

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10731 HOUSE COMMUNITY & REGIONAL AFFAIRS

authorities to determine that the welfare of the public was properly protected prior to going forward with construction in a municipality. In 1974 an additional requirement was imposed relating to compliance with zoning ordinances. Under the new requirement, uses of property sold or leased by the state to other than a public entity had to comply with local zoning ordinances as long as the property was "held in private use." In full, as amended in 1974, AS 35.10.020 provided:

Before the construction of a public works in a municipality, the department shall confer with the planning commission of the municipality to determine that the welfare of the public is properly protected. Real property of the state which is leased, sold, exchanged, or otherwise transferred for value to other than a public entity shall conform so long as held in private use to local planning and zoning ordinances and regulations in the same manner and to the same extent as real property of other landowners subject to the local ordinances and regulations, unless the local ordinances and regulations are less stringent than comparable state standards.

(Emphasis added.)

Having described the history of AS 35.10.020 thus far, it is worthwhile to ask whether a reasonable argument could be made in light of AS 35.10.020 as it existed in 1974 that projects on state land that remained in state hands were required to comply with local planning and zoning ordinances. The answer is clear that they were not. The unmistakable meaning of section .020 as of the 1974 amendment is that while projects on state land that had been transferred for private use were required to conform with local zoning ordinances "so long as held in private use," projects on state land not held in private use did not have to conform to local zoning requirements. The 1974 amendment clearly illustrates the rule that state projects are exempt from local zoning unless a statute provides otherwise.

As described above, in 1975 AS 35.10.020 was amended again. Instead of being limited to state property that had been transferred for private use, the requirement of compliance with local planning and zoning ordinances subject to a waiver granted by the governor was made generally applicable.

In 1976 another change was made that again illustrates legislative acceptance of the rule of general immunity. In 1976 the University of Alaska was made subject to AS 35.10.020.⁴ As amended in 1976 the statute had the familiar form of the 1975 act requiring both a conference with local officials and compliance with local ordinances, with the latter subject to gubernatorial waiver. The statute read:

Before the construction of a public works in a municipality, or a building or other structure by the University of Alaska in a municipality, the department or the University of Alaska, as appropriate, shall confer with the planning commission of the municipality to determine that the welfare of the public is properly protected. The University of Alaska or the department and its agencies and instrumentalities shall comply with all local planning and zoning ordinances and the local regulations in the same manner and to the same extent as other landowners. However, if a state agency or the University of Alaska clearly demonstrates an overriding state interest, a waiver to the compliance requirements may be granted by the governor.

The University was added to the coverage of AS 35.10.020 because it took the position that it did not have to comply with local planning and zoning ordinances and the legislature thought it was desirable that the University be required to so comply.⁵

⁴ Ch. 50, § 1, SLA 1976.

⁵ Senator Chancy Croft, sponsor of the measure, explained the purpose of the amendment as follows to the Community and Regional Affairs Committee of the Senate:
(continued...)

(...continued)

Mr. Chairman, you will recall that last year we passed a bill that contained all this except for the reference to the University of Alaska. None of us I think being sensitive enough that the University considers itself something other than a portion of the state as far as public works are concerned. The bill as far as I know was satisfactory to everybody with the exception that the University told people that they just weren't going to abide by it. I think they should and if I frankly had had any knowledge that they wouldn't, we would have included it last year and this bill simply adds the University to the bill that was passed last year that requires state instrumentalities to comply with local planning and zoning ordinances unless the governor determines that there is a sufficient reason to override it in which he case he can do it but otherwise they have to abide by the same laws as everybody else.

Track 1, 16:00-19:20 - 1976 Senate Committee: Community & Regional Affairs.

When the legislation was being considered by the House of Representatives, Senator Croft explained the evolution of the requirement of state government compliance with local codes as follows:

This, I might say Mr. Chairman, this whole area has been one in which the state has gone on a gradual basis to it. The first portion of the bill of the present statute that the state would consult was passed in 57 and then it was 68 before the state said that it would comply with local building codes. And then in 75 we went and we thought we were picking up the University but there was a drafting mistake and we weren't, that they shall comply with local planning and zoning, and so it has been a real evolutionary process

Track 2, 0:27-4:00 - 1976 House Committee: Community & Regional Affairs.

The hearing concluded with Representative Cotton and Senator Croft agreeing that another look should be taken in the future to determine whether the statute
(continued...)

The rule that state government entities are not subject to local zoning in the absence of a statute is illustrated by the 1976 amendment. The University had taken the position that it was not subject to zoning because no statute provided that it was subject to zoning. The legislature implicitly accepted the University's view that it was not subject to zoning but decided that as a policy matter that the University should be subject to zoning and amended AS 35.10.020 to include the University.

Nothing occurred to indicate that the legislature had altered the general rule of immunity in 1984 when the legislature enacted the Alaska Railroad Corporation Act.⁶ As a part of that act, AS 42.40.920 specifically provided that Title 35 of the Alaska Statutes would not apply to the Railroad. Thus AS 35.30.020 and .030 do not apply to the Railroad. This exemption put the Railroad in the position that the University had been in prior to the 1976 amendment, and in the position that all state projects had been in prior to the 1975 amendment — immune from local planning and zoning ordinances.

Having stated this conclusion, I do not mean to imply that no changes were made between 1976 and 1984 to AS 35.30.020 and .030. There was a change in 1977, but it did nothing to erode the principle that state agencies do not have to comply with local zoning unless required by statute. The change is interesting because it laid the groundwork for a broadening in the coverage of AS 35.30.020.

In 1977, AS 35.30.020 as it had existed was broken into two parts, with .020 requiring compliance with local planning ordinances and .030 providing for a

⁵ (...continued)

was still insufficiently comprehensive. Representative Cotton stated: "It was pointed out to me at one time that public works was somewhat restrictive and really didn't take everything that a lot of people would like to have seen into consideration." Senator Croft responded: "I think that's a valid point and sure would be glad to work on that."

⁶ AS 42.40.010 - .990.

waiver by the governor. Other changes were also made. Instead of referring to “the department” as previously, .020 was written in its present form referring to “a department.” Likewise, the waiver provisions put in .030 referred to “a department.”

In the definitions section of the 1977 enactment, AS 35.30.040(1) stated: “In this chapter (1) ‘department’ means the Department of Transportation and Public Facilities, and the University of Alaska.” But this was changed in 1987. Alaska Statute 35.30.040(1) was repealed.⁷ This was the section that defined the “department” in the 1977 act to include the University of Alaska. Did this mean that the 1987 legislature no longer intended the University of Alaska to be subject to local zoning ordinances? Or did it mean that the legislature believed that without the definition the University would be covered because it is “a department”? It is clear that no substantive change was intended. The changes were described by the title of the act as merely “corrective amendments to the Alaska Statutes as recommended by the revisor of statutes.” In a memorandum dated May 17, 1987, the revisor wrote that section AS 35.30.040(1) was “proposed for repeal” because the definition of “department” was “redundant to a definition in AS 35.25.020 that applies to all of AS 35.”⁸ In the same memo the revisor refers to section 57, among other sections, as a section that “repeal[s] provisions that are duplicated by other applicable law, and make[s] conforming changes in related provisions.”⁹ Since the 1987 amendment disclaims any intent to make a substantive change, it seems that the revisor interpreted “a department” in AS 35.30.020 and .030 to include all departments of state government, including the University of Alaska.

⁷ Ch. 14, § 57, SLA 1987.

⁸ House Journal Supp. No. 11 at 8, 1987 House Journal 1617.

⁹ *Id.* at 2.

Otherwise the change would have been substantive, deleting the University from coverage of the statute. As the legislature enacted the change suggested by the revisor, the legislature endorsed the revisor's view.

It thus appears that AS 35.30.020 and .030 now include all departments of state government that are not excluded by other statutes. But this interpretation is not central to the main premise of this dissent, which is simply that the evolution of .020 and .030 plainly shows that the legislature has accepted the traditional rule that state entities that are not made subject to local zoning by statute are not subject to local zoning.¹⁰

In summary, the history related above shows that state entities and state activities not covered by .020 and .030 and their predecessors were assumed and intended by the legislature to be immune from local zoning. Acceptance of the rule of immunity is clearly shown in 1974 when state lands conveyed or leased to private entities were made subject to local zoning so long as they remained in private hands, but state lands not meeting these conditions remained immune from local zoning. It is also clearly shown in 1976 when the legislature included the University in the coverage of .020 because the University was not originally included and it was thought desirable to make the University comply with local zoning. Nothing occurred in the intervening years between the 1974, 1975, and 1976 enactments and 1984 to change the rule of

¹⁰ There are a number of particularized statutes that also indicate the legislature's acceptance of the rule that state agencies and state activities should be immune from local zoning unless made subject to zoning by statute. Thus AS 18.55.100(7) makes the Alaska Housing Finance Corporation subject to local zoning. If the corporation were already subject to local zoning this act would not have been needed. Similarly, AS 19.30.080 provides that access roads to state land constructed within a municipality that has zoning shall conform with zoning regulations as to width of right-of-way — but, by implication, not with other standards. Likewise, AS 38.04.045 requires that the Department of Natural Resources when subdividing state land for sale within a municipality comply with local zoning.

general state immunity. Thus when the legislature enacted the Alaska Railroad Corporation Act and exempted the Railroad from coverage by .020 and .030, the Railroad retained the immunity from local zoning that it had as an instrumentality of the federal government because no statute made it subject to local zoning.

II. The Alaska Railroad Corporation Act Exempts the Railroad from Local Zoning.

Although the rationale that state agencies are immune from local zoning unless a statute makes them subject to local zoning expressed above is sufficient to decide this case, there are a number of provisions in the Alaska Railroad Corporation Act that affirmatively indicate that the Railroad was intended to be exempt from local planning and zoning control. These include:

a. AS 42.40.390.

This section provides:

The board may adopt exclusive rules governing land use by parties having interests in or permits for land owned or managed by the corporation. The power conferred by this section is exercised for the common health, safety, and welfare of the public and to the extent constitutionally permissible, may not be limited by the terms and conditions of leases, contracts, or other transactions.

By this section the Railroad Board is given the power to “to adopt exclusive rules governing land use” for railroad land. The second sentence of this section confirms that the exclusive rules have the same purpose as a planning and zoning ordinance, namely to provide “for the common health, safety, and welfare of the public.” The word “exclusive” by definition excludes the possibility that a municipality could impose rules governing land use of railroad property.

The legislative history of this section of the Alaska Railroad Corporation Act confirms that the legislature was aware that section .390 placed railroad lands beyond the control of local zoning. Tamara Cook, Deputy Director of the Division of Legal Services of the Legislative Affairs Agency, first raised a question as to the effect of section .390 on March 1, 1984, at a Senate Transportation Committee meeting. She asked, "what does it do, is this an effort to supercede municipal land use regulations? Is that what this does? Does this say that property controlled by the railroad is not subject to municipal land regulations? Is that what this is?"¹¹ Chairman Moss initially responded in the negative: "I don't believe that that was the original intent on it. Maybe, I'm wrong on it." But Cook persisted, stating: "What this says though, it says the board may adopt exclusive regulations governing land use, which means that the board would then be operating as a planning commission." After further discussion Cook again explained that the Railroad could "attempt to put a subdivision" on acquired property "and not be subject to municipal zoning ordinances." She recommended that "until this section is made a lot clearer I think the committee ought to consider dropping it entirely." Chairman Moss observed that this would be "one way to eliminate the problem." Senator Gilman agreed that "removing it is fine" but observed that as to a version of the legislation in a prior session there were reasons why the section was written as it was, but he could not remember what they were. He suggested that he be allowed to "revisit the file." Chairman Moss agreed: "Let's do that before we delete this section" and proceeded to adjourn the meeting.

Cook put her concerns in writing, in a memorandum dated March 12, 1984, to the Chair of the Senate Transportation Committee. Observing that there are two

¹¹ See Senate Transportation Committee Hearing, tape 65, side A, March 1, 1984.

alternative effects of AS 42.40.390, she again recommended that section .390 be clarified or deleted:

Section 42.40.390 appears to be an attempt to grant the power of land use regulation, such as platting and zoning, to the railroad corporation, which would contravene the requirement contained in Article X, section 2 that all local government powers shall be vested in boroughs and cities. If, on the other hand, the purpose of the section is to exclude rail property from municipal land use regulation, that should be done specifically. I would recommend that the section be clarified or eliminated.

It is worth noting that while Cook states that there are two possible interpretations of section .390 — that it grants zoning power to the Railroad or that it excludes railroad property from municipal land use regulation — under either interpretation the Railroad would be immune from local zoning. Under the first, a grant of exclusive zoning power to the Railroad would necessarily exclude the power of a municipality to zone the same property. Under the second, the exclusion of municipal zoning is the explicit purpose.¹² Section .390 was retained as written, despite Cook's suggestion that it be clarified or deleted.

¹² Today's opinion offers a third interpretation of section .390. It states that the section "could also be read as a choice-of-law provision . . ." Slip Op. at 11. Thus, "if the Railroad Board promulgated rules conflicting with local ordinances, the Railroad's regulations would govern, but in the absence of a conflict, local rules are unaffected." Under this interpretation the Railroad Board may promulgate a land-use rule covering the land in question, permitting it to be used for quarry purposes. Since such a rule would conflict with the municipal zoning code, the rule would govern. Thus even under the court's interpretation, section .390 is a "direct statutory grant[] of immunity," Slip Op. at 27-30, albeit a conditional one, that controls over the balancing test adopted by today's opinion when the Railroad Board promulgates rules inconsistent with local zoning.

The question of retaining or deleting section .390 was taken up for the last time by the Senate Transportation Standing Committee on March 15, 1984. The minutes of that meeting indicate that Senator Gilman initially sought to remove AS 42.40.390. But Senator Halford responded "that there should be a way to protect railroad operations. That would protect the railroad's operations from local zoning restrictions."¹³ The matter was discussed further. Senator Gilman stated that .390 "originally was put in at a time when it was anticipated that they were going to have to establish some rationale for why the railroad should get a tax-exempt bonding authority." He noted that this was no longer a problem. But Senator Faiks stated that pending in the House of Representatives was a bill that would take away tax-exempt status from the Railroad. She argued that section .390 should be left in the bill. This was the final resolution.

The discussion reveals that the Senate Committee clearly understood that .390 would protect the Railroad's operations from local zoning restrictions. No one argued with Senator Halford's characterization that this was the section's direct function. Senator Gilman's observation that the purpose of section .390 was to guarantee tax-exempt bonding status is consistent with section .390's function. In order to have tax-exempt bonding status, it was believed that the Railroad needed land use regulation powers comparable to those of a local government. Such powers were granted. It does not matter whether the powers were granted primarily so that the Railroad could issue tax-free bonds or so that the Railroad would not be disturbed in its operations by municipal zoning. Whatever the dominant motive may have been, the grant of exclusive land use regulatory power was the same.

¹³ Minutes of Committee Meeting of March 15, 1984.

b. AS 42.40.920(b)(3).

This is the section that declares that AS 35 does not apply to the Railroad. Since, as discussed above, AS 35 contains AS 35.30.020 requiring "a department" to comply with local zoning, exempting the Railroad from AS 35 indicates, among other purposes, an intent to exempt the Railroad from local zoning.

c. AS 42.40.935(b).¹⁴

This section required the Railroad to comply with local building and safety codes within five years, subject to waiver by the Commissioner of Public Safety. Because AS 35 is not applicable to the Railroad, AS 35.10.025,¹⁵ which requires all public buildings to comply with local building codes, did not apply to the Railroad. Recognizing that a transition to compliance with local building codes was desirable, subject to an executive waiver, the legislature enacted AS 42.40.936(b). Its enactment shows legislative awareness that in light of the fact that AS 35 was made inapplicable to

¹⁴ AS 42.40.935(b) provides:

No later than two years after the date of transfer, the corporation in consultation with the Department of Public Safety and appropriate municipal officials, shall develop and adopt a plan to achieve compliance with building and related safety codes applicable to facilities of the corporation. The plan shall be implemented and compliance achieved within five years after it is adopted. In the sole determination of the commissioner of public safety, any existing building owned or controlled by the corporation that does not present a serious safety hazard and for which compliance would be uneconomical in consideration of its remaining useful life shall be exempted from compliance with state or municipal safety codes.

¹⁵ *See supra* p. 40.

the Railroad, special measures were needed in areas where it was intended to make the Railroad subject to local laws. The omission of a similar measure relating to compliance with local zoning codes thus seems deliberate and purposeful.

d. AS 42.40.250(13).¹⁶

Section .250 lists the general powers of the Alaska Railroad Corporation. Subsection (13) authorizes the Railroad Corporation to apply to various entities for permits or approvals necessary to construct various facilities. The Railroad is authorized to apply to the "state, the United States, and foreign countries or other proper agencies." But the list pointedly does not include political subdivisions of the state. By contrast, subsection(9) of section .250 expressly mentions political subdivisions. Subsection (13) thus suggests that the legislature thought that it would not be necessary for the Railroad to apply to political subdivisions for approval to obtain permits to construct and operate facilities.

¹⁶ AS 42.40.250 provides in relevant part:

In addition to the exercise of other powers authorized by law, the corporation may

...

(9) contract with and accept transfers, gifts, grants, or loans of funds or property from the United States and the state or its political subdivisions, subject to other provisions of federal or state law or municipal ordinances;

...

(13) apply to the state, the United States, and foreign countries or other proper agencies for the permits, licenses, rights-of-way, or approvals necessary to construct, maintain, and operate transportation and related services, and obtain, hold, and reuse the licenses and permits in the same manner as other railroad operators[.]

The legislative history of subsection (13) indicates that the omission of political subdivisions was not accidental. Versions of the Alaska Railroad Corporation Act were considered in 1982. Senate Bill 212 in 1982 contained a section entitled "Licenses and Permits." It provided:

Whenever the laws of a municipality, the state, or the United States require a license or a permit to undertake certain activities or perform an act, the authority, prior to undertaking the activity or performing the act, shall comply therewith to the same extent as the state, except as otherwise provided in this chapter.

A notation in the legislative folio indicates that the Railroad requested that the word "municipality" be deleted from this provision. Offered as a reason for this was that "the railroad presently negotiates with a number of municipalities regarding crossings, traffic signals, etc. If the municipalities were granted authority to regulate the railroad's passage through their boundaries, the railroad's transportation of goods and services would be so erratic as to be totally nonoperable."¹⁷

The specific examples offered by the Railroad, "crossings, traffic signals, etc.," may not be subjects governed by typical zoning codes, but the more general topic of "passage through municipal boundaries" potentially is. Further, the bill applied to all permits "to undertake certain activities or perform an act," terms that readily encompass permits such as conditional use permits needed for zoning compliance. If the legislature intended the Railroad to be subject to local zoning codes — regulatory systems in which permits of many types are standard fare — it would not have deleted political

¹⁷ April 12, 1982 Memorandum from Senator Kerttula to the Senate Transportation Committee outlining the amendments to SB 212 requested by Frank Jones, the manager of the Alaska Railroad.

subdivisions from the list of government entities to which the Railroad is authorized to apply for permits.

In summary, the legislature in section .390 of the Alaska Railroad Corporation Act gave the board exclusive authority to adopt rules governing railroad land. This necessarily excluded local zoning authority over the same land. The Legislative Affairs Agency and a legislative committee recognized that section .390 had this effect. A number of other provisions of the Alaska Railroad Corporation Act confirm that the legislature intended that the Railroad was to be exempt from local zoning.

III. Conclusion

The traditional rule that state entities are not subject to local zoning unless a statute so provides has been repeatedly recognized by the Alaska Legislature. The Alaska Railroad is exempt from local zoning under this rule because no statute makes it subject to zoning. In addition, provisions of the Alaska Railroad Corporation Act show that the legislature intended the Alaska Railroad Corporation to be exempt from local zoning.

For these reasons, I dissent.



House Transportation Committee
State Capitol, Room 17
465-4858



Rep Jim Holm, Chair

Members:

Rep Mary Kapsner, Rep Vic Kohring, Rep Albert Kookesh, Rep Bev Masek, Rep Dan Ogg, Rep Nick Stepovich

Sectional Analysis

House Bill 560

ALASKA RAILROAD: EXTENSION/ TASK FORCE
by the House Transportation Committee
5/7/4

Section 1 allows the Alaska Railroad Corporation to extend its existing line to Fort Greely, Alaska, and to acquire land along the corridor for associated facilities.

Sections 2 and 3 authorize the Alaska Railroad Corporation to issue bonds for up to \$500,000,000 for this extension.

Before issuing the bonds, the Railroad must enter into a binding agreement with the United States government that will provide sufficient revenue to pay principal, interest, and other costs for the bonds.

Section 4 creates a Railroad Planning, Platting, and Land Use Regulation Task Force, to make recommendations to the Legislature regarding the extent to which local regulations should apply to Railroad land.

Members of the Task Force, appointed jointly by the President of the Senate and the Speaker of the House of Representatives, will include a municipal official from each of the thirteen governing bodies through which the rail line currently passes.

Section 5 sunsets the Task Force on the second day of the 2005 legislative session.

Section 6 makes HB 560 effective immediately upon passage.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB560(TRA)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Municipal Land Use Regulation RDU Alaska Railroad Corporation
 Component _____
 Sponsor House Transportation
 Requester House CRA Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures		500,000.0				
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	500,000.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Revenue Bond Proceeds		500,000.0				
TOTAL	0.0	500,000.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Alaska Railroad Corporation (ARRC) is a public corporation supported by revenues generated through its freight, passenger and real estate services. ARRC does not receive state subsidies for operations or capital improvements.

HB560 creates a task force to provide recommendations to the legislature next year on the extent to which municipal planning, platting and land use regulations apply to Railroad land. Reports and other administrative needs relating to task force functions will be paid for by the Railroad and not by the State.

Prepared by: Wendy Lindskoog, Director of External Affairs Phone (907) 265-2498
 Division Alaska Railroad Corporation Date/Time 5/7/2004 6:59pm
 Approved by: Edgar Blatchford, Commissioner Date 5/7/2004
 Agency Department of Community & Economic Development

FISCAL NOTE

**STATE OF ALASKA
2004 LEGISLATIVE SESSION**

BILL NO. CSHB560(TRA)

ANALYSIS CONTINUATION

In addition to forming a task force, HB560 authorizes the Railroad to issue up to \$500 million in revenue bonds to finance the acquisition, construction, improvement, maintenance, equipping, and operation of a rail line and related facilities from its existing railroad corridor to Ft. Greely, Alaska.

The costs of issuing the bonds will be paid with bond proceeds at closing. Anticipated professional services include those related to financial advisors, attorney's fees (bond counsel, underwriter's counsel, tax counsel, negotiating with prospective customers), rating agencies, underwriters, printing, travel, public notices, and the feasibility consultant. ARRC will front certain minor necessary reimbursable costs from corporation revenues.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 560(TRA)
 (H) Publish Date: 5/7/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Municipal Land Use Regulation RDU Alaska Railroad Corporation
 Component _____
 Sponsor House Transportation
 Requester House Transportation Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Alaska Railroad Corporation (AARC) is a public corporation supported by revenues generated through its freight, passenger and real estate services. AARC does not receive state subsidies for operations or capital improvements.

While HB560 will not create a current fiscal impact for the State, failure to pass the bill could subject the Alaska Railroad to costly legal challenges with regard to protection of its operations and interstate commerce. For example, the recent planning and zoning litigation involving the Eklutna Quarry has resulted in over \$63.0 of legal fees to date. In addition, compliance with the various local planning, zoning and land use laws would increase project costs, sometimes substantially. Construction of the Railroad's new Anchorage Operations Center, a new building in the middle of AARC's Anchorage Yard, has been delayed due to local planning and zoning review now required by the recent Supreme Court case. As a result of the delay, this project's cost has now increased by an estimated \$100.0 and possibly more if accelerated construction is necessary before winter.

Prepared by: Wendy Lindskoog, Director of External Affairs
 Division: Alaska Railroad Corporation
 Approved by: Edgar Blatchford, Commissioner
 Agency: Community & Economic Development

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 Date 4/28/2004



House Transportation Committee
State Capitol, Room 17
465-4858



Rep Jim Holm, Chair

Members:

Rep Mary Kapsner, Vic Kohring, Rep Albert Kookesh, Rep Bev Masek, Rep Dan Ogg, Rep Nick Stajovich

Sponsor Statement

HB 560

House Bill 560 contains two provisions relating to the Alaska Railroad Corporation and its role as a State transportation and economic development agent.

HB 560 authorizes the Railroad to issue up to \$500 million in tax-free revenue bonds to pay for extending a rail line to Delta Junction and Ft. Greely. The proposal would have the bonds secured through federal funds from the Department of Defense. Depending upon negotiations with the Department, the Railroad could issue the bonds as early as 2005.

The new main line would extend from Moose Creek near the City of North Pole to Fort Greely, approximately 80 miles. A line extension could efficiently provide transportation services for military training support, freight, and commuter service between Fairbanks and the Ft. Greely missile site.

In addition, HB 560 addresses a recent Alaska Supreme Court decision that has called into question the Railroad's exemption from local planning and zoning ordinances provided in AS 42.40. The decision jeopardizes a mode of operation that has been in place since the Railroad was transferred to the State 18 years ago.

So that legislative intent can be clarified in law, this bill creates a task force to provide recommendations to the legislature in 2005 on whether and to what extent municipal planning, platting and land use regulations should apply to interests in land owned by the Alaska Railroad. The task force will be comprised of one senator, one house member, a member from each railbelt municipality, and a railroad representative. Members will be appointed by the president of the senate and speaker of the house of representatives. The task force will be required to submit a written report of its findings and recommendations on or before the first day of the First Regular Session of the Twenty-Fourth Alaska State Legislature.

The Alaska Railroad Corporation is both an interstate common carrier and an instrumentality of the State of Alaska. Its statutory mission is to provide transportation services to residents, businesses, visitors and military installations in the State, and foster and promote long term economic growth and development, particularly of the State's land and natural resources. The Railroad's ability to operate safely, efficiently and effectively is due in great part to the singular nature of its corridor ROW. The Railroad's current track alignment passes through 13 recognized municipal (city and borough) governments between Seward and North Pole. It is important to protect the Railroad's ability to use its

lands for operational purposes in service to the broader state interest without facing different, and potentially conflicting, planning and zoning scenarios among so many municipalities.

Without this protection, local communities could separately dictate planning and zoning restrictions that would negatively impact the Railroad's ability to offer safe, efficient, economical and reliable service to its freight and passenger customers. For example, communities could prohibit train operations or noise levels during certain hours (e.g., evenings and early morning) or on certain days (e.g. Sundays) and the hours of operation could vary from community to community. This type of restriction would increase the cost of operations, impact train movements, customer schedules, contract commitments, and the amount of business the Railroad can accommodate each year due to decreased or varied hours of operation. More importantly, in situations where the Railroad and a municipality are in agreement on a planning and zoning issue, an individual or environmental group could still file a lawsuit seeking to overturn the municipality's decision, which would further delay or possibly eliminate a project.

There are other adverse impacts that can arise if the Railroad is subject to local planning and zoning. Inconsistent regulation would also decrease the value of the State's considerable investment in purchasing the Railroad. Finally, it could unreasonably delay and add significant cost to the Railroad's efforts to improve the transportation infrastructure of the State through upgrades of existing track and facilities and expand in new directions (for example to Fort Greely or to Canada).

While federal law arguably protects interstate commerce from some of these restrictions, the issue as it now stands after the Supreme Court decision invites litigation, which is not only costly to the Railroad and municipalities, but could result in inconsistent holdings among various jurisdictions. The bottom line is that, because the Railroad is an essential part of the State's transportation network and serves an important State mission, the State should be the entity that controls the Railroad's use of its land, not the 13 Railbelt municipalities and boroughs.

HB

562

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

May 1, 2004

SUBJECT: Sectional Summary of HB 562; An Act relating to the establishment of the Interior Rivers Port Authority (Work Order No. 23-LS1951\H)

TO: Representative Carl Morgan
Attn: Lori Nottingham

FROM: George Utermohle 
Legislative Counsel

You have requested a sectional summary of HB 562; An Act relating to the establishment of the Interior Rivers Port Authority.

As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill sets out the findings and purpose of the legislature in regard to the establishment of the Interior Rivers Port Authority.

Section 2 of the bill adds a new chapter to AS 30 to provide for the establishment and operation of the Interior Rivers Port Authority.

Article 1. Creation and Organization.

Sec. 30.21.010 establishes the Interior Rivers Port Authority as a public corporation of the state within the Department of Community and Economic Development.

Sec. 30.21.020 establishes the board of directors of the authority, consisting of nine voting members appointed by the governor. Seven members are to be appointed from lists of nominees submitted by certain corporations in the area of operation of the authority. One member is to be a person employed by a company that has a physical presence in the operation of the authority. One member is a public member. The commissioners of transportation and public facilities and of community and economic development are non-voting members of the board.

Sec. 30.21.030 provides for the removal and replacement of members of the board.

Sec. 30.21.040 provides that the members of the board may receive compensation, per diem, and travel expenses for participation in board meetings.

Sec. 30.21.050 provides that the board shall hold at least four regular meetings each year and that the board may also hold special meetings at the call of the chair of the board or of three members of the board.

Sec. 30.21.060 provides for the election of officers of the board and sets the quorum and certain voting procedures for meetings of the board.

Sec. 30.21.070 provides that the board may employ officers and employees of the authority as necessary for operation of the authority.

Sec. 30.21.080 describes the operating area of the authority.

Sec. 30.21.090 provides that the board of the authority may adopt regulations to carry out its functions.

Article 2. Powers and Duties.

Sec. 30.21.100 sets out the powers and duties of the authority.

Sec. 30.21.110 provides that the activities of the authority are public and governmental functions exercised for a public purpose and are matters of public necessity.

Sec. 30.21.120 provides that the authority may acquire, by purchase, lease, or gift, upon terms that the authority considers proper, land, structures, real or personal property rights, rights-of-way, franchises, easements, and other interests in land.

Sec. 30.21.130 provides that the authority may acquire land and easements by purchase, gift, grant, exchange, or eminent domain.

Sec. 30.21.140 provides that the authority may acquire publicly or privately owned land, easements, and material for purposes of exchange by purchase, gift, grant, exchange, or eminent domain.

Sec. 30.21.150 provides that the authority has the power of eminent domain.

Sec. 30.21.160 provides that the authority may defend and indemnify a current or former member of the board, employee, or agent of the authority against all costs, expenses, judgments, and liabilities incurred by or imposed upon that person in connection with a civil or criminal action in which the person is involved by affiliation with the authority. The authority may also purchase insurance to protect and hold

personally harmless its board members, employees, and agents from an action, claim, or proceeding arising out of the performance, purported performance, or failure of performance, in good faith, of duties for, or employment with, the authority.

Sec. 30.21.170 provides that the authority shall protect its assets, services, and employees by purchasing insurance or providing for certain self-insurance retentions. The authority shall also maintain casualty, property, and other insurance in amounts reasonably calculated to cover potential claims against the authority or state related to authority operations and activities.

Sec. 30.21.180 provides that the authority shall obtain a fidelity bond in an amount determined by the board for members of the board and for each executive officer responsible for accounts and finances.

Article 3. Revenue Bonds and Notes.

Secs. 30.21.200 - 30.21.320 set out the powers and duties of the authority in regard to the issuance of revenue bonds. Under sec. 30.21.300, the credit of the state is not pledged to the repayment of debts, liabilities, or obligations of the authority. The authority is solely responsible for payment of its debts, liabilities, or obligations from the revenue of the authority.

Article 4. Fiscal Procedures.

Sec. 30.21.350 sets out the requirement of the authority to assure the development of a system of results-based operation designed to increase efficiency and effectiveness of facilities, operations, programs, and services of the authority. The authority shall annually prepare a detailed report of the mission, goals, operations, and performance of the authority.

Sec. 30.21.360 provides that the authority has power to administer its programs and is responsible for the proper management of its facilities and operations.

Sec. 30.21.370 provides that the authority shall prepare an annual report of its operations, income, and expenditures for the preceding fiscal year.

Sec. 30.21.380 provides that the authority shall have a certified audit of its financial records prepared annually by an independent certified public accountant.

Article 5. General Provisions.

Sec. 30.21.400 provides that the employees of the authority are not state employees.

Sec. 30.21.410 provides that the authority is not subject to the State Procurement

Representative Carl Morgan
May 1, 2004
Page 4

Code (AS 36.30) except as specifically provided in this bill or to the statutes governing public officers and employees in AS 39.

Sec. 30.21.490 sets out the definitions of terms used in the bill.

Sec. 30.21.495 provides that this chapter may be cited as the Interior Rivers Port Authority Act.

Sections 3 - 6 of the bill amend provisions of AS 30.15 to provide that the Interior Rivers Port Authority would be eligible for grants, if any, that are made for port facility construction under that chapter.

Section 7 of the bill amends AS 36.30.015(e) to provide that the board of directors of the Interior Rivers Port Authority is to adopt procedures to govern the procurement of supplies, services, professional services, and construction that are substantially equivalent to the procedures prescribed in the State Procurement Code (AS 36.30).

Section 8 of the bill amends AS 36.30.050 to provide that the board of directors of the Interior Rivers Port Authority may use the lists of contractors prepared by the commissioner of administration when issuing invitations to bid or requests for proposals.

Section 9 of the bill amends AS 36.30.990(1) to exclude the Interior Rivers Port Authority from the agencies that are subject to the State Procurement Code (AS 36.30).

Section 10 of the bill amends AS 37.05 by adding a new sec. 37.05.055 to provide that the commissioner of administration may delegate functions under the Fiscal Procedures Act (AS 37.05) to the board of directors of the Interior Rivers Port Authority.

Section 11 of the bill amends AS 39.50.200(b) to add the board of directors of the Interior Rivers Port Authority to the list of boards and commissions whose members are subject to public official financial disclosure under AS 39.50.

Sections 12 - 14 of the bill amend AS 39.52.960(2), (4), and (12), respectively, to provide that the board of directors of the Interior Rivers Port Authority is subject to the Executive Branch Ethics Act (AS 39.52).

Section 15 of the bill amends AS 44.42.020(a) to provide that the Department of Transportation and Public Facilities is not responsible for management, operation, or maintenance of ports and port related facilities and operations managed, operated, and maintained by the Interior Rivers Port Authority.

Section 16 of the bill provides that the board of directors of the Interior Rivers Port Authority shall, within one year from the first meeting of the board, prepare and publish a development plan for promoting economic self-sufficiency in the region in which the authority operates.

Representative Carl Morgan
May 1, 2004
Page 5

Section 17 of the bill establishes the length of the terms of the persons initially appointed to board of directors of the Interior Rivers Port Authority in order to establish a system of staggered appointments.

Section 18 of the bill provides that the bill takes effect July 1, 2004.

If I may be of further assistance, please advise.

GU:med
04-489.med

ALASKA RAILROAD CORPORATION



Corporate Address: P.O. Box 107500, Anchorage, Alaska 99510
327 W. Ship Creek Avenue, Anchorage, Alaska 99501

May 1, 2004

Representative Carl Morgan
State Capitol
M/S 3100
Juneau, Alaska
99801-1182

Re: Interior Rivers Port Authority

Honorable Representative Morgan:

The Alaska Railroad Corporation is pleased to support the endeavor of forming an Interior Rivers Port Authority.

This initiative would greatly enhance the interior's opportunity for economic growth by paving the way for infrastructure development. Specifically, it would contribute to the state's overall transportation system and provide an important link, through the City of Nenana, with the Alaska Railroad.

Best regards,

A handwritten signature in cursive script that reads "Wendy Lindskoog". The signature is written in dark ink and is positioned above the typed name.

Wendy Lindskoog
Director, External Affairs
Alaska Railroad Corporation

ALASKA STATE HOUSE OF REPRESENTATIVES

Representative Carl Morgan, Chair
408
Representative Kelly Wolf, Vice Chair
1182
Representative Tom Anderson
3882
Representative Ralph Samuels
4527
Representative Pete Kott
representative_carl_morgan@legis.state.ak.us
Representative Sharon Cissna
Representative Albert Kookesh



Alaska State Capital, Room
Juneau, AK 99801-
Telephone: (907) 465-
Fax: (907) 465-

HOUSE COMMITTEE ON COMMUNITY AND REGIONAL AFFAIRS Representative Carl Morgan, Chair

INTERIOR RIVERS PORT AUTHORITY ACT

The Interior Rivers region of Alaska is one of the more economically depressed areas of our state, yet it is a region that also has tremendous potential. What has been missing is the regional transportation and energy infrastructure that would lead to self-sufficiency. Currently the region cannot carry the financial burden of establishing a municipal government. A regional port authority can provide the regional focus and development authority that local government normally provides, until the region is prosperous enough to justify formation of a sustainable local government structure.

The region contains mineral deposits that could provide local employment opportunities, similar to the Red Dog Mine, if sufficient transportation and energy infrastructure can be provided through tax-exempt bonding. The area could also benefit from the leverage of regional bulk fuel purchase agreements, electrical interties, and in the long term, providing gas to the region through a spur line or barge system to deliver North Slope gas from an Alaskan gas pipeline.

The region also contains opportunities for developing river tourism experiences that could stimulate local employment and revenues. Development of tourism facilities and experiences along with coordinated marketing programs are necessary for this opportunity to be realized.

Regional landfill solutions can also provide cost efficient solutions to solid waste management and help resolve health issues associated with uncovered landfills.

The Interior Rivers Port Authority is structured to provide representation from the major land owning and economic development organizations in the region. The authority has the power to accept private, municipal, state and federal funds, to issue tax-exempt revenue bonds, to enter into land leases and acquisitions, and to contract for the provision of management services for authority facilities and operations.

The Interior Rivers Port Authority empowers the local people to determine their own development strategy and gives them the tools to implement it. Funding organizations will be more likely to provide funding because they will be able to see a coordinated program that has a strong likelihood of success with a minimum of duplication of services. They will view their contributions in the authority as investments in the self-sufficiency of the region.

Private sector business will also want to invest in the region because the authority will provide a source of stability and access to tax exempt bonding for necessary infrastructure.



Doyon, Limited

1 Doyon Place, Suite 300
Fairbanks, Alaska 99701-2941
(907) 459-2000
Info@doyon.com

Sent via fax: (907) 465-2197

April 30, 2004

Representative Carl Morgan
Alaska Legislature
State Capitol, Room 408
Juneau, AK 99801-1182

RE: Possible legislation on Interior Rivers Port Authority

Dear Rep. Morgan:

Thank you once again for the opportunity to review draft legislation that would create an Interior Rivers Port Authority. Additional thanks for the prompt response to my inquiry regarding the relationship this new port authority likely would have with the Alaska Industrial Development and Export Authority. An IRPA could be very beneficial, if not critical, to development projects within the operating area of the authority, and for that reason I support your efforts.

I look forward to further discussion with you and your staff.

Very truly yours,

for Oric Williams
President and CEO

Alaska State Legislature

SESSION/ INTERIM OFFICE
State Capitol Building
Juneau, Alaska 99801-1182
Phone: 907-465-4527
Fax: 907-465-2197
Toll Free: 800-491-4527



INTERIM DISTRICT OFFICE
P.O. Box 798
Tok, Alaska 99780
Phone: 907-883-2669
Fax: 907-883-2670

**Representative Carl M. Morgan, Jr.
District 6**

April 28, 2004

Mr. Orie Williams, President and CEO
Doyon, Limited
1 Doyon Place, Suite 300
Fairbanks, AK 99701-2941

Dear Orie,

Thanks for your letter regarding the relationship of the Interior Rivers Port Authority (IRPA) and Alaska Industrial Development and Export Authority (AIDEA). We foresee IRPA having a cooperative relationship with AIDEA. The IRPA will provide the focus for involvement of the river communities in regional transportation, energy and water and waste disposal issues. Although, this legislation provides IRPA its own bonding authority we assume major bonding would go through AIDEA. AIDEA is established in the bond market with high bond ratings resulting in lower interest rates. Ron Miller, Executive Director of AIDEA does not see any conflict between the two organizations. He expressed optimism in the synergy that could result between IRPA and AIDEA..

The IRPA's value is in examining the economies of scale for large projects, such as the Donlin Creek Mine, and the benefit to the local people within the region. The IRPA will be the focus for electrical interties, group purchase of fuel, and transportation services which lower the cost of bringing in food and other necessary consumer goods.

The IRPA is a real opportunity to bring the interior rivers region together for the good of the people with an emphasis on economic development and self-sufficiency. The most important thing at this point is to provide employment and training opportunities to local people and to help facilitate the resource development projects that will "lift up" our whole region.

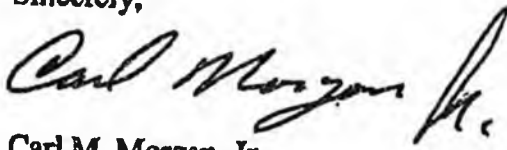
Page Two

Letter to Ori Williams, President & CEO

As a state agency, IRPA will be able to facilitate rights of way and permits necessary for these projects and to inform local people of the benefits of resource development projects.

I hope Doyon will support these efforts. I look forward to working together with you on this important legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carl Morgan, Jr.", written in dark ink.

Carl M. Morgan, Jr.
Alaska State Representative

Cc: Ron Miller, Executive Director of AIDEA



Doyon, Limited

1 Doyon Place, Suite 300
Fairbanks, Alaska 99701-2941
(907) 459-2000
info@doyon.com

Sent via fax: (907) 465-2197

April 28, 2004


Representative Carl Morgan
Alaska Legislature
State Capitol, Room 408
Juneau, AK 99801-1182

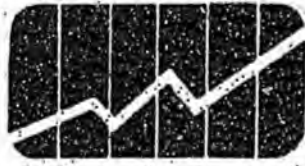
RE: Possible Legislation on Interior Rivers Port Authority

Dear Rep. Morgan:

Thank you for the opportunity to review draft legislation that would create an Interior Rivers Port Authority. The purpose for the authority would be to assist in development of mineral deposits and economic opportunities through tax exempt bonding that could be used to help provide needed transportation and energy infrastructure. This goal is a worthy one that I support. I do have one reservation, however. I would like to have a better understanding of what roles and responsibilities this new entity would have in relation to the Alaska Industrial Development and Export Authority. Frankly, I had assumed that most if not all of the functions the new entity were similar to the AIDEA charter. I look forward to further discussion with you and your staff.

Very truly yours,


Orin Williams
President and CEO



The Kuskokwim Corporation

Representative Carl Morgan

RE: Interior Rivers Port Authority

April 26, 2004

To Whom It May Concern:

The Kuskokwim Corporation (TKC) is in support of the Interior Rivers Port Authority researching strategies that would benefit the local people in implementation of local resources. Mainly Yupik Eskimo and Athabascan Indian descendants populate the Kuskokwim River region of Alaska. TKC is the merger of 10 ANCSA village corporations and has over 2,500 shareholders who either live in, or are descendants from, one of the numerous small villages along the Kuskokwim River. TKC owns over 950,000 acres of surface estate lands surrounding the 10 villages including Crooked Creek and surrounding Donlin Creek.

The Interior Rivers Port Authority an option that would provide a structure which could help represent the major land owners and economic development organizations in the region. It not only shows representation by the majority of parties involved, but also shows a commitment to work together to achieve common goals.

The region has little to no economic base, substantially high unemployment and chronically suffers from poverty and marginal education. The cost of electricity, where it is available, is very high and there are minimal to no municipal infrastructures. A number of village residents are without sewer and water, yet it is a region that has great economic development potential. The regional transportation and energy infrastructure would help lead the region to self-sufficiency. The concept of the regional port authority could be the beginning of providing this regional focus.

It is in the best interest of the state to move forward and research establishing a port authority for the Interior Rivers region so long that it protects the regions interest in development for our area.

Sincerely,

Maver E. Carey
TKC President/CEO

Anchorage Office:
4300 B St., Suite 207
Anchorage, Alaska 99503
Phone: (907) 243-2944
Fax: (907) 243-2984

Aniak Office
P.O. Box 227
Aniak, Alaska 99557
Phone: (907) 675-4275
Fax: (907) 675-4276



301 Calista Court, Suite A • Anchorage, Alaska 99518-3028 • (907) 279-5516 • Facsimile (907) 272-5060 • Website: www.calistacorp.com

Office of the President

April 27, 2004

The Honorable Carl Morgan
Alaska State Legislature
State Capital
Juneau, Alaska 99811

Re: Proposed Interior Rivers Port Authority

Dear Carl:

Calista Corporation favors the development of an Interior Rivers Port Authority within the unorganized borough to facilitate economic development. Specifying such a port authority is the first of its kind in Alaska and we applaud your efforts. There is a need to facilitate economic development of our resources, and the Donlin Creek project provides an important impetus to begin the process of sustainable long term development for both river systems. The Donlin Creek project has the potential of transforming the third world conditions of our regions. The project will never happen however, without federal and state support. As you know, Calista Corporation has completed the Donlin Creek Mine Power Supply Feasibility Study which, after more than two years of analysis of all available options, demonstrates that the lowest cost alternative that provides power to Donlin Creek and the villages in the region is for a power plant at Bethel and a transmission line to Donlin Creek. If the proposed bill is approved, the Interior Rivers Port Authority can help finance the infrastructure to make Donlin Creek a reality.

The energy and transportation needs for the Donlin Creek project is massive and will need to include a large part of the Kuskokwim and the Yukon Rivers. The large service area identified in this bill could certainly address both the transportation and energy infrastructure necessary to support the Donlin Creek project and other potential mineralized areas over the long term. We look forward to the formation of the Interior Rivers Port Authority.

Sincerely,

CALISTA CORPORATION

A handwritten signature in black ink, appearing to read "Matthew Nicolai", is written over the printed name.

Matthew Nicolai
President/CEO



G Y L

Gana-A'Yoo, Ltd.-----
3000 A Street, Suite 417, Anchorage, Alaska 99503 • phone: (907) 558-9599 • fax: (907) 569-9699 • www.ganahyoo.com

April 29, 2004

Representative Carl M. Morgan, Jr
State Capitol Building, Suite 408
Juneau, AK 99801-1182

Re: Interior Rivers Port Authority

Dear Representative Morgan,

Gana-A'Yoo, Limited supports an Interior Rivers Port Authority (IRPA). This authority will provide the focus for involvement of the river communities in regional transportation, energy and water and waste disposal issues. It provides a real opportunity to bring the interior rivers region together for the good of the people with an emphasis on economic development and self-sufficiency.

The most important thing at this point is to provide employment and training opportunities to local people and to help facilitate the resource development projects that will "lift up" our whole region.

The IRPA will provide an opportunity for our region to have a voice in directing our own future.

We look forward to working with you on this important piece of legislation.

Sincerely,

Michael Stickman
President
Gana-A'Yoo, Limited



City of Nenana

P.O. Box 70, Nenana, Alaska 99760

907-832-5501, 907-832-5503-fax

<http://www.nenana.org>



Rep. Carl Morgan
State Capitol
M/S 3100
Juneau, Alaska
99801-1182

28-Apr-04

Re: Interior Rivers Port Authority

Honorable Representative Morgan,

It gives me great pleasure to voice the City of Nenana's support for an Interior Rivers Port Authority.

As Nenana is the primary port for the communities in this area, we have first hand experience with the difficulties in transportation and the needs that exist.

There is a tremendous need to provide a vehicle for these issues to be addressed and the Port Authority concept is an excellent way to accomplish this.

The Interior region of Alaska has been studied many times in the past identifying untapped mineral resources and natural gas resources. Unfortunately there was no appropriate mechanism to organize the affected communities.

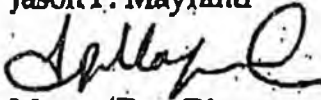
It is clear that the region currently does not have the economic infrastructure to operate as an organized governmental area however the Port Authority will allow the communities to be organized as a whole to pursue the establishment and enhancement of the transportation infrastructure.

Formation of the Port Authority will also allow the entity to bond, enter into leases, and apply for state and federal funding and management of facilities and operations. In addition to the added cooperation between entities along the river, the Port Authority would have the ability to coordinate bulk purchases for products and services thereby lowering the overall costs to communities.

Development of energy infrastructure, expanded tourism opportunity, economic development, and the establishment of a regional landfill to address village health concerns can all be a possibility through the Port Authority.

In short, this is the perfect solution to many problems that plague the Interior river communities and would greatly enhance the economic future of the area as well as provide the means to help them coordinate with each other to pursue economic development projects that enable these areas to be more self-sufficient.

Sincerely,
Jason P. Mayrand



Mayor/Port Director
City of Nenana.
Nenana Port Authority

HCR

5



Alaska State Legislature

House Committee on Community and Regional Affairs

Representative Carl Morgan, Chair
State Capitol Building, Room 408
Juneau, AK 99801
907-465-3882

AGENDA

State Capitol 124
8:00 am – 10:00 am

- **Call to Order**
 - Today's date is March 4, 2003
 - The time is ~~8 am~~ *8:05 am*

- **On today's agenda**
 - HCR 5 Legislative Task Force On Design Of State Seal
Sponsor is Representative Reggie Joule

- **Public Testimony**
 - Anyone on teleconference
 - Anyone present in Juneau

- **Other Business**
 - Next Meeting – Tuesday, March 11th

- **Adjourn**

During Session:
Alaska State Capitol
Juneau, Alaska 99801-1182
(907) 465-4833
Fax (907) 465-4586
1-800-782-4833

Representative_Reggie_Joule@legis.state.ak.us



During Interim:
P.O. Box 673
Kotzebue, Alaska 99752
(907) 442-3880
Fax (907) 442-3022

Alaska State Legislature
REPRESENTATIVE REGGIE JOULE

February 26, 2003

Rep. Carl Morgan
Chair, House C&RA Committee
Juneau

Dear Carl,

House Concurrent Resolution 5, creating a task force on the state seal, has been referred to the House Community & Regional Affairs Committee. I am writing to request that you schedule a hearing on HCR5 as quickly as possible. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Reggie Joule".

Rep. Reggie Joule
Sponsor HCR 5

During Session:
Alaska State Capitol
Juneau Alaska 99801-1182
(907) 465-4833
Fax (907) 465-4586
1-800-782-4833

Representative_Reggie_Joule@legis.state.ak.us



During Interim:
P.O. Box 673
Kotzebue, Alaska 99752
(907) 442-3880
Fax (907) 442-3022

Alaska State Legislature
REPRESENTATIVE REGGIE JOULE

Sponsor Statement for HCR 5, creating a special task force to redesign the state seal

By Representative Reggie Joule

The official seal of the State of Alaska was designed 93 years ago by federal and territorial officials. It is time to consider whether the seal should reflect the modern state in which we live and recognize the many diverse cultures of Alaska. This resolution would authorize a task force of Alaskans to solicit proposals for changing the seal and report recommendations to the second session of the 23rd Alaska Legislature.

The task force proposed by this resolution would be housed in the Alaska Legislature. Two representatives each would be appointed from the Alaska Historical Commission, the Alaska Department of Education and Early Development, the Alaska Humanities Forum and the Alaska Native Heritage Center. The task force would serve as a focal point for public involvement in the redesign of the seal, including suggestions from Alaska school children.

A final design for a new seal would be up to the full Legislature.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HCR 5
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
 Title "Establishing a task force to make BRU Legislative Council
recommendations regarding a new design for the official seal..." Component Council and Subcommittees
 Sponsor Representative Joule, Chenault...
 Requester Representative Joule Component No. 783

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	21.0					
Travel	12.5					
Contractual	16.5	0.0	0.0	0.0	0.0	0.0
Supplies	3.0					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	53.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
1002 Federal Receipts						
1003 GF Match						
1004 GF	53.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	53.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: _____
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Part-time						
Temporary	1	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
 HCR 5 establishes a six member Task Force in the Legislative Branch whose mission is to gather input from the citizens of Alaska about what the official State Seal should look like and to make recommendations to the Legislature about a proposed new design for a new official State Seal for the State. The Task Force on the State Seal will be comprised of two representatives of the Department of Education and Early Development, two representatives of the Alaska Historical Commission in the Department of Natural Resources, two members appointed by the Board of Directors of the Alaska Humanities Forum, and two members appointed by the Board of Directors of the Alaska Native Heritage Center.

Prepared by: Karla Schofield, Deputy Director Phone 465-3852
 Division Administrative Services Date/Time 2/26/03 2:04 PM
 Approved by: Pamela Varni, Executive Director Date 2/26/2003
 Agency Legislative Affairs Agency

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. HCR 5

ANALYSIS CONTINUATION

Personal Services - It is anticipated that the Task Force on the State Seal will ask for and receive reasonable administrative services support from the Legislative Council. The services would most likely include coordinating travel arrangements, setting up teleconferences, placing advertisements if the Task Force decides to hold a contest or wishes to hear testimony and ideas from people in the State regarding the State Seal, and other duties to facilitate the work of the Task Force. This fiscal note anticipates the cost of the administrative support to be 3 months of a Range 21 equaling \$21,000.

Travel - It is anticipated that the Task Force will hold two 3 day meetings requiring travel. Both meetings will be held in Anchorage. The travel costs for the 4 representatives from the DCED and DNR-Alaska Historical Commission will be absorbed within Executive Branch travel budgets. This fiscal note contains funding for the appointees from the Alaska Humanities Forum and the Alaska Native Heritage Center and the administrative support person. For the purposes of this fiscal note the appointees are assumed to be from Kotzebue, Ketchikan, Anchorage, and Juneau. The support person is assumed to be from Juneau. This fiscal note also includes funding for two people, either two Task Force members, or one Task Force member and a contest winner, to meet with the Legislature in Juneau to review the recommendations of the Task Force during the Second Regular Session of the 23rd Legislature.

Two Anchorage Meetings: Airfare \$ 4,000; Per Diem \$ 6,000 = \$ 10,000
Juneau Meeting with Legislature: Airfare \$ 1,200; Per Diem \$ 1,300 = \$ 2,500

All other meetings will be by teleconference. Teleconference costs will be absorbed by the Legislative Affairs Agency.

Contractual - It is anticipated that the Task Force will require a phone budget, most likely for calling cards in the amount of \$150 per month times 10 months = \$1,500.

As it is not known how the Task Force will decide to pursue their objective, \$15,000 is included in this fiscal note which may be used for expenses relating to conducting a contest, including advertising in newspapers all over the State over several weeks, or to mail flyers to interested parties or residents in the State interested in participating in the contest or submitting ideas to the Task Force. These funds might also be used to acquire a simple scriptlet program to allow children to design their own State Seal on the website. These funds could also be used to hire a graphic artist if the Task Force wished to contract with a consultant to create a new State Seal based on input from Alaskans.

The Legislative Affairs Agency will work with the Task Force to create a web site on the Legislature's home page to inform Alaskans about the activities of the Task Force and to provide an avenue for interested persons to comment about new ideas for the State Seal. Interested parties would be able to provide information to the Task Force by submitting ideas through the Legislative Information Offices around the State. These costs will be absorbed by the Legislative Affairs Agency. The Information Offices will also work with the Task Force to provide information to the schools if requested to do so by the Task Force.

Supplies - It is anticipated the Task Force will need to purchase supplies to help organize information submitted to them and may need to purchase computer software for rendering proposed designs into graphic images for presentation to the Legislature - \$3,000.

If requested by the Task Force, costs to print black and white flyers or copies of the proposed new State Seal, will be absorbed by the Legislative Affairs Agency Printshop.

Alaska's Official State Seal

the case for modernization



1

Introduction

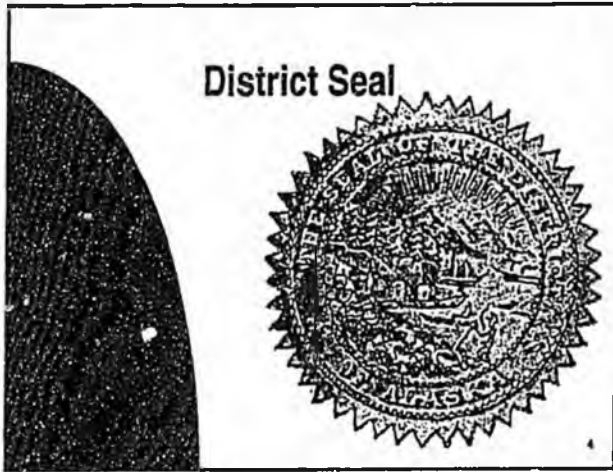
- HCR 5 Task Force on State Seal
- Focal point for citizen involvement in designing new seal
- Report to Legislature in January 2004
- Any changes to seal require approval of full Legislature

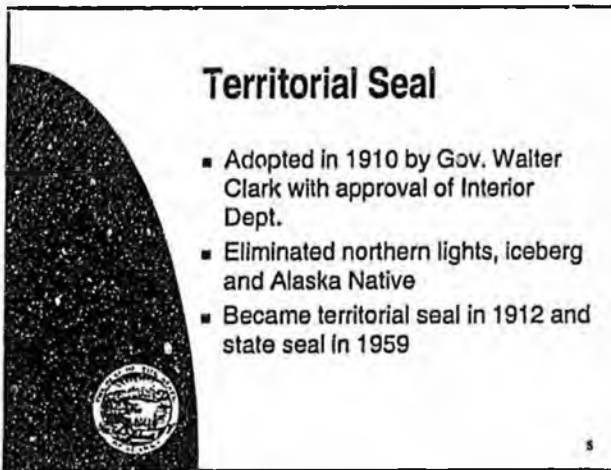
2

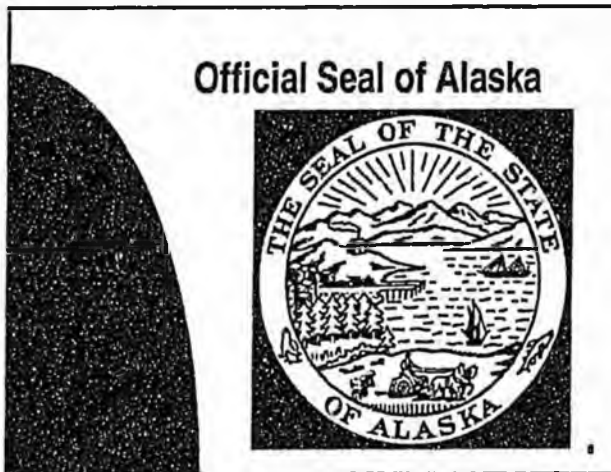
Alaska's First Seal


- Designed by Gov. John Kinkead in 1885
- Alaska was military district then
- Seal depicted northern lights, icebergs and Alaska Native

3










Elements of the Seal

- The rising sun of "development and industrial progress" in 1910
- Ore mill, train and wharf
- Steamship and fishing vessel
- Forests
- Harvest scene
- Fur seal and salmon

7



Why change the seal?

- Alaska has changed dramatically since 1910
- New industries, including oil & gas
- Alaska Natives deserve recognition
- Alaskans deserve involvement – a good learning exercise
- The future: what symbols might have currency in 100 years?

8

Alaska Dept. of Fish & Game



1962

Alaska Dept. of Fish & Game



Alaska Dept. of Fish & Game



Dept. of Health & Social Services



Early 1

Hawaii State Seal



Montana State Seal



Idaho State Seal



During Session:
Alaska State Capitol
Juneau, Alaska 99801-1182
(907) 465-4833
Fax (907) 465-4586
1-800-782-4833

Representative_Reggie_Joule@legis.state.ak.us



During Interim:
P.O. Box 673
Kotzebue, Alaska 99752
(907) 442-3880
Fax (907) 442-3022

Alaska State Legislature
REPRESENTATIVE REGGIE JOULE

Sponsor Statement for HCR 5, creating a special task force to redesign the state seal

By Representative Reggie Joule

The official seal of the State of Alaska was designed 93 years ago by federal and territorial officials. It is time to consider whether the seal should reflect the modern state in which we live and recognize the many diverse cultures of Alaska. This resolution would authorize a task force of Alaskans to solicit proposals for changing the seal and report recommendations to the second session of the 23rd Alaska Legislature.

The task force proposed by this resolution would be housed in the Alaska Legislature. Two representatives each would be appointed from the Alaska Historical Commission, the Alaska Department of Education and Early Development, the Alaska Humanities Forum and the Alaska Native Heritage Center. The task force would serve as a focal point for public involvement in the redesign of the seal, including suggestions from Alaska school children.

A final design for a new seal would be up to the full Legislature.



ALASKA
NATIVE
HERITAGE
CENTER

Representative Reggie Joule
House of Representatives, District 37
State Capital, Room 405
Juneau, AK 99801-1182

Dear Representative Joule,

I regret that I will be unable to attend the Juneau meeting regarding House Concurrent Resolution No. 5 on March 3, 2003.

As Executive Vice President and Chief Operating Officer/Acting President and CEO of the Alaska Native Heritage Center, I would like to officially go on record as supporting Resolution No. 5. It is the intention of the Alaska Native Heritage Center to work together with the Alaska State Legislature and other organizations to do whatever it takes to establish a task force and to assure passage of this important resolution.

As you are aware, the Alaska Native Heritage Center is a nonprofit organization that is headed by a board of directors drawn from Alaska Native Corporations and civic and business groups who are guided by a 30 member academy composed of Native Elders and Tradition Bears from diverse Native peoples, including Athabascan, Yup'ik and Cup'ik Eskimo, Inupiaq, Aleut, Alutiiq, Eyak, Tlingit, Haida, and Tsimshian. We look forward to working with the Legislature and other members of the task force to make recommendations regarding a new design for the official seal of the State of Alaska that will represent the diversity of its people.

Sincerely yours,

Lonnie Jackson
Executive Vice President and Chief Operating Officer
Acting President and CEO
Alaska Native Heritage Center

SB

51



Alaska State Legislature

House Committee on Community and Regional Affairs

Representative Carl Morgan, Chair
State Capitol Building, Room 408
Juneau, AK 99801
907-465-3882

AGENDA

State Capitol 124
9:00 am – 10:00 am

- **Call to Order**
 - Today's date is March 11, 2003
 - The time is 9 am
- **On today's agenda**
 - SB 5 Bonds Of Bond Bank Authority
Sponsor: Governor Murkowski
Testifying will be Deven Mitchell, Debt Manager
From the Department of Revenue
- **Public Testimony**
 - Anyone on teleconference
 - Anyone present in Juneau
- **Wishes of the committee**
 - Move the bill with the attached zero fiscal notes
- **Other Business**
 - If there is no other business, announce next meeting.
 - No Meeting this Thursday
 - Next Meeting – Tuesday, March 18th
- **Adjourn**

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110400
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2300
FACSIMILE: (907) 465-2389

March 6, 2003

The Honorable Carl Morgan
Chair, House Community and Regional Affairs Committee
State Capitol, Room 408
Alaska State Legislature
Juneau, AK 99801

Dear Representative Morgan,

I am writing to request a hearing next week for Senate Bill 51, an act increasing the annual revenue bond issuance limit and the overall debt limit for the Alaska Municipal Bond Bank Authority. The Senate approved the measure Monday on an 18-0 vote.

Because of the timing on several municipal projects around the state, the Bond Bank Authority requests expedited action on this legislation. We need final approval by both chambers and signature into law by mid-March to avoid delays — and possibly additional costs — to several municipalities. The Bond Bank expects to reach its statutory debt issuance limit early this spring.

The Municipal Bond Bank Authority was created in 1975 to assist municipalities in issuing bonds for local projects. The Bond Bank is able to realize savings for municipalities by pooling bonds in large numbers and obtaining lower interest rates that result in reduced costs, and often better terms overall, than municipalities could obtain on their own. The purpose of this legislation is to raise the limit on the amount of revenue bonds the Authority may issue in any one fiscal year and to raise the limit on the total outstanding bond debt the Authority may carry on its books. The Legislature has not raised these limits since 1983 and 1984, respectively.

An increase in the amount of the Authority's indebtedness limit will not have a fiscal impact on the state's General Fund. Bond Bank debt is not a direct liability of the state, and the municipalities that use the Authority pay all of the debt service on the bonds.

As of January 23, 2003, the Bond Bank had issued \$27,145,000 in revenue bonds in Fiscal 2003, and there were \$235,655,878 in bonds outstanding. The existing limits in statute are \$50 million in any one year in revenue bonds and \$300 million in total bonds outstanding. Additional projects scheduled for funding in the next three months are the Lake and Peninsula Borough's Chignik dock project at \$1 million, the City and Borough of Juneau's hospital expansion at \$25 million, the City and Borough of Juneau's port improvement at \$5.6 million, the City of Valdez'

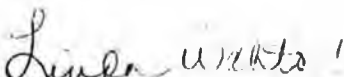
hospital replacement at \$19 million, and the Kodiak Island Borough \$3.3 million refinancing of existing debt. Following these bond issues, the Authority would be at \$289,555,878 in total bonds outstanding, just \$11 million shy of its statutory limit.

Additional expected financing activity includes the City of Homer seawall at \$1 million and dock improvements at \$1 million, Aleutians East Borough school and dock improvements, Kenai Peninsula Borough solid waste project, City of Fairbanks fire protection facility, and the City of Petersburg \$1 million refinancing of existing debt. The combination of these would exceed the Authority's debt limit.

An increase in the annual bonding cap under AS 44.85.100(b) from \$50 million to \$75 million would enable the Authority to act on the applications it has received from municipalities this fiscal year. And, the increase in the cap on the total outstanding debt from \$300 million to \$500 million under AS 44.85.180(c) would enable the Authority to issue the bonds and notes already applied for as well as those that are anticipated this fiscal year. The Bond Bank has sufficient reserve capacity to continue financing capital projects up to the requested \$500 million cap.

Thank you for your consideration, and please let me know if you have any questions. My direct line is 465-5469. Or you also may contact Deven Mitchell, State Debt Manager, at 465-3750.

Sincerely,


Larry Persily
Deputy Commissioner

cc: Mike Tibbles, Legislative Liaison, Office of the Governor

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

January 30, 2003

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 107
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to revenue bonds issued by the Alaska Municipal Bond Bank Authority and the total amount of bonds and notes outstanding of that authority.

The Alaska Municipal Bond Bank Authority (AMBBA) was created in 1975 to assist Alaskan municipalities issue bonds for local projects. The AMBBA is able to realize savings for municipalities by pooling bonds in large numbers and obtaining lower interest rates that result in reduced costs for bond issuance, and often better terms overall, that would not be obtainable by municipalities on their own. The purpose of this bill is to raise the limit on the amount of revenue bonds that the AMBBA may issue in any one fiscal year and to raise the limit on the total outstanding bond debt the AMBBA may carry at any one time. These limits have not been raised by the legislature since 1983 and 1984, respectively.

An increase in the annual bonding cap under AS 44.85.100(b) from \$50,000,000 to \$75,000,000, would enable the AMBBA to act on the applications it has already received from municipalities this fiscal year. Current fiscal year applications exceed \$56,000,000.

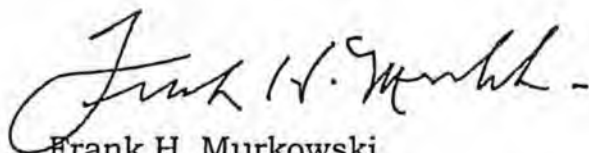
Further, an increase in the cap on the total outstanding bonds and notes from \$300,000,000 to \$500,000,000 under AS 44.85.180(c), would enable AMBBA to issue the bonds and notes already applied for as well as those that are anticipated, which may exceed \$70,000,000. Reaching the annual fiscal year limit or the outstanding limits would prevent municipalities from proceeding with projects or prevent municipalities from using the financially more attractive debt terms that could be made available if the bonds are issued by AMBBA.

An increase in the amount of the AMBBA's indebtedness limit will not have a fiscal impact on the state's general fund. Debt of the AMBBA is not a direct liability of the state. Additionally, municipalities that use the AMBBA to issue bonds pay all of the debt service on the bonds. And the AMBBA has sufficient reserve capacity to continue financing capital projects up to the requested \$500,000,000 cap.

Finally, in order to accommodate current fiscal year applications received by the AMBBA, an immediate effective date is included in the bill.

I urge your prompt and favorable action on this measure.

Sincerely Yours,

A handwritten signature in cursive script, reading "Frank H. Murkowski".

Frank H. Murkowski
Governor

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 51
 (S) Publish Date: 1/31/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Alaska Municipal Bond Bank BRU Alaska Bond Bank Authority
Authority Limits Component Alaska Bond Bank Authority
 Sponsor Rules Committee
 Requester Governor Component No. 108

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This legislation would increase the Alaska Municipal Bond Bank's total borrowing limit from \$300 million to \$500 million and increase the amount of revenue bonds that may be issued in any one fiscal year from \$50 million to \$75 million.
 The increase in the borrowing limit to \$500 million is needed as the Bond Bank expects to reach the existing limit in FY04, if not sooner. If all of the loan applications that have been submitted to the Bond Bank were funded immediately, the existing \$300 million cap would be filled and additional projects could not be funded. An inability to fund loans to communities will cost these communities -- and possibly the state in reimbursement costs -- in increased costs of issuance and interest expense.
 The increase from \$50 million to \$75 million in annual revenue bond authority is needed in FY03 because the Bond Bank has issued, or has requests to issue, \$50 million in revenue bonds by the end of March 2003. A failure to approve the increase in the revenue bond limit will potentially result in the City of Valdez needing to issue two series of revenue bonds over two fiscal years, increasing the cost of issuing these bonds by approximately \$100,000, or delaying funding of the city's project until July 1, 2003.
 As the Bond Bank is self-supporting, and has sufficient assets to fund reserves, the increases in statutory authorization would not have any fiscal impact.

Prepared by: Deven Mitchell, State Debt Manager Phone 465-5469
 Division Treasury Division Date/Time 1/29/03 2:23 PM
 Approved by: Larry Persily, Deputy Commissioner Date 1/29/2003
 Agency Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 51
 (S) Publish Date: 2/14/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Bonds of Bond Bank Authority BRU Investments (122)
 Component Investments
 Sponsor Governor
 Requester Senate Community & Regional Affairs Component No. 383

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill does not impact the fiscal operations of this department.

Prepared by: Greg Winegar, Director Phone 907-465-2510
 Division Investments Date/Time 2/7/03 10:18 AM
 Approved by: Edgar Blatchford, Commissioner Date 2/7/2003
 Agency Department of Community & Economic Development

SB

63

SITE: HOMER LIO

COMMITTEE: HCRA

DATE: 5-15-03

SUBJECT OF MEETING:

SB 63

P R I N T YOUR NAME

ADDRESS (MAILING & ZIP)

REPRESENTING

**DO YOU WANT
TO TESTIFY?
Y OR N**

Mary Griswold	Box 1417, Homer 99603	Self	Y SB63
Email address:			
Email address:			
Email address:			
Email address:			
Email address:			
Email address:			
Email address:			

February 12, 2004

HCRA testimony

I thank the House for agreeing to take SB 63 out of SB 183. The version included in SB 183 was incomplete because it did not address property taxation in the event of incorporation and had technical difficulties in that it unnecessarily restricted property assessment and collection of taxes. The tax levy is the important consideration. Tax collection can only occur after the levy. It does not need to be included in this legislation. Property value assessment must be allowed any time as part of boundary change discussions in order to evaluate the cost benefits of the proposed action.

Today, I ask you to support CSSB 63 (STA) with or without the transition language in the title and in sections 1, 2, 4, 6, and 7. The Local Boundary Commission's 2004 Report to the Legislature includes support for this bill without the language granting the LBC explicit powers to determine appropriate transition measures if this language jeopardizes the bill's passage. The important provisions are in Sections 3 and 5.

SB 63 eliminates long-standing ambiguities in existing law regarding when newly incorporated, annexed, and detached properties are subject to municipal property taxes. This committee identified the need to resolve this issue as it debated Homer's annexation proposal in 2002. The Local Boundary Commission has requested legislative resolution for at least the past four years.

AS 29.45.110 establishes January 1 of the assessment year as the date properties shall be valued. The statutes require municipalities to determine the rate of levy before June 15 and to mail tax statements setting out the levy by July 1. These deadlines prevent municipalities from levying taxes in the same year for any annexation or incorporation that becomes effective after July 1. The question remains whether they can disrupt the established schedule to immediately tax properties annexed or incorporated between January 1 and July 1. To complicate the situation, the Local Boundary Commission is given broad powers to place conditions on boundary changes, but there is no clear authority for it to decide property tax jurisdiction. This is a policy issue and is better resolved through legislation than by the LBC on a case by case basis, or by dragging it through the courts.

Clarifying by statute, in cases of incorporation, annexation, and detachment, that property taxes accrue in full each year on January 1 is consistent with existing policies and procedures across the state for assessing property and adding new property to tax rolls. It is a practical approach that will simplify the transition planning process and be less disruptive to the affected governmental units and individual taxpayers. It is the approach the Mat-Su Borough has consistently used in all its annexations, and they have completed more than anyone else.

It is important to note that with many annexations and incorporations, there is a corresponding simultaneous detachment from another governmental unit. Using January 1 as the cutoff date to establish value and jurisdiction provides less disruption to that municipality's budget process and service delivery plans. This is a better approach than pro-rating taxes between governments for the remainder of the tax year because many services are provided on an area-wide basis, the cost of which will not decrease proportionately to the territory affected by the simultaneous boundary change. It is also a better approach because municipal governments have flexibility to establish levy dates and payment cycles within the statutory limits and are often on different fiscal and budget preparation cycles which makes pro-rating taxes cumbersome and disruptive.

Taxpayers expect property assessments and tax bills on an orderly schedule. The January 1 assessment date is the effective date for property tax liability. That Alaska statutes allow up to six months to mail the bills is a practical necessity for sufficient time to create an assessment roll, notify property owners, consider adjustments, conduct board of adjustment hearings, develop annual budgets, certify the roll, set an appropriate levy, and prepare the tax bills. This schedule also allows taxpayers time to set aside sufficient funds to pay their bills. It is not fair to surprise them with a big change in the middle of the assessment calendar.

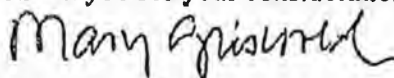
If the LBC were allowed to direct municipalities to levy taxes on properties within their jurisdiction as of any date other than January 1, serious conflicts could arise. Exactly how close the effective date of a boundary change could crowd the tax mailing date is too open a question to leave unresolved until well into the petition analysis. Furthermore, realistic revenue projections are necessary at the beginning of the process for responsible evaluation and transition planning.

Some people have argued that this approach is unduly conservative and punitive, especially for areas undertaking incorporation because they will be required to immediately provide services for which they have no funding. After analyzing the consequences of trying to accommodate special situations, I realized that the conflicts created by more flexible approaches defeat their purpose. Municipalities are not expected to immediately provide the host of services typically associated with government. Anticipated services and delivery timelines should be made clear to everyone early in the consideration to incorporate or annex territory.

It is important to note that municipalities have revenue sources other than property taxes. An area deemed appropriate for incorporation or annexation has demonstrated sufficient economic and human resources to support government. Sales taxes could serve as an initial source of funding for government services while a municipality builds a solid financial foundation. Organized boroughs may loan money to newly incorporated cities similar to a loan made by the Kenai Peninsula Borough to a service area formed in October, 2000, for which the borough did not levy taxes until June, 2001. The state offers significant financial incentives, including a \$600,000 organizational grant, to areas of the unorganized borough willing to incorporate. Such payments would help bridge this revenue gap.

Clear guidelines for municipal taxation authority will promote orderly municipal growth and will reduce the stress and contention associated with boundary changes. Please support CSSB 63 (STA), as amended to remove the transition language if necessary, so everyone understands the revenue rules before becoming involved in an annexation, detachment, or incorporation procedure.

Thank you for your consideration.



Mary Griswold

P.O. Box 1417

Homer, AK 99603

235-3725



CHAPTER 3 POLICY ISSUES AND CONCERNS

To

CSSB 63(STA) "An Act relating to transition provisions related to municipal mergers, consolidations, dissolutions, reclassifications, annexations, detachments, and incorporations; and relating to municipal property taxation in annexed, detached, and newly incorporated areas."

The fundamental purpose of CSSB 63(STA) is to eliminate long-standing ambiguities in existing law regarding when newly incorporated, annexed, and detached properties are subject to municipal property taxes. Sections 3 and 5 of the bill accomplish that fundamental purpose.

To ensure that the provisions of Sections 3 and 5 not be construed as limitations on the discretion of the Local Boundary Commission to determine appropriate transition measures for municipal incorporation, annexation, and detachment, Sections 2, 4, and 5 were added. In view of those additions and to maintain existing substantial uniformity in State law regarding all decision-making actions of the Commission, language paralleling the provisions of Sections 2, 4, and 5 were added to other matters under the jurisdiction of the Commission (i.e., city reclassifications, municip-

pal merger, consolidation, and dissolution). Those additions were set out in Sections 1, 6, and 7 of the bill.

On May 5, 2003, CSSB 63(STA) passed the State Senate by a unanimous vote of all members present (18 voted in favor of the bill, one Senator was excused and one Senator was absent). The Local Boundary Commission supported the bill, which is currently before the House of Representatives for review.

In December 2003, Representative Paul Seaton requested that the Commission support the bill without the language relating to transition provisions. He observed that the Commission already has the power to amend petitions and impose transition requirements for boundary changes. He stated that while codifying those powers in statute would create additional clarity, removing the provisions from the bill would not diminish the Commission's ability to effect reasonable boundary changes. He is of the opinion that the transitional language in the bill may jeopardize its passage. Therefore, he requested that the Commission support a change in title of the bill and removal of the language referring to transition provisions and powers of the Commission. He concluded that this compromise could enable passage of a final resolution of the municipal property tax issue.

The Commission concurs with the conclusions and recommendations made by Representative Seaton and encourages amendment and passage of the bill as it relates to municipal property taxation in annexed, detached, and newly incorporated areas; i.e., the provisions in Section 3 and 5 of the bill.

HB 38 "An Act relating to mergers and consolidations of municipalities."

This bill alters existing laws governing merger and consolidation of municipal governments (cities and boroughs). Its provisions are identical to those passed by the Legislature in 2002 as SCS CSHB 296(JUD). That bill was opposed by the DCED and LBC and vetoed by the Governor.

Section 1 of the bill imposes a requirement that signatures on a voter-initiated local option petition for merger or consolidation of municipal governments must be gathered within a 965-day period. Currently, there is no time limit on the gathering of signatures.

Section 2 adds a new subsection to AS 29.06.100 dealing with a local option petition for merger or consolidation of a borough and more than one city within that borough. It requires the petition to propose one of two results if it is approved by voters in the borough area outside the cities proposed to be merged or consolidated but is not approved by voters in each of the cities. The two options are: (1) the entire proposal is defeated, or (2) the proposal is partially approved and the borough is merged or consolidated with the cities in which the proposal has been approved.

Section 3 amends existing law. It requires that a majority of the votes in each of the municipalities proposed to be merged or consolidated through the local option process must favor merger or consolidation in order for it to be approved.

Votes on a proposal to merge or consolidate a borough and one or more cities within that borough must be tabulated as follows:

1. in the borough area outside of each city in that borough proposed to be merged or consolidated, and
2. in each of the cities in the borough proposed to be merged or consolidated.

If one or more municipalities outside of the borough are also included within the proposal, in each of those other municipalities a separate tabulation must be made for that area.

The bill provides that the proposal is defeated if it is not separately approved in the borough outside of the cities in that borough that are proposed to be merged or consolidated. If municipalities outside of the borough are included in the proposal, it is also rejected if not approved in those other municipalities.

If the proposal is not approved in one or more of the cities within the borough that are proposed to be merged or consolidated but is otherwise approved in each of the areas separately tabulated, the proposal is either entirely defeated or partially approved as specified in the petition under the new provision set out in Section 2.

Lastly, Section 3 states that the provisions in the amended law are intended to be consistent with the voting requirements for annexation specified in AS 29.06.040(c)(1).

23-LS0489\S
Cook
5/16/03

HOUSE CS FOR CS FOR SENATE BILL NO. 63(CRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to municipal property taxation in annexed and detached areas and to**
2 **mergers and consolidations of municipalities; requiring a municipal initiative or**
3 **municipal referendum to be submitted to the voters at the next regular election**
4 **occurring not sooner than 60 days after certification of the initiative or referendum**
5 **petition; and providing for an effective date."**

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

7 *** Section 1. AS 29.06 is amended by adding a new section to read:**

8 **Sec. 29.06.055. Property taxes in annexed or detached areas. (a) Unless**
9 **the annexation takes effect on January 1, the municipality may not assess, levy, or**
10 **collect property taxes in an annexed area before January 1 of the year immediately**
11 **following the year in which the annexation takes effect.**

12 **(b) If an area is detached from a municipality, all property taxes that are levied**
13 **by that municipality on property in the detached area based on an assessment that**

1 occurred before the effective date of the detachment remain valid. AS 29.45.290 -
2 29.45.500 apply to the enforcement of those taxes.

3 * Sec. 2. AS 29.06.100(a) is amended to read:

4 (a) Residents of two or more municipalities may file a merger or consolidation
5 petition with the department. The petition must be signed during a period that does
6 not exceed 365 consecutive days by a number of voters of each existing municipality
7 equal to at least 25 percent of the number of votes cast in each municipality's last
8 regular election.

9 * Sec. 3. AS 29.06.100 is amended by adding a new subsection to read:

10 (c) A petition for the merger or consolidation of a borough and more than one
11 city within that borough shall provide that, if the proposal is approved by a majority of
12 the votes in the borough area outside of the cities proposed to be merged or
13 consolidated but is not approved by a majority of the votes in each of the cities,

14 (1) the entire proposal is defeated; or

15 (2) the proposal is partially approved and the borough is merged or
16 consolidated with the cities in which the proposal has been approved.

17 * Sec. 4. AS 29.06.140(a) is amended to read:

18 (a) The Local Boundary Commission shall immediately notify the director of
19 elections of its acceptance of a merger or consolidation petition. Within 30 days after
20 notification, the director of elections shall order an election in the area to be included
21 in the new municipality to determine whether the voters desire merger or
22 consolidation. The election shall be held not less than 30 or more than 90 days after
23 the election order. A voter who is a resident of the area to be included in the proposed
24 municipality may vote. Unless the proposal includes the merger or consolidation
25 of a borough and one or more of the cities within that borough, if a majority of
26 the votes in each of the municipalities proposed to be merged or consolidated
27 favours the merger or consolidation, the proposal is approved. Votes on a
28 proposal that includes the merger or consolidation of a borough and one or more
29 of the cities within that borough shall be separately tabulated as follows: (1) in
30 the borough area outside of each city in that borough proposed to be merged or
31 consolidated; (2) in each of the cities in the borough proposed to be merged or

1 consolidated; and (3) if one or more municipalities outside of the borough are
2 also included within the proposal, in each of those other municipalities. The
3 entire proposal is defeated if it is not separately approved in the borough outside
4 of the cities in that borough that are proposed to be merged or consolidated and,
5 if municipalities outside of the borough are included in the proposal, in those
6 other municipalities. If the proposal is not approved in one or more of the cities
7 within the borough that are proposed to be merged or consolidated but is
8 otherwise approved in each of the areas separately tabulated, the proposal is
9 either entirely defeated or partially approved as provided in the petition under
10 AS 29.06.100(c). This subsection is intended to be consistent with the voting
11 requirements for annexation specified in AS 29.06.040(c)(1).

12 * Sec. 5. AS 29.26.170(a) is amended to read:

13 (a) Unless substantially the same measure is adopted, when a petition seeks an
14 initiative vote, the clerk shall submit the matter to the voters at the next regular
15 election occurring no sooner than 60 [45] days after certification of the petition. [IF
16 NO REGULAR ELECTION OCCURS WITHIN 75 DAYS AFTER THE
17 CERTIFICATION OF A PETITION, THE GOVERNING BODY SHALL HOLD A
18 SPECIAL ELECTION WITHIN 75 DAYS, BUT NOT SOONER THAN 45 DAYS
19 AFTER CERTIFICATION.]

20 * Sec. 6. AS 29.26.170(b) is amended to read:

21 (b) If the governing body adopts substantially the same measure, the petition
22 is void, and the matter initiated may not be placed before the voters.

23 * Sec. 7. AS 29.26.180(a) is amended to read:

24 (a) Unless the ordinance or resolution is repealed, when a petition seeks a
25 referendum vote, the clerk shall submit the matter to the voters at the next election
26 occurring no sooner than 60 [45] days after certification of the petition. [IF NO
27 ELECTION OCCURS WITHIN 75 DAYS OF CERTIFICATION OF A PETITION,
28 THE GOVERNING BODY SHALL HOLD A SPECIAL ELECTION WITHIN 75
29 DAYS, BUT NOT SOONER THAN 45 DAYS AFTER CERTIFICATION.]

30 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 APPLICABILITY. The amendments to AS 29.06.100 in secs. 2 and 3 of this Act do
2 not apply to a merger or consolidation petition filed with the Department of Community and
3 Economic Development before the effective date of secs. 2 and 3 of this Act. The amendment
4 to AS 29.06.140(a) in sec. 4 of this Act does not apply to an election held as a result of a
5 petition filed with the Department of Community and Economic Development before the
6 effective date of sec. 4 of this Act, and AS 29.06.140(a) as it read before the effective date of
7 sec. 4 of this Act applies to that election.

8 * **Sec. 9.** Section 1 of this Act takes effect immediately under AS 01.10.070(c).

WORK ORDER REQUEST FORM

W.O. 23-LS1155

KEYWORDS: UNIFORM RULES

ASSIGNED: Cook

REQUEST FOR: Resolution

TAKEN BY: Cook

SUBJECT: Suspend UN RLS: Title Change for SB 63

REQUESTED FOR: HC HCRA

BY: Sue

PHONE: 465-3882

DELIVER TO: Rep. Morgan, Attn:Sue, Cap 408

INSTRUCTIONS:

Title change for SB 63

OBTAIN	SPECIAL DRAFTING INSTRUCTIONS ATTACHED <input type="checkbox"/> AUTHORIZED TO CONFER WITH _____ _____
	RETURN _____ _____ TO REQUESTOR
APPROVED <input checked="" type="checkbox"/> DIRECTOR, LEGAL SERVICES	

REVIEWED _____	SPECIAL INSTRUCTIONS to TYPING/PROOFING Request for DRAFT
IN <u>05/15/03</u> DUE _____	
TYPED: DRAFT _____ DATE _____	
FINAL _____ DATE _____	
PROOFED _____ DELIVERED _____	

Sue Stancilitt

SB 63 information

465-2197

The Commission has adopted regulations (3 AAC 110.800) that require transition plans in all proceedings that come before the Commission. While that regulation ostensibly covers matters involving taxation and service areas, absent express authority from the legislature concerning the issues raised above, it has not remedied the ambiguities to the satisfaction of many parties.

transition plans should be subject to amendment by the Commission following a public hearing on the proposal.²⁹

The Commission emphasizes that there are suitable checks and balances on the authority of the Commission. Ac-

tions that come before the Commission are: (1) initiated by all property owners and residents of the affected area, (2) subject to approval by the voters of the affected area, and/or (3) subject to tacit approval by the Legislature.

The Commission offers the following draft language for consideration as a means to implement the proposed change. The draft language offered by the Commission would provide for the enactment of a new section as AS 44.33.830 to read as follows:

AS 44.33.830. Transition Plan. (a) A petition for change involving incorporation, annexation, detachment, merger, consolidation, dissolution, or city reclassification shall include a transition plan. The transition plan shall set out a practical proposal to implement the proposed change through the assumption, transfer, or surrender of relevant powers, duties, assets, and liabilities of affected cities, organized boroughs, and service areas of the unorganized borough. The transition plan may provide for the assessment, levy, and collection of property taxes by a city or organized borough on a prorated basis in the area of change for the remainder of the tax year following the change, notwithstanding AS 29.45.110(a) and AS 29.45.120(a). The transition plan may provide for other measures reasonably necessary to implement the proposed change.

(b) The transition plan shall be prepared in consultation with officials of affected cities, organized boroughs, and service areas of the unorganized borough. If such officials decline reasonable opportunities for consultation, the transition plan may be included in the petition without such consultation.

(c) The local boundary commission may amend the transition plan following a public hearing on the petition.

(d) A transition plan included in a petition approved by the local boundary commission takes effect only after any requisite approval of the petition under AS 29.04, AS 29.05, AS 29.06, or AS 44.33. A transition plan included in a petition that takes effect has the force and effect of law. ■

465-2197
Sue Stancliff

SB 63 HCRA 5/16/03



I just heard that HCRA has concerns about the language addressing incorporation and transition added to the original SB63. I think it is very important to leave this language in the bill. The incorporation language protects taxpayers in newly incorporated areas just like it protects taxpayers in newly annexed areas. Further, if it is not included, it is not clear what the legislature does intend to do about taxation in incorporated areas. The ambiguity would not be removed. Incorporations should be treated the same way as annexations. I helped draft this bill and did not know enough to include incorporations at that time. That is why they were not addressed.

The transition language does not give the LBC any additional power. It merely describes what the LBC can already do.

This bill restricts the LBC's power and is very different from what the LBC proposed to resolve the ambiguity in its last two reports to the legislature. The LBC would have preferred to resolve these issues in the transition plan, where it could oversee the pro-ration or assignment of taxes. See the LBC Report to the Second Session of the Twenty-Second Alaska State Legislature, page 29. I do not think this is a reasonable approach. That's why I worked hard to put SB63 before you. I was relieved, but a little surprised, that the LBC endorsed it unanimously.

As much as I would like to see CSSB 63 passed this year, I hope you will keep it in committee over the interim if you have problems with it as amended. I think the Senate Committee Substitute is excellent.

Please let me know if I might help convince the committee to move it as presented.

Sincerely,

Mary Griswold
P.O. Box 1417
Homer, AK 99603
235-3725
mgrt@xyz.net

TAM
Please consider
~~it~~ when looking
at "ambiguities"