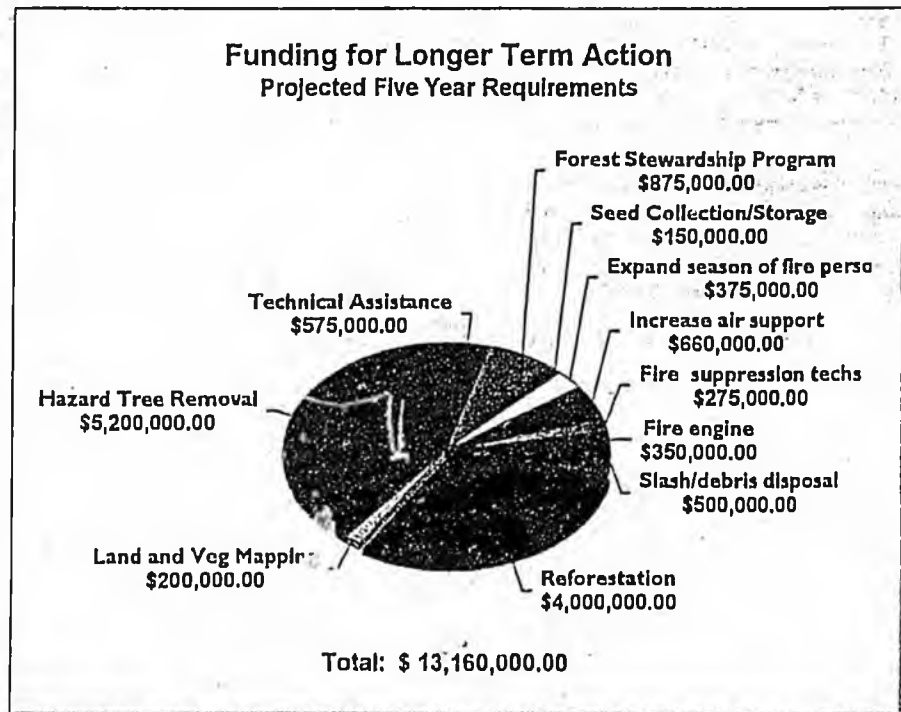
- Mayor Mike Navarre, Chair, Local Government;
- ① Education - Milke Fastabend, Anchorage
  - ② Environmental - Rick Smeriglio, Moose Pass
  - ③ Fishing - Catherine Cassidy, Kaslof
  - ④ Native Interests - Dean Kvasnikoff, Ninilchik
  - ⑤ Private Land Owners - Ann Whitmore-Painter, Moose Pass
  - ⑥ Public Safety - Robert Purcell, Homer
  - ⑦ Recreation - Milke Huckababy, Soldotna
  - ⑧ Rights-of-Way - George Bowen, Kenai
  - ⑨ Timber - Terry Nininger, Homer
  - ⑩ Tourism - Phil Morris, Homer

### Advisory Panelists

- ① AK Dept. Fish and Game - Ellen Fritts, Juneau;
- ② AK Dept. Natural Resources - Jeff Jahnke, Juneau;
- ③ AK Dept. Env. Cons. - Deric Marcocelle, Soldotna;
- ④ U.S. Forest Service - Paul Forward, Anchorage;
- ⑤ Bureau of Land Management - Mike Zaldicz, Anchorage;
- ⑥ U.S. Fish and Wildlife Service - Mark Chase, Soldotna.

Facilitator/Mediator: Gene Burden, Burden & Associates, Inc.

<b>Short Term Action Recommendations</b>	
<b>Projected Funding Requirements</b>	
Recommendation	Projected Costs
Urban Interface Fire Hazard Assessment	15,000
Public Education	40,000
Spruce Bark Coordinator	85,000
Homer East End Project	75,000
Spruce Seeds	25,000
Veg Mapping Phase I	25,000
Trans Corridor Mapping	50,000
General Implementation of other early action recommendations	155,000
<b>Total</b>	<b>\$470,000</b>



# FOREST Killers

KENAI SCIENTIST THINKS HE KNOWS WHY BEETLES  
ARE WIPING OUT ALASKA'S SPRUCE TREES

By Charles Wohlforth

**S**outhcentral Alaska's 4-million-acre spruce bark beetle plague of the 1990s was the biggest single insect kill of trees ever recorded in North America, so you might think that finding out how it happened would be a scientific priority. But

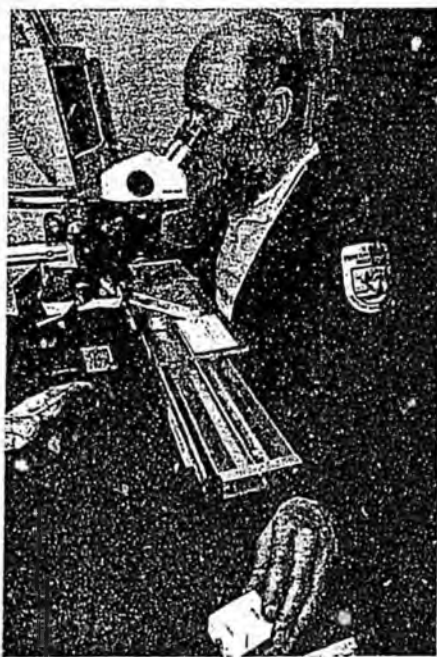
only one researcher looked deeply into the question, a soft-spoken forest ecologist who wears a bushy beard, flannel shirts and suspenders.

Working at the Kenai National Wildlife Refuge, Ed Berg had the skills and curiosity to find the clues and fit them together with advanced statistical analysis. What he found turned out to be much bigger than even the beetle kill. The climate changed enough in this region—it has become warmer and drier—to swing the ecological balance strongly in favor of spruce bark beetles and away from the trees.

Here are some of the clues:

- In the Mystery Hills, on the refuge's Fuller Lakes Trail, krummholz trees, those old, gnarled hemlocks that creep along the ground, have shot up straight and tall as if suddenly cured of their rheumatism. After centuries of struggling for life at the edge of tree-line, they're growing fast in ideal conditions.

- To the west, on the mostly flat, pond-pocked land near the Swanson River, kettle ponds are evaporating, their shrinkage gauged by old aerial photographs and the rings left by receding shores. Some have disappeared entirely, leaving a telltale, concentric pattern of vegetation that is younger toward the center, where the deepest water used to be.



M. SCOTT MOON

**Botanist Ed Berg** (ABOVE) of the Kenai National Wildlife Refuge examines spruce tree rings under a microscope at the refuge's headquarters. Berg has been studying spruce beetles to determine why they have become more destructive over the past decade.

- All over the region, growth rings inside the trees record each year and give an accurate gauge of conditions in that area of forest. Counted and precisely measured by Berg and his assistants on a microscopic slide wired to a computer—and compiled by the thousands—the growth rings confirm that the 1990s beetle kill was the largest to hit the area in at least 250 years. Beetles have killed a lot of trees before—they come through regularly—but in the past, cool, damp weather stopped them before they could wipe out so much forest.

This huge beetle kill was a direct result of global warming. And it may have been a preview of how insects could devour other Alaska forests as change advances.

Berg hasn't yet published his findings in a peer-reviewed scientific journal, but experts in Alaska buy them. "It's just difficult to account for in any other way," said Glenn Juday, a professor of Forest Ecology at the University of Alaska Fairbanks. Juday and his colleagues put enough stock in Berg's

work to include his conclusion in a Congressionally mandated report by the National Assessment Team of the U.S. Global Change Research Program.

Twenty years ago, experts such as Forest Service entomologist Ed Holsten didn't believe this could happen.

Alaska lost 2.5 million acres of spruce to bark beetles from 1920 to 1990. In the next 10 years, 4 million acres died, and much of that in an uncharacteristic way. Beetles normally attack only the largest spruce trees, but in some areas they took out almost every tree, large and small.

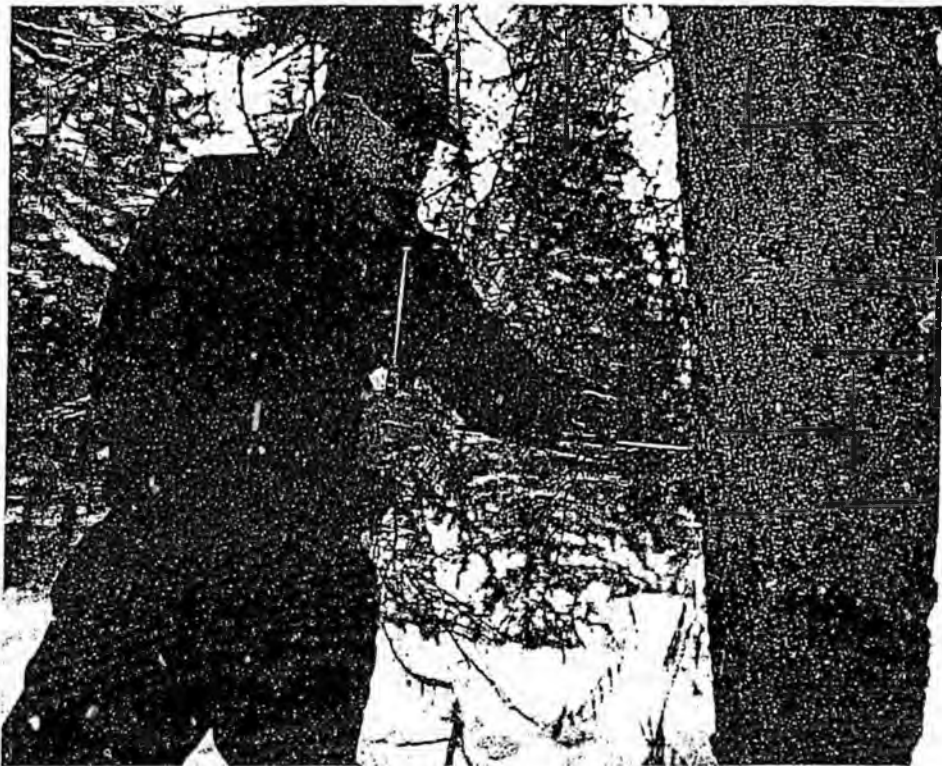
"We had entomologists coming up and just scratching their heads," Holsten said. "If you read the textbook, the spruce beetle is just not very aggressive."

Homer was supposed to be immune from spruce bark beetles. But in 1988, when Ed Berg left for Georgia to become an ecologist instead of a carpenter, it was already evident that the experts were wrong. Red, dying spruce trees were showing up around Kachemak Bay, where the maritime climate had been too cool and wet for bark beetles to do much damage in the past. Still, Berg didn't see the significance.

His career followed an eccentric trajectory to bring him to his discovery. Caught up in the early 1960s craze for the hard sciences, he first became a geophysicist, but for ethical reasons he quit before completing a doctoral thesis. Studying in Madison, Wis., he had joined the movement to oppose the Vietnam War and came to believe his study of the earth's crust could be perverted by the military. He feared that the Navy could use the knowledge to develop communications with nuclear-armed submarines. Berg switched to philosophy, earned his first doctorate, and became a carpenter.

A philosopher, a skilled finish carpenter, a liberal war protester: Berg had the perfect résumé to live among the big Sitka spruce trees on Homer's East End Road, where he ended up in a community of like-minded people in 1982. Free spirits inhabited these woods, building fanciful houses hidden down narrow, muddy roads. Berg's neighbor liked to sing in the chapel of big trees outside her door. "I loved living in the forest," he said.

But in 1992, when Berg returned from Georgia with a doctorate in botany, it was clear that his home was changing. "The beetles had really taken off at that point, and I could see a lot of my trees had beetles in them," Berg said. He decided not to spray, but it didn't matter; nothing could stop the



**Berg extracts** a sample from a spruce tree in Soldotna. In the mid-1990s, Berg witnessed spring swarms of spruce beetles as they took flight looking for new trees to infest. "I can remember them coming, kind of like an Alfred Hitchcock movie," he said.

insects.

Each spring in the mid-'90s when the beetles took flight to search for new trees to infest, they swarmed like a Biblical plague.

"I can remember them coming, kind of like an Alfred Hitchcock movie," Berg said. "They would be in your hair and your eyes, you'd have to brush them off. I've heard people saying they could see them in clouds, miles off, coming down the Anchor River Valley."

The beetles spend most of their lives inside trees, eating a thin layer of inner bark called the phloem, which carries food produced in the needles down to the roots for storage. Eggs hatch during summer and the larvae begin chewing. The insects stay in a tree for nearly two years and then in spring make their brief flight to find new trees in which to lay eggs.

If a tree's sap is flowing, it can flush the beetles out before they get started. Young trees, rich in sap, usually are immune. Most trees have good defenses in cool, damp weather. Even if one generation of beetles thrives, the next can be knocked down by a cool spring. For the beetles to fly, the air must be at least 60 degrees.

Best for the beetles—and worst for

the trees—is when such a warm day comes early in the spring, when the ground is still frozen. At such a time, with moisture quickly evaporating from the needles but little dampness available to draw from the frozen roots, the trees have little defensive sap and beetles can have a field day.

Spruce bark beetle infestations have always come and gone, but historically they never lasted more than a few years before a return to cool spring weather stopped them. Tree ring records show that the cycle has worked that way for at least 400 years. But since 1987, Southcentral Alaska has had an unbroken string of abnormally warm summers. Some summers in the 1990s were so warm that beetles grew to maturity in one year instead of two, doubling the hit on the forest the next spring. So many beetles flew that young and old trees were overwhelmed in some places, leaving few alive for regeneration. The plague didn't slow until the beetles ate their way through all the available acreage.

The forest along East End Road died, as did many. Some people—including everyone in Berg's neighborhood—chose to cut their trees rather than live with the fear of fire and blow-downs. Berg decided to move into

town, partly because of the loss of privacy and the chilly wind that constantly blew off the bay after the trees were gone.

The neighbor who sang from her porch, Mary Jane Shows, lives there still but the area looks like a perpetually messy construction site. During a recent storm, her husband, John Shows, heard a big tree crashing down every minute or so, so he's glad he cut his trees. But he calls the area left around their home "Beirut."

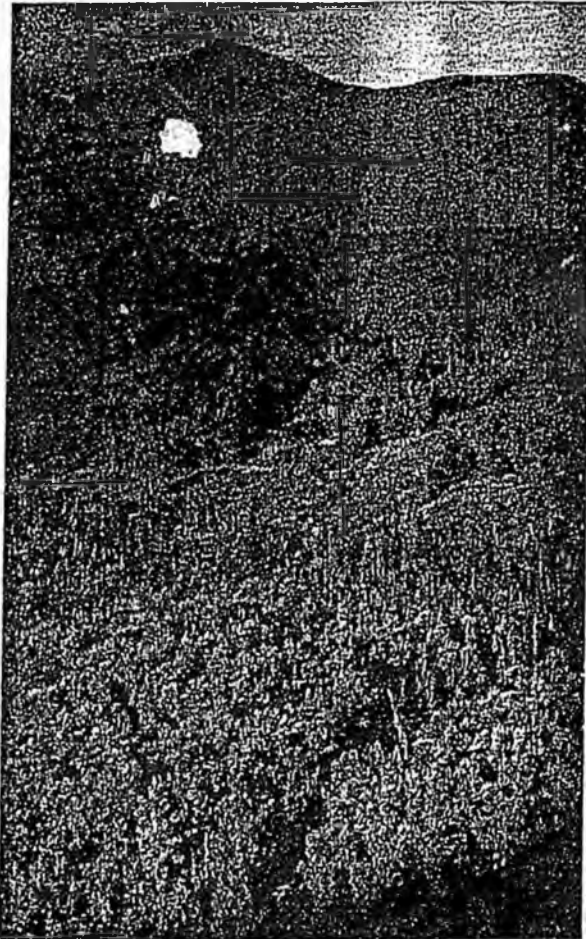
Their trees and thousands of others went into a chipper and out to Homer Spit to be loaded on ships bound for Japan, there to become paper. When you look into the holds of those bulk carriers you get a sense of the scale of how many dead trees there are. These ships are far larger than the biggest building on the Kenai Peninsula, but they are as simple as a bath tub toy—just big boats with immense, empty spaces to be filled. The chips gush into these spaces from a conveyor belt, a torrential cascade of wood and sawdust. But even at this prodigious rate, it takes 12 hours to fill just one of the six holds. Ships come every few weeks. After years of this loading, they've taken only a small nibble from all the dead trees.

Most trees will fall and rot before anyone harvests them. In Bear Cove, on the south side of Kachemak Bay, where the infestation hit early, many trees have already fallen. The land is impassable, like a giant game of pick-up sticks. Once you might have walked or skied through the forest; now it's a no-man's land, probably for a generation. Berg recently visited a site near Point Possession where beetles hit hard in 1958. It is good wildlife habitat, full of devil's club and other berries, but the downed trees make tough going for people.

With a changing climate, it's anyone's guess what will happen next. The ecology of this part of Alaska has changed: spruce beetles won't be limited by cool, wet springs anymore. They might spread next into the coastal rain forest; infestations already have

occurred near Haines and in Glacier Bay, drier pockets of that ecosystem. Canada's Kluane National Park has beetles in forest that never had them before; Berg is training Canadian scientists in his techniques.

Or maybe some other insect will make the next run. "With climate change in the northern latitudes, we might not be able to predict which insect will be the problem, but we know we will have increased insect activity," said entomologist Holsten.



As spruce beetles have swept through Alaska forests, mountainsides have turned brown with dead trees

He studies and records increased outbreaks of various bugs with odd names, such as the larch sawfly. No one saw one in Alaska before 1965, and now the bugs have taken the needles off just about every larch in Interior Alaska for the past seven years. A mystery malady has killed half a million acres of valuable yellow cedar in Southeast Alaska, possibly because climate change has reduced the snow cover that protected roots from freezing.

Ecologist Juday sees much of Alaska becoming more like southern Alberta,

with grasslands and parklike clearings of broadly spaced trees. It could look as it did during the ice ages, providing habitat for elk, bison and wild horses. "It would be kind of back to the future," he said.

But Juday admits that's only a guess. The lesson of climate change and the spruce bark beetle is that we have no idea what big things might happen. Ecosystems are still far beyond our understanding, Juday said.

"They have factors that we don't even know about, like some bug that comes out of nowhere, that's not a factor, then you warm it up a little bit, and it's not a factor, then you warm it up a little bit more, and, boom, it is the only factor," Juday said. "And not only do we not know how that works, but we don't even have a name for the bug yet."

When Beryl Myhill and her husband, Howard, bought their 11 acres off West Hill Road in Homer, there were no big trees around, nor any stumps or signs of a burn. That was in 1946. Over the years since, she felt the climate warm in Homer—she saw winters become milder—and she watched a forest grow up around her house. The tree line came to lie just uphill of her place.

A few years ago, the beetles hit and all those big trees died, including her favorite, where her husband once strung a radio aerial, and her sons' favorites, where they played as children. Howard died in 1997 and their five sons all grew up and moved away. Beryl cut the dead trees to keep them from falling on any-

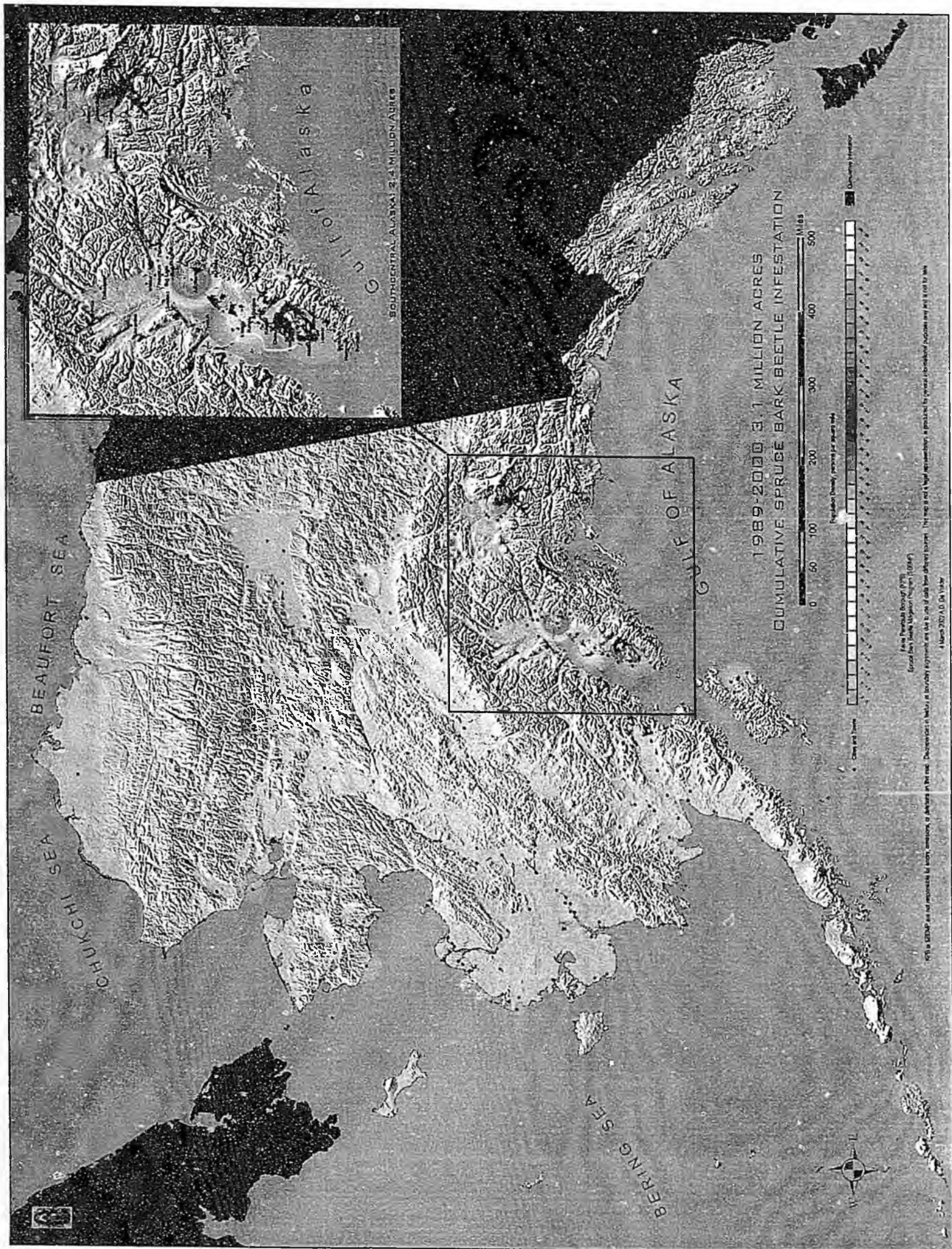
one. She felt sick, but she assumed God had made a decision.

"You know," she said, "there's a cycle of life to everything. Those trees, they come up and they grow to maturity and they deteriorate and finally they die and the little ones grow up."

"Everyone says it'll grow up again. Of course, I won't be here to see it."

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CHARLES WOHLFORTH, an Anchorage-based free-lance writer, is writing a book about northern climate change research and human adaptation.



CHUKCHI SEA  
BEAUFORT SEA

BERING SEA

GULF OF ALASKA

Alaska

SOUTHCENTRAL ALASKA: 3.4 MILLION ACRES

1989-2000 CUMULATIVE SPRUCE BARK BEETLE INFESTATION

0 50 100 200 300 400 500 Miles

Population Density, persons per square mile

State Population Density (PSD)  
Source: U.S. Census Bureau (1990)

PSD is based on information from censuses, is subject to change in the future. Data are not available for all areas. This map is not a legal document. It is produced by general government agencies and is not for sale.  
4 March 2007 A.D. 04 1347

**HB**

**382**

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB 382(FIN)  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Environmental Conservation  
 Title An Act Relating to Cleanup of Illegal Drug Sites BRU Environmental Health  
 Component Laboratory Services  
 Sponsor Representative Guess  
 Requester Senate Resources Component No. 2065

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	10.0	0.0	0.0	0.0	0.0	0.0
Supplies	2.0	2.0	2.0	2.0	2.0	2.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>12.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>

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

FUND SOURCE	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	12.0	2.0	2.0	2.0	2.0	2.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>12.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>

Estimate of any current year (FY2002) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

POSITIONS	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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)  
 The evaluation and cleanup process of illegal drug sites as proposed in this bill will require the Department to develop contaminated substance limits in regulation and guidelines for decontamination. In preparing this fiscal note, the Department has assumed that the expected number of contaminated sites requiring evaluation and clean up would be approximately 18 a year based on actual numbers of 13 sites last year and 25 the year before. Additionally, it is anticipated that Alaska can use standards and cleanup guidance documents from other states as templates.  
 Contractual costs of 10.0 would be incurred the first year to pay for regulation development, public notices, and production of the required guidance document.  
 Continued on Page 2

Prepared by: Janice Adair, Director Phone (907) 269-7644  
 Division Environmental Health Date/Time 4/29/02 9:55 AM  
 Approved by: Kurt Fredriksson Date 4/29/02  
 Agency Department of Environmental Conservation

FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

BILL NO. CSHB 382(FIN)

ANALYSIS CONTINUATION

Continuation from Page 1

A telephonic survey of the private labs in the state revealed that there are no labs currently capable of conducting some of the analyses required under this legislation. Therefore, this fiscal note assumes that the department's chemical laboratory will conduct the required tests. Laboratory supplies cost of 2.0 are included to cover the commodities required for this testing.

Line Item Description	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY2007
<b>Personal Services</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Travel</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Contractual</b>						
• Regulations and Public Notice	\$2,000	\$0	\$0	\$0	\$0	\$0
• Guidance Document preparation and copying	\$8,000	\$0	\$0	\$0	\$0	\$0
Subtotal:	\$10,000	\$0	\$0	\$0	\$0	\$0
<b>Supplies</b>						
• Laboratory commodities (72 Samples)	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000
<b>Equipment</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$12,000</b>	<b>\$2,000</b>	<b>\$2,000</b>	<b>\$2,000</b>	<b>\$2,000</b>	<b>\$2,000</b>

22-LS1105\S  
Lauterbach  
4/26/02

SENATE CS FOR CS FOR HOUSE BILL NO. 382( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES GUESS, Foster, Croft, Crawford

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to the evaluation and cleanup of sites where certain controlled  
2 substances may have been manufactured or stored; and providing for an effective date."

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

4 \* Section 1. The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

6 PURPOSE. The purpose of this Act is to provide a just, equitable, and practicable  
7 method, to be cumulative with and in addition to any other remedy provided by law, whereby  
8 property that endangers the life, safety, or welfare of the general public or occupants of the  
9 property because of toxic chemical contamination that may result from illegal drug  
10 manufacturing may be required to be decontaminated or vacated and secured against use.

11 \* Sec. 2. AS 46.03 is amended by adding new sections to read:

12 Article 6A. Cleanup of Illegal Drug Sites.

13 Sec. 46.03.500. Notice of illegal drug manufacturing site. (a) When a law  
14 enforcement officer, qualified under federal regulations to investigate and dismantle

1 illegal drug manufacturing sites, determines that a site constitutes an illegal drug  
2 manufacturing site, the law enforcement agency that employs the officer shall notify  
3 the owner of the property, the occupants and users of the property, and the department  
4 that the determination has been made.

5 (b) The notice to the property owner required under (a) of this section shall be  
6 by certified mail, return receipt requested, and must include the following information:

7 (1) the parcel identification number and legal description of the  
8 property where the site is located;

9 (2) a statement of the determination made by the law enforcement  
10 officer that the site was an illegal drug manufacturing site and the findings that formed  
11 the basis for the determination;

12 (3) a citation to, and short summary of, AS 46.03.510, which restricts  
13 transfer and occupancy of the site until it is determined to be fit for use; and

14 (4) the following information, which shall be provided to the law  
15 enforcement agency by the department:

16 (A) a copy of the standards contained in regulations adopted  
17 under AS 46.03.530 that determine whether the property is fit for use;

18 (B) a copy of the testing procedures established under  
19 AS 46.03.520(b) and a copy of the list of laboratories maintained under  
20 AS 46.03.520(c) that must be used for determining whether the property is fit  
21 for use; and

22 (C) a copy of the guidelines for decontamination established by  
23 the department under AS 46.03.540(b).

24 (c) The notice to the department required under (a) of this section must  
25 include

26 (1) the parcel identification number and legal description of the  
27 property where the site is located;

28 (2) a statement of the determination made by the law enforcement  
29 officer that the site was an illegal drug manufacturing site and the findings that formed  
30 the basis for the determination; and

31 (3) the name and mailing address of the person who owns the property

1 where the site is located.

2 (d) The notice required under (a) of this section for the occupants and users of  
3 the property shall be accomplished by immediate posting of the entryway of the  
4 property with a notice that includes the location of the property, the information  
5 described in (b)(2) and (3) of this section, and a statement that the property may pose a  
6 substantial risk of physical harm to persons or animals that enter or occupy the  
7 property.

8 (e) If a person other than the owner, such as a property manager or rental  
9 agency, is authorized to let others use or occupy property for which an owner has  
10 received a notice under (a) of this section or is authorized to transfer, sell, lease, or  
11 rent the property to others, the owner of the property shall communicate the substance  
12 of the notice to that person within four days after receiving the notice.

13 **Sec. 46.03.510. Restrictions on property.** (a) Until determined to be fit for  
14 use under AS 46.03.550, the property for which a notice has been issued under  
15 AS 46.03.500(a) may not be transferred, sold, leased, or rented to another person  
16 except as provided in (b) of this section, and a person may not use or occupy the  
17 property at any time after the fourth day following the day on which the property was  
18 posted with the notice required under AS 46.03.500(d), except as necessary for testing  
19 or decontamination under AS 46.03.520 and 46.03.540. An oral or written contract  
20 that would transfer, sell, lease, rent, or otherwise allow the use of the property in  
21 violation of this subsection is voidable between the parties at the option of the  
22 purchaser, transferee, user, lessee, or renter. However, this subsection does not

23 (1) make voidable a promissory note or other evidence of indebtedness  
24 or a mortgage, trust deed, or other security interest securing the promissory note or  
25 evidence of indebtedness, if the note or evidence of indebtedness, mortgage, trust  
26 deed, or other security interest was given to a person other than the person  
27 transferring, selling, using, leasing, or renting the property to induce the person to  
28 finance the transfer, sale, use, leasing, or rental of the property;

29 (2) make voidable a lease or rental agreement between the property  
30 owner and the person who caused the property to be contaminated and determined  
31 unfit for use; or

1 (3) impair obligations or duties required to be performed on  
2 termination of a contract, as required by the contract, such as payment of damages or  
3 return of refundable deposits.

4 (b) Notwithstanding (a) of this section, property covered by (a) of this section  
5 may be transferred or sold if full written disclosure is made to the prospective  
6 transferee or purchaser that the property has been determined to be an illegal drug  
7 manufacturing site and the property has not been determined to be fit for use. The  
8 disclosure shall be attached to the earnest money receipt, if any, and shall accompany  
9 the transfer or sale document. The disclosure is not considered to be part of the  
10 transfer or sale document, however, and may not be recorded. The property shall  
11 continue to be subject to the restrictions in (a) of this section after transfer or sale  
12 under this subsection.

13 (c) A person who knowingly transfers, sells, leases, or rents property to  
14 another, knowingly allows another to use or occupy property, or, being the owner of  
15 property, knowingly occupies or uses the property, in violation of this section is guilty  
16 of a class A misdemeanor. In this subsection, "knowingly" has the meaning given in  
17 AS 11.81.900(a).

18 (d) It is an affirmative defense to a prosecution under (c) of this section for  
19 allowing another to use or occupy the property that the defendant or an agent of the  
20 defendant, within four days after receiving a notice under AS 46.03.500, filed an  
21 appropriate civil action to remove the user or occupier from the property for which the  
22 notice was received.

23 **Sec. 46.03.520. Testing procedures.** (a) If the owner of the property for  
24 which notice was received under AS 46.03.500(b) desires to determine if the property  
25 is fit for use, the owner shall cause the site to be tested for the substances specified in  
26 AS 46.03.530, using the procedures and laboratory services specified under (b) and (c)  
27 of this section. The property owner shall inform the laboratory used for a test under  
28 this subsection that the test is related to property that has been determined to be an  
29 illegal drug manufacturing site.

30 (b) The department shall establish procedures for testing property that may  
31 have been an illegal drug manufacturing site.

1 (c) The department shall establish and maintain a list of laboratories in the  
2 state that have the capacity to perform the testing procedures and have notified the  
3 department that they wish to be on the list maintained under this subsection. A  
4 laboratory may not be included on the list unless the laboratory agrees to send the  
5 department a copy of test results related to properties whose owners have informed the  
6 laboratory that the test results are for property that has been determined to be an illegal  
7 drug manufacturing site.

8 **Sec. 46.03.530. Standards for determining fitness.** (a) Property for which a  
9 notice was received under AS 46.03.500(b) is not fit for use if a test of the property  
10 shows the presence of one of the following substances above the limit set by the  
11 department for that substance: lead, mercury, methamphetamines, and volatile organic  
12 compounds.

13 (b) The department shall adopt regulations that set the limit for each substance  
14 listed in (a) of this section for purposes of determining whether the property for which  
15 a notice was received under AS 46.03.500 is fit for use.

16 **Sec. 46.03.540. Decontamination requirements.** (a) If the owner desires to  
17 decontaminate the property for which a notice has been issued under AS 46.03.500,  
18 the owner shall follow the guidelines established by the department under (b) of this  
19 section.

20 (b) The department shall establish guidelines for decontamination of sites that  
21 are determined to be unfit for use under AS 46.03.530. The department shall provide  
22 a copy of the guidelines to any person who requests a copy.

23 **Sec. 46.03.550. Fitness for use.** (a) Property for which a notice has been  
24 issued under AS 46.03.500 shall be determined by the department to be fit for use if  
25 the owner submits satisfactory evidence to the department that

26 (1) based on testing procedures established by the department under  
27 AS 46.03.520(b) and performed by laboratories that are on the list maintained by the  
28 department under AS 46.03.520(c), the limits on substances specified in AS 46.03.530  
29 are not exceeded on the property; or

30 (2) if the property was ever tested under AS 46.03.520 and the test  
31 results showed the property to be unfit for use under AS 46.03.530, decontamination