

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 00/2

10939 HOUSE LABOR & COMMERCE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 402
 (H) Publish Date: 1/28/04

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: "An Act relating to fees..." BRU: Labor Standards & Safety
 Component: Wage and Hour
 Sponsor: Rules Committee
 Requester: Governor Component Number: 345

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 (1005)	24.0	24.0	24.0	24.0	24.0	24.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(24.0)	(24.0)	(24.0)	(24.0)	(24.0)	(24.0)
1005 GF/Program Receipts	24.0	24.0	24.0	24.0	24.0	24.0
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: None

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)

Section 4 of this bill creates a non-refundable \$100.00 fee for processing and filing a voluntary flexible work hour plan. This fee will cover the administrative and enforcement expenses associated with flexible work hour plans. The costs associated with these plans are currently funded with general funds that will be replaced by the receipts from this fee. Estimated receipts are \$24.0 annually.

Prepared by: Grey Mitchell, Director
 Division: Labor Standards & Safety
 Approved by: Greg O'Claray, Commissioner
 Agency: Department of Labor and Workforce Development

Phone: 465-4855
 Date/Time: 12/22/03 1:37 PM
 Date: 12/22/2003

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 402
(H) Publish Date: 1/28/04

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
Title: "An Act relating to fees..." BRU: Labor Standards & Safety
Component: Mechanical Inspection
Sponsor: Rules Committee
Requester: Governor Component Number: 346

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	80.8	80.8	80.8	80.8	80.8	80.8
Travel	22.0	22.0	22.0	22.0	22.0	22.0
Contractual	24.1	24.1	24.1	24.1	24.1	24.1
Supplies	15.1	15.1	15.1	15.1	15.1	15.1
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	142.0	142.0	142.0	142.0	142.0	142.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1172)	218.4	218.4	218.4	218.4	218.4	218.4
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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						
1172 Building Safety Account	142.0	142.0	142.0	142.0	142.0	142.0
TOTAL	142.0	142.0	142.0	142.0	142.0	142.0

Estimate of any current year (FY2004) cost: None
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See Attached.

Prepared by: Grey Mitchell, Director Phone 465-4855
Division: Labor Standards & Safety Date/Time 12/22/03 1:38 PM
Approved by: Greg O'Claray, Commissioner Date 12/22/2003
Agency: Department of Labor and Workforce Development

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: HB 402

ANALYSIS: (continued)

The bill creates two new fees and increases an existing fee charged by the department:

Section 1: This section creates a \$200.00 fee for amusement devices inspected by the department. This fee is intended to cover costs associated with inspector certification and travel. Estimated receipts are \$10.0 annually.

Section 2: This section creates a \$200.00 certification fee for boiler operator licenses. This fee is intended to cover existing administrative costs associated with issuing the licenses. Positions have currently been held vacant due to lack of revenue. Estimated receipts are \$76.4 annually.

Section 3: This section increases the fees for electrical and plumbing certificates of fitness from \$160.00 to \$200.00. This increase is expected to generate sufficient revenues to add an Electrical Inspector position and associated costs to enforce certificate of fitness requirements and perform inspections. Estimated receipts are \$132.0 annually.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB402-DOLWD-WH-02-05-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
Title: Labor & Workforce Development Fees BRU: Labor Standards & Safety
Sponsor: Rules Committee Component: Wage and Hour
Requester: House L&C Component Number: 345

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						
CHANGE IN REVENUES (1005)	24.0	24.0	24.0	24.0	24.0	24.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(24.0)	(24.0)	(24.0)	(24.0)	(24.0)	(24.0)
1005 GF/Program Receipts	24.0	24.0	24.0	24.0	24.0	24.0
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: None
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)

Section 4 of this bill creates a non-refundable \$100.00 fee for processing and filing a voluntary flexible work hour plan. This fee will cover the administrative and enforcement expenses associated with flexible work hour plans. The costs associated with these plans are currently funded with general funds that will be replaced by the receipts from this fee. Estimated receipts are \$24.0 annually.

Prepared by: Grey Mitchell, Director Phone 465-4855
Division: Labor Standards & Safety Date/Time 2/5/04 8:37 AM
Approved by: Greg O'Claray, Commissioner Date 2/5/2004
Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB402-DOLWD-MI-02-05-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Labor & Workforce Development Fees BRU: Labor Standards & Safety
 Component: Mechanical Inspection
 Sponsor: Rules Committee
 Requester: House L&C Component Number: 346

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	80.8	80.8	80.8	80.8	80.8	80.8
Travel	22.0	22.0	22.0	22.0	22.0	22.0
Contractual	24.1	24.1	24.1	24.1	24.1	24.1
Supplies	15.1	15.1	15.1	15.1	15.1	15.1
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	142.0	142.0	142.0	142.0	142.0	142.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1172)	218.4	218.4	218.4	218.4	218.4	218.4
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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						
1172 Building Safety Account	142.0	142.0	142.0	142.0	142.0	142.0
TOTAL	142.0	142.0	142.0	142.0	142.0	142.0

Estimate of any current year (FY2004) cost: None
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See Attached.

Prepared by: Grey Mitchell, Director Phone 465-4855
 Division: Labor Standards & Safety Date/Time 2/5/04 8:39 AM
 Approved by: Greg O'Claray, Commissioner Date 2/5/2004
 Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: HB402-DOLWD-MI-02-05-04

ANALYSIS: (continued)

The bill creates two new fees and increases an existing fee charged by the department:

Section 1: This section creates a \$200.00 fee for amusement devices inspected by the department. This fee is intended to cover costs associated with inspector certification and travel. Estimated receipts are \$10.0 annually.

Section 2: This section creates a \$200.00 certification fee for boiler operator licenses. This fee is intended to cover existing administrative costs associated with issuing the licenses. Positions have currently been held vacant due to lack of revenue. Estimated receipts are \$76.4 annually.

Section 3: This section increases the fees for electrical and plumbing certificates of fitness from \$160.00 to \$200.00. This increase is expected to generate sufficient revenues to add an Electrical Inspector position and associated costs to enforce certificate of fitness requirements and perform inspections. Estimated receipts are \$132.0 annually.

HOUSE LABOR &
COMMERCE

COMMITTEE
PACKET
Index

February 25, 2004

1

HB 402

*Labor & Workforce
Development Fees*

2

HB 428

*Civil Penalty: Underage
Alcohol Purchases*

3

HB 430

*Employees Under 21
At Licensed Premises*

Alaska Department of Labor and Workforce Development
House Bill 402

- Section 1 is required to generate revenue to cover inspector certification and travel costs associated with performing recreational device inspections. Several other states charge fees to cover the cost of inspection programs, but Alaska's will be higher than average due to the relatively low number of amusement rides and higher travel costs. The revenue from this new annual fee is expected to be \$15.0 and will be used to cover inspector travel expenses.
- Section 2 is required to generate revenue necessary to cover administrative costs in Mechanical Inspection associated with testing applicants and issuing boiler operator licenses and other program costs. At \$200 for a three-year license, the annual cost (\$67.00) is in line with charges for other certificates of fitness issued by the department. This new fee is expected to generate \$76.4 in revenue to be deposited in the Building Safety Account.
- Section 3 is required to generate revenue to cover administrative and inspection costs in Mechanical Inspection. Increasing this biennial fee is expected to provide revenues needed to fill an existing electrical inspector position in Juneau and add an electrical inspector position in Fairbanks. Currently, there is one electrical inspector for the entire state. These additional positions are necessary to provide electrical inspections and certificate of fitness and licensing enforcement in the southeast and northern regions of Alaska that are not covered by municipal inspectors. These fees were last adjusted on July 1, 1993. The additional revenue is expected to be \$132.0.
- Section 4 establishes a \$100 fee to generate revenue for administrative and enforcement costs associated with flexible work hour plans. These costs are currently 100% GF expenditures. The revenue is expected to be \$24.0 and will be used to assist with reducing the GF operating budget.
- Section 5 and 6 require the recreational device inspection fees and boiler licensing fees to be deposited in the Building Safety Account, which is the sole source of funding for the Mechanical Inspection section.
- Section 7 establishes an effective date of July 1, 2004.

HB

403



Alaska Municipal League Joint Insurance Association, Inc.

217 Second Street, Suite 200 • Juneau, Alaska 99801 • Phone (907) 586-3222 • Fax (907)

February 3, 2004

The Honorable Tom Anderson
Chairman, House Labor & Commerce Committee
State Capitol, Room 432
Juneau, AK 99801-1182

RE: HB403

Dear Representative Anderson:

The Alaska Municipal League Joint Insurance Association (AML/JIA) opposes HB403 as currently drafted. The bill imposes a "non-user fee" on local governments, school districts, and self-insureds, including the State of Alaska.

In addition to other, more lucrative provisions, the bill proposes a two percent assessment on all workers' comp. expenses paid out annually by a joint insurance arrangement or self-insured employer. Neither joint insurance arrangements like the AML/JIA nor self-insured employers like the State of Alaska are eligible to receive any benefit from the fund.

AS21.76 permits public entities to form joint insurance arrangements. One reason local government entities are permitted to pool is because they have taxing authority. If additional monies are needed to protect injured workers in the pool, school and municipal members of the joint insurance association would be tapped to replenish the pool's reserves much as the private sector members of the Alaska Guaranty Fund are assessed to replenish their fund.

Ultimately, workers' compensation is an obligation of the employer. This is an obligation the 140 municipal and school district members of the AML/JIA take very seriously. We have been working diligently to adequately fund our program. In the unlikely event of financial problems, the AML/JIA does not expect, nor are we entitled to, a bail-out from the Guaranty Fund.

There is no question that the Alaska Guaranty Fund is in desperate straits. If joint insurance arrangements and self-insureds must be called upon to pay into a fund which we have no access to, please consider a sunset provision in four years.

Thank you for your consideration.

Sincerely,

Kevin Smith
Executive Director

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 22, 2004

The Honorable Pete Kott
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill aimed at a crisis in the Alaska Workers' Compensation insurance industry. Resolving this issue is vitally important to Alaska's employers and employees. Specifically, this bill deals with the after-effects of Fremont Insurance Company's insolvency (Fremont). Fremont was a California based workers compensation insurer. It was writing about 27 percent of the workers' compensation insurance policies in Alaska by the year 2000.

Fremont was heavily involved in California's workers' compensation price wars. These price wars occurred after California deregulated its insurance market in 1995. Insurers like Fremont cut prices and scrambled for market share. The result was that 41 workers' compensation carriers in California went insolvent or quit doing business in the state to avoid insolvency. Fremont joined the group of failed insurers when it was declared insolvent in July, 2003. Fremont left Alaska employers and employees "holding the bag" with liability for claims worth approximately \$60 million.

The Alaska Insurance Guaranty Association Fund (Fund) is set up to pay uncovered claims. The Fund pays claims in situations where insurance is unavailable to pay claims. The goal is to minimize losses to employers and employees. Association members are insurers that are authorized to write property and casualty insurance Alaska. An assessment is made based on the amount of premiums the member writes in this state. Current statutes cap the assessment at two percent of premiums written each year.

The Fremont insolvency and the amount of claims left over is so large, the Fund cannot cover the claims. If the difference is not made up, Alaska employers and employees alike will suffer. Employers will be held liable for claims they paid Fremont to cover. Some businesses will simply not be able to afford to pay the claims and will have to go out of business. Many other claims

The Honorable Pete Kott
January 22, 2004
Page 2

will be delayed or settled for less than their full value as employers and employees litigate or dispute liability and the value of a claim.

Statutory changes are necessary to address the Fund's substantial cash deficits and to provide for greater equity in times of crisis among all persons covering an employer's liability for workers' compensation, whether through insurance, self-insurance, or a pooling arrangement. A brief description of these changes follows.

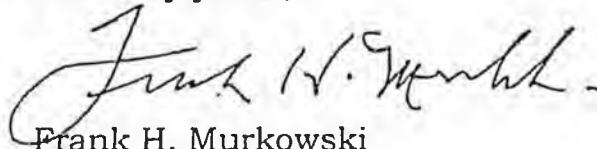
Under the bill, the insurance code (AS 21) would be amended to raise the cap on member assessments by the association from two percent to four percent of written premiums and to provide for excess assessments on member insurers if there is a shortage of money in an association account. The bill would also authorize the association to assess employers that are self-insured for workers' compensation and assess joint insurance arrangements that insure an employer's workers' compensation liability. This assessment applies only when insurer assessments are insufficient in any one year to cover workers' compensation claims payments by the association and is limited to a maximum of two percent of all payments reported to the Alaska Workers' Compensation Board under the Alaska Workers' Compensation Act (AS 23.30).

The bill also includes a provision to authorize the Alaska Industrial Development and Export Authority (AIDEA) to guarantee loans to the association that are needed to make the association financially able to meet cash flow needs. While current law allows the association to borrow money, the association is not a viable prospect for traditional commercial loans. Loan guarantees from AIDEA would permit the association to obtain loans on favorable terms. The bill, however, would limit AIDEA guarantees for association loans to a maximum outstanding principal balance at any time on all loans of \$30,000,000.

The bill provides for an immediate effective date.

I urge your prompt and favorable action on this measure.

Sincerely yours,



Frank H. Murkowski
Governor

Enclosure

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 403
(H) Publish Date: 1/28/04

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
Title: "An Act relating to the RDU: Workers' Compensation
Alaska Insurance Guaranty Association..." Component: Workers' Compensation
Sponsor: Rules Committee
Requester: Governor Component Number: 344

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: None
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)

There is no anticipated fiscal impact to the department as a result of this legislation.

Prepared by: Paul Grossi, Director Phone 465-2790
Division: Workers' Compensation Division Date/Time 12/31/03 9:17 AM
Approved by: Greg O'Claray, Commissioner Date 12/31/2003
Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 403
 (H) Publish Date: 1/28/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title AIGA Assessment RDU _____
 Component Alaska Railroad Corporation
 Sponsor Rules
 Requester By Request of the Governor 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						
Alaska Railroad Corp Revenues						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: _____
 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 wholly supported by revenues generated through freight, passenger and real estate services. ARRC does not receive state subsidies for operations or capital improvements from the State.

It is estimated that \$1,560,000 of the railroad's operating expenses will be expensed to workers compensation in 2003. The fiscal impact on ARRC related to the assessment fees (an incremental 2% of all payments reported to the Workers Compensation Board) associated with the proposed bill are as follows:

Prepared by: Wendy Lindscoog, Director of External Affairs Phone (907) 265-2498
 Division Alaska Railroad Corporation Date/Time 12/24/03 10:54 AM
 Approved by: Edgar Blatchford, Commissioner Date 12/24/2003
 Agency Department of Community & Economic Development

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB 403

ANALYSIS CONTINUATION

FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
\$31.2	\$31.2	\$31.2	\$31.2	\$31.2	\$32.2	\$31.2

This assumes that ARRC's workers compensation expenses, which increased significantly from 2000 to 2002, will return to the fairly stable level experienced between 1987 and 1999. Future workers compensation expenses will fluctuate from year to year based on the performance of ARRC's safety and injury record, which is estimated to stabilize in future years.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: HB 403
 (H) Publish Date: 1/28/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title AIGA Assessment RDU Insurance (116)
 Component Insurance
 Sponsor Rules
 Requester By Request of the Governor Component No. 354

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	0.0	0.0	0.0	0.0	0.0	0.0
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)

This legislation increases the Alaska Insurance Guaranty Association's (AIGA) ability to pay Alaska claims of insurers who become insolvent. It raises the current assessment limit for insurance companies from two percent to four percent of the member insurers net direct written premiums for a calendar year (AS 21.80). Based on 2001 premium activity for workers compensation insurance, an increase to four percent could generate a maximum assessment of approximately \$6 million annually. In addition to the assessment on insurance company premiums, the legislation also expands the assessment pool to include joint insurance arrangements (Alaska Municipal League Joint Insurance Association, Inc. and the Alaska Public Entity Insurance) as well as self-insurers (some large Alaska employers including the State of Alaska). They are to be assessed an amount not to exceed two percent of the payments reported to the Alaska Workers Compensation Board for a calendar year. This bill has no fiscal impact on the operations of the division.

Prepared by: Linda S. Hall, Director Phone (907) 269-7900
 Division Insurance Date/Time 12/24/03 9:54 AM
 Approved by: Edgar Blatchford, Commissioner Date 12/24/2003
 Agency Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: HB 403
(H) Publish Date: 1/28/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title AIGA Assessment RDU AIDEA (125)
Component AIDEA
Sponsor Rules
Requester By Request of the Governor Component No. 1234

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	0.0	0.0	0.0	0.0	0.0	0.0
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 (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)

This legislation authorizes Alaska Industrial Development and Export Authority (AIDEA) to guarantee loans to the Alaska Insurance Guaranty Association (AIGA) needed to make the association financially able to meet cash flow needs. AIDEA guarantees for association loans are limited to a maximum outstanding principal balance at any time of \$30 million on all loans. There is no financial impact on the operations of AIDEA.

Prepared by: Ron Miller, Executive Director Phone (907) 259-3000
Division: AIDEA/AEA Date/Time 12/24/03 9:00 AM
Approved by: Edgar Blatchford, Commissioner Date 12/24/2003
Agency: Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: HB 403
(H) Publish Date: 1/28/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act relating to AK Guaranty Assoc. BRU Risk Management
and new fee assessments Component Risk Management
Sponsor _____
Requester _____ Component No. 71

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	372.9	439.9	519.0	612.4	722.5	852.4
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	372.9	439.9	519.0	612.4	722.5	852.4

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1007 I/A Receipts	372.9	439.9	519.0	612.4	722.5	852.4
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	372.9	439.9	519.0	612.4	722.5	852.4

Estimate of any current year (FY2004) cost: 316.1
Check 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 creates an increased cost to Risk Management operating expenses as it requires an assessment fee for all self insured employers. The bill includes an immediate effective date, therefore it is assumed that an assessment will be applied in FY2004 for calendar 2003 payments reported 3/1/2004.

Applying the 2% rate to the projected workers' compensation claims experience is projected, although future loss experience will determine actual costs incurred.

As Risk Management is funded solely through inter-agency receipts, this additional expense will require increased cost of risk allocations (premium assessments) to all state agency operating budgets.

Prepared by: J. Brad Thompson, Director Phone _____
Division Risk Management Date/Time 1/23/04 7:17 AM
Approved by: Mike Miller, Commissioner Date 1/23/2004
Agency Administration

HB 403 - Fiscal Note #5

Calendar Year annual report	Total W/C benefits paid (excluding	Second Injury Fund - SIF)	Estimated Assessment Owed
		% Increase	
CY2000	\$9,625,032		
CY2001	\$11,165,023	16.00%	
CY2002	\$13,166,038	17.92%	
CY2003 (11 mo. Exp. Proj. 12 mo)	\$15,802,514	20.02%	\$316,050
	3 year average increase	17.98%	

	Estimated Future W/C Benefits to be Paid w/avg. % increase	
CY2004	\$18,644,167	\$372,883
CY2005	\$21,996,814	\$439,936
CY2006	\$25,952,343	\$519,047
CY2007	\$30,619,167	\$612,383
CY2008	\$36,125,193	\$722,504
CY2009	\$42,621,328	\$852,427

HB

418

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
LEGISLATIVE ETHICS COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/rokeberg/>



INTERIM:
716 WEST 4TH AVENUE, SUITE 300
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119


SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

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

MEMORANDUM

TO: Rep. Tom Anderson, Chairman
House Labor & Commerce Committee

FROM: Rep. Norman Rokeberg 

DATE: March 1, 2004

RE: HB 418 – Real Estate Commission

The Division of Occupational Licensing has requested some additional amendments to House Bill 418. When you request a hearing in House Finance, would you be so kind as to forward 23-LS1548/H.1, Mischel, 3/1/04, to the Committee. The proposed amendment H.1 is attached.

Page 1, line 3, through page 2, line 7, is more language regarding home inspectors. This makes it very plain that the licensees do not need to take a new examination each time they renew licenses but that they do need to provide proof of continuing education.

Page 2, lines 11-15, makes some slight word changes (“The licensee” to “Each licensee” and reference to the chapter) in the notification language.

Page 2, line 17, through page 3, line 9: Insert reference to the “residential combination examination” along with the other exams listed in that uncodified law.

Page 3, lines 10-15, makes word changes to conform to the repeal of Section (e) as provided on page 3, line 27.

Page 3, lines 19-21, makes a word change to reflect changes in the amendment.

Page 3, lines 23-26: When we adopted language concerning home inspectors, we did not provide the Department with authority to collect transitional licensing fees. This

Memorandum re HB 418

March 1, 2004

Page 2

language does that. Without the language, no fee may be charged for transitional licenses.

Page 3, line 27, repeals language that indicates that a transitional license may not be renewed. It was my intent that transitional licenses could be renewed upon providing proof of continuing education, which this amendment and the items contained in the Labor & Commerce version of the bill will accomplish.

Your assistance is appreciated.

Attachment: Amendment H.1
CSHB 418 (L&C)
Referenced sections of HB 9

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 418(L&C)

1 Page 1, following line 6:

2 Insert a new bill section to read:

3 **** Sec. 2.** AS 08.18.022(a) is amended to read:

4 (a) The department shall issue a certificate of registration as a home inspector
5 for new homes, existing homes, or both, as appropriate, to an individual who

6 (1) passes the appropriate home inspection examination; for purposes
7 of this paragraph, the appropriate home inspection examination for an individual who
8 applies to be registered for inspection of

9 (A) existing homes is the examination offered by the American
10 Society of Home Inspectors, American Home Inspectors Training Institute, or
11 National Association of Home Inspectors;

12 (B) new homes or for a joint registration is the examination
13 offered by the International Code Council;

14 (2) meets the educational and experience requirements adopted by the
15 department in regulations for the type of registration applied for;

16 (3) submits a complete application for registration either

17 (A) within one year after passing the examination required
18 under (1) of this subsection; or

19 (B) accompanied by documentation that the applicant has
20 completed continuing education requirements established by the
21 department;

22 (4) within the seven years preceding the date of application, has not
23 been under a sentence for an offense related to forgery, theft in the first or second

1 degree, extortion, or defrauding creditors or for a felony involving dishonesty;

2 (5) has not had the authority to perform home inspections revoked in
3 this state or in another jurisdiction;

4 (6) is not the subject of an unresolved criminal complaint or
5 unresolved disciplinary action before a regulatory authority in this state or in another
6 jurisdiction related to real estate or home inspection matters; and

7 (7) pays the appropriate fees."
8

9 Renumber the following bill sections accordingly.
10

11 Page 2, line 5:

12 Delete "The"

13 Insert "Each"

14 Following "licensee":

15 Insert "under this chapter"
16

17 Page 2, following line 14:

18 Insert new bill sections to read:

19 **** Sec. 6.** The uncodified law of the State of Alaska enacted in sec. 44(a), ch. 134, SLA
20 2003, is amended to read:

21 (a) Notwithstanding AS 08.18.022, added by sec. 7 of this Act, the
22 Department of Community and Economic Development shall issue a certificate of
23 joint registration that is valid until January 1, 2006, to an individual who submits to
24 the department satisfactory evidence of being in the business of home inspection in the
25 state at the time of application for registration under this subsection and of having

26 (1) been in the business of home inspection in the state on October 1,
27 2002; and

28 (2) passed the building inspector examination, [OR] property
29 maintenance and housing inspector examination, or the residential combination
30 examination given by the International Code Council.

31 * **Sec. 7.** The uncodified law of the State of Alaska enacted in sec. 44(c), ch. 134, SLA

1 2003, is amended to read:

2 (c) Notwithstanding AS 08.18.022, added by sec. 7 of this Act, the
 3 Department of Community and Economic Development shall issue a certificate of
 4 registration to practice home inspection of new construction that is valid until
 5 January 1, 2006, to an individual who submits to the department satisfactory evidence
 6 of being in the business of home inspection in the state at the time of application for
 7 registration under this subsection and of having passed the combination inspector
 8 examination, [OR] the combination dwelling inspector examination, or the
 9 residential combination examination given by the International Code Council.

10 * Sec. 8. The uncodified law of the State of Alaska enacted in sec. 44(f), ch. 134, SLA
 11 2003, is amended to read:

12 (f) A [EXCEPT AS PROVIDED IN (e) OF THIS SECTION, A] certificate of
 13 registration as a home inspector or associate home inspector issued under this section
 14 is considered to be a certificate of registration as a home inspector or associate home
 15 inspector issued under AS 08.18.022, added by sec. 7 of this Act."
 16

17 Renumber the following bill sections accordingly.

18

19 Page 2, line 16:

20 Delete "a new subsection"

21 Insert "new subsections"

22

23 Page 2, following line 25:

24 Insert

25 "(i) The fee for a license issued under this section is \$200. The department shall
 26 adopt regulations for the collection of this fee.

27 * Sec. 10. Section 44(e), ch. 134, SLA 2003, is repealed."
 28

28

29 Renumber the following bill section accordingly.



ALASKA ASSOCIATION OF REALTORS, INC.
4205 Minnesota Drive Anchorage, Alaska 99503
Telephone (907) 563-7133 Fax (907) 561-1779
www.alaskarealtors.com

February 23, 2004

The Honorable Norm Rokeberg
Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99801

RE: House Bill 418, extending the termination date of the Real Estate Commission

Dear Representative Rokeberg,

The Alaska Association of REALTORS is in favor of extending the termination date of the Real Estate Commission to June 30, 2008, rather than June 30, 2004.

The Association does not concur with the Division of Legislative Audit recommendations that the limits of reimbursement on surety fund claims increase from \$10,000 to \$20,000 per transaction and the associated maximum payment per licensee be increased to \$100,000.

Sincerely,

A handwritten signature in cursive script that reads 'Kathryn Clark'.

Kathryn Clark
President



HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 2, 2004

FURTHER REFERRALS:

Date of Committee Action: February 23, 2004

The LABOR AND COMMERCE Committee considered:

HB 418

HOUSE BILL NO. 418

EXTEND REAL ESTATE COMMISSION

"An Act extending the termination date of the Real Estate Commission; and providing for an effective date."

Recommends it be replaced with HCS or CS for HB 418 (LBC)
For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

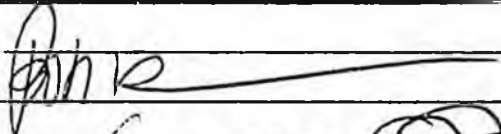
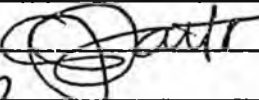
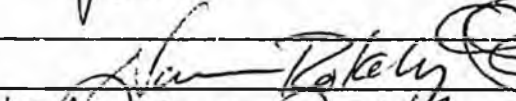
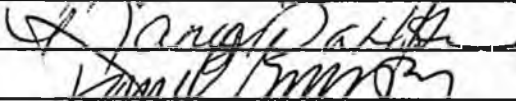
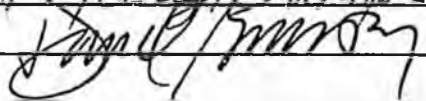
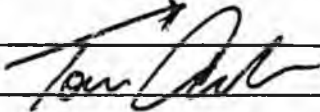
- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LEG
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
<u>CED</u>		<u>X</u>		

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	LYNN	<u>X</u>			
	GATTO	<u>X</u>			
	ROKEBERG	<u>X</u>			
	DAHLSTROM	<u>X</u>			
	GUTTENBERG			<u>X</u>	
	ANDERSON	<u>X</u>			
Chair:					
Chair:					

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 418
 () Publish Date: _____

Revision Date/Time (Note if correction): _____
 Title Extend Real Estate Commission
 Dept. Affected: DCED
 RDU Occupational Licensing (117)
 Component Occupational Licensing
 Sponsor House Labor and Commerce
 Requester House Labor and Commerce
 Component No. 2360

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	171.3	171.3	171.3	171.3	171.3	
Travel	21.2	21.2	21.2	21.2	21.2	
Contractual	79.3	79.3	79.3	79.3	79.3	
Supplies	1.6	1.6	1.6	1.6	1.6	
Equipment	0.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	273.4	273.4	273.4	273.4	273.4	

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

CHANGE IN REVENUES ()	273.4	273.4	273.4	273.4	273.4	
-------------------------------	--------------	--------------	--------------	--------------	--------------	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156-Receipt Supported Services	273.4	273.4	273.4	273.4	273.4	
TOTAL	273.4	273.4	273.4	273.4	273.4	

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	2	2	2	2	2
Part-time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

This bill extends the Real Estate Commission to June 30, 2008. In accordance with AS 08.03.020, funding is extended one year following the termination date allowing the Commission to conclude its affairs. The information above identifies direct expenditure and revenue information included in the FY 2005 Operating Budget request. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division Occupational Licensing Date/Time 2/4/04 8:30 AM
 Approved by: Edgar Blatchford, Commissioner Date 2/4/2004
 Agency Department of Community and Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 418
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title An Act Extending the termination date of the BRU Occupational Licensing (117)
Real Estate Commission. Component Occupational Licensing
 Sponsor House Labor & Commerce
 Requester House Labor & Commerce 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						
-----------------------------	--	--	--	--	--	--

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 (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)

This bill has no general fund fiscal impact.

Prepared by: House Labor & Commerce Committee
 Division _____
 Approved by: Rep. Tom Anderson, Chair
 Agency House Labor & Commerce Committee

Phone _____
 Date/Time 2/23/04 1:31 PM
 Date 2/23/2004

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
LEGISLATIVE ETHICS COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/rokeberg/>



INTERIM:
716 WEST 4TH AVENUE, SUITE 300
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119


SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1162
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

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

MEMORANDUM

TO: Representative Tom Anderson, Chairman
House Labor & Commerce Committee

FROM: Representative Norman Rokeberg 

DATE: February 23, 2004

RE: HB 418

Attached is a proposed CS for HB 418.

Section 1: Remains the same (extending the Real Estate Commission to June 30, 2008).

Section 2: Adds language that will address a problem wherein an applicant for a license (specialty contractor, home inspector, etc) must be covered by certain insurance (worker's compensation, general liability, etc.). Under this amendment, if the applicant is an employee of a company that has a policy covering employees, the applicant does not have to prove coverage under an individual policy. It makes no sense to have the employee/applicant be covered by a personal policy as well as a company policy.

Section 3: Added at the request of the Division of Occupational Licensing in order to clarify issues surrounding inactive licenses.

Section 4: Added at the request of the Division of Occupational Licensing in order to clarify issues surrounding notification of a licensee.

Section 5: Amends transitional language in last year's home inspector legislation. Currently, the language requires that anyone who gains a transitional license (which expires in January 2006 and requires that a person be in business a certain length of time and pass certain exams) must again take an examination before being issued a non-

Memorandum
February 23, 2004
Page Two

transitional license. This amendment indicates that the applicant must only prove completion of continuing education courses and not the retake of the whole examination.

Section 6: Immediate effective date

I will also be providing you with an amendment concerning the surety fund that I wish the committee to discuss. The Division of Occupational Licensing may also be suggesting one additional amendment.

Thank you for your consideration and assistance with this important legislation.

HOUSE LABOR
& COMMERCE

COMMITTEE
PACKET
Index

February 23, 2004

1

HB 418

*Extend Real
Estate Commission*

2

HB 389

*Deferred Deposit
Advances(Payday Loans)*

3

HB 509

*Alaska Gaming
Commission*

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE [REDACTED]

TO: CSHB 418()

1 Page 2, following line 14:

2 Insert new bill sections to read:

3 **"* Sec. 5.** AS 08.88.470 is amended to read:

4 **Sec. 08.88.470. Findings and payment.** At the conclusion of the
5 commission's consideration of a claim made under AS 08.88.460, it shall make written
6 findings and conclusions on the evidence. If the commission finds that the claimant
7 has suffered a loss in a real estate transaction as a result of fraud, misrepresentation,
8 deceit, or the conversion of trust funds or the conversion of community association
9 accounts under the control of a community association manager on the part of a real
10 estate licensee, the commission may award a claimant reimbursement from the real
11 estate surety fund for the claimant's loss up to \$20,000 [\$10,000]. Not more than
12 \$20,000 [\$10,000] may be paid for each transaction regardless of the number of
13 persons injured or the number of parcels of real estate involved in the transaction.

14 *** Sec. 6.** AS 08.88.475 is amended to read:

15 **Sec. 08.88.475. Maximum liability.** (a) The maximum liability of the real
16 estate surety fund may not exceed \$100,000 [\$50,000] for any one real estate licensee.

17 (b) If the \$100,000 [\$50,000] liability of the fund as provided in (a) of this
18 section is insufficient to pay in full the valid claims of all persons who have filed
19 claims against an individual licensee, the \$100,000 [\$50,000] shall be distributed
20 among the claimants in the ratio that their individual claims bear to the aggregate of
21 valid claims, or in another manner that the commission considers equitable.
22 Distribution shall be among the persons entitled to share in the recovery without
23 regard to the order in which their claims were filed.

1 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 APPLICABILITY. AS 08.88.470 and 08.88.475, as amended by secs. 5 and 6 of this
4 Act, apply to awards made by the commission on or after the effective date of this Act."

5

6 Renumber the following bill sections accordingly.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 418 BY: Representative Tom Anderson

TITLE: An Act extending the termination date of the Real Estate Commission

AS 08.88.010 established the Real Estate Commission (REC) and provided for the appointment of members by the governor. The commission consists of five real estate brokers or associate brokers, one from each of the four judicial districts and two public members. HB 418, if enacted would extend the commission operation for another 4 years to June 30, 2008.

The commission serves the public interest by adopting regulations to carry out the laws governing the practice of real estate in Alaska. It approves education courses and instructors, makes final licensing decisions and takes disciplinary action against people who violate the licensing laws.

In the opinion of Legislative Audit, the REC should be extended. The regulation and licensing of real estate professionals provides necessary public protection in the buying and selling of residential and commercial properties. I recommend that the REC be extended to June 30, 2008, and urge you to vote for its passage.

October 16, 2003

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
REAL ESTATE COMMISSION SUNSET REVIEW

October 16, 2003

Audit Control Number

08-20023-03

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given commission, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(19), the Real Estate Commission is scheduled to terminate on June 30, 2004. If the legislature takes no action to extend the termination date, the commission would be allowed one year in which to conclude its administrative operations.

In our opinion, the termination date for REC should be extended. The regulation and licensing of real estate professionals provides necessary public protection in the buying and selling of residential and commercial properties. We recommend that legislation be enacted to extend the commission's termination date to June 30, 2008.

The audit was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology.

Pat Davidson, CPA
Legislative Auditor

BACKGROUND INFORMATION

The Alaska Real Estate Commission (REC) was created in 1964. In one of its earliest actions, REC required all licensees to carry a surety bond. Salespersons were required to maintain a \$1,000 bond while brokers had to carry bonding for \$5,000. The purpose of these bonds was to provide consumers some protection from malfeasance on the part of REC licensees.

At the request of REC, the Legislature established a state-administered surety fund in 1974

Although there were few claims against these bonds, the real estate profession and REC realized the required bonding levels were too low to adequately protect the public. Following the example of 12 other states, the industry together with REC, actively lobbied the 1974 legislature to create a state-administered surety fund that is funded by licensee fees. The fund was to serve a two-fold purpose:

1. To provide indemnification up to \$10,000 per transaction for judgments awarded by the courts to persons who suffered financial loss because of a licensee's actions that involved fraud, deceit, misrepresentation, or conversion of trust funds.
2. To provide funding for real estate education of both the public and REC licensees.

Originally, the surety fund only paid court-ordered judgments against real estate licensees

The 1974 legislation, which was patterned after the California model, required a court judgment against a licensee prior to any disbursement from the Surety Fund. Under the original 1974 law there was no requirement that the fund be reimbursed by the licensee whose actions resulted in a claim payment, nor did the law provide for any review by REC prior to payment from the fund. From the 1976 license renewal cycle (when the first fees were paid into the surety fund), judges were able to order payment to the successful complainant directly from the fund to satisfy a judgment.

In 1980, surety fund statutes were amended to provide for an administrative hearing process

The legislature responded to a recommendation in a 1980 REC sunset review by amending the surety fund statutes. We recommended that REC take on the responsibility of not only hearing cases involving RESF claims, but also approving awards from the fund. The use of hearing officers, in accordance with the Administrative Procedures Act, began in late 1982. At that time, the commission adopted regulations that became effective in early 1983.

Under these regulations, claims are filed directly with REC. A \$250 filing fee is required; however, the fee is refunded if the complainant prevails. Once a complaint is received the administrative hearing process begins. The hearing consists of presentations by the claimant and the licensee(s) involved. The hearing officer has the power to subpoena evidence and to require the attendance of witnesses. Both parties are allowed legal counsel if they so choose.

Administrative hearings provide all of the due process protections, with the exception of a jury trial, that are afforded through the civil court system. The rules of evidence are more informal than in court; although, as a practical matter, most of the evidence that is presented in administrative hearings would be allowed in a civil court proceeding.

At the conclusion of the hearing, a document titled Findings of Fact and Conclusions of Law is prepared by the hearing officer. This document summarizes the hearing officer's findings and recommended action as to whether REC should approve payment of the claim from the fund. Once a hearing officer has made a recommended decision, the commission reviews the case and decides if the claim should be paid from the RESF. After the final decision is made, the licensee or the claimant has the option to appeal to the Superior Court.

Statute requires the surety fund maintain a minimum balance and also sets the maximum level

Alaska Statute 08.88.450 establishes the floor of the fund at \$250,000 and the ceiling at \$500,000. The funds in RESF may be used to pay claims and fund education for real estate professionals. The surety fee is set by REC and is capped at \$125. This fee may be adjusted downward by REC as long as the fund is maintained at a level that can pay claims against it without going below the minimum fund balance of \$250,000. REC is also responsible for approving education expenditures and all consumer claim payments charged to the fund.

REPORT CONCLUSIONS

In accordance with AS 08.03.010(c)(19), the Real Estate Commission (REC) is scheduled to terminate by statute on June 30, 2004. If no action is taken by the legislature, the commission will have one year in which to conclude its affairs and will be dissolved on June 30, 2005.

REC is responsible for licensing and regulating individuals who hold themselves out to the public as real estate salespersons, associate brokers, or brokers. The commission accomplishes this by establishing: (1) qualifications for licensure; (2) the scope and extent of continuing education necessary for real estate professionals to remain licensed; and, (3) evaluating and approving payment of claims from the real estate surety fund to consumers seeking reimbursement for a loss suffered in a real estate transaction attributable to fraud, misrepresentation, or deceit on the part of a REC licensee.

In our opinion, the termination date for REC should be extended. The commission serves a public purpose and has demonstrated an ability to operate in a satisfactory manner. The regulation and licensing of real estate professionals provides necessary public protection in the buying and selling of residential and commercial properties. The commission carries out its responsibilities to educate both the public and REC licensees in a professional, competent, and efficient manner. Additionally, active investigation of complaints and licensure actions, when appropriate, provides assurance that licensed professionals are competent and ethical. We recommend that legislation be enacted to extend the commission's termination date to June 30, 2008.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should consider amending the statutes related to the Real Estate Surety Fund to provide more complete, effective, and efficient consumer protection to claimants.

The Real Estate Surety Fund (RESF) provides consumers reimbursement for financial losses they may have suffered from a real estate transaction attributable to "*fraud, misrepresentation, deceit, or the conversion of trust funds...*"¹ on the part of an REC licensee. Claims for reimbursement are subject to a hearing process administered in accordance with the state's administrative procedures act.

In reviewing the administration of the fund in recent years, we have noted instances or circumstances that are not consistent with the evident purpose of the fund. That is, the fund is not operating in a manner that provides individuals with a less cumbersome alternative to formal litigation in the courts when they have been financially injured in a real estate transaction. Towards the end of making RESF operate in a manner consistent with this evident purpose, we recommend the legislature consider amending state laws related to the fund in order to:

1. Increase the limits on reimbursement of claims. Under current state law, RESF claim payments are capped at \$10,000 per transaction,² up to a maximum of \$50,000 per licensee.³ The current limits were set in 1974 when RESF was first established in statute.

The mandate for licensees to pay a fee (set by REC) to fund the RESF was also set out in the 1974 statute. The statute was amended in 1998 limiting this fee to no more than \$125.⁴ Currently, the license fee is set by REC at \$30 per licensee. The amount paid by licensees is primarily determined by how close the balance of the fund is to \$500,000 (the maximum set in statute) or to \$250,000 (the statutory minimum). During our audit period, the RESF has fluctuated close to the \$500,000 ceiling; at no time did the balance approach the \$250,000 minimum floor.

Given the soundness of the fund, we suggest the legislature consider increasing the claim limit. The following observations indicate a need to reconsider the claim limit:

- Each of the last five RESF claim payments was for the maximum \$10,000. The alleged losses associated with each of these successful, and presumably valid, claims exceeded the \$10,000 limit (although all but one was less than \$20,000).

¹ AS 08.88.460(a)

² AS 08.88.470

³ AS 08.88.475(a)

⁴ am § 36 ch 45 SLA 1998

HB

421

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 421

BY REPRESENTATIVE ANDERSON

1 Page 4, line 12:

2 Delete "title insurer's"

3 Insert "title insurance company's"

4

5 Page 4, line 27, following "section,":

6 Insert

7 "(1)"

8

9 Page 4, line 28, following "under the trust deed":

10 Insert ";

11 (2) "title insurance company" means a title insurance company or a title
12 insurance limited producer; in this paragraph, "title insurance company" and "title insurance
13 limited producer" have the meanings given in AS 21.66.480"

HOUSE LABOR &
COMMERCE

COMMITTEE
PACKET
Index

March 19, 2004

1

HB 452

Guided Sports Fishing

2

HB 453

Joint Action Agencies

3

HB 379

*Office of Citizenship
Assistance*

4

HB 421

*Deed of Trust
Reconveyance*

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 421 BY: Representative Tom Anderson

TITLE: An Act relating to reconveyances of deeds of trust.

HB 421 is legislation proposed and requested by the Alaska Land Title Association (ALTA). The legislation would help to clear land records of paid off mortgage liens. In other words, after a mortgage (or deed of trust) has been paid off, a title insurance company could, through the procedures established in HB 421, record the reconveyance.

A title insurance company, acting as trustee under a deed of trust, could release (by deed of reconveyance) a lien after notice to the lender, if the title company paid off the deed of trust through a closing. The lender would be given 60 days to object to the proposed release of the lien.

HB 421, based on a law from the State of Idaho, would be helpful in "cleaning up" many old liens left unreleased by lenders who may be from out-of-state, or have closed. In Alaska, it is very common for the company servicing a mortgage on a home to be located outside of state.

By having this sort of law in place, the net result is a quicker closing and fewer hassles for sellers, lenders and agents. For example, any previous liens on the deed could be cleared away before they become burdensome on any future transactions or sales of the property.

The intent of this bill is to provide a clear and clean process allowing liens to be cleared from deeds after satisfactory evidence of payment has been presented to the title company. This does not establish any additional risks or opportunities for fraud, and it is not intended to create any unnecessary burdens upon mortgage lenders in Alaska.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB421-DNR-REC-03-09-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title Deed of Trust Reconveyance RDU Resource Development
 Component Recorder's Office
 Sponsor Rep. Anderson
 Requester (H) L&C Component No. 802

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
 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)

There is no fiscal impact for the Recorder's Office associated with implementation of this legislation.

Prepared by: Vicky Backus Phone 907-269-8882
 Division: Recorder's Office Date/Time 3/9/04
 Approved by: Thomas Irwin, Commissioner Date 3/9/04
 Agency: Natural Resources

THE
FOLLOWING
DOCUMENT(S)
ARE
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WESTERN ALASKA LAND TITLE CO.

Agents for Stewart Title Guaranty Co.

February 11, 2004

The Honorable Tom Anderson
House of Representatives
State Capitol
Juneau, Alaska 99801-1182
VIA Fax: (907) 465-2418

Dear Mr. Anderson;

With HB421 we have an opportunity to speed up the Real Estate closing process. Title searches consistently turn up mortgages, which have been paid in full and have never been released of record. Although lenders are quick to secure their loans, some never produce the proper paperwork to release their interests of record after receiving satisfaction in full. HB421 would at least provide a tool to the industry to help alleviate the backlog of unreleased mortgages which burden the "Public Records". The speedy passage of this bill can only benefit the consumer and the industry.

Sincerely,



Tim Hurley
President

TJH/ds
CC: Representative Dan Ogg



Ph (907) 274-2562 • Fax (907) 258-4656

2801 Denali Street, Anchorage, Alaska 99503

February 10, 2005

Representative Tom Anderson
State Capitola, Room 432
Juneau, Alaska 99801

Re: House Bill 421 (Reconveyance Bill)

Dear Rep. Anderson:

I would like to express my support for HB421 which is intended to help clear the record with regard to deeds of trust (mortgages) that have been paid in full and where evidence of that payment has not been presented for recording.

Under these circumstances the consumer is left with a record showing liens against him and his property, which understandably causes great concern on their part.

At least twice or more times a week we deal with consumers who are attempting to clear the record title to their property because the lenders who have been paid will not respond to inquiries as to where the releases were delivered.

This bill will allow the local title companies or agents to deal with the issue of releases in a manner such as to establish for the record the facts that the consumer felt had happened.

As you are aware there are no statutory provisions dealing with form or manner of reconveyances, thus it is presently very hard to get lenders (of which the problem lenders are not local to Alaska) to conform or respond to inquiries from Alaska.

If this bill is enacted we could deal quickly with the consumer to aid them in clearing the title to their property so that they can proceed with quiet ownership of their home.

Very truly yours,

Stewart Title of Alaska

A handwritten signature in black ink, appearing to read "Jeffrey D. Blake".

Jeffrey D. Blake
Title Manager

Direct line (907) 777-0532

Direct fax (907) 222-7432

From: Howard Hancock
To: Representative_Tom_Anderson@legis.state.ak.us
Subject: Support for HB421

I am a title officer with Pacific Northwest Title of Alaska. I have been searching and examining title to real estate for 23 years. Probably the most prevalent and frustrating problem that I have encountered over the years is the issue of deed of trust/mortgage liens, that have been paid off, but not cleared and released from the title records. This leaves a cloud on the title that can have devastating effects on someone trying to sell or refinance their property. Unless cleared, their sale or loan transactions are often delayed until the reconveyance is recorded. Sometimes the cloud causes a sale to fall through completely or in the case of a refinance, the loss of a lower interest rate.

This is a not just a sad situation for a property owner, but for the economy as a whole, since these transactions generate revenues to the different sectors of the real estate industry, such as real estate firms, mortgage lenders, appraisers, title companies and attorneys.

This bill will go a long way towards helping us clear title of mortgage liens held by banks, credit unions, mortgage companies and the like, that are no longer in business, unlocatable or unable to provide releases of their liens. A speedy real estate transaction is of enormous benefit to everyone involved in the process. No one should have to be held up by an unnecessary clouded title report! I strongly urge support and passage of this bill into law. Thank you for your consideration.

Subject: Non Constituent POMS Re:HB 421

Date: Thu, 5 Feb 2004 16:00:41 -0900

From: <POMS@legis.state.ak.us>

To: <jim_shine@legis.state.ak.us>

J Harold Michal
Po Box 3549
Po Box 3549
Valdez AK, 99686-3549

Email:

Non Constituent

BILL#: HB 421 DEED OF TRUST RECONVEYANCE

SUBJECT:

MESSAGE: Real Estate laws have enough legalese regulations now. At present this bill is superfluous and wasting time the legislature should be putting on an income, sales, education tax to bolster state income. Alaska gas pipeline is another. Make it known to the Governor- hands off the PFD!!

DISTRIBUTION: Rep. Anderson, Rep. Crawford, Rep. Dahlstrom, Rep. Gatto,
Rep. Guttenberg,
Rep. Harris, Rep. Lynn, Rep. Rokeberg, Sen. Therriault

HB

426

CORRECTION

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



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

HB

426

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 426(EDT)
 (H) Publish Date: 3/18/04

Revision Date/Time (Note if corrections): _____ Dept. Affected: DCED
 Title Tourism and Recreation Assessment/Car Tax RDU Executive Admin and Dev (119)
 Component Office of Economic Development
 Sponsor Representative Kott, McGuire, et al.
 Requester House Econ Dev. Int'l. Trade & Tourism Component No. 2743

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 Act establishes a 2% assessment on certain tourism-related and recreation-related goods and services. Proceeds would be deposited into a sustainable tourism & marketing account, created in the general fund. Funds may be appropriated for tourism marketing. HB 426 also amends AS43.52 to allow the Legislature to appropriate 20% of funds in the vehicle rental tax account to the department for purposes of entering into a contract with a qualified trade organization to fund tourism marketing. The assessment must be approved by eligible visitor industry businesses that together account for at least 51% of the value of sales, leases and rentals described in the bill. HB 426 provides a mechanism for the visitor industry to terminate the assessment.

Subject to appropriation the department shall, on or before April 1 of each fiscal year, approve a destination tourism marketing campaign plan and contract with a single qualified trade association to execute the campaign during the next fiscal year. No new funds are required to implement these provisions.

Prepared by: Albert H. Clough, Deputy Commissioner Phone (907) 465-2500
 Division Office of Economic Development Date/Time 2/12/04 9:35 AM
 Approved by: Edgar Blatchford, Commissioner Date 2/12/2004
 Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 426(EDT)
(H) Publish Date: 3/18/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Tourism & Recreation Assessment RDU Alaska Railroad Corporation
Sponsor Representative Kott, McGuire, et al. Component _____
Requester House Econ Dev. Int'l. Trade & Tourism 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

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 from the State. The following analysis provides ARRC's estimate regarding its fiscal impact from HB 426.

HB 426 seeks to impose a 2% assessment on the sale of ARRC passenger tickets and tour company pull charges. This effectively places the assessment on all ARRC passenger revenue. ARRC understands the funds would be collected and remitted, less an administration fee of 1% of total collection, to the Department of Revenue on a monthly basis. Based upon current ARRC passenger revenue forecasts, the amount of assessment remitted would total approximately \$300.0 annually.

Prepared by: Wendy Lindskoog, Director of External Affairs Phone (907) 269-2498
Division Alaska Railroad Corporation Date/Time 2/12/04 10:02 AM
Approved by: Edgar Blatchford, Commissioner Date 2/12/2004
Agency Department of Community & Economic Development

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 426(EDT)

ANALYSIS CONTINUATION

<u>Tourism Assessment Calculation</u>	<u>(Thousands)</u>				
	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Projected ARRC Passenger Revenue	14,660.0	14,790.0	15,070.0	15,200.0	15,330.0
2% Assessment	293.2	295.8	301.4	304.0	306.6
Less 1% assessment retainage (admin fee)	2.9	3.0	3.0	3.0	3.1
Net assessment transferred to GF	<u>290.3</u>	<u>292.8</u>	<u>298.4</u>	<u>301.0</u>	<u>303.5</u>

ARRC would collect and remit approximately \$300,000 annually to the State Department of Revenue under this proposed legislation.

Note: ARRC fiscal year runs from January 1 - December 31; revenues per year are presented on this basis.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 426(EDT)
 (H) Publish Date: 3/18/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Tourism & Recreation Assessment RDU Revenue Programs & Services
/Car Tax Component Tax Division
 Sponsor Representative Kott
 Requester House Econ Dev Trade & Tourism Component No. 2476

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	**	**	**	**	**	**

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	**	**	**	**	**	**

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)

**** See page 2 for analysis.**

Prepared by: Chuck Harlamert & Brett Fried Phone 465-2320
 Division Tax Division Date/Time 2/12/04 6:24 AM
 Approved by: Steve Porter, Deputy Commissioner Date 2/12/2004
 Agency Department of Revenue

FISCAL NOTE #3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 426(EDT)

ANALYSIS CONTINUATION

Cost Discussion

We estimate the ongoing base level costs for a sales or gross receipts tax program of this size at \$1.3 million per year. This estimate assumes a number of factors which must be considered when calculating the base level operating costs for a sales or gross receipts tax program are in place such as; a stable tax program, a consistent and predictable taxpayer population, a well defined and understood tax base, planned technology investment, and successful implementation of electronic filing. The bill is not fully aligned with these assumptions at this time. Our estimate for the base level operating costs for the program proposed by the bill is approximately \$2.6 million annually.

Revenue Discussion

The following estimates are for those goods or services that were clearly defined in the bill or could be defined so that they could be estimated from existing data. These are those services reflected under (1) – (5) of Section 43.33.126.

- (1) Scenic and Sightseeing Transportation – Using the narrow definition in the economic census we estimate this would raise approximately \$2.5 million per year at 2%.
- (2) Transient accommodations – We estimate that the hotels, motels and B&B component would raise approximately 6 million at 2%. If all camp tuitions or fees were included, we estimate it would add about an additional \$600,000 in tax at 2%.
- (3) Alaska Marine Highway System Passenger Fares - We estimate that a 2% tax on passenger fares would raise approximately \$300,000.
- (4) & (5) Alaska Railroad Corporation Passenger Fares and Towing Charges – We estimate that a 2% tax would raise about \$300,000.

The total revenue estimate from services taxed under AS 43.33.126(1)-(5) (as defined above) is \$9.7 million. This does not include revenue from the proposed assessment on "seasonal" or other retail goods.

We do not have any data on retail shops that make more than 75 percent of their sales after May 1 but before October 1 and have not included an estimate for this area. It may be interesting to note that the total estimated sales for "Gift, Novelty and Souvenir Stores" in the 1997 census was approximately \$109 million. If we update this value to the present using the change in bed taxes (adjusted for changes in rates) estimated sales would be approximately \$130 million.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 426(EDT)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Tourism & Recreation Assessment RDU Revenue Programs & Services
/Car Tax Component Tax Division
 Sponsor Representative Kott
 Requester House Labor & Commerce Component No. 2476

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	**	**	**	**	**	**

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	**	**	**	**	**	**

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)

All costs are unrestricted General Fund expenditures, while revenues are new restricted General Fund revenue to be appropriated as specified under the Bill.

Cost Analysis

The ongoing annual operational costs for the Bill, as written, are estimated to be \$2.4 million. This is a rough cost estimate based on our analysis of a limited sales and use tax program adjusted for unique features of this Bill. We expect year to year costs to be less in FY05, peaking above this estimate in FY06, then declining and stabilizing at the estimate as the program matures. In addition, capital costs will be incurred during the first two or three years of the program, though we have not yet estimated those costs.

Prepared by: Chuck Harlamert & Brett Fried Phone 465-2320
 Division Tax Division Date/Time 4/2/04 8:16 AM
 Approved by: Steve Porter, Deputy Commissioner Date 4/2/2004
 Agency Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 426(EDT)

ANALYSIS CONTINUATION

Cost Analysis - Continued

Significant cost factors in the Bill are:

-We interpret the Bill to be a gross receipts tax on providers of certain taxable services. However, the Bill includes elements typically found in a sales and use tax. The uniqueness of the levy make it difficult to gauge the level of resources necessary to administer the program. Our inability to rely on existing judicial and administrative precedence creates additional costs of administration.

-Under the Bill, sales through a commissioned agent are taxed at the full purchase price of the service including the agent's commission or fee. Sales to an agent for resale are taxed at the price paid to the provider by the agent and do not include the agent's share of the total sales price. Thus, services purchased and resold by an agent generate a lower tax compared to service sold to the consumer either directly by the service provider or through a commissioned agent. An agent is defined in the bill to include related parties or independent contractors, but not employees. The Bill therefore enables taxpayers to reduce their tax through price-setting between related parties. The Bill also encourages the use of independent contractors over employer/employee relationships. We therefore expect unusually high return processing, enforcement, and adjudication costs to deal with abusive related party pricing and additional taxpayers set up to reduce the tax.

-The range of potential taxpayers under the recreational and adventure services category could be substantial. A broad definition of this category of services will include a large percentage of businesses operating within the state. We estimate that there are approximately 2,000 providers of guided recreational and adventure services operating in Alaska. The inclusion of non-guided recreational services (bowling, video rentals, video games...) has the potential to generate many times that number of taxpayers. The seasonal entertainment category of taxable services defined generally as entertainment involving certain "themes" that "appeal primarily" to visitors is difficult to define with certainty. Our cost estimate reflects our uncertainty concerning the number of taxpayers under the Bill and the costs of working with businesses who may also be uncertain of their status.

-Under federal law the tax must be fairly apportioned to the state; however, the bill does not specify a method for apportioning the tax between Alaska and other states or foreign countries where the taxable service occurs both inside and outside of Alaska. The lack of statutory guidance for apportionment increases our enforcement and adjudication effort and associated costs.

-The Bill allows differential taxation of identical services and between competing taxpayers. Perceptions of fairness strongly influence tax compliance and in turn will increase administrative costs of enforcement and adjudication.

- Timely filing credits generate abnormal error rates which are costly for taxpayers and the agency. The timely filing credit can actually reduce operational costs if the credit is limited to taxpayers that file and pay electronically.

-We are uncertain how to reflect our additional cost of administering irregular elections within estimates of annual appropriations. This operating cost estimate does not include the costs of administering elections under the Bill.

Revenue Discussion

The following estimates are for those goods or services that were clearly defined in the bill or could be defined so that they could be estimated from existing data. These are those services reflected under (1) - (4) of Section 43.33.126:

(1) Sale of land, water, and air transportation of passengers - would seem to include sightseeing and scenic travel (not just travel from A to B) and travel aboard the Alaska Marine Highway and Railroad. We used the 1997 economic census (updated to current) for the sightseeing and scenic transportation component. We, however, excluded charter fishing because this is included under the sale of recreation and adventure services below. At the two percent tax rate the revenue estimate comes to about \$2.2 million. In addition, at the 2% rate about \$600,000 would be collected from the Alaska Marine Highway and Alaska Railroad Corporation (AMH passenger revenue is reduced by approximately \$130,000 to offset the tax on fares paid by Alaska residents for a net figure of 470,000 to the State). Please see below for a discussion of cruise ship transportation.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 426(EDT)

ANALYSIS CONTINUATION

(2) Sale of transient accommodations – would raise an estimated 6 million at 2% from hotels, motels and B&Bs. If all camp tuitions or fees were included, we estimate it would add about an additional \$600,000 in revenue at the 2% rate. Please see below for a discussion of cruise ship and marine ferry transient accommodations.

(3) Sale of recreational and adventure services - would raise an estimated \$2.1 million from guided activities at the two percent rate. However, the sale of recreational and adventure services could include such nonguided activities as charitable gaming, amusement parks, arcades, fitness and recreational sports centers, spectator sports, bowling, etc.

(4) Sale of seasonal visitor entertainment - is defined as " the sale on or after May, but before October 1, in each calendar year of tickets to theater productions, revues, cabarets, movies, readings and other entertainment offerings that feature the gold rush, Soapy Smith, or other Alaska historical themes or figures, and that appeal primarily to visitors." We could not identify a reasonable method to isolate the sale of these services.

Cruise Ships

Cruise ships are not specifically excluded from any of the categories above. However, no method is included in this bill to apportion cruise ship sales to Alaska. Cruise ships do provide transportation and accommodation for passengers, as well as, recreational and adventure services and seasonal visitor entertainment. If we assume that these are bundled together and that the average taxable sale for tourism services on a cruise ship is \$1,000 per passenger, apportionment to Alaska is 60 percent and the number of passengers is about 776,000, then we would estimate that revenue from cruise ships would be about \$9.3 million. The Juneau Empire (Feb. 3, 2004) states that the North West Cruise Ship Association estimates 800,000 passengers will visit Juneau this year. Lorene Palmer (president of the Juneau Convention and Visitors Bureau) then adds that smaller cruise lines "will boost that number to 850,000." At 850,000 passengers the revenue estimate above would increase to \$10.2 million. Additionally, accommodations aboard the Alaska Marine Ferry do not appear to be specifically excluded and apportioned to Alaska we estimate that this revenue would be about \$60,000 at the 2% tax rate.

The total revenue from services that we were able to provide estimates for is \$21.6 million. We used the 2004 cruise passenger estimate from the Juneau Empire (of 850,000) for this estimate.

Sources included the following:

- (1) The U.S. Census Bureau - 1997 Economic Census
- (2) Cruise Line Agencies - 2003 Cruise Line Schedules
- (3) Juneau Convention and Visitors Bureau - "2003 Cruise Ship Calendar"
- (4) Alaska Department of Community and Economic Development - "2003 Alaska Taxable "
- (5) Alaska Department of Transportation and Public Facilities - Alaska Marine Highway - "2002 Traffic Report"
- (6) Alaska Department of Community and Economic Development - Business License Database
- (7) Institute of Social and Economics Research - "Economics of Sportfishing in Alaska" - December 1999.
- (8) Alaska Journal of Commerce - 2001 Book of Lists
- (9) United States Fish and Wildlife Service - "2001 National Survey of Fishing, Hunting and Wildlife-Associated Recreation."
- (10) Internet sites for all the major cruise lines, as well as, other cruise ship booking sites such as travelocity.com.
- (11) The 2002 Alaska Railroad Corporation Annual report.
- (12) Data provided by the Kenai Peninsula Borough Sales Tax Division (Troy Tankersley).
- (13) Data provided by the Alaska Department of Transportation and Public Facilities (Gary Cuscia).
- (14) The Juneau Empire - February 3, 2004 - "2004 Prediction: Cruise passengers up by 9%."

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

November 18, 2005

SUBJECT: Funding of regional seafood marketing plans
(Work Order No. 23-LS1409)

TO: Senator Ben Stevens, Co-chair, Salmon Industry Task Force
Attn: Cheryl Sutton

FROM: George Uteamaohle
Legislative Counsel

This memorandum is in response to your inquiry regarding certain legal issues associated with the establishment and funding of regional seafood marketing organizations in Alaska. It is my understanding that a proposal for the establishment of regional seafood marketing organizations to promote Alaska seafood products on a regional basis is currently being considered by participants in the legislative Salmon Industry Task Force. One of the proposed options to fund the marketing operations of the organizations would be through assessments on the members of the organization.

ONE: What are some of the implications that arise from state involvement in the creation and/or funding of regional seafood marketing organizations? Once the state becomes involved in the establishment and/or funding of regional seafood marketing organizations, many of the constitutional and legal constraints placed on the state may apply to the organizations and the state's involvement with the organizations. Certainly one of the issues to be addressed is whether the regional organizations are private entities or subdivisions of the state. In regard to organizations currently involved in the commercial fishing industry, such as the regional and private hatchery associations and dive fishery management associations, the most significant concerns relate to the use of the state's taxing power to collect taxes and assessments from members of such organizations and the use of state appropriations to pay for the operations of those organizations.

The state has broad powers to impose taxes. The state has exercised the taxing power to collect money from various groups, such as commercial fishermen and processors, through taxes and assessments imposed on those groups. The current salmon marketing tax, dive fishery management assessment, seafood processors' assessment, and fishery business tax are some examples of the use of the taxing power.

Two issues of significant concern arise when the state uses the taxing power to collect money on behalf of organizations for the purposes of funding activities of the

Underlined

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A

organizations. The first issue arises from the desire on the part of those being assessed to approve either the assessment itself, the amount of the assessment, or both. In the context of a state imposed assessment, the assessment is a tax for purposes of the Alaska Constitution. The Alaska Constitution provides that "[t]he power of taxation shall never be surrendered." Constitution of the State of Alaska, art. IX, sec. 1, first sentence. The ability of the members of an organization to vote to approve or repeal taxes and assessments imposed by the state may constitute an invalid delegation of the legislature's taxing powers. Under the Alaska Constitution, only the legislature may impose a tax and that power may only be delegated to a borough or city. The Alaska Supreme Court struck down a royalty assessment on salmon to pay for salmon hatcheries and salmon enhancement because the assessment was a tax and the legislature did not have the authority to authorize regional associations to approve or disapprove the imposition of the assessment. State v. Alex, 646 P.2d 203 (Alaska 1982). Under the Alex decision, the legislature can impose a tax or an assessment but it cannot delegate authority to the regional associations to determine if the assessment takes effect or not. Arguably, the current salmon enhancement tax, seafood processors' assessment, and the dive fishery management assessment, among other taxes and assessments, are valid because any approval of the relevant tax or assessment by the taxpayers was only a condition precedent to the enforcement of a lawfully enacted tax and not a delegation of the legislative power to the taxpayer to impose a tax. However, the Alaska courts may not recognize a meaningful distinction between conditioning the implementation of a tax on the happening of a specific event (such as approval by the taxpayers) and the outright delegation of the authority to impose a tax to the taxpayer, thus, many of the current commercial fishing taxes and assessments are potentially unconstitutional under the Alex decision.

H

The second issue raised by state imposed and enforced taxes and assessments arises from the expectation that the money collected by the state will be appropriated back to the organization or region where the money was collected. (Except as provided by the Alaska Constitution, the state cannot be required to dedicate state revenue for a particular purpose.) The Alaska Constitution disfavors dedicated funds. ("The dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs." State v. Alex, 646 P.2d 203, 210 (Alaska 1982), quoting with approval 1975 Alaska Att'y. Gen. Op. No. 9 at 24 (May 2). The taxes and assessments of the kind discussed in this memorandum are general revenue of the state and are potentially available for any public purpose. Any requirement that the

1. Article IX, sec. 7, Constitution of the State of Alaska states:

Dedicated Funds. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

Senator Ben Stevens
November 18, 2003
Page 3

legislature appropriate the money collected from a tax or assessment to a particular purpose raises the dedicated funds issue. Thus far the legislature has avoided a direct conflict with the prohibition against dedicated funds by stating in the relevant statutes, such as the salmon enhancement tax; salmon marketing tax, dive fishery management assessment, etc., that the resulting revenue may be appropriated to a particular purpose. See, AS 43.76.025(c), 43.76.120(d), and 43.76.200(a). This approach seemingly retains the full discretion of the legislature to determine how the revenue from the relevant taxes and assessments may be used. The downside of this approach is that it potentially misleads constituents to believe that the money from the taxes and assessments that they pay will be used only for certain purposes and creates a "moral" obligation on the part of legislators to appropriate the money for a specific purpose which may, in effect, violate the prohibition against dedicated funds.

dedicated funds issue
2

TWO: What conflicts might arise between existing seafood marketing effort and those of the proposed regional marketing organizations? The state already has its own statewide seafood marketing agency, the Alaska Seafood Marketing Institute, which promotes Alaska seafood as a whole and which is indirectly funded from assessments and taxes paid by fishermen and seafood processors. There is also the new federally created and funded Alaska seafood promotion board which has more flexibility to promote Alaska seafood than does the Alaska Seafood Marketing Institute. The addition of new state-funded regional marketing organizations would provide for still more marketing efforts on behalf of Alaska seafood. As inevitably happens there will be some duplication of efforts, and possibly conflicting messages and programs due to multiple organizations attempting to do similar things. The possibility that there may be more than one regional marketing organization promoting seafood products from a region may create additional inefficiencies. The fewer the number of entities involved in marketing of Alaska seafood, the greater should be the efficiency of marketing operations. Coordination of the various regional, federal, and state seafood marketing organizations may be necessary to avoid unproductive duplication of efforts. On the other hand, there is the risk that efforts to coordinate the many seafood marketing organizations may result in additional administrative overhead, reduce the total amount of funding available for actual seafood marketing, and stifle the grassroots, entrepreneurial spirit that seems to underlie the proposal for regional marketing organizations. However, these issues do not pose legal problems. These are policy issues that the legislature may wish to address when it considers the authorization and funding of regional seafood marketing organizations.

how?

THREE: Are there alternatives to state organized and funded regional seafood marketing organizations? An alternative to state organized and funded seafood marketing efforts would be a privately organized and funded seafood marketing organization. Individual fishermen, boat owners, fish processors, and others are free to join together in organizations to promote common goals. The members of such organizations are free to assess fees on themselves to fund the purposes of the organization. The organization may structure itself in any manner that the members consider appropriate for achieving their intended purpose. The organization may limit

Senator Ben Stevens
November 18, 2003
Page 4

membership to certain categories of persons and organizations. And those persons and organizations are free to join or leave the organizations as they consider appropriate. Such private organizations would not be subject to the many constitutional and statutory constraints imposed on the state when it becomes involved in what is inherently a private sector function.

Despite the constraints imposed on the state's seafood marketing efforts, the state still has advantages not available to the private sector, such as greater ability to provide the funding, organization, and unifying goals necessary to operate a seafood marketing program. It is partly for these reasons that a significant privately organized and funded seafood marketing organization has not been established in the state.

If I may be of further assistance, please advise.

GU:mdr
03-199.mdr

Senate Labor and Commerce Committee

CS HB 426 Assessment on Tourism-Related Sales 4/02/04

Submitted by Chip Thoma, Box 21884, Juneau AK 99802

Imagine being told by the government that you must advertise your product, even if you don't want to. That is the issue before us today.

- I maintain my opposition to CS HB 426 on constitutional grounds; the effect of 426 is to compel those being assessed a tourism tax to subsidize speech with which they may disagree.
- According to well-documented, federal case law, an industry advertising program, like that created in HB 426, violates the First Amendment, which both prevents government from prohibiting individuals from speaking, and it also prevents government from requiring them to speak. This latter understanding is the so-called "government-speech" issue being ruled on throughout the nation today.
- There is extensive, and very recent case history of these promotional entities being struck down by federal courts, notably with the US Supreme Court and the mushroom industry in 2001, known as United States v. United Foods. This is a precedent-setting, high court decision, and federal appeals court rulings on similar advertising programs have been based on it ever since.
- The Court stated in the United Foods mushroom decision,

"If the first Amendment means anything, it means that compelling speech must be the LAST and not the first strategy considered by the government."

- The only distinction that any court has ever made on this issue is whether the industry in question is highly regulated on sales, exempted from anti-trust laws, or that it prevents individual producers from making their own marketing decisions. That wasn't the case for the mushroom industry, and it **CERTAINLY** is not the case for the Alaska tourist industry.
- Since that 2001 Supreme Court decision, other federal courts across the nation have weighed in on these industry-advertising programs, which are sanctioned and assisted by government to collect taxes from select producers and merchants.
- Coincidentally, oral arguments were held on Wednesday, March 31 in Seattle, before the Ninth Circuit court, to hear an appeal of the BEEF (It's What's for Dinner) checkoff case, (Charter. et al. v. USDA et al.) challenging that program's constitutionality.
- An identical beef case (Veneman v. Livestock Marketing Association) is before the Supreme Court's April 16 conference of justices, with a grant or denial decision for review expected by April 19. This is a final appeal after a unanimous 8th Circuit Court decision that the beef program compels payment for generic advertising and is thus unconstitutional. Should the court deny further review that should settle the basic issues.
- Similarly, the Pork (Michigan Pork Producers v. Campaign for Family Farms, 6th Circuit Appeals Court, 2003) and Grape checkoff programs (Delano Farms v. California Table Grape Commission, 9th Circuit Appeals Court, 1995) were also found to be unconstitutional, based on the government compelling mandatory assessments to subsidize speech with which producers may disagree.
- Of further interest to Alaska, the 9th Circuit Court of Appeals held that the ALMOND checkoff program is unconstitutional and was not permitted government speech. (Cal-Almond Inc. v. Department of Agriculture, 67 F.3d 874, 9th Cir. 1995)

- Remember the celebrity moustaches of the Got Milk? campaign? Just two weeks ago, that huge federal tax assessment on dairy farmers, which funded generic milk advertising, was found to violate farmers' free speech in a unanimous decision by the US Court of Appeals of the Third Circuit. (Cochran v. the Secretary of Agriculture)
- I have provided the committee with the news story from the Philadelphia Enquirer and background on this latest milk advertising decision, and a copy of the Third Circuit ruling for staff. It is the most recent of these many cases.
- A similar Come to Alaska campaign is no different from these advertising programs already found to be unconstitutional by many federal courts, and the US Supreme Court.
- Finally, the brief by the successful litigants in the recent Got Milk case used a very applicable quote from Thomas Jefferson:

"To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical."

I believe this 200 year old statement by Jefferson makes a good case against passage of HB 426, and obviously the federal courts believe so, too.

philly.com

Posted on Wed, Feb. 25, 2004

Ruling: Milk mandate unfair

A federal appeals court in Philadelphia ruled yesterday that a 1983 federal law that requires dairy farmers to contribute toward the "Got Milk?" advertising campaign violates the free-speech rights of dairy farmers.

The unanimous ruling by a three-judge panel of the U.S. Court of Appeals for the Third Circuit came on an appeal by Joseph S. and Brenda S. Cochran, who run a small, independent "traditional method" dairy farm in Tioga County, in north-central Pennsylvania. A government appeal is expected.

Under the Dairy Promotion Stabilization Act of 1983, the Cochrans had to pay 15 cents per hundredweight of milk sold - \$3,500 to \$4,000 annually - to fund the promotional campaign. The Cochrans sued in 2002 contending that they were not part of any dairy cooperative and did not participate in the federal dairy-price stabilization program. Their suit said the promotion program forced them to "subsidize speech with which they disagree."

A federal judge in central Pennsylvania ruled against the Cochrans but the Third Circuit reversed the decision, ruling that the 1983 law was subject to free-speech review because it had nothing to do with milk safety or the dairy industry.

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Dairy Farmers & IJ Win Challenge to "Got Milk?" Ads**WEB RELEASE: February 24, 2004****Media Contact:**

John Kramer

Lisa Knepper

(202) 955-1300

[First Amendment]

[See Related Information](#)

Washington, D.C.—A unanimous U.S. Court of Appeals for the 3rd Circuit today declared unconstitutional the government-compelled speech program that forced dairy farmers to help pay for those ubiquitous "Got Milk" advertisements. The lawsuit had been brought to the 3rd Circuit by the Washington, D.C.-based Institute for Justice on behalf of Joseph and Brenda Cochran from Westfield, Pa.

The Court stated in its 21-page opinion, "[G]overnment may not compel individuals to support an advertising program for the sole purpose of increasing demand for [a] product." It further stated, "[P]romotional programs such as the Dairy Act seem to really be special interest legislation on behalf of the industry's interest more so than the government's." The Court concluded, "Although the dairy industry may be subject to a labyrinth of federal regulation, the Dairy Act is a stand-alone law and the compelled assessments for generic dairy advertising are not germane to a larger regulatory purpose other than the speech itself."

"The Court made clear that just because an industry is regulated doesn't mean that its members lose their First Amendment rights," said Steve Simpson, a senior attorney with the Institute for Justice. "That is great news for free speech."

The case pits the First Amendment against agricultural regulation and promises to have far-reaching consequences for free speech. Although just about everyone has seen the "Got Milk?" ads on television and in print, most people do not know that under the federal Dairy Promotion Program dairy farmers are forced to pay for them. The Cochrans, for example, must pay approximately \$4,000 a year from their thin operating budget for advertisements that obscure the distinctions between the Cochrans' traditional farming and large-scale producers. This case will have major implications for the many similar programs promoting a wide variety of agricultural products such as "ahh, the power of cheese," "beef, it's what's for dinner" and "pork, the other white meat" ad campaigns, to name just a few. Each of these is certainly a clever ad campaign, but the Cochrans' lawsuit raises the question, "May the government force individual producers to pay for them whether or not they want to advertise their products and whether or not they agree with the advertising the programs fund?"

Today the federal court said the government may not.

Simpson said, "The U.S. Supreme Court long ago held that the First Amendment does not allow government to compel individuals to speak, just as it does not allow government to prevent them from speaking. Speech wouldn't be free if government could require people to convey officially sanctioned messages. The same principle applies to compelling people to pay for speech with which they disagree."

[Read current information on this case](#)

[See background on this case](#)

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Lawsuit Takes on "got milk?" Ads
Institute for Justice & Independent Dairy Farmers
Challenge Mandatory Milk Advertising

WEB RELEASE: January 12, 2004

Media Contact:
John Kramer
Lisa Knepper
(202) 955-1300
[First Amendment]

[See Related Information](#)

Washington, D.C.—Milk producers who are forced to pay for those ubiquitous "got milk?" ads are asking the federal government, "got free speech?"

Traditional dairy farmers Joseph and Brenda Cochran from Westfield, Penn., are being forced by federal law to help pay for the "got milk" advertisements. Represented by the Washington, D.C.-based Institute for Justice, they are in court seeking to stop this form of government-compelled speech. The case pits the First Amendment against agricultural regulation and promises to have far-reaching consequences for free speech. The U.S. Court of Appeals for the Third Circuit in Philadelphia will hear the Cochrans' case on January 12, 2004, at 1 p.m.

Although just about everyone has seen the "got milk?" ads on television and in print, most people do not know that under the federal Dairy Promotion Program dairy farmers are forced to pay for them. The Cochrans, for example, must pay approximately \$4,000 a year from their thin operating budget for advertisements that obscure the distinctions between the Cochrans' traditional farming and large-scale producers. This case will have major implications for the many similar programs promoting a wide variety of agricultural products such as "ahh, the power of cheese," "hcef, it's what's for dinner" and "pork, the other white meat" ad campaigns, to name just a few. Each of these is certainly a clever ad campaign, but the Cochrans' lawsuit raises the question, "Should the government force individual producers to pay for them whether or not they want to advertise their products and whether or not they agree with the advertising the programs fund?"

As "traditional" dairy farmers, the Cochrans allow their cows more room to graze and to move around, and they don't use bovine growth hormone. They tend to about 150 cows on roughly 900 acres of land, 200 of which they own. Dairy farming has been in Joe's family for three generations. In the Cochrans' view, traditional dairy farming results in healthier cows, a cleaner environment and a superior product. The Cochrans thus have every reason to distinguish their product from that of larger-scale producers. The Dairy Act, however, compels them to do just the opposite. It requires them to fund generic ads whose message is that all milk is the same, regardless of who produces it or what methods they use. Under the Dairy Program, for instance, all dairy farmers must pay to the program 15 cents per "hundredweight" (i.e., per 100 lbs.) of milk they sell.

Steve Simpson, a senior attorney with the Institute for Justice, said, "The U.S. Supreme Court long ago held that the First Amendment does not allow government to compel individuals to speak, just as it does not allow government to prevent them from speaking. Speech wouldn't be free if government could require people to convey officially sanctioned messages. The same principle applies to compelling people to pay for speech with which they disagree."

On April 2, 2002, the Cochrans filed *Cochran v. Veneman* in the U.S. District Court for the

Middle District of Pennsylvania challenging the Dairy Program as a violation of their rights under the First Amendment. Unfortunately, because of confusion from seemingly conflicting recent U.S. Supreme Court decisions in similar cases, the Cochrans' lost their case in District Court, with the court ruling on March 4, 2003, that the Dairy Program is constitutional because the milk industry is otherwise heavily regulated. (In 1997, the U.S. Supreme Court upheld a federal law that required producers of California peaches and nectarines to subsidize a collective advertising program because they operate in a heavily regulated industry. In 2001, the Court struck down a program that required producers of mushrooms to do the same because they are not as regulated.)

"Courts are telling agricultural producers that as long as the government controls their prices, production, terms of sale and so on, it may as well control their free speech, too," Simpson said. "But two wrongs don't make a right; restricting one kind of freedom—economic liberty—isn't license to destroy another—free speech."

The Cochrans appealed their case to the U.S. Court of Appeals for the Third Circuit, and IJ agreed to handle their appeal. The case is scheduled to be argued in Philadelphia on January 12, 2004, with a decision following some months thereafter.

Defenders of the Dairy Program claim that it will increase demand for dairy products, which is necessary in order to decrease the federal government's financial obligations under the so-called "dairy price support program." In 1949, Congress passed a law that required the federal government to purchase dairy products if the price of milk fell too low. The idea of the program was to prop up the price of milk by establishing the government as the buyer of last resort. The problem is that this eliminated dairy farmers' incentive to cut production when prices fell. As a result, dairy producers kept producing dairy products that the government was obligated to purchase. Before long, the government had a lot of dairy products it didn't need and a very large bill. Thus, proponents of the Dairy Program argue, clever "got milk" ads are necessary to make private citizens buy up all that excess milk so the government won't have to. But here again, the problem is not a lack of advertising but an ill-advised price support program that distorts the milk market and leaves the federal government holding the bag. The solution is not to foist a collective advertising program on dairy farmers, but to end the price support program.

"The truth is, the laws that create these promotional programs are as much a result of special interest politics as any other pork barrel measure—with the only difference being that instead of heaping taxpayer dollars on a particular industry, Congress essentially lends out its legal authority to coerce all producers into a collective advertising scheme," Simpson said.


The Cochrans are independent dairy farmers. They are not members of any dairy manufacturing or marketing cooperative. They market their milk themselves, and they alone determine how much to produce, how to sell it and to whom it will be sold. Each year, they independently negotiate with the various processing plants that purchase their milk. They would be perfectly happy if the government would leave dairy farmers alone and let them produce, market and sell their milk themselves.

Assisting the Institute for Justice as local counsel is Walter Grabowski, of Holland & Grabowski in Wilkes Barre, Pa.

[Read current information on this case](#)
[See background on this case](#)

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[NOTE: To arrange interviews on this subject, journalists may call [John Kramer](#), the Institute for Justice's Vice President for Communications, at (202) 955-1300 or in the evening/weekend at (703) 527-8730.]

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Institute For Justice

Litigation Backgrounder

Got Free Speech?*IJ & Independent Dairy Farmers
Challenge Mandatory Milk Advertising*

“[T]o compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical.”

Thomas Jefferson[1]

-Introduction

Imagine being told by the government that you must advertise your product, even if you don't want to.

This is exactly what is happening to traditional dairy farmers Joseph and Brenda Cochran from Westfield, Penn., which is located in the north-central region of the state. The Cochrans are being forced by federal law to help pay for those ubiquitous “got milk” advertisements. Represented by the Washington, D.C.-based Institute for Justice, the Cochrans are in court seeking to stop this form of government-compelled speech. The case pits the First Amendment against agricultural regulation and promises to have far-reaching consequences for free speech. At issue is the federal law that created the well-known “got milk” ad campaign. Although just about everyone has seen these ads on television and in print, most people do not know that under the federal Dairy Promotion Program dairy farmers are forced to pay for them.[2] The Cochrans, for example, must pay approximately \$4,000 a year from their thin operating budget for advertisements that obscure the distinctions between the Cochrans' traditional farming and other producers. Federal laws create a number of similar programs for a wide variety of agricultural products. Besides “got milk,” government programs are also responsible for the “ahh, the power of cheese,” “beef, it's what's for dinner” and “pork, the other white meat” ad campaigns, to name just a few. Federal and state agricultural programs exist for many more products as well. Clever ad campaigns all, but should the government force individual producers to pay for these programs whether or not they want to advertise their products and whether or not they agree with the advertising the programs fund?

The U.S. Supreme Court long ago held that the First Amendment does not allow government to compel individuals to speak, just as it does not allow government to prevent them from speaking. Speech wouldn't be “free” after all if government could require people to convey officially sanctioned messages. The same principle applies to compelling people to pay for speech with which they disagree.

The Cochrans are “traditional” dairy farmers. They allow their cows more room to graze and to move around, and they don't use bovine growth hormone. Although traditional dairy farming generally produces less milk than other types of farming, in the Cochrans' view it results in healthier cows, a

clearer environment and a superior product. Judging by the booming market for organic products,[3] many people agree with this approach to farming.

The Cochrans thus have every reason to distinguish their product from that of other producers. The Dairy Act, however, compels them to do just the opposite. It requires them to fund generic ads whose message is that all milk is the same, regardless of who produces it or what methods they use. Imagine if farmers who chose not to use pesticides were forced to fund advertising of foods produced using pesticides or if paper manufacturers who use only recycled products were forced to fund advertising of those that do not, and you begin to get an idea of why this is objectionable. The Cochrans, in other words, are forced to support a message and farming practices they have specifically chosen to reject. And they are forced to do so to the tune of thousands of dollars a year, a steep price for small dairy farmers who operate on thin margins.

On April 2, 2002, the Cochrans filed *Cochran v. Veneman*[4] in the U.S. District Court for the Middle District of Pennsylvania challenging the Dairy Program as a violation of their rights under the First Amendment. Just two years ago, in *United States v. United Foods*, the U.S. Supreme Court held that a federal promotional program for mushrooms that is nearly identical to the Dairy Promotion Program was unconstitutional because it compelled mushroom producers to fund advertising with which they disagreed.[5] As the Court stated in that case, "First Amendment values are at serious risk if the government can compel a particular citizen, or a discrete group of citizens, to pay special subsidies for speech on the side that it favors." [6] Even when the issue is product advertising, the rights of dissenting producers deserve to be recognized under the First Amendment. [7]

Unfortunately, the High Court has issued other decisions that have left the line between constitutional economic regulations and unconstitutional speech regulations unclear.[8] As a result of this confusion, the Cochrans lost their case in District Court, with the court ruling on March 4, 2003, that the Dairy Program is constitutional because the milk industry is otherwise heavily regulated. In essence, the Court told dairy farmers that as long as the government regulates their prices and certain aspects of production, it may as well control their free speech, too. But two wrongs don't make a right; restricting one kind of freedom—economic liberty—isn't license to destroy another—free speech. Considering how prevalent economic regulations have become in all manner of businesses, this is a very troubling ruling. It is also a textbook example of how restricting some rights leads inevitably to restrictions on all rights—a trend the Institute for Justice fights tirelessly against.

The Cochrans appealed their case to the U.S. Court of Appeals for the Third Circuit, and IJ agreed to handle their appeal. The case is slated to be argued in Philadelphia in January 2004 with a decision following some months thereafter.

Agriculture Promotional Programs: Government Regulated Speech; Pork Barrel Politics

During the past two decades, Congress has created a host of promotional programs for many agricultural products besides milk. Programs have existed for products as wide-ranging as beef, pork, honey, potatoes, watermelons, mangos, kiwifruit, limes, fresh cut flowers, peanuts, popcorn, pecans, soybeans, avocados and wool, to name just a few.[9] Congress was so enamored of the promotional programs that in 1996 it enacted the generic Commodity Promotion Act, which is a catchall act that allows the Secretary of Agriculture to create promotional programs for any agricultural commodity.[10] The states have also gotten into the game, creating promotional programs for products such as California grapes, Washington apples and even Louisiana alligator skins. Advertising, it seems, is increasingly something that governments view as too important to be left to individual producers and the free market.

The catch, of course, is that under most of these programs, producers who disagree with the advertising strategy of appointed industry boards have no right to create their own ads under the programs, to refuse to fund ads with which they disagree, or to opt out of the programs altogether. Under the Dairy Program, for instance, all dairy farmers must pay to the program 15 cents per "hundredweight" (i.e., per 100 lbs.) of milk they sell.[11] For the Cochrans, this amounts to roughly \$4,000 per year.

Proponents of the programs cite a number of justifications for this compulsion. They claim, for instance, that the ads are only generic and contain no message at all, so who can complain? But both consumers and producers make distinctions based on different brands and different production methods. Why should one producer be required to contribute to a general advertising fund for all products of a given type when he believes his product is superior? As the large market for organic foods and the many different brands of products available show, consumers are interested not only in the products themselves, but in how they are produced. In short, as the Supreme Court has made clear, the whole point of the First Amendment is to allow the speaker and the listener—not governments or industry boards imbued with government power—to assess the importance of commercial information.[12]

Proponents also claim that any producer who is allowed to opt out of the promotional programs will be permitted to be free riders on the advertising of others. But this is a complaint more properly directed at collective advertising itself, not those who dissent from such schemes. If proponents of these schemes don't like free riding, they should end collective advertising, not complain about those who believe that they can do better by advertising for themselves.

In a similar vein, defenders of the Dairy Program claim that it will increase demand for dairy products, which is necessary in order to decrease the federal government's financial obligations under the so-called "dairy price support program." In 1949, Congress passed a law that required the federal government to purchase dairy products if the price of milk fell too low.[13] The idea of the program was to prop up the price of milk by establishing the government as the buyer of last resort. The problem is that this eliminated the incentive to cut production or to direct milk to more efficient uses when prices fell. As a result, dairy producers kept producing dairy products that the government was obligated to purchase. Before long, the government had a lot of dairy products it didn't need and a very large bill. Thus, proponents of the Dairy Program argue, clever "got milk" ads are necessary to make private citizens buy up all that excess milk so the government won't have to. But here again, the problem is not a lack of advertising but an ill-advised price support program that distorts the milk market and leaves the federal government holding the bag.

Another justification for promotional programs is the idea that agricultural products are just too important to the economy to leave their advertising to the free market. This, however, can be used to justify government involvement in any market. And, indeed, Congress has used it repeatedly, claiming with each new program that the product at issue was vital to the national economy and public health.[14] But are popcorn, kiwifruit and cut and dried flowers, to name just a few of the many products for which promotional programs exist, really a matter of national concern?

The truth is, the laws that create these promotional programs are as much a result of special interest politics as any other pork barrel measure—with the only difference being that instead of heaping taxpayer dollars on a particular industry, Congress essentially lends out its legal authority to coerce all producers into a collective advertising scheme. The government's own website for the Dairy Program trumpeted the fact that the program is a private business with government "help." As the website put it, "Dairy Producer Checkoff: A \$250 Million Business." [15] This shouldn't be surprising. The idea for the website came from dairy industry groups who were unhappy with voluntary local and regional advertising programs and wanted a national program that kept dissenting farmers from opting out. Not surprisingly, a number of dairy producers intervened in the Cochran's lawsuit to defend the program, arguing that it is beneficial to dairy producers—including those who wish to differentiate their products from the mainstream. But whether or not the Dairy Program helps dairy farmers who don't object to its advertising is not the issue. They can always choose to advertise their products or to join with others and advertise collectively. The Cochran's, however, cannot choose to opt out of the Dairy Program.

The First Amendment Bars Compelled Subsidies for Speech

The Cochran's challenge to the Dairy Program finds its roots in the principle, first established by the U.S. Supreme Court in 1943, that just as the First Amendment prevents government from prohibiting individuals from speaking, so it prevents government from requiring them to speak. Thus, the Court has held that states cannot force schoolchildren to recite the pledge of allegiance [16] or citizens to display state slogans on their car license plates. [17]