

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11105 SENATE COMMUNITY & REGIONAL AFFAIRS

registered commercial shell fish beds and found that small ships do not currently moor or dock near these sites.

Copper is highly toxic in aquatic environments. This toxicity is reflected in the low Alaska Water Quality Standard of 3.1 µg/L dissolved copper in saltwater. The predicted concentration of copper in receiving water during small ship stationary discharge can be as high as 10 times this standard and therefore does pose a likely risk to aquatic life.

Most organisms need a minimum concentration of zinc to function properly. Alaska has a water quality standard of 81.0 µg/L for dissolved zinc in saltwater based on chronic effects to aquatic life. In 2003, the level of dissolved zinc found in receiving water during graywater discharge slightly exceeds Water Quality Standards, and therefore poses some risk to aquatic life.

The Whole Effluent Toxicity (WET) testing done in 2002 and 2003 in conjunction with the information above indicates that **the wastewater effluent from small ships poses some risk to the marine environment during stationary discharges.**

The concentration of fecal coliform in the effluent during stationary discharge would pose a risk to human health in areas where aquatic life is harvested for raw consumption.

7.3. Comparison to other Marine Discharges

Cruise ship's wastewater systems can be compared to municipal treatment systems that serve small Alaskan cities. Cruise ships are excluded from obtaining permits under the Clean Water Act. However, their marine sanitation devices (MSDs) must meet effluent standards set in Section 312. This section set the Type II MSD standards for blackwater at 200 fecal coliform/100 ml and 150 mg/L total suspended solids (TSS). In Alaska, cruise ships must also adhere to state and federal wastewater effluent standards and discharge conditions (Table 2).

Municipalities must obtain permits under the Clean Water Act before discharging wastewater. The Act uses both water quality effluent standards and technology based limits to protect water quality.¹⁰¹ It has been termed a technology-forcing statute because of the rigorous demands placed on the regulated community to improve effluent quality through treatment technology. The Act required municipalities to upgrade systems to secondary treatment, (85% removal of biological oxygen demand (BOD) and total suspended solids (TSS)), by July 1, 1988. Eighty-six percent (86%) of municipalities met that date. Cities that discharged wastes into the marine environment were eligible for case-by-case EPA waivers of the secondary treatment requirement. These waivers, referred to as 301(h) waivers, require 30% removal of BOD and TSS. In order to be eligible for these waivers, natural factors such as tides and currents must provide significant elimination of traditional forms of pollution, protect shell fish, fish, and other aquatic life, and comply with water quality standards. Waivers were only granted, with certain exceptions, if a waiver application was filed by December 29, 1982.

Juneau and most other Alaskan cities adhere to secondary treatment standards and have limits that do not allow the exceedance of a monthly geometric mean of 200 fecal coliforms per 100 ml if chlorine is used for disinfection and a monthly geometric mean of 400 fecal coliform bacteria if ultraviolet light is used for disinfection. However, many communities in Southeast Alaska including the popular cruise ship ports of Ketchikan, Skagway, and Sitka have waivers from

¹⁰¹ Copeland, Claudia. CRS Report for Congress, Clean Water Act: A Summary of the Law, January 20, 1999

secondary treatment. These treatment systems have been assigned very large mixing zones to allow for dilution in the receiving water. These cities have effluent limits with a daily maximum of 1.5 million fecal coliforms/100 ml and a monthly geometric mean of 1 million fecal coliforms/100 ml. These are the highest limits that have been allowed in Alaska.

Domestic and industrial discharges in Alaska usually exceed water quality standards at the end of pipe. Under the State of Alaska and the National Pollutant Discharge Elimination System (NPDES) permit systems, these entities are granted mixing zones - areas where they may legally exceed water quality standards while dilution and decay or die-off occur. Outside of the mixing zone, water quality standards must be met. ADEC uses information from the discharge source such as wastewater volume, velocity, temperature, and salinity as well as pipe diameter and depth, and receiving water uses and sensitivity to determine the size of the mixing zone. These dischargers must monitor at the edge of mixing zone specified in their permit to ensure that they are meeting the water quality standards. Because other dischargers are typically granted a mixing zone, ADEC considered the effect of dilution on cruise ship effluent to assess its impact on water quality.

There are numerous potential sources of pollution that impact the Alaska marine environment. They include private vessels, commercial fishing vessels, day trip charter vessels, commercial passenger vessels that have less than 50 overnight passengers for hire, yachts, residential shore based dischargers, runoff and wildlife, (including marine animals). The effects of these other sources have not yet been quantified.

8. ADEC RECOMMENDATIONS

8.1. Recommendations for future study

Sampling

At the recommendation of the Science Advisory Panel, ADEC tested vessel wastewater for commonly used organophosphorus pesticides at the end of 2003 season. No pesticides were detected in the four samples. The ADEC will continue organophosphorus testing during the 2004 season.

Cyanide was dropped from the Quality Assurance/Quality Control (QAQC) Plan after 2000 even though there were high concentrations in some of the 2000 samples. We believe the exclusion from the sampling protocol was premature. ADEC will resume sampling for cyanide in 2004 when the state goes on board and samples the ship wastewater discharges.

In general, fecal coliforms survive for shorter periods than other enteric microorganisms in marine water. The absence of fecal coliform bacteria does not guarantee the absence of viruses and other pathogens.¹⁰² EPA recommends using enterococci for bacteria monitoring in marine waters.¹⁰³ ADEC will sample vessel wastewater for *Escherichia coli* (*E. coli*) and enterococci, in 2004.

The current method detection limits (MDL) for chlorine exceeds Alaska Water Quality Standards. As part of the QAQC Plan for 2004, ADEC will require using a more sensitive test that can measure as low as 20 ug/l, instead of the current MDL of 100 ug/l. This sensitive method, however, will still not be able to detect the Alaska Water Quality chronic standard of 7.5 ug/l.

During 2003, some large ship samples were taken from the sampling port right after the treatment system but at a distance between 50 to 400 feet from the overboard discharge port. The 2003 data indicated that fecal contamination and growth occasionally occurs during the transit from the treatment system to the overboard port. In 2004, ADEC will only approve Vessel Specific Sampling Plans where samples are taken from sample ports located within 50 feet of the overboard discharge port.

State cruise ship regulations,¹⁰⁴ effective November 2002, allowed small ships to have a qualified crew member sample the vessel's wastewater. ADEC will encourage small vessel operators to use their own staff to sample their vessel as it comes into port. These samples will be more representative since ships will still be full with passengers and the treatment system will be operating normally. ADEC can provide sampling training to operators upon request. ADEC would audit the vessel samplers.

¹⁰² Commission on Geosciences, Environment and Resources, 1993 "Managing Wastewater in Coastal Urban Areas" pg. 67
<http://books.nap.edu/books/0309048265/html/67.html>

¹⁰³ EPA 440/5-88/007 Bacteria Water Quality Standards Criteria Summaries: A Compilation of State/Federal Criteria. September 1988.

¹⁰⁴ 18 AAC 69.090, <http://www.state.ak.us/dec/title18/wpfiles/69mas.pdf>

Section 5.1 discusses traditional treatment systems. The sampling results from the Alaska Marine Highway System (AMHS) ferries' macerator chlorinating systems were extremely variable from 2001 through 2003. ADEC recommends that AMHS sample for fecal coliform, total suspended solids (TSS) and chlorine at timed intervals such as: 1) at the discharge pump start; 2) 5 minutes into the pumping cycle; 3) 10 minutes into the pumping cycle; 4) 15 minutes into the pumping cycle; and 5) at the end of the discharge cycle. This experiment would check the fecal coliform variability throughout the pumping cycle. This information may indicate the correct location for the sample port in the treatment cycle.

New Studies

ADEC made assumptions about ambient water quality for the dilution model. It is important to check these assumptions with real data. ADEC will conduct ambient marine monitoring in Southeast Alaska in coordination with the Western States Coastal Environmental Monitoring and Assessment Program (EMAP) project during the summer of 2004.¹⁰⁵ The EMAP project will also include sediment and fish tissue sampling for heavy metals and PCBs. ADEC will use this information in future modeling efforts.

After applying the dilution factor calculated by the Visual Plumes model to effluent data, small ships exceed four Alaska Water Quality Standards (free chlorine, fecal coliform, copper, and zinc) in receiving water during stationary discharge. When a ship discharges above the waterline, the dilution factor is decreased, exacerbating the problem. The Visual Plumes model that is used to estimate the dilution factors in this report was not designed to model discharges from vessels. ADEC may perform a dye study in the future to determine the dilution factor caused by small ships during stationary discharge.

8.2. Recommendations for Best Management Practices

When large and small vessels discharge wastewater underway, they are able to meet all Alaska Water Quality Standards. The 2003 data indicates that large vessels with advanced wastewater treatment systems meet Alaska Water Quality Standards for all tested pollutants in receiving water during stationary discharges. Large vessels should use discharge ports that are less than 12 inches in diameter to create a jet like propulsion that will increase dilution. Large vessels should avoid discharging above the water line because this decreases dilution. ADEC also wants to encourage the continued use of ultraviolet light instead of chlorine as a disinfectant on large ships. It is also important that the discharge port be located within 50 feet of the wastewater treatment system to decrease the likelihood of fecal coliform contamination in the discharge line.

Small ships regularly exceed four Alaska Water Quality Standards in receiving water during stationary discharge. Vessels that have holding capacity should not discharge while stationary. Holding water while in port is ideal. Most small ships can hold their blackwater and mixed blackwater and graywater for up to 24 hours while stationary (Table 24). This is important since blackwater and mixed blackwater and graywater have the highest fecal coliform counts.

However, only one ship can hold their graywater, the majority of wastewater volume, for even 12 hours while stationary (Table 24). According to the Vessel Specific Sampling Plans,

¹⁰⁵ For more information on EMAP, visit the EPA EMAP Research Strategy Report, July 2002 at: http://www.epa.gov/emfjulte/html/pubs/docs/resdocs/EMAP_Research_Strategy.pdf

graywater is not plumbed to blackwater holding tanks. Therefore, excess blackwater holding capacity can not be used to store graywater.

Small ships need to develop strategies to limit their graywater discharge while stationary. Small vessels should not do laundry to minimize their waste water production. Small vessels could also schedule to arrive in port or at anchor after the morning high water usage periods (8-10 a.m.) or leave before the evening high water usage (6-8 pm).

Table 24. Small Ship Holding Tank Capacity

Company	Ship Name	Number of passengers and crew	Blackwater (gallons per day)				Graywater (gallons per day)			
			Produced	Holding capacity	Hold 24hr	Hold 12 hr	Produced	Holding capacity	Hold 24hr	Hold 12 hr
AMHS	Columbia	223	6,690	23,800	Yes	Yes	GW is mixed with BW. See BW.			
AMHS	Kennicott	204	6,120	8,800	Yes	Yes	GW is mixed with BW. See BW.			
AMHS	Malaspina	188	5,640	8,006	Yes	Yes	GW is mixed with BW. See BW.			
AMHS	Matanuska	186	5,580	8,281	Yes	Yes	GW is mixed with BW. See BW.			
AMHS	Taku	97	2,910	3,360	Yes	Yes	GW is mixed with BW. See BW.			
Glacier Bay	Wilderness Adventurer	95	2,920	2,400	No	Yes	GW is mixed with BW. See BW.			
Glacier Bay	Wilderness Discoverer	120	3,130	2,400	No	Yes	GW is mixed with BW. See BW.			
America West Steamship	Empress of the North	320	8,730	26,800	Yes	Yes	GW is mixed with BW. See BW.			
CruiseWest	Spirit of Discovery	105	500	1,700	Yes	Yes	2,500	30	No	No
CruiseWest	Spirit of Alaska	99	495	334	No	Yes	2,250	182	No	No
CruiseWest	Spirit of Columbia	99	400	3,600	Yes	Yes	2,260	478	No	No
CruiseWest	Spirit of Endeavour	130	600	934	Yes	Yes	3,600	934	No	No
CruiseWest	Spirit of 98	120	3,600	12,700	Yes	Yes	3,000	0	No	No
CruiseWest	Spirit of Oceanus	178	19,875	14,460	No	Yes	GW is mixed with BW. See BW.			
Lindblad	Sea Bird	96	3,000 ¹⁰⁶	1,150	No	No	2,100	735	No	No
Lindblad	Sea Lion	98	3,000 ¹⁰⁷	1,255	No	No	2,100	735	No	No
New World Ship Management	Clipper Odyssey	204	612	606	Yes	Yes	16,500	28,800	Yes	Yes
New World Ship Management	Yorktown Clipper	175	2,728 ¹⁰⁸	2,996	Yes	Yes	12,000 ¹⁰⁹	2,996	No	No

Source: Table created from information submitted by small ship owner and operators in their 2003 Vessel Specific Sampling Plans.

¹⁰⁶ Includes saltwater for flushing.

¹⁰⁷ Includes saltwater for flushing.

¹⁰⁸ Includes saltwater for flushing.

¹⁰⁹ This vessel does laundry which accounts for 2,000 gallons per day. This vessel should not do laundry in port.

8.3. Evaluation of Whether Small Ships Should Remain in the Program

Based on the wastewater testing results, ADEC recommends that small ships remain in the Commercial Passenger Vessel Environmental Compliance program. The Science Advisory Panel recommended in their November 2002 report that these ships should avoid stationary discharge, particularly in small fjords and embayments where the movement or flux of water is limited, because of the high levels of fecal coliform and suspended solids in their wastewater.¹¹⁰ ADEC WET test results in conjunction with conventional and priority pollutant testing indicate that these small ships pose some risk to the marine environment during stationary discharge. Small ships that discharge blackwater or blackwater and graywater mixed while stationary may pose a risk to human health in areas where people collect shellfish for raw consumption.

Small vessels were granted three years to come into compliance with the state cruise ship law wastewater effluent standards.¹¹¹ As of March 1, 2004, these vessels may submit an interim protection plan that, if approved by ADEC, extends the time for compliance with the effluent standards. This plan should include a description of Best Management Practices, such as avoiding stationary discharges in areas of limited water movement, that the operator is undertaking to limit the adverse impacts of their discharges.¹¹² Violations and fines could be levied against ships that are found violating the terms of their approved plan.

¹¹⁰ Science Advisory Panel, November 2002, "The Impact of Cruise Ship Wastewater Discharge on Alaska Waters," Executive Summary, <http://www.state.ak.us/dec/press/cruise/documents/impact/executivesummary.htm>

¹¹¹ Alaska Statute 46.03.460 – 490 Section 7

¹¹² 18 AAC 69.045 Interim Protective Measures Plan, <http://www.state.ak.us/local/akpages/ENV.CONSERV/title18/wpfiles/69mas.pdf>

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/4/04

FURTHER: Resources

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4/1/04

Community and Regional Affairs Committee considered

SENATE BILL NO. 361

SB 361 SMALL CRUISE SHIP DISCHARGES

"An Act relating to discharges from small commercial passenger vessels; and providing for an effective date."

and recommends:

- be replaced with _____ CS 361 (CRA)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DEC	3/31/04			✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Thomas H. Wagon</i>	✓			
<i>Georgiana Smith</i>				X
<i>[Signature]</i>	✓		X	
CHAIR: <i>Burt K. Mathews</i>	✓		X	

Alaska State Legislature

Senate Resources Committee

Senator Scott Ogan, Chair

Senator Fred Dyson
Senator Kim Elton
Senator Georgiana Lincoln
Senator Ralph Seekins
Senator Ben Stevens
Senator Tom Wagoner



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SB 361: Sectional Analysis

Section 1: This section states the findings by the legislature and the intent to allow older small commercial passenger vessels to continue to operate in Alaska while taking steps to minimize discharges and minimize harm to the marine waters of the state.

Section 2: A third option for terms and conditions of vessel discharges is recognized by this section through an amendment to AS 46.03.462(a).

Section 3: This section repeals the amendment in the previous section and would be effective January 1, 2016, under the effective date in section 16 of the bill.

Section 4: By amending AS 46.03.462(d), the Dept. of Environmental Conservation would have the power to waive portions of the discharge requirements and limitations in AS 46.03.463 for older small commercial passenger vessels.

Section 5: This section repeals the amendment in the previous section and would be effective January 1, 2016, under the effective date in section 16 of the bill.

Section 6: This section adds new subsection (e) and (f) to AS 46.03.462. Under subsection (e), a small commercial passenger vessel can submit a plan for alternative terms and conditions of vessel discharges based on best management practices if the keel of the vessel was laid before January 1, 2004. If DEC finds that the plan incorporates the best management practices as defined in this subsection, the department shall approve the plan for a three-year period. This amendment authorizes the department to adopt regulations and limits the

extent to which the department may require retrofitting of a vessel. Despite the 3 year duration of a plan approved by the department under subsection (e), subsection (f) bars the duration of any plan to extend beyond December 31, 2015.

Section 7: This section amends AS 46.03.463(b) to conform to the amendments to AS 46.03.462 in sections 4 and 6 of the bill.

Section 8: This section repeals the amendment in the previous section and would be effective January 1, 2016, under the effective date in section 16.

Section 9: This section amends AS 46.03.463(c) to conform to the amendments to AS 46.03.462 in sections 4 and 6.

Section 10: This section repeals the amendment in the previous section and would be effective January 1, 2016, under the effective date in section 16.

Section 11: This section amends AS 46.03.463(e) to conform to the amendments to AS 46.03.462 in sections 4 and 6.

Section 12: This section repeals the amendment in the previous section and would be effective January 1, 2016, under the effective date in section 16.

Section 13: This section repeals subsections to AS 46.03.462 added by section 6.

Section 14: A new section to the uncodified law, providing for a retroactive effect of the Act for the 2004 season. The section sets the deadline for the owner or operator of an eligible vessel to submit a plan to DEC and describes the retroactive effect of the approval of the plan.

Section 15: This section makes sections 1, 2, 4, 6, 7, 9, and 11 retroactive to January 1, 2004.

Section 16: This section makes sections 3, 5, 8, 10, 12, and 13 take effect on January 1, 2016, thus sun setting the changes made in sections 1, 2, 4, 6, 7, 9, and 11.

Section 17: Except for the future effective dates in the previous section, this section provides for an immediate effective date.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB361-EC-AWQ-03-31-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affect: Environmental Conservation
Title Small Cruise Ship Discharges RDU Air and Water Quality
Component Water Quality
Sponsor Senate Resources
Requester Senate C&RA Committee Component No. 2062

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	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (0)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Commercial Passenger Environment)	0.0	0.0	0.0	0.0	0.0	0.0
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	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill will not have a financial impact on the Commercial Passenger Vessel Environmental Compliance Program. The cost to administer the program remains unchanged.

Prepared by: Lynn J. Tornich Kent, Water Programs Manager Phone 907-465-5312
Division Air and Water Quality Date/Time 3/31/04 11:11 AM
Approved by: Kurt Fredriksson, Deputy Commissioner Date 3/31/2004
Agency Environmental Conservation

SB

382

Sponsor Statement
Prepared by Alaska Department of Transportation and Public Facilities
April 1, 2004
In Support of SB 382

In late March, Commissioner Barton wrote to both Senate and House Transportation, requesting legislation be prepared to address an urgent problem regarding the method used to perform property line changes associated with right-of-way for new transportation projects. His concern was based on a recent lawsuit filed on the C Street extension project in Anchorage. Based on discussion between the Department of Law and right-of-way staff within the department, there was a concern the argument used in the lawsuit could be extended to several other projects across the state. Indeed, that same week, a second lawsuit was filed on the Kenai River bridge project at Soldotna, based on the same legal argument.

The novel legal theory being advanced in the C-Street and Kenai River cases is based on a state law that dates back to 1975. What's new is the interpretation that the state cannot fulfill the typical replat provisions required by local governments (mandated by AS 09.55.275) while also fulfilling the legal processes associated with property acquisition under eminent domain powers.

While the state will vigorously defend against these lawsuits, we are quite fearful of the consequence of an adverse decision as well as the time delay associated with such litigation. Several major projects across the state are at risk. Most critical is the Soldotna project that is slated for construction this summer and several others slated for construction in 2005. If either case is decided in favor of the landowner, the state's ability to use eminent domain powers will be virtually extinguished.

Our principal concern with the current language in AS 09.55.275 is that it requires:

"The platting authority shall treat applications for replat made by state or local governmental agencies in the same manner as replat petitions originated by private landowners.

Inherently, a replat associated with property acquired under eminent domain proceedings, is different than a replat a property owner pursues voluntarily. Accordingly, boroughs with platting authority have created different procedures for such replats involving right-of-way. The argument being advanced in court is that having two separate procedures violates the 1975 legislative intent. The state strongly disagrees with this position, but it is possible that an Alaska Superior Court judge could find that the separate procedures are not treated in the "same manner," and could therefore also find that the state has no authority to acquire needed property.

To prevent further project delay, the legislation before you is offered. It ensures that a state or municipal entity can still reasonably proceed with property acquisition under eminent domain while retaining the local government's locally structured replat procedure.

THE
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delegated his statutory authority to the Interior authorizing the State of Alaska for specified purposes in a Land Title Ass'n, 667 U.S. 1040, 88 (1984).

shall not be construed to limit the right-of-way or other easements created by the court on 14, 1966, by the court. The court required under the court. Stat. 418. (§ 3 ch 118)

shall apply to patents issued by the court in 1938, 43 U.S.C. & 1701. State v. Alaska Land Title Ass'n, 667 U.S. 1040, 88 (1984), cert. denied, 79 L. Ed. 2d 168 (1984). The court does not apply to the court's order under which the court delegated his statutory authority to the Interior authorizing the State of Alaska for specified purposes in a Land Title Ass'n, 667 U.S. 1040, 88 (1984).

shall appeal that

it is to be applied is

proceedings in condemnation and those under a court's order for the court. v. 3.60 Acres, More or Less, 138 F. 544 (9th Cir. 1905). The court shows authority and the right of eminent domain on behalf of a public use in the taking of property in the complaint or petition in plain and affirmative authority for the court of the property for such purposes, 138 F. 544 (9th Cir. 1905).

ent in eminent domain clear, positive statement condemned is necessary law, and supported by a

statement of facts from which the court can see that the property is intended to be used for that purpose. *Miocene Ditch Co. v. Lyng*, 138 F. 544 (9th Cir. 1905).

Authority and necessity must be found by court before condemnation. — This section has been construed as requiring the court to find the use is authorized by law and the taking is necessary "before condemnation." *Bridges v. Alaska Hous. Auth.*, 349 P.2d 149 (Alaska 1960).

Necessity of findings. — It is upon findings made in accordance with this section that there is established a basis for further proceedings. The findings constitute the decision of the court upon the vital question of whether or not the property sought to be taken can be condemned at all. *Van Dyke v. Midnight Sur. Mining & Ditch Co.*, 177 F. 85 (9th Cir. 1910).

Questions to be considered by court. — Ordinarily the only questions to be considered by the courts in condemnation proceedings are: First, whether the petitioner has the power to exercise the right of eminent domain; second, whether the property itself is of a nature subject to condemnation; third, whether the property is being taken for a public or a private use; and fourth, whether the power is being used for taking an excessive amount of property. *Town of Seward v. Margules*, 9 Alaska 354 (1938).

Absolute necessity not required. — Although the condemnor may have the burden of making a prima facie showing of necessity, the language of this section ought to be construed to require no more than that the particular taking be shown to be "reasonably requisite and proper for the accomplishment of the purpose for which it is sought." *City of Fairbanks v. Metro Co.*, 540 P.2d 1056 (Alaska 1975).

Particular questions left to discretion of condemnor authority. — In general condemnation proceedings under this article, once the condemnor has presented sufficient evidence to support a finding that a particular taking is "reasonably requisite" for the effectuation of the authorized public purpose for which it is sought, particular questions as to the route, location or amount of property to be taken are to be left to the sound discretion of the condemning

Collateral references. — Sufficiency of condemnor's negotiations required as preliminary to taking in eminent domain, 21 ALR4th 765.

Sec. 09.55.275. Replat approval. An agency of the state or municipality may not acquire property located within a municipality exercising the powers conferred by AS 29.35.180 or 29.35.260(c) that results in a boundary change unless the agency or municipality first obtains from the municipal platting authority preliminary approval of a replat showing clearly the location of the proposed public streets, easements, rights-of-way, and other taking of private property. Final approval of replat shall be similarly obtained. However, if a state agency clearly demonstrates an overriding state interest, a waiver to the approval requirements of this section may be granted by the governor. The platting authority shall treat applications for replat made by state or local governmental agencies in the same manner as replat petitions originated by private landowners. (§ 2 ch 96 SLA 1975; am § 23 ch 74 SLA 1985)

Revisor's notes. — In 1994, in the first sentence of this section, "An agency of the state or municipality may not" was substituted for "No agency of the state

authority absent a showing by clear and convincing evidence that such determinations are the product of fraud, caprice or arbitrariness. *City of Fairbanks v. Metro Co.*, 540 P.2d 1056 (Alaska 1975).

Burden of proof. — One seeking to show that a particular taking is excessive or arbitrary has a heavy burden of proof: "the attempt to persuade the court to substitute its judgment for that of the condemnor." *City of Fairbanks v. Metro Co.*, 540 P.2d 1056 (Alaska 1975).

Relative private injury. — That certain property owners suffer relatively greater injury than others, or are less directly benefited by the project, does not establish that the taking of their property is unnecessarily injurious or unwarranted. *City of Fairbanks v. Metro Co.*, 540 P.2d 1056 (Alaska 1975).

While it is true that the inability of a particular condemnor to obtain immediate beneficial use from the project may be considered as a factor in weighing the project's impact in terms of the degree of private injury involved in a proposed route or location, the interest in minimizing private injury is not absolute and must always be weighed in relation to the goals and efficacy of the project in its entirety at the time such determinations are made. *City of Fairbanks v. Metro Co.*, 540 P.2d 1056 (Alaska 1975).

City clearly met its initial burden of demonstrating that its taking certain parcels of land for purposes of the construction of a sewer line was reasonably necessary under the circumstances. *City of Fairbanks v. Metro Co.*, 540 P.2d 1056 (Alaska 1975).

Complaint held sufficient. — Where a complaint used the words "imperatively required" for a public use and alleged facts supporting the same, this was sufficient to show necessity under this section. *Town of Seward v. Margules*, 9 Alaska 354 (1938).

Appeal from interlocutory order finding use authorized and taking necessary. — See *Van Dyke v. Midnight Sun Mining & Ditch Co.*, 177 F. 85 (9th Cir. 1910); *Northern Mining & Trading Co. v. Alaska Gold Recovery Co.*, 20 F.2d 5 (9th Cir. 1927).

or municipality may" to conform the section to the current style of the Alaska statutes.



ALASKA STATE LEGISLATURE

SENATE COMMITTEE ON COMMUNITY & REGIONAL AFFAIRS

Senator Bert K. Stedman, Chair

Official Business

Senator Tom Wagoner, Vice-Chair
Senator Kim Elton
Senator Georgianna Lincoln
Senator Gary Stevens

State Capitol, Room 30
Juneau, AK 99801-1182
Phone: (907) 465-4989
Fax: (907) 465-3922

April 14, 2004
1:30 - 3:30 PM
Fahrenkamp 203

AGENDA

I. Call To Order

II. New Business

SB 132 Minto Flats Game Refuge

Sponsor Testimony:

*Senator Georgianna Lincoln (D-Rampart), District C
Mark Stopha, Staff Senator Lincoln*

Invited Testimony:

Chief

*Andrew Jimmy, Minto, Alaska
Available for Questions (Via Phone)
Wyn Menefee, Chief of Ops, Div Mining, Land & Water, DNR
Joe Joyner, Div Mining, Land & Water, DNR*

Public Testimony

SB 382 Eminent Domain/Replat of Boundary Changes

Sponsor Testimony:

*Senator John Cowdery (R-Anch), District O
Richard Schmitz, Staff Senator Cowdery*

Invited Testimony:

*Peter Putzier, Asst Atty Gen, Transportation, Dept Of Law
Jeff Ottesen, Director, Div of Program Development, DOT*

Public Testimony

III. Adjourn

*John Mackinnon
MacKinnon*

SB 382

Subject: Conceptual Amendments—SB 382
Date: Tue, 13 Apr 2004 17:00:08 -0800
From: "Peter Putzier" <Peter_Putzier@law.state.ak.us>
To: <Richard_Schmitz@Legis.state.ak.us>
CC: <Sam_Kito@ci.juneau.ak.us>

Richard:

DOT&PF has opened a dialogue with various municipalities. Those discussions have resulted in a few suggestions for changes to the existing legislation.

Section 1: Amend the PURPOSE AND INTENT to read: "(a) The purpose of this Act is to confirm the municipal role in eminent domain proceedings, including the right of municipalities to regulate remnant parcels, while at the same time . . ."

Section 3: Add a new AS 44.42.085(b)(1), and renumber the following subsections:

"(b)(1) must be narrowly tailored to establish minimum baseline procedures or standards particular to replat issues arising in eminent domain proceedings, and may not unnecessarily, or without good cause, infringe on general municipal zoning powers or authority."

Section 3: Change subpart (c) as follows: "shall allow the municipal authority to elect to provide preliminary and final replat approval." [replaces "may" with "shall"]

The foregoing reflects the changes that have been discussed so far. The CBJ may be asking for additional language of some sort which would require DOT&PF to get review and comment from relevant platting authorities prior to adopting regulations. In the absence of specific language changes, DOT&PF is amenable to committing on the record that it will include the impacted platting authorities in the regulation drafting process.

I will contact you sometime before noon tomorrow with an update. Please feel free to give me a call, if you would like any additional information or clarification.

Thank you.


Peter Putzier
Assistant Attorney General
Transportation Section
(907) 465-6712 (direct line)
(907) 465-6735 (fax)
Email: peter_putzier@law.state.ak.us

This is a privileged and confidential communication. If you are not the intended recipient, you must: (1) Notify the sender of the error; (2) Destroy this communication entirely, including deletion of all associated attachment files from all individual and network storage devices; and (3) Refrain from copying or disseminating this communication by any means.

Peter Putzier

From the office of . . . Senator John J. Cowdery
State Capitol Building, Rm # 101
Juneau, AK 99801
907-465-3879 phone
907-465-2069 fax

MEMORANDUM

DATE: April 5, 2004
TO: SENATOR BERT STEDMAN
Chair, Senate Committee on Community and Regional Affairs
FROM: Senator John J. Cowdery 
RE: SB 382

Please schedule, at your earliest convenience, a hearing for **CSSB 382(TRA)** "an act relating to replat approval; relating to the platting of right-of-way acquired through eminent domain proceedings; and providing for an effective date."

A copy of the bill, sponsor statement, sectional analysis and fiscal note is attached.

Thank you for your attention to this matter.

ALASKA STATE LEGISLATURE

SESSION

State Capitol, Rm 30
Juneau, Alaska 99801-1182
(907) 465-3873 Phone
(907) 465-3922 Fax
(877) 463-3873 Toll Free
Senator_Bert_Stedman@legis.state.ak.us



INTERIM

50 Front Street
Ketchikan, AK 99901-6442
Phone (907) 225-8088
Fax (907) 225-0713

SENATOR BERT K. STEDMAN

MEMORANDUM

DATE: April 20, 2004

TO: Don Bullock
Legal Services

FROM: Miles Baker for Senator Bert K. Stedman *MS*

SUBJECT: Floor Amendment CSSB 382 (CPA)

I would like to request an amendment for CSSB 382(CRA) for today's 11:00am Senate floor session:

The amendment is to add the following text to Page 3, line 11 of AS44.42.085 (c):

"Unless a regulation adopted by the department under this section expressly preempts local platting provisions which conflict with such regulation, a municipality may apply additional platting requirements beyond those identified in (b)(1) above as long as such platting requirements are consistent with those applied to other landowners."

Please contact Miles Baker at 4906 for information and questions.

Thank you for your quick response.

DISTRICT A

Ketchikan • Sitka • Petersburg • Wrangell
Pelican • Elfin Cove • Port Alexander • Saxman • Meyers Chuck • Thorne Bay • Coffman Cove • Hollis

ALASKA STATE LEGISLATURE

SESSION

State Capitol, Rm 30
Juneau, Alaska 99801-1182
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50 Front Street
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Phone (907) 225-8088
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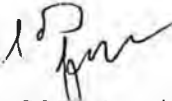
SENATOR BERT K. STEDMAN

MEMORANDUM

DATE: April 15, 2004

TO: Peter Putzier, Asst Attorney General, Transportation, Dept of Law
Jeff Ottesen, Director, Program Development, DOT

CC: Senator John Cowdery
Senator Tom Wagoner
Co-Chairs, Senate Transportation Committee

FROM: Senator Bert K. Stedman 

SUBJECT: Proposed Amendment to CSSB 382 (CRA)

Yesterday the Senate Community & Regional Affairs Committee heard SB 382, an act dealing with eminent domain and replat of boundary changes. The committee heard testimony from representatives of the Department of Law and the Department of Transportation and passed out a new committee substitute – CSSB 382(CRA).

During yesterday's testimony, DOT indicated that they had opened a dialogue with the affected municipalities and solicited their suggestions regarding this legislation. However, due to the speed with which this bill has progressed, they stated that they had yet to get responses from a few of the larger municipalities. I was unaware at that time that the Ketchikan Gateway Borough was one of those that had yet to comment.

This morning, I met with the Ketchikan Gateway Borough's attorney. Ketchikan's concern is that even though it is DOT's stated intent to get comments from the relevant platting authorities prior to adopting department regulations governing eminent domain replat procedures and standards; there is no specific requirement for them to do so in this bill. Further, since Sec 44.42.085 (c) exempts DOT from municipal platting requirements that may conflict with the State's as yet unwritten regulations, SB 382 may have the unintended consequence of trumping local procedures. I think they have a valid concern.

DISTRICT A

Ketchikan • Sitka • Petersburg • Wrangell
Pelican • Elfin Cove • Port Alexander • Saxman • Meyers Chuck • Thorne Bay • Coffman Cove • Hollis

MEMORANDUM
RE: Amendment to CSSB 382 (CRA)
April 15, 2004
Page 2 of 2

I realize this bill is in the Rules Committee and will be heading to the Senate Floor, but I'm hoping there is some way we can address their concern as this legislation continues to the House. I would like to suggest an amendment to CSSB 382(CRA) that I believe would alleviate Ketchikan's concern.

Amendment 1 CSSB 382 (CRA)

Amend section 44.42.085 (c) by deleting the bracketed text:

“The department is exempt from municipal platting requirements that are in conflict with this section.[AND THE REGULATIONS ADOPTED BY THE DEPARTMENT UNDER (B) OF THIS SECTION.]”

Thank you for your attention to this request. Please let me know if I can be of further assistance.

KETCHIKAN GATEWAY BOROUGH

Office of the Borough Attorney • 344 Front Street • Ketchikan, Alaska 99901 Scott A. Brandt-Erichsen
Borough Attorney
(907) 228-6635
Fax: (907) 247-6625
E-Mail: boroatty@borough.ketchikan.ak.us

April 16, 2004

Faxed and Mailed

Senator John Cowdery
Chair, Senate Rules Committee
State Capitol
Juneau, AK 99801-1182

Re: CSSB 382 CRA

Dear Senator Cowdery,

I am writing in reference to CSSB 382 CRA regarding eminent domain and right of way platting. This bill is currently in the rules committee. DOT has requested the bill in order to address a problem created by a 2002 Alaska Supreme Court decision in Suzuki v. Municipality of Anchorage. That decision held that the current language in AS 9.55.275 precluded a modified plat process for right of way plats involving condemnation, and requires substantially similar procedures for such plats and any other subdivision plat.

One reason that this is a concern is that right of way plats are different than most subdivision plats as they do not require extension of roads and utilities to the lots in the subdivision. Additionally, where most subdivision plats require the signature of the property owner on the plat, right of way plats often affect property with numerous property owners who own property affected by the project, some of whom are adverse to the project having been on the opposite side of a condemnation proceeding. As a result, several jurisdictions, Ketchikan included, have adopted right of way plat procedures which do not require such signatures. Ketchikan worked with the DOT in developing the ordinance, but also retained some requirements which are important to local planning objectives.

The Suzuki decision brings these procedures into question as they are different from the rules for other subdivisions, an apparent violation of the last sentence of the current AS 9.55.275. The Ketchikan Gateway Borough agrees that this is a problem which should be addressed.

The method proposed by CSSB 382 CRA, as currently drafted, causes concern due to the broad preemption of local platting regulations embodied in the proposed AS 44.42.085 (c). This section provides that the department (DOT) is exempt from municipal platting requirements that are in conflict with either the proposed AS 44.42.085 or regulations which the DOT will adopt, but which have not yet been prepared. In the most recent amendments language was added to the purpose statement which confirms the right of municipalities to regulate remnant parcels. This is merely palliative language as it is not substantive. The statutory language would preempt municipal regulations where there is a conflict. It cannot be determined where such conflicts will arise. Normally where there is a conflict the municipal provision will prevail if there is not

an expressed preemption and the issue is primarily a local concern. If the only local requirement identified by DOT which is causing problems is the requirement for signatures from all property owners affected by the plat, then express preemption of such a requirement would be more direct and more appropriate. A blanket preemption to be defined later in a subject area which is primarily a local concern is undesirable.

The Ketchikan Gateway Borough wants to assist in addressing the problem identified by DOT. We agree that right of way plats are fundamentally different from other subdivisions, and may appropriately be addressed under different, more streamlined, procedures. To this end we have consulted with the Attorney General's office and endorse a modification prepared by that office which alleviates our concerns. Specifically, the proposed change would amend the bill by adding the following text to the end of the proposed AS 44.42.085 (c):

"Unless a regulation adopted by the department under this section expressly preempts local platting provisions which conflict with such regulation, a municipality may apply additional platting requirements beyond those identified in (b)(1) above so long as such platting requirements are consistent with those applied to other landowners."

Thank you for your attention to this issue.

Sincerely,



Scott A. Brandt-Erichsen
Borough Attorney
Ketchikan Gateway Borough

Enclosure

cc: Senator Burt Stedman
Representative Bill Williams
Kevin Ritche, Alaska Municipal League
Peter Putzier, Assistant Attorney General - 6712



ALASKA STATE LEGISLATURE

SENATE COMMITTEE ON COMMUNITY & REGIONAL AFFAIRS

Senator Bert K. Stedman, Chair

Official Business

Senator Tom Wagoner, Vice-Chair
Senator Kim Elton
Senator Georgianna Lincoln
Senator Gary Stevens

State Capitol, Room 30
Juneau, AK 99801-1182
Phone: (907) 465-4989
Fax: (907) 465-3922

CSSB 382 (CRA)

Version 23-LS1879\H dated 4/14/04

Eminent Domain/Replat of Boundary Changes

Draft changes to CSSB 382 (TRA)

Change 1

Section 1: PURPOSE AND INTENT has been amended to read:

"(a) The purpose of this Act is to confirm the municipal role in eminent domain proceedings, including the right of municipalities to regulate remnant parcels, while at the same time....."

Change 2:

Section 3: AS 44.42.085, inserts a new (b)(1) and renumbers the subsections that follow (2), (3) and (4):

"(b)(1) must be narrowly tailored to establish minimum baseline procedures or standards particular to replat issues arising in eminent domain proceedings, and may not unnecessarily, or without good cause, infringe on general municipal zoning powers or authority."

Change 3:

Section 3: AS 44.42.085 (b) (4) [*previously subsection (3)*]:

"(4) shall [may] allow the municipal authority to elect to provide preliminary and final replat approval."

23-LS1879H
Bullock
4/14/04

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

BY

Offered: .
Referred:

Sponsor(s): SENATE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to replat approval; relating to the platting of right-of-way acquired
2 through eminent domain proceedings; and providing for an effective date."

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

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

6 PURPOSE AND INTENT. (a) The purpose of this Act is to confirm the municipal
7 role in eminent domain proceedings, including the right of municipalities to regulate remnant
8 parcels, while at the same time clarifying that that role is not intended to require the same
9 substantive review or procedures for review of replats for the acquisition of property by the
10 state or a municipality as required in replats for private landowner subdivisions or zoning
11 reviews. Regulations adopted by the Department of Transportation and Public Facilities shall
12 be the primary and governing authority for these replat approval proceedings.

13 (b) It is the intent of the legislature to

14 (1) confirm the authority of an agency of the state or a municipality to conduct

1 condemnation proceedings so long as the agency of the state or municipality obtains
2 preliminary replat approval as provided for in this Act, notwithstanding challenges to
3 particular municipal replat ordinances, review standards, procedures, or applications; and

4 (2) apply secs. 1 and 2 of this Act retrospectively to July 1, 1999, and to
5 existing litigation such as State of Alaska v. Hartman, 3AN-03-13875 CI and State of Alaska
6 v. Hinkel, 3AN-04-4768 CI.

7 * Sec. 2. AS 09.55.275 is repealed and reenacted to read:

8 **Sec. 09.55.275. Replat approval.** An agency of the state or municipality
9 acquiring property in fee that results in a boundary change located within a
10 municipality exercising the powers conferred by AS 29.35.180 or 29.35.260(c) shall
11 conform to this section and AS 44.42.085 by obtaining preliminary approval of a
12 replat showing clearly the location of the proposed public street or other acquisition of
13 property. The platting authority may establish applicable review procedures and
14 standards, consistent with AS 44.42.085 and regulations adopted under that section,
15 for a replat made for the purpose of a right-of-way acquisition or condemnation. If no
16 municipal standards and procedures are in effect, then the provision of AS 44.42.085
17 and the regulations adopted under that section shall apply. Final approval of replat
18 shall also be obtained. However, if a state agency clearly demonstrates an overriding
19 state interest, a waiver of the municipal approval requirements in this section may be
20 granted by the governor.

21 * Sec. 3. AS 44.42 is amended by adding a new section to read:

22 **Sec. 44.42.085. Platting of right-of-way acquired through eminent domain**
23 **proceedings.** (a) Except as provided in (c) of this section, the department shall
24 comply with AS 09.55.275 when exercising eminent domain powers in municipalities
25 that exercise the powers conferred by AS 29.35.180 or 29.35.260(c).

26 (b) The department shall adopt regulations providing for uniform procedures
27 and standards for replatting required by (a) of this section. The regulations

28 (1) must be written narrowly to establish minimum baseline
29 procedures or standards particular to replat issues arising in eminent domain
30 proceedings and may not unnecessarily or without good cause infringe on general
31 municipal zoning powers or authority;

1 (2) must be consistent with AS 09.55.240 - 09.55.460, AS 34.60.010 -
2 34.60.150, and 42 U.S.C. 4601 - 4655 (Uniform Relocation Assistance and Real
3 Property Acquisition Policies Act of 1970), as amended;

4 (3) must provide for a review by the platting authority of the
5 municipality in which the property subject to the eminent domain proceeding is
6 located; and

7 (4) shall allow the municipal authority to elect to provide preliminary
8 and final replat approval.

9 (c) The department is exempt from municipal platting requirements that are in
10 conflict with this section and the regulations adopted by the department under (b) of
11 this section.

12 (d) Neither the adequacy of the municipal replat process or standards, if any,
13 nor the failure of a municipality to follow its own replat process and standards shall
14 deprive the state of the authority to exercise its power of eminent domain.

15 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 RETROACTIVITY. Sections 1 and 2 of the Act are retroactive to July 1, 1999.

18 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

SENATE COMMITTEE REPORT

DATE: 04/02/04

FURTHER:

DATE TURNED IN TO OFFICE: 4/14/04

Community and Regional Affairs Committee considered SENATE BILL NO. 382

SB 382 EMINENT DOMAIN/REPLAT OF BOUNDARY CHANGES

"An Act relating to replat approval; relating to the platting of right-of-way acquired through eminent domain proceedings; and providing for an effective date."

and recommends:

- be replaced with C.R. CS SB382 (CRA)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input checked="" type="checkbox"/> Same Title	
<input type="checkbox"/> New Title	
House Bill:	
<input type="checkbox"/> Same Title	
<input type="checkbox"/> Technical Title Change	
<input type="checkbox"/> New Title w/ SCR # _____	

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DOT	3/31/04			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Demetrius Lewis</i>			✓	
<i>Thomas H. Wynn</i>	✓			
<i>K. [Signature]</i>			✓	
CHAIR: <i>Bert K. [Signature]</i>	✓			

23-LS1879\H
Bullock
4/14/04

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

BY

Offered:
Referred:

Sponsor(s): SENATE TRANSPORTATION COMMITTEE

Changes are highlighted

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to replat approval; relating to the platting of right-of-way acquired
2 through eminent domain proceedings; and providing for an effective date."

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

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

6 PURPOSE AND INTENT. (a) The purpose of this Act is to confirm the municipal
7 role in eminent domain proceedings, including the right of municipalities to regulate remnant
8 parcels, while at the same time clarifying that that role is not intended to require the same
9 substantive review or procedures for review of replats for the acquisition of property by the
10 state or a municipality as required in replats for private landowner subdivisions or zoning
11 reviews. Regulations adopted by the Department of Transportation and Public Facilities shall
12 be the primary and governing authority for these replat approval proceedings.

13 (b) It is the intent of the legislature to

14 (1) confirm the authority of an agency of the state or a municipality to conduct

1 condemnation proceedings so long as the agency of the state or municipality obtains
2 preliminary replat approval as provided for in this Act, notwithstanding challenges to
3 particular municipal replat ordinances, review standards, procedures, or applications; and

4 (2) apply secs. 1 and 2 of this Act retrospectively to July 1, 1999, and to
5 existing litigation such as State of Alaska v. Hartman, 3AN-03-13875 CI and State of Alaska
6 v. Hinkel, 3AN-04-4768 CI.

7 * Sec. 2. AS 09.55.275 is repealed and reenacted to read:

8 **Sec. 09.55.275. Replat approval.** An agency of the state or municipality
9 acquiring property in fee that results in a boundary change located within a
10 municipality exercising the powers conferred by AS 29.35.180 or 29.35.260(c) shall
11 conform to this section and AS 44.42.085 by obtaining preliminary approval of a
12 replat showing clearly the location of the proposed public street or other acquisition of
13 property. The platting authority may establish applicable review procedures and
14 standards, consistent with AS 44.42.085 and regulations adopted under that section,
15 for a replat made for the purpose of a right-of-way acquisition or condemnation. If no
16 municipal standards and procedures are in effect, then the provision of AS 44.42.085
17 and the regulations adopted under that section shall apply. Final approval of replat
18 shall also be obtained. However, if a state agency clearly demonstrates an overriding
19 state interest, a waiver of the municipal approval requirements in this section may be
20 granted by the governor.

21 * Sec. 3. AS 44.42 is amended by adding a new section to read:

22 **Sec. 44.42.085. Platting of right-of-way acquired through eminent domain**
23 **proceedings.** (a) Except as provided in (c) of this section, the department shall
24 comply with AS 09.55.275 when exercising eminent domain powers in municipalities
25 that exercise the powers conferred by AS 29.35.180 or 29.35.260(c).

26 (b) The department shall adopt regulations providing for uniform procedures
27 and standards for replatting required by (a) of this section. The regulations

28 (1) must be written narrowly to establish minimum baseline
29 procedures or standards particular to replat issues arising in eminent domain
30 proceedings and may not unnecessarily or without good cause infringe on general
31 municipal zoning powers or authority;

1 (2) must be consistent with AS 09.55.240 - 09.55.460, AS 34.60.010 -
2 34.60.150, and 42 U.S.C. 4601 - 4655 (Uniform Relocation Assistance and Real
3 Property Acquisition Policies Act of 1970), as amended;

4 (3) must provide for a review by the platting authority of the
5 municipality in which the property subject to the eminent domain proceeding is
6 located; and

7 (4) shall allow the municipal authority to elect to provide preliminary
8 and final replat approval.

9 (c) The department is exempt from municipal platting requirements that are in
10 conflict with this section and the regulations adopted by the department under (b) of
11 this section.

12 (d) Neither the adequacy of the municipal replat process or standards, if any,
13 nor the failure of a municipality to follow its own replat process and standards shall
14 deprive the state of the authority to exercise its power of eminent domain.

15 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 RETROACTIVITY. Sections 1 and 2 of the Act are retroactive to July 1, 1999.

18 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

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

BY THE SENATE TRANSPORTATION COMMITTEE

Offered: 4/2/04

Referred: Community and Regional Affairs

Sponsor(s): SENATE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to replat approval; relating to the platting of right-of-way acquired
2 through eminent domain proceedings; and providing for an effective date."

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

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

6 PURPOSE AND INTENT. (a) The purpose of this Act is to confirm the municipal
7 role in eminent domain proceedings while at the same time clarifying that that role is not
8 intended to require the same substantive review or procedures for review of replats for the
9 acquisition of property by the state or a municipality as required in replats for private
10 landowner subdivisions or zoning reviews. Regulations adopted by the Department of
11 Transportation and Public Facilities shall be the primary and governing authority for these
12 replat approval proceedings.

13 (b) It is the intent of the legislature to

14 (1) confirm the authority of an agency of the state or a municipality to conduct

1 condemnation proceedings so long as the agency of the state or municipality obtains
2 preliminary replat approval as provided for in this Act, notwithstanding challenges to
3 particular municipal replat ordinances, review standards, procedures, or applications; and

4 (2) apply secs. 1 and 2 of this Act retrospectively to July 1, 1999, and to
5 existing litigation such as State of Alaska v. Hartman, 3AN-03-13875 CI and State of Alaska
6 v. Hinkel, 3AN-04-4768 CI.

?

7 * Sec. 2. AS 09.55.275 is repealed and reenacted to read:

8 **Sec. 09.55.275. Replat approval.** An agency of the state or municipality
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12 replat showing clearly the location of the proposed public street or other acquisition of
13 property. The platting authority may establish applicable review procedures and
14 standards, consistent with AS 44.42.085 and regulations adopted under that section,
15 for a replat made for the purpose of a right-of-way acquisition or condemnation. If no
16 municipal standards and procedures are in effect, then the provision of AS 44.42.085
17 and the regulations adopted under that section shall apply. Final approval of replat
18 shall also be obtained. However, if a state agency clearly demonstrates an overriding
19 state interest, a waiver of the municipal approval requirements in this section may be
20 granted by the governor.

21 * Sec. 3. AS 44.42 is amended by adding a new section to read:

22 **Sec. 44.42.085. Platting of right of way acquired through eminent domain**
23 **proceedings.** (a) Except as provided in (c) of this section, the department shall
24 comply with AS 09.55.275 when exercising eminent domain powers in municipalities
25 that exercise the powers conferred by AS 29.35.180 or 29.35.260(c).

26 (b) The department shall adopt regulations providing for uniform procedures
27 and standards for replatting required by (a) of this section. The regulations

28 (1) must be consistent with AS 09.55.240 - 09.55.460, AS 34.60.010 -
29 34.60.150, and 42 U.S.C. 4601 - 4655 (Uniform Relocation Assistance and Real
30 Property Acquisition Policies Act of 1970), as amended;

31 (2) must provide for a review by the platting authority of the

Eminent Domain Regs
State Relocation
Real Prop Acquisition Practices

1 municipality in which the property subject to the eminent domain proceeding is
2 located; and

3 (3) may allow the municipal authority to elect to provide preliminary
4 and final replat approval.

5 (c) The department is exempt from municipal platting requirements that are in
6 conflict with this section and the regulations adopted by the department under (b) of
7 this section.

8 (d) Neither the adequacy of the municipal replat process or standards, if any,
9 nor the failure of a municipality to follow its own replat process and standards, shall
10 deprive the state of the authority to exercise its power of eminent domain.

11 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 RETROACTIVITY. Sections 1 and 2 of the Act are retroactive to July 1, 1999.

14 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

P.O. BOX 110300
DIMOND COURT HOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-6735

SECTIONAL ANALYSIS—SB 382

Section 1 of this bill sets forth a general explanation. The overall goals of the bill are (1) to confirm the municipal role in review of property acquisitions by eminent domain for public infrastructure projects, while maintaining flexibility in how the municipal review is conducted; (2) to standardize the replat process through implementation of regulations defining how the replat approval process is to be conducted, and (3) to confirm DOT&PF's authority to condemn property in cases where it has already applied for, and received, replat approval pursuant to existing municipal law from a municipality, such as in State of Alaska v. Hartman (C Street Extension in Anchorage), and State of Alaska v. Hinkel (Kenai River Bridge in Soldotna).

Section 2 of this bill repeals and reenacts AS 09.55.275. This section references AS 44.42.085, which will require that DOT&PF adopt regulations setting replat procedures, and standards, under AS 09.55.275. The other primary change is to delete the last sentence of present AS 09.55.275:

The platting authority shall treat applications for replat made by state or local governmental agencies in the same manner as replat petitions originated by private landowners.

The foregoing sentence has been used in two existing court cases to challenge DOT&PF's authority to condemn property. The challengers contend that existing municipal ordinances do not comply with the foregoing sentence, and thus DOT&PF lacks authority to condemn property. The deletion of the sentence above, together with other changes to this section, make clear that the legislature is not trying to mandate a particular and specific municipal replat review process but, instead, to grant some municipal discretion in how to conduct the review.

Section 3 of this bill requires DOT&PF to implement regulations standardizing the broad replat approval process under AS 09.55.275. In addition, while DOT&PF remains subject to local review, the adequacy of the process or standards chosen by the local government cannot be used as a basis to deprive DOT&PF of condemnation authority.

Section 4 of this bill provides for a retroactive effective date to 1999, a time preceding existing litigation in State of Alaska v. Hartman, 3AN-05-13875 CI and State of Alaska v. Hinkel, 3AN-04-4768 CI. The retroactive effective date will enable DOT&PF to use the legislation as evidence of statutory intent.

Section 5 of this bill provides for an immediate effective date.

General: The broad purpose of this bill is to harmonize two important public goals:

- (1) That state and municipal transportation projects may reasonably proceed with right-of-way acquisition that is done in accord with federal and state laws.
- (2) Ensuring the responsible review and approval of right-of-way acquisition under the replatting process administered by local government.

The goal is to preserve a balance between the need for public transportation projects, on the one hand, with reasonable local review on the other.

Two lawsuits have been filed challenging DOT&PF's authority to condemn needed right-of-way for public projects (C Street Extension project/Kenai River Bridge project). The argument being made to the courts is that the last sentence of AS 09.55.275 is evidence that the legislature intended to define a specific local review process. The argument continues that any deviation from the alleged, defined legislative procedure is therefore a violation of AS 09.55.275, and deprives DOT&PF of the authority to condemn property. DOT&PF believes there was never a legislative intent to define a specific procedure.

Both the Municipality of Anchorage, and the Kenai Peninsula Borough, for example, have specific replat review procedures in place for right-of-way acquisitions. Not surprisingly, those procedures differ in some respects from other replat review proceedings, such as might be found for a typical subdivision replat. The lawsuits argue that the court must deny DOT&PF the authority to condemn, since the ordinances for right-of-way acquisition replat review differ from review procedures which might apply to a typical subdivision. Notably, DOT&PF properly applied for, and received, replat approval from both the Municipality of Anchorage, and the Kenai Peninsula Borough, yet may still be found to have no authority to proceed with condemnation.

If the Anchorage or Kenai Superior Courts uphold this novel legal theory, DOT&PF will be held to have no authority to proceed with condemnation. The potential for significant delay of many important projects is great. Many of these projects were approved by the voters as bond projects, and untimely project completion could cause the project costs to increase. In addition, litigation concerning DOT&PF's authority to condemn property obviously jeopardizes the scheduling of current, and future, public construction projects. For example, the construction seasons might be lost both for the C Street extension project in Anchorage, as well as for the Kenai River Bridge project in Soldotna.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB382-DOT-CO-3-31-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title Replating provisions of Eminent RDU Administration & Support
Domain Right of Way Component Commissioner's Office
Sponsor Senate Transportation
Requester Senate Transportation Component No. 530

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)

Prepared by: Nona Wilson
Division: Legislative Liaison
Approved by: John MacKinnon
Agency: Deputy Commissioner

Phone 465-6973
Date/Time 3/31/04 12:29 PM
Date 3/31/2004

SB

387



ALASKA STATE LEGISLATURE

SENATE COMMITTEE ON COMMUNITY & REGIONAL AFFAIRS

Senator Bert K. Stedman, Chair

Official Business

Senator Tom Wagoner, Vice-Chair
Senator Kim Elton
Senator Georgianna Lincoln
Senator Gary Stevens

State Capitol, Room 30
Juneau, AK 99801-1182
Phone: (907) 465-4989
Fax: (907) 465-3922

April 19, 2004
1:30 - 3:30 PM
Fahrenkamp 203

1:30

REVISED AGENDA

I. Call To Order

II. New Business

SB 387 Commercial Fishing Loans for Quota Shares

Sponsor Testimony:

Greg Winegar, Director, Division of Investments, DCED
Phil Smith, NOAA Fisheries

Invited Testimony:

Gale Vick, Ex Dir, Gulf of Alaska Coastal Community Coalition
Ole Olsen

Chuck Totemoff, Cheniga Corp

~~*Fredie Christensen, Old Harbor, Alaska*~~

Public Testimony

III. Adjourn

SB 387 Questions

§4 home 9

27-8 • What were the community eligibility requirements for this program?
What about any minimum catch history?

- 27-1
- What kind of parameters does the federal program put on CQEs?
 - Can they re-invest earnings from quota fishing into community projects that involve fishing infrastructure?
 - Can the local government re-invest in community projects unrelated to the fishing industry?
 - What are the requirements on the agreements between a CQE and the fishermen who will fish the quota?
 - Is there prohibition on contracting with vessels from outside the community to catch the quota? Must it actually be fished by local fishermen and local crews?
 - Are there delivery restrictions on individual fishermen? Take Hoonah for example. Will fishermen who are using Hoonah community quota be required to deliver to Hoonah Cold Storage?
 - What are the residency requirements for fishermen to qualify for the community program?
 - Is there a public listing of quota that is for sale, including the place of residency of the sellers?

320
↓
200
100

PPAWAN 21%

HOONAH		min people		
2003	1.5 mil	IFR		
	2.3 mil	%	1995	
4	60	2.3	1.4	37.
1.87.		2.7	2.3	
		1.8 to		
		21%		
2.5 ↓ 1.8 ↑				

Community Quota Entity (CQE) Legislation:

HB554/SB387

Commercial Fishing Loans to Eligible CQE's

Background

- The National Marine Fisheries Service (NMFS) is expected to publish the final rule implementing Amendment 66 to the Fishery Management Plan (FMP) for groundfish in the Gulf of Alaska in May 2004.
- Amendment 66 is the outcome of a series of public meetings with the North Pacific Fishery Management Council (NPFMC) and represents a consensus on how to reverse the outward migrating of IFQs from rural Alaska communities to the Lower 48 states.
- The proposed rule would allow 42 coastal communities to be eligible purchase Individual Fishing Quotas (IFQs). These organizations would be known as Community Quota Entities (CQEs) and they would be authorized to purchase halibut and sablefish quota shares on the open market and lease these shares back to harvesters who are residents of the eligible communities.
- Communities represented by CQEs cumulatively would be limited to holding a maximum of 3 percent of the total halibut and black cod quota share in each area for the first seven years of the program up to a total of 21%.
- CQEs in Area 2C and 3A could only receive and use halibut quota share assigned to vessels greater than 35 feet and less than or equal to 60 feet (Category C) and greater than 60 feet (Category B). This provision would prohibit CQE's from holding halibut quota share assigned to vessels less than or equal to 35 feet (Category D). The Council did not recommend catcher vessel restrictions for CQEs holding sablefish quota shares as sablefish are typically harvested by larger vessels.
- The proposed rule identifies eligibility criteria, transfer restrictions and provides limited administrative oversight, however, it does not identify a funding mechanism for these communities to purchase the quota shares.

Legislation

- HB554/SB387 amends the Commercial Fishing Revolving Loan Fund (CFRLF) to allow the Department of Community & Economic Development to make loans to CQEs and in turn create a new local revenue stream. The department is currently able to make loans only to individuals to purchase quota shares.
- CQE applicants would be limited to \$2 million in outstanding loans per community.
- A down payment of 35% would be required for loans secured by quota share.

Benefits of CQEs:

- CQEs improve the economic viability of these communities through local control of fishing privileges.
- The majority of the 42 eligible communities in the proposed rule have experienced an out-migration of quota resulting in a significant decline in the number of quota shares held by local residents. The amendment should provide these communities with a mechanism to reverse the trend and this legislation will provide essential funding for the program.
- CQEs will provide additional employment opportunities for residents, help diversify fishing operations from salmon to halibut and sablefish, and increase efficiency by using existing salmon infrastructure such as vessels, processing plant and cold storage facilities.

Impact of the CQE legislation on Financial Services

- This legislation will not adversely impact private sector lenders. Section one of the bill requires that loans may be made only if the applicant is not eligible or qualified for financing from other recognized commercial lending institutions. This same requirement is already contained in the Commercial Fishing Revolving Loan Fund (CFRLF) statute for loans made to individuals to purchase quota shares.
- The CFRLF has adequate cash flow to handle anticipated loan demand. The Department of Community and Economic Development (Department) expects the program to phase in over a period of several years as communities form CQE's, establish a capital base necessary to meet down payment requirements and locate quota shares to purchase.
- The Department will amend the CFRLF regulations (3 AAC 80.055 (a)) to ensure that if total loan demand for the program ever exceeds the amount of capital available for loans that applications submitted by individuals to purchase limited entry permits, vessels, gear, or quota shares will be processed first.
- There will be no additional administrative costs associated with this proposal. The Department will use existing staff, expertise and infrastructure to handle CQE loans requests.

April 15, 2004

GULF OF ALASKA COASTAL COMMUNITIES COALITION (GOAC³)

P.O. Box 201236, Anchorage AK 99520

Phone: 907-561-7633 FAX: 907-561-7634

E-mail: goaccc@alaska.net

www.goac3.org

RECEIVED
4/19/04

DATE: April 17, 2004

TO: Senator Bert Stedman, Chair, CRA Committee, Alaska State Senate
Senator Thomas Wagoner
Senator Gary Stevens
Senator Kim Elton
Senator Georgianna Lincoln

RE: SB 387: An act authorizing the making of certain commercial fishing loans to eligible community quota entities for the purchase of certain fishing quota shares; and providing for an effective date.

Dear Senators:

I am writing concerning the proposed legislation, Senate Bill 387, which has been recently introduced by Governor Frank Murkowski.

The Gulf of Alaska Coastal Communities Coalition (GOAC³) greatly appreciates the Governor's and other efforts in introducing a bill which will enable the pending CQEs (non-profit community quota entities) become eligible for specific commercial fishing loans through the Alaska Division of Investments.

CQEs will result from a pending amendment to the existing Halibut and Sablefish IFQ (Individual Fishing Quota) program which affects 42 eligible communities within the Gulf of Alaska. Amendment #66 was approved by the North Pacific Fishery Management Council (NPMFC) on April 10, 2002, and has subsequently been reviewed by the National Marine Fisheries Service (NMFS) and published in the *Federal Register* as a "proposed rule." It is now waiting for signature by the U.S. Secretary of Commerce as Final Rule.

The intent of Amendment #66 was to help neutralize some of the negative impacts of the 1995 implementation of the Halibut and Sablefish IFQ program. Research illustrated that many of our smaller communities in the Gulf of Alaska (less than 1500 in population and not connected to a larger community by a road system) lost a great amount of fishing opportunity and infrastructure because community fishermen did not qualify for initial issuance of quota share. Because the IFQ program was already in place, the Council felt their only option was to allow eligible GOA communities to form CQEs with the ability to purchase quota share as a qualified buyer.

The GOAC3 has worked since 1998 on trying to find solutions to the continuing loss of fishing opportunity to the smaller GOA communities. The loss has been so dramatic in the last few years that we are greatly concerned about stabilizing the situation. Amendment #66 will provide one important way to do this.

We and the newly formed CQEs will be looking for funding sources from many places. Halibut and sablefish IFQ prices are at historic highs, in large part because the IFQ program has allowed harvesters and processors to offer a better product through a much longer fishing time. Because the prices are so high, it will be important for our CQEs to find sources of financing which are flexible and give us the maximum level of opportunity to purchase quota share and lease to area residents. It is for this reason we strongly support SB 387.

In anticipation of the Secretary's approval of Amendment #66, we are working with the State of Alaska (Department of Community and Economic Development) and the National Marine Fisheries Service / Restricted Access Management Division to conduct regional community meetings addressing the details of the program and offering some ideas for financing the purchase of halibut and sablefish. We hope that SB 387 is quickly approved by the Legislature so that our communities can utilize the options it provides.

I am attaching a power point presentation created by Phil Smith of the National Marine Fisheries Service to explain Amendment #66 in greater detail. It also provides an excellent brief history of the IFQ program.

Members of the Legislature will be receiving many Public Opinion Messages in support of SB 387 within the next week. If we can be of any assistance in providing further information, please do not hesitate to call us.

We thank you for your time and consideration of this important matter.

Sincerely,

Gale K. Vick, Executive Director
Gulf of Alaska Coastal Communities Coalition (GOAC3)

Cc: GOAC3 Board of Directors and Technical Team
Governor Frank Murkowski
Commissioner Edgar Blatchford, Department of Community & Economic Dev.
Alan Austerman, Fish Advisor, Office of the Governor



CENTRAL COUNCIL
tlingit and haida indian tribes of alaska
ANDREW P. HOPE BUILDING
320 West Willoughby Avenue • Suite 300
Juneau, Alaska 99801-1726

Testimony Supporting SB 387

By: Don Bremner, Staff,
T&H Central Council Business & Economic Development
April 19, 2004

On Behalf of The S.E. Alaska Villages which Central Council represents we submit comment in support of SB 387.

Central Council Indian Tribes of Alaska has been working with the Southeast Alaska Intertribal Fish and Wildlife Commission; Communities and tribes of S.E. Alaska to accomplish the following in support of the Community IFQ Program;

1. Worked with the North Pacific Fisheries Management Council on behalf of all communities and tribes of S.E. Alaska to gain passage of the Community IFQ program.
2. Are working with all communities and tribes to educate them about the program and to gain support to form a Regional Halibut and Sable Fish Nonprofit Corporation to assist in implementing the IFQ program.
3. Worked with the RAM Division; and State Community and Economic Development Department to help develop awareness of the program in the S.E. Villages.
4. Numerous letters and documentation about the benefits of the IFQ program has been shared with each S.E. Alaska community and tribe through meetings; letters; faxes; phone calls and e-mails. (Main documents attachment I.)
5. Worked to gain our Congressional delegation support in coming up with Federal funding for the program.
6. Most recently Central Council Indian Tribes of Alaska General Assembly has passed a Resolution authorizing Central Council legal council to assist our Villages in drafting and filing the Nonprofit Articles of Incorporation and By-Laws, which once signed by the President and Tribal Secretary we will be able to move forward with meeting with our Tribal lawyers to accomplish the legal aspect of incorporation and be able to offer a Regional Nonprofit corporation entity to help implement this program. (Copy of Resolution attached II.)

Based upon our role of working with the North Pacific Fisheries Management Council; S.E. Communities; Tribes; Fishermen; Southeast Inter-tribal Fish and Wildlife Commission and State Department of Commerce and Economic Development Department, we believe that the Central Council Business and Economic Development Department is best positioned to assist the State with coordinating the implementation of this program in S.E. Alaska.

Central Council of Tlingit & Haida Indian Tribes of Alaska
Sixty-Ninth General Assembly
April 14-17, 2004
Juneau, Alaska

Resolution 04-43

Title: **Support of Funding of Legal Formation for Community Purchase of Halibut and Sablefish Commercial IFQ Non-Profit Organizations**
By: Tlingit Haida Indians of the City and Borough of Juneau

WHEREAS, communities throughout Alaska that are dependent on commercial halibut and sablefish fishing are in extreme economic distress due to fundamental, long term changes in the seafood markets, unprecedented low salmon prices and closure of many processing operations and the loss of most markets for Alaska fishermen; and

WHEREAS, the Alaskan fishing industry is facing a crisis of terrible proportion; and

WHEREAS, the loss of many processors has added to this crisis and created a situation in which it is physically impossible for the remaining Alaskan processors to commit to buying a vast majority of the fast approaching 2004 return; and

WHEREAS, many coastal communities are eligible to form Community IFQ's Nonprofit Corporations to purchase halibut and sablefish; and

WHEREAS, the NPFMC is drafting guidelines which determine eligible communities, appropriate ownership entities, Ownership caps on individual communities, Cumulative ownership caps, blocked and unblocked shares, vessel size restrictions, sale criteria, codes of conduct, administrative oversight, and sunset provisions important to our affected communities; and

WHEREAS, the opportunity to have the S.E. Alaska Coastal Communities benefit from such IFQ's is important to the economic survival of our Native villages;

NOW THEREFORE BE IT RESOLVED, that the Sixty-Ninth General Assembly of Central Council Tlingit and Haida Indian Tribes of Alaska convened in Juneau, Alaska on April 14-17, 2004 direct the Central Council President and Lawyers to work to draft and Incorporate a Regional S.E. Alaska Nonprofit Corporation to help our S.E. Villages benefit by these programs with any and all legal rights established under this program considered by the National Marine Fisheries Management Council.

ADOPTED this th 17 of April, 2004 by the Sixty-Ninth General Assembly of the Central Council of the Tlingit and Haida Indian Tribes of Alaska.

CERTIFY

President

ATTEST

Tribal Secretary



Tina Dickinson
Communications Specialist
907-269-4568
Fax: 907-269-8125
tina_dickinson@dced.state.ak.us
www.dced.state.ak.us

FOR IMMEDIATE RELEASE: April 14, 2004

No. 04-010

Proposed Legislation Could Assist Fishing Communities In the Gulf and SE Alaska

(Juneau) –Governor Frank H. Murkowski has introduced legislation that would allow non-profit groups to purchase halibut and sablefish (black cod) shares, to be fished by eligible residents along Southeast coastal communities and the Gulf of Alaska.

HB 554 and SB 387 propose a state funding mechanism through the Division of Investments, and opens up opportunity for 42 eligible communities to purchase halibut and sablefish quota shares under a National Marine Fisheries Service program known as Community Entities Quota.

The Department of Community and Economic Development proposes to support legislation to amend the Commercial Fishing Revolving Loan Fund. This will allow the department to make loans to a new group of purchasers and in turn create a new local revenue stream.

"The purpose for this legislation is to bring fishing quotas home to Alaska and provide and economic base for villages traditionally dependent on fishing," said Governor Murkowski. "Some of our communities have been hard hit by the decline in salmon prices, and this program has the potential of bringing long term stability to those regions."

The CQE program will implement a community protection plan for the Gulf of Alaska approved by the North Pacific Fishery Management Council known as Amendment 66. Amendment 66 was the outcome of a series of public meetings with the council process and represents a consensus on how to reverse the outward migration of IFQs from rural Alaska communities to Lower 48 states.

"This is an important step that creates opportunity for local residents to fish quota in their own waters," said DCED Commissioner, Edgar Blatchford. "The development of Alaska's rural economy is of great importance to the Murkowski Administration."

-more-

NMFS is expected to publish the final rule implementing Amendment 66 to the Fishery Management Plan for groundfish in the Gulf of Alaska in May 2004. This will allow eligible communities to form non-profit corporations for purchasing and holding Individual Fishing Quotas for halibut and sablefish.

The non-profit corporations will be recognized under the federal regulations as CQEs, and would be authorized to purchase shares on the open market and lease them back to harvesters who are residents of the communities. Only permanent residents would be eligible for leases. Restrictions would apply to quota shares transferred by each CQE outside the program to ensure program goals are met. Communities participating in the program must adhere to performance standards established by NMFS.

"This is a major step towards revitalizing fishing communities that have suffered because of the out migration of IFQs and limited entry permits," said Murkowski. I am encouraged that this will provide smaller communities an opportunity for future revenue and new jobs."

There are 42 communities with 13,030 residents that were determined eligible for the program. The communities are:

Area 2C includes: Angoon, Coffman Cove, Craig, Edna Bay, Elfin Cove, Gustavus, Hollis, Hoonah, Hydaburg, Kake, Kassan, Klawock, Metlakatla, Meyers Chuck, Pelican, Point Baker, Port Alexander, Port Protection, Tenakee Springs, Thorne Bay

Area 3A includes: Akhiok, Chenega Bay, Halibut Cove, Karluk, Larsen Bay, Nanwalek, Old Harbor, Ouzinkie, Port Graham, Port Lions, Seldovia, Tatitlek, Tyonek, and Yakutat

Area 3B includes: Chignik, Chignik Lagoon, Chignik Lake, Ivanof Bay, King Cove, Perryville, and Sand Point

Communities represented by CQEs cumulatively would be limited to holding a maximum of 3 percent of the total halibut and sablefish quota share in each area for the first seven years of the program.

CQEs could only receive and use halibut quota share assigned to vessels 35 to 60 feet (Category C) and greater than 60 feet (Category B). The Council did not recommend catcher vessel restrictions for CQEs holding sablefish quota share.

For more information contact the Department of Community and Economic Development at 907-269-4568.

###

SB 387

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
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April 9, 2004

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill to amend the lending authority of the Department of Community and Economic Development (department) under the Commercial Fishing Loan Act; to authorize loans to federally designated community quota entities authorized by federal regulation to purchase and hold certain fishing quota shares; and to lease the resultant individual fishing quota shares to community residents.

The federal government is currently proposing federal regulations that, if adopted, would amend the federal individual fishing quota program. The definition of an eligible quota shares holder would be revised to allow specific communities in the Gulf of Alaska to purchase quota shares for halibut and sablefish fisheries. The community quota entity may then hold the shares for lease to their community residents. Quota shares, and loans for their purchase under the Commercial Fishing Loan Act, are presently limited to individuals.

The purpose of the amendment is to improve the economic viability of these communities through local ownership of fishing privileges. Since the initial allocation of quota shares all but two of the 42 eligible communities have experienced a significant decline in the number of quota shares held by residents. This amendment will provide a financing mechanism that can be used by these communities to help reverse this trend.

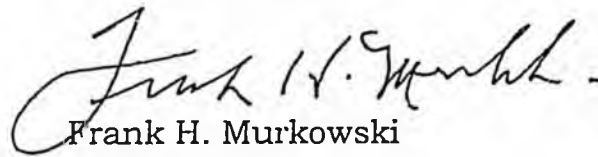
The bill's effective date provision for the loan statute changes would ensure that if the proposed federal regulations do not take effect, the bill's changes expanding the department's lending authority also would not take effect.

The Honorable Gene Therriault
April 9, 2004
Page 2

The community quota entity program provides a unique opportunity to improve economic conditions in a number of Alaska's coastal communities. Local ownership of fishing privileges is vital to the financial health of these communities.

I urge your prompt and favorable action on this measure.

Sincerely yours,

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

Frank H. Murkowski
Governor

Enclosure

Frank Murkowski, Governor

Alaska

**Department of Community
and Economic Development**

Division of Investments

P.O. Box 34159, Juneau, AK 99803-4159

Telephone:

Voice: 907-465-2510

Fax: 907-465-2103

Toll Free: 1-800-478-LOAN

Text: 907-465-5437

Email: investments@dced.state.ak.us • Website: www.dced.state.ak.us/investments/

April 15, 2004

Senate Community & Regional Affairs Committee Member
Capitol Room 11
Juneau, Alaska 99801-1182

Dear Senator

RE: Senate Bill 387

Enclosed is a packet of information relating to Senate Bill 387. Please let me know if you would like additional information or if you would like to set up a meeting to discuss the particulars of this bill.

The Department strongly supports this legislation and hopes that you will be able to give it favorable consideration.

Thank you very much.

Cordially,

Greg Winegar

Greg Winegar
Director

enclosures

**ALASKA DIVISION OF INVESTMENTS
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
Commercial Fishing Revolving Loan Fund
Historical Summary
(Dollars in Thousands)**

AS 16.10.300 - .370; enacted in 1972

3 AAC 80.010 -.900

Mission: It is the policy of the state, under AS 16.10.300 - 16.10.370, to promote the rehabilitation of the state's fisheries, the development of a predominantly resident fishery, and the continued maintenance of commercial fishing gear and vessels throughout the state by means of long-term low interest loans.

PURPOSE

ELIGIBILITY

SECTION A: \$300,000 Maximum

Purchase limited entry permits; upgrade existing vessels to improve the quality of Alaska seafood.

SECTION B: \$100,000 Maximum

Purchase limited entry permits, vessels or gear; repair, restore or upgrade existing vessels or gear.

SECTION C: \$300,000 Maximum

Purchase quota shares for the halibut or sablefish fisheries.

SECTION D: \$300,000 Maximum

Satisfy past due Federal tax obligations.

SECTION 10: Refinance

Refinance existing CFRLF loans to allow borrowers to take advantage of lower interest rates when they occur.

SECTION 11: Refinance up to \$300,000

Refinance debts incurred by a borrower to purchase a commercial fishing vessel or gear.

● Alaska resident for the past two years and:

● Active in fishery for 3 of the past 5 years, including the year prior to the date of application.

● No other occupational opportunities available in area of residence, or economically dependent on commercial fishing for a living.

● Intended for individuals that do not qualify for other sources of financing.

● Possesses a permit or crew license.

● Active participant in fishery for 2 of the last 5 years.

● Qualifies as a transferee for quota shares.

● Not eligible for financing from other commercial lenders.

● Files past and current tax returns.

● Meets section A or section B eligibility criteria.

● Loan must be in good standing.

● Qualifies for a loan under section A, B, or C.

Interest rate: Fixed rate at Prime +2%, not to exceed 10.5% (Product quality improvement is Prime -2%.)

Maximum loan term: 15 years

Statistics as of June 30, 2003

Total appropriations to RLF:	60,201.0	Last appropriation RLF: FY85	3,710.0
Total appropriations from RLF:	80,392.0		
Net of appropriations:	<u>(20,191.0)</u>		
Total number of loans committed:	5,905	Number of accounts outstanding:	2,744
Total dollars committed:	366,726.6	Principal amount outstanding:	92,053.5

HB554/SB387
Commercial Fishing Loans for Quota Shares
Eligible Communities

There are 42 Communities with 13,030 residents that were determined by the National Marine Fisheries Services to eligible for the program. These communities are listed according to the halibut regulatory areas as follows:

Area 2C
8,119 Residents

Angoon
Coffman Cove
Craig
Edna Bay
Elfin Cove
Gustavus
Hollis
Hoonah
Hydaburg
Kake
Kassan
Klawock
Metlakatla
Meyers Chuck
Pelican
Point Baker
Port Alexander
Port Protection
Tenakee Springs
Thorne Bay
Whale Pas

Area 3A
2,711 Residents

Akhiok
Chenega Bay
Halibut Cove
Karluk
Larsen Bay
Nanwalek
Old Harbor
Ouzinkie
Port Graham
Port Lions
Seldovia
Tatitlek
Tyonek
Yakutat

Area 3B
2,200 Residents

Chignik
Chignik Lagoon
Chignik Lake
Ivanof Bay
King Cove
Perryville
Sand Point



Amending the Halibut and Sablefish IFQ Program

A New Opportunity for Gulf of Alaska Coastal Communities

Restricted Access Management (RAM) • Alaska Region, NOAA Fisheries (NMFS)

Phil Smith, RAM
April 14, 2004

Introduction: Within the next week or so, the U.S. Secretary of Commerce will publish an amendment to the Alaska halibut and sablefish Individual Fishing Quota (IFQ) program. The purpose of the amendment is to provide new opportunities for coastal community residents to benefit from the IFQ program. The amendment will allow those communities to form non-profit corporations under Alaska law; the non-profits will gain eligibility to receive quota by transfer. Quota obtained by the non-profit on behalf of an eligible community will then be fished by a community resident.

Background: Under the halibut/sablefish IFQ program entry to the fisheries is limited to those who hold quota shares. Quota, which is transferable, was initially issued to persons who had a history of fishing during the late 1980s. Under existing rules, quota may only be transferred to those who received shares initially or to "IFQ Crewmembers" (i.e., individuals who can demonstrate that they have commercially fished for a minimum of 150 days).

Since the beginning of the program in 1995, a large amount of the quota initially issued to people living in smaller Gulf of Alaska communities has been voluntarily transferred to people living in larger communities. Although each quota holder made up his or her own mind to transfer the quota, the effect has been a decrease in quota in the community and this fact has raised concerns about the overall economic viability of these smaller communities.

To address this issue, the North Pacific Fishery Management Council (Council) devised a program to provide the opportunity for eligible communities to create non-profit corporations to collectively hold the quota on behalf of the community.

Program Description: Under the program, "eligible communities" are those that have fewer than 1,500 residents (2000 Census), that have a history in the fisheries, that are not on the road system, and that have been designated by the Council. There are currently 42 designated communities, including 21 in South-central and 21 in Southeast.

Each of these communities (or several communities working together) may form a non-profit corporation. Once formed, the non-profit will apply to NMFS for

authority to act on behalf of the community(ies). Upon approval of the application, the non-profit will be designated as a "Community Quota Entity" (CQE). Before approving the application, NMFS will provide it to the State (Department of Community and Economic Development) for review and comment.

Once designated, a CQE will be eligible to receive quota on behalf of the community(ies) it represents. It is anticipated that the CQE will buy the quota from the existing quota market (prices vary, but currently quota sells for around \$12/pound).

When the annual IFQ is issued, the CQE will lease it to fishers who are residents of the communities on whose behalf the CQE holds the quota.

Allocation of the fishing profits will be determined by contract between the CQE and the fisher; it is expected that some will be returned to the CQE to repay loans used to buy the quota and to expand the community's quota holdings.

Other Program Elements: To insure that CQEs don't force individual quota purchasers out of the market, there are strict caps on the amount of quota that may be held by a CQE on behalf of any eligible community, and there is also a cap on the aggregate quota that may be held by CQEs on behalf of all communities. Additionally, there is a limit on the number of halibut and sablefish "blocks" that can be held by CQEs. Finally, CQEs will be required to submit an Annual Report that details their experiences under the program (the Reports will be submitted to NMFS and the Council and will be public information).

Conclusion: It is important to note that this program does not allocate fish and it does not allocate money; instead, it allocates opportunity. To that end, we hope that the creativity and hard work of coastal residents will make the program a success.

More Information: We welcome questions about this important program. Please contact us as follows:

Restricted Access Management Program
Alaska Region, NOAA Fisheries (NMFS)
1-800-304-4846; or (in Juneau): 907-586-7344
e-mail: RAM.Alaska@noaa.gov
www.fakr.noaa.gov/ram

Alaska Division of Investments
Department of Community and Economic Development

Proposed Regulation Amendment

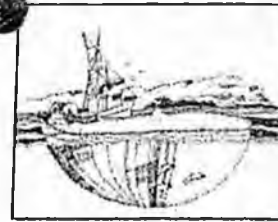
3AAC 80.055. Lending Practices. (a) If the balance of the commercial fishing revolving loan fund is not adequate to meet the anticipated loan demand for the remainder of the fiscal year, the department will, in its discretion, process loan applications in the following order:

- (1) permits;
- (2) federal tax obligations
- (3) vessel upgrade or purchase
- (4) gear;
- (5) quota shares for individuals; [and]
- (6) quota shares for community quota entities; and
- (7) refinancing as permitted under AS 16.10.310(a)(11).



Central Council of Tlingit & Haida Indian
Tribes of Alaska
Business and Economic Development
3200 Hospital Drive, Suite 101
Juneau, AK 99801

Phone: (907) 463-7147 or (800) 344-1432
Fax: (907) 463-7316



**SOUTHEAST ALASKA
INTER-TRIBAL
FISH & WILDLIFE COMMISSION**

Attachment I,

Dated: 1/27/04

Notice

Invitation to Participate in the Formation of The **Southeast Alaska Community Coalition of Fishing Communities**

On January 19, 2004 the Southeast Inter-tribal Fish and Wildlife Commission met and voted to form a "Southeast Alaska Community Coalition of Fishing Communities" to implement and administer the new halibut and sablefish program. We know you will need time to review this opportunity so included with this notice are documents that will help you decide. There are a number of reasons a Region wide Coalition will be advantageous to your community and we want to list them for you;

1. This is a federal program and our Congressional delegation, including Senator Ted Stevens has been advocating consolidation and regionalism of federal programs.
2. The Governor of Alaska is working to consolidate programs and services and from our experience has been funding commercial fisheries opportunities which benefit regions, as opposed to single communities.
3. Other regions have formed under Coalitions to take advantage of combined management, social, political; legal, and economic opportunities of implementing this new program.
4. The Code of Federal Regulations requires that each community may designate only one Community Quota Entity to hold the quota shares on behalf of that community and we know that with our experience of participating in the formation of this community purchase of halibut and sable fish program and our experience of managing such programs we have the immediate ability to represent your community with what we say we can do in this letter.

The Southeast Alaska Community Coalition of Fishing Communities will do a number of things that will benefit the region to increase the value of this program to the eligible member communities of Southeast Alaska as follows;

1. Hire attorneys to draft and file approved Articles of Incorporation and By-Laws that the communities can in turn adopt to manage and implement at the local level the benefits of the program.
2. Seek financial support to send representatives of the newly formed organization to Washington DC to meet with our Congressmen to request federal start-up funds for the community 501 C (3) Non-profits.
3. The request for federal start-up funds will be in the form of a grant to the community Non-profits and/or loan package.
4. The region wide organization will have strength of "One Voice" in areas of representation; political; legal; economic, and marketing opportunities.

This is what we are doing now:

1. Continuing our effort to establish funding sources.
2. Starting the development of community-based non-profits for the administration of the community purchase program.
3. Developing letters and resolutions for Tribes and City governments to facilitate and form the Community Quota Entities in our S.E. Alaska villages.
4. Network with organizations that will help carry our funding request to our Congressman.
5. Coordinate with financial institutions and their representatives to help establish the economic criteria for funding of community Non-profits.
6. Coordinating with the Federal Program Managers responsible for this new program.

Here is what we need from you by February 27, 2004;

1. We are including in this packet, a **Resolution** and complete the attached **Survey** your community can adopt to participate in the planning and implementation of a Southeast Alaska Community Coalition of Fishing Communities organization. Please return this by February 27, 2004 or we will assume your community does not wish be included in any of the organization benefits.

As the Southeast Inter-tribal Fish and Wildlife Commission Chairman, Matt Kookesh has been working on this issue with the North Pacific Fishery Management Council since 2001 and is fully capable of guiding the organization through this new halibut and sable fish IFQ program along with the Commissioners, and Federal managers of this program. We have been networking and collaborating with many knowledgeable scientists and federal managers responsible for implementing this program. They also have influenced the need to implement this program in a united manner in order to take immediate advantage of the program once the final regulations are approved either at the end of March or April 2004. We have been in contact with lawyers that have also reviewed the draft rules which are being finalized and they also recognize the need for coalition efforts in order for this program to be successful.

We encourage your community to consider this Resolution and Survey to join the Southeast Alaska Community Coalition of Fishing Communities organization a priority. Time is critical as we have people going to Washington DC within the next few weeks and they may be able to represent us as one voice on requesting federal start-up money for this program. I can be reached at 907-723-0260 or contact our staff members, Gordon Jackson, 907-463-7121, or Don Bremner, 907-463-7341 for questions about the attached material.

Sincerely,

Matt Kookesh, Chairman
Southeast Inter-tribal Fish and Wildlife Commission

Sincerely,

Gordon Jackson, Manager
Business and Economic Development

Attachments: Mr. Phil Smith, RAM Division presentation regarding the IFQ program
Volume and cost estimates to enter the program and purchase the full
volumes under this program
Resolution for adoption to participate in the region wide organization
Survey to complete and return by February 27, 2004

cc: All eligible Southeast Alaska 2A and 3A Communities and Tribes

Survey to Join The Southeast Alaska Community Coalition of Fishing Communities

(Check only one answer)

City

(If you would like to do the survey over the phone call Don Bremner at 1-800-344-1432, ext. 7341)

1. **Based upon the attached letters of Introduction can your community join the S.E. Community Coalition at this time?**-----Yes No
2. **If no to number one, what more information do you need to decide to join at this time?**
 - a. Proposed Non-profit Organizational and Management.-----
 - b. Financial structure of the region non-profit.-----
 - c. Financial obligation of my community non-profit at this time.-----
 - d. Legal obligations of my community Non-profit at this time.-----

We would like to learn more about the commercial fishing infrastructure in your community.

- a. Does your community have an operating commercial seafood processing plant?-----Yes No
- b. Does your community have commercial seafood dock buying and off-loading capability?----- Yes No
- c. What is the current size of your fishing fleet?-----# _____
- d. How many potential fishermen do you have in your community# _____
- e. How many fishermen or potential fishermen have the vessels and equipment to begin operations?-----# _____

- f. How many fishermen and potential fishermen have the financial capability to gear up a fisheries operation for the 2004 season?-----# _____
- g. How many fishermen and potential fishermen have the financial capability to pay the necessary lease of the halibut or sable fish quota?-----# _____

We would like to learn more about your City Government operations and capability.

- a. Under what type government is your City Incorporated? _____
- b. How often does your government meet? _____
- c. Does your government have experience in managing Non-profit Corporations?-----
-----Yes No
- d. Does your government have the capability of forming a 501 C (3) Non-profit to implement this program?-----
-----Yes No
- e. Based upon the estimated costs of purchasing the halibut and sablefish IFQ's in an open market does your City Government have the funds to purchase the IFQ's for the 2004 season?-----
-----Yes No

We would like to learn more about your communities' freight service ability.

- a. Does your community have the freight service capability to store and move the estimated volumes of fish product under this program? Yes No
- b. Who is the freight service provider? _____
- c. What is the freight service schedule? _____
- d. What are the freight service costs? _____
- e. Will your community be able to get the fish products to market on a competitive basis with the current freight service in and out of your community?-----
-----Yes No

What do you see as your community strong points in implementing this program successfully?

- a. _____
- b. _____
- c. _____

d. _____
What do you see as your communities' weak points in implementing this IFQ program?

a. _____

b. _____

c. _____

d. _____

We would like to learn more about your communities' fuel and electricity costs?

a. Who delivers fuel to your community? _____

b. How often is fuel delivered to your community? _____

c. What are your community fuel costs? _____

d. What are your community electricity costs? _____

We would like to learn more about your community water system.

a. What type water system does your community have? _____

b. What is your communities water source? _____

c. How is your communities water system maintained and managed? _____

Who will be your community contact for this program?

a. Name _____

b. Address _____

c. Phone _____

d. Fax _____

e. E-mail _____

Does your community have bonding capability to purchase IFQ's? Yes No

Amending the IFQ Program: a New Opportunity for Gulf of Alaska Coastal Communities

Presented to:

Restricted Access Management (RAM) Staff
Juneau, Alaska :: December 23, 2003

Phil Smith, RAM
Alaska Region, NMFS (National Marine Fisheries Service)



Background

- In 1980s and early 1990s, the halibut and sablefish fisheries were overcapitalized; the result was
 - Short, intense (derby) seasons ("race for fish")
 - Poor product quality and low ex-vessel prices
 - Unhappy consumers (little fresh fish)
 - Unsafe operations (loss of vessels and life)
 - Low catch per unit of effort (CPUE)
 - Gear conflicts, lost gear, & ghost fishing
- In 1991, the Council recommended an Individual Fishing Quotas (IFQs) program to address these problems
- The IFQ program was implemented in 1995

Background - IFQ Program

- Quota Shares (QS) were issued to vessel owners and lessees who had catch in the "qualifying years" - late 1980s and 1990
 - Amount of quota depended on amount of catch from that person's boat by species and area
- QS is defined by Species, Area, Vessel Category and Block Status, as follows:
 - Species = Halibut or Sablefish
 - Area = 2C, 3A, etc. (for halibut)
SE, WY, etc. (for sablefish)
 - Vessel Cat. = A (freezer), B, C, or D
 - Blocked = QS that may not be divided

Background - IFQ Program (Cont'd)

- Amount of QS that may be held by any person, or fished from any one vessel, is "capped"
 - Amount varies, between 0.5% and 1.5%
- No person may hold more than two "blocks" of QS in any area at the same time (or one block and unblocked QS up to the cap)
- Every year, managers (IPHC and Council) decide the Total Allowable Catch (TAC) by administrative area, for both halibut and sablefish

Background - IFQ Program (Cont'd)

- After the annual TAC is set, QS holders receive their annual Individual Fishing Quota (IFQ) permit
 - The permit authorizes harvest of a specific number of pounds of fish of a specific species (halibut/sablefish), in a specific administrative area
- Amount of IFQ that is issued to a person depends on amount of QS s/he holds, relative to the QS held by all QS holders in the administrative area (i.e., the "Quota Share Pool" - QSP), as follows

$$QS/QSP \times TAC = IFQ$$

Background - IFQ Program (Cont'd)

- QS (and IFQ) is transferable (i.e., it may be sold), and so it has a market value
 - Value has been ~ \$10 to \$12 per pound of IFQ
 - Value depends on amount, area, species, etc.
- Catcher vessel QS may be only be transferred to, and used by,
 - Those who received QS initially, or
 - "IFQ Crewmembers" (i.e., individuals who can demonstrate 150 days of fishing)
- Eligible persons receive "Transfer Eligibility Certificate" (TEC)
- Catcher vessel QS may not be leased

Background - IFQ Program (Cont'd)

- Corporations and partnerships, and individuals who received shares initially may hire a skipper to fish their IFQ permit
 - But must own a 20% interest in the vessel
- When corporation or partnership "changes" (brings on a new owner), it must divest its catcher vessel QS to qualified individual(s)
- So, over time, all catcher vessel QS/IFQ will be held by individuals who must be on board when the IFQ permit is being fished.
- This "owner on board" program element is an important goal of the IFQ program

Background - IFQ Program (Cont'd)

- The IFQ program has been in effect since 1995; as a result,
 - The seasons have extended to 8+ months
 - The ex-vessel value has increased
 - Product quality has improved
 - Safety at sea has improved dramatically
 - CPUE has risen, while discards, by-catch, lost gear, and ghost fishing have declined
- Consolidation has also occurred
 - Total QS holders has declined by >25%
 - Numbers of vessels have declined by >50%
- So, the program is considered a "success"

Background - Communities

- Fishermen in small coastal communities (villages) received QS in proportion to their halibut/sablefish fishing in the late 1980s
- After IFQs, some bought more QS and expanded their operations; most did not
- By the end of 1998, almost 25% of QS that was issued to residents of small coastal communities had been transferred to residents of larger communities
 - Even as gross income from IFQ fishing increased
- Problem of declining access to IFQ fisheries was made worse by poor salmon prices

Background - Communities (Cont'd)

- In the late 1990s, leaders in the communities got organized and created the GOACCC
- Intent was to advocate for a solution to the decline of the fishery economy in small GOA communities
- With respect to IFQ halibut/sablefish, they sought either quota or access to quota
 - GOACCC testified before the National Research Council and before the North Pacific Fishery Management Council (Council) on several occasions
 - GOACCC also met with NMFS, the State, Sen. Stevens, and others, to pursue their goals

Background - Communities (Cont'd)

- The Council considered two formal mandates, including
 - National Research Council report ("Sharing the Fish...") recommended attention to communities as stakeholders in the management process
 - National Standard #8 [1996 Sustainable Fisheries Act (amended Magnuson-Stevens Act)] mandated consideration of community issues in fishery management plans
- As a result, the Council listened to the GOACCC, and acted
 - In April 2002 Council took final action on Amendment to IFQ program to allow communities to "buy in" to the IFQ program

Background - Communities (Cont'd)

- The result is current Secretarial approval of a proposed Amendment to the IFQ Program to allow small coastal communities to "buy in" to the IFQ program and to use IFQ to benefit local communities
- A Proposed Rule for the amendment has been published in the Federal Register (comment period ended on December 1)
- Final Rule could be published in early 2004
- So, communities could obtain QS and be fishing their IFQs during the 2004 season
- A presentation of program elements follows

Disclaimer

Although it is intended to be accurate, the following program description is only a summary of the program requirements that are set out in the Proposed Rule.

The Secretary of Commerce has approved the Council's proposed amendment to the Fishery Management Plan (Amendment 66); however, as of the date of this presentation (December 2003), he has not approved the implementing regulations.

Accordingly be advised that the Secretary may still reject the Proposed Rule in its entirety, or he may amend it before it is published as a Final Rule.

Program Summary

- Eligible GOA Communities may establish new non-profit corporations ("Community Quota Entities" or CQEs) to act on their behalf; if they do, then
 - CQEs apply to NMFS for authority to hold QS
 - When approved, CQEs enter the QS market
 - CQEs who hold QS then "lease" annual IFQ permit amounts to community residents
 - Lessees hire crew and fish the IFQ
 - Annually, CQEs submit activity reports and lessees pay the annual IFQ fee
 - CQEs remain in the market, and buy/sell QS as their finances and interests allow
 - Council reviews program in 5 years

"Eligible" GOA Communities

- Eligible Gulf of Alaska communities have the following characteristics:
 - They have a population of fewer than 1500 people (according to the 2000 census)
 - They have direct saltwater access (i.e., they are located on the coast of the GOA)
 - They lack direct access to the road system
 - They have historic participation in the commercial halibut and sablefish fisheries, and
 - They have been specifically designated on a list recommended by the Council
- The Council has designated 42 communities, as follows:

Designated Eligible Communities

Southeastern Alaska

Angoon
Craig
Elfin Cove
Hollis
Hydaburg
Kasaan
Metlakatla
Pelican
Port Alexander
Tenakee
Whale Pass

Coffman Cove
Edna Bay
Gustavus
Hoonah
Kake
Klawock
Meyers Chuck
Point Baker
Port Protection
Thorne Bay

Southcentral Alaska

Akhiok
Chignik
Chignik Lake
Ivanof Bay
King Cove
Nanwalek
Ouzinkie
Port Graham
Sand Point
Tatitlek
Yakutat

Chenega Bay
Chignik Lagoon
Halibut Cove
Karluk
Larsen Bay
Old Harbor
Perryville
Port Lyons
Seldovia
Tyonek

Note that, in the future, other communities may petition the Council for designation

Community Quota Entities (CQEs)

- CQEs are new (organized after April 10, 2002) non-profit corporations that are authorized to hold halibut/sablefish QS on behalf of specific eligible communities
 - CQEs are organized under the laws of the State of Alaska (Title X)
 - CQEs are tax exempt under relevant IRS rules
- Before being designated as a CQE, the entity must
 - Receive the support of one or more eligible communities
 - Successfully apply to NMFS (RAM) for CQE status and authorization to hold and use QS

Obtaining Community Support

- To become a CQE, a non-profit entity must demonstrate support from the eligible community(ies) it seeks to represent
- Support is demonstrated by resolution from the community's governing body; i.e., its
 - City Council if community is a municipality, or its
 - Tribal Government if community is not a municipality, or its
 - Non-Profit Association if community is neither a municipality nor a tribe
- A community may not designate more than one non-profit entity to represent it, but
 - A non-profit entity may represent more than one eligible community

Applying to NMFS/RAM

- When a non-profit has obtained support from one or more eligible community(ies), it applies to NMFS for CQE status; applications must (minimally) include
 - Articles of Incorporation and By-laws
 - Organizational Chart and explanation of management structure
 - Statement describing procedures that will be used to distribute annual IFQ to residents of communities represented by the corporation
 - Formal statements of support (resolutions) from governing body(ies) of eligible community(ies)

Approving CQE Applications

- When a non-profit seeking CQE status applies, RAM will
 - Review application for completeness and accuracy
 - Ask for clarification or additional documentation
- When application is complete and accurate, RAM will provide it to the State of Alaska for a 30-day review period
 - State may ask for additional information and
 - May comment on the application to NMFS
- However, the State does not have "veto" power over an application

Approving CQE Applications (Cont'd)

- Following comment by the State of Alaska (if any), RAM may
 - Approve the application
 - Partially approve the application (e.g., approve for only some eligible communities), or
 - Deny the application
- All denials will be recorded by a formal "Initial Administrative Determination" (IAD)
 - Each IAD will identify the issue(s), provide the background, discuss the record, and provide a detailed explanation of the determination, and
 - The IAD will also provide instructions for appealing the determination to the (NMFS) Office of Administrative Appeals

Approving CQE Applications (Cont'd)

- Upon approval of an application, RAM will certify that
 - The non-profit entity is a designated CQE, and may act on behalf of the named community(ies), and that
 - The CQE may hold and use QS on behalf of those community(ies)
- The CQE will be issued a "Transfer Eligibility Certificate" (TEC) and will be eligible to enter QS market on behalf of its eligible community(ies)
- But certain limits and special rules for CQEs will apply

Community/CQE QS Use Caps

- There are two types of QS Use Caps that apply, including
 1. Caps on each community's holdings, and
 2. Cumulative caps on all community holdings
- Community use caps (as held by CQEs on behalf of the communities) are same as caps under the existing program; i.e.:
 - 1% of 2C halibut QS (~600k units)
 - 0.5% of all GOA halibut QS (~1,500k units)
 - 1% of SE sablefish QS (~688k units)
 - 1% of all sablefish QS (~3,230k units)

Community/CQE QS Use Caps (Cont'd)

- Cumulative use caps on all CQE/community QS holdings apply as follows:

• First Year:	3%
• Second Year:	6%
• Third Year:	9%
• Fourth Year:	12%
• Fifth Year:	15%
• Sixth Year:	18%
• Seventh Year:	21%
- These cap amounts will be a specific item of Council attention at 5-year program review

Other CQE QS Purchase Limitations

- A CQE may not purchase, nor voluntarily receive by transfer, and use
 - QS from Bering Sea administrative areas
 - QS from halibut Area 3B (if on behalf of community located in Southeast Alaska)
 - QS from halibut Area 2C (if on behalf of community located in Southcentral Alaska)
 - QS in vessel category "D" (yielding IFQ for use on vessels less than 35' length over-all) in areas 2C and 3A
- If a CQE receives QS by "operation of law" contrary to above limitations, such QS may not be used (i.e., will not yield IFQ)

Community/CQE QS Block Rules

- A CQE may not purchase, nor voluntarily receive by transfer, and use (on behalf of any community)
 - More than 10 blocks of halibut or 5 blocks of sablefish QS in any one management area
- Further, a CQE may not purchase, nor voluntarily receive by transfer, and use (on behalf of any community)
 - QS blocks in amounts small enough to be "swept up" to form larger blocks; "sweep up" amounts are fixed numbers of QS units in each area, that generally yield
 - Less than ~3,000 pounds of halibut QS
 - Less than ~5,000 pounds of sablefish QS

Use of Community QS Held by a CQE

- QS held by a CQE on behalf of an eligible community will yield annual IFQ permit(s)
 - The size of each permit (amount of IFQ pounds it authorizes) depends on the relative amount of QS held in the pertinent administrative area and the size of the TAC; recall that:
$$QS/QSP \times TAC = IFQ$$
- Upon receipt of its annual IFQ permit(s), the CQE may then transfer (i.e. "lease") all or part of the IFQ pounds to one or more permanent resident(s) of the community on whose behalf the QS is held

Use of Community QS (Cont'd)

- To be eligible to lease the IFQ, a person must
 - Be a permanent resident of the community on whose behalf the CQE is leasing the IFQ,
 - A "permanent resident" is one who affirms that s/he has maintained a domicile in the community for a minimum of 12 months prior to applying to receive IFQ by transfer
 - Be an individual who is eligible to receive QS/IFQ by transfer; i.e.,
 - Be an "IFQ Crewmember" (demonstrate 150 days fishing experience), or
 - Be an individual who received QS by initial issuance

Limitations on Leasing of IFQ

- Amount of IFQ held by lessee may not exceed 50,000 pounds of halibut or sablefish, as derived from any source
- Amount of IFQ fished from any vessel may not exceed 50,000 pounds of halibut or sablefish in any season, inclusive of all IFQ fished aboard the vessel
- Lessee must be on board while fishing and delivering (i.e., no hired skippers)
- Vessel category length restrictions do not apply to IFQ leased from CQEs

Responsibilities of Lessee

- Hire crew (preferably local), outfit vessel, secure a market, and go fishing
- Follow all rules that apply to all other catcher vessel IFQ permit holders
 - Including accepting liability, jointly with CQE, for fishery violations
- Pay the annual fee assessed against IFQ permit holders with landings
 - Will be billed at the end of year for amount not to exceed 3% of the ex-vessel value of the IFQ delivered halibut or sablefish
 - Fees are to recover the actual costs of managing and enforcing the IFQ program

Restrictions on Sales of Community QS

- A CQE that holds QS on behalf of a community may only sell that QS to
 - "...improve, sustain, or expand..." the opportunities for community members to participate in the IFQ fisheries; but note that
 - QS may also be transferred by "...operation of law..." or by the terms of a security agreement
- To insure that the community's interests are protected
 - an application to transfer QS from the CQE to another entity must be signed by a representative of the community

Steps if Restrictions Violated

- Purpose(s) of proposed transfer of QS would be self-declared by community and its CQE at time of transfer
- If it is subsequently shown that the restriction was violated, NMFS would
 - Withhold issuance of the community's IFQ to the CQE, and
 - Suspend the community's ability to use QS for a period of up to three calendar years
- These would be administrative sanctions and would not be imposed until full administrative due process (notice and opportunity to be heard) had been exhausted

CQE Annual Reporting Obligation

- Each CQE must file an Annual Report on behalf of its eligible community(ies)
- Report must be filed by January 31 of the year following the calendar year for which the report is prepared
- Copies of the report are to be submitted
 - To each eligible community on whose behalf the CQE is filing, and
 - To NMFS
- Information in the reports will be summarized and made available to the public (specifically, to the Council)

Contents of Annual Report

- To be complete, an Annual Report must contain
 - Name(s) of vessel(s) upon which IFQ was fished
 - Names and addresses of crew members
 - Description of criteria used to distribute IFQ (leases) among eligible community residents
 - Description of efforts to employ community residents as crewmembers
 - Description of process used to solicit lease applications from eligible community residents, including name(s) of all who applied
 - CQE management changes, including changes in key personnel, board members, and corporate by-laws

Contents of Annual Report (Cont'd)

- Copies of relevant decision documents and minutes from CQE board meetings
- The contents will be augmented with information provided by NMFS, including
 - Identification of eligible community(ies)
 - Amount of QS held by CQE/community at beginning and end of calendar year
 - Amount of IFQ leased from the CQE/community
 - Name(s) and address(es) of IFQ lessee(s)
 - Number of vessels from which the community IFQ was fished

Steps if Annual Report is Not Filed

- Failure to submit an Annual Report in a timely manner could result in
 - Withholding of annual IFQ permit(s) from the CQE and the community(ies) it represents
 - Suspending authority of CQE/community(ies) to receive additional QS by transfer or to transfer QS/IFQ it holds
 - Additional enforcement action as indicated
- As is the case with other adverse actions, these would be administrative sanctions and would not be imposed until full administrative due process (notice and opportunity to be heard) had been exhausted

Concluding Remarks

- The Council and NMFS view this program amendment as a way to help small GOA communities to enhance their fishing economies
 - But it provides no allocation nor guarantees of success
 - Instead, it provides an opportunity
- Success of program will depend on the imagination and hard work of the communities and the organizations they form to represent them

Conclusion

- ✓ We have discussed a Proposed Rule only; changes could well be made before the rule becomes Final
- ✓ Questions and comments on the policy issues should be addressed to the Council, in Anchorage
- ✓ Questions and comments on the rule-making process should be directed to the NMFS Sustainable Fisheries Division, in Juneau
- ✓ Questions and comments on the implementation process should be directed to NMFS, Restricted Access Management (RAM), in Juneau

Contacts

North Pacific Fishery Management Council: Nicole Kimball
(Anchorage local number) 271-2809
E-mail: Nicole.Kimball@noaa.gov

NMFS, Sustainable Fisheries Division: Glenn Merrill or Jay Sinter
1-800-304-4846 (press "3"), or
(Juneau local number) 907-586-7228
E-mail: Glenn.Merrill@noaa.gov

NMFS, Restricted Access Management
Phil Smith, Tracy Buck, or Jessica Gharrett
1-800-304-4846 (press "2"), or
(Juneau local number) 586-7344
E-mail: RAM.Alaska@noaa.gov

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 04/13/04

FURTHER: Labor and Commerce

Date of 5-Day Notice: _____
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 4/19/04

Community and Regional Affairs Committee considered SENATE BILL NO. 387

SB 387 COMMERCIAL FISHING LOANS FOR QUOTA SHARES

"An Act authorizing the making of certain commercial fishing loans to eligible community quota entities for the purchase of certain fishing quota shares; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

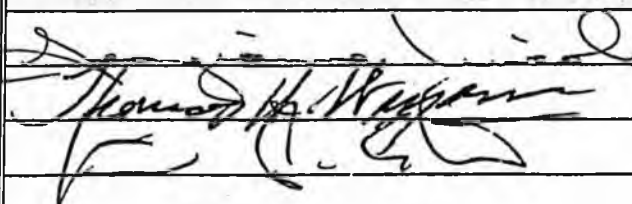
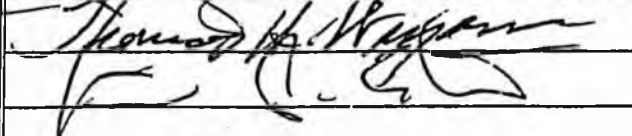

^{Previous}
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
FISH & GAME	1/25/04			✓	2
DCED	2/12/04			✓	1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
	✓			
	✓			
CHAIR: 	✓			

**Alaska Division of Investments
SB 387 Sectional Analysis**

- Section 1 Amends AS 16.10.310(a)(1) by adding subsection E that allows the department to make loans to a new class of borrowers called community quota entities (CQE) to purchase fishing quota shares. To qualify a CQE must be eligible under federal statute or regulation and must not be eligible for financing from other recognized commercial lending institutions.
- Section 2 Amends AS 16.10.320(d) to limit the dollar amount of loans a community can have outstanding at any point in time to \$2,000,000.
- Section 3 Stipulates that the act does not take effect until the federal regulations authorizing community quota entities takes effect.

Prepared by the Alaska Division of Investments
April 9, 2003

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 387
(S) Publish Date: 4/13/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
Title Making commercial fishing loans RDU _____
to eligible community quota entities Component _____
Sponsor Rules Committee
Requester 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						
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)*

Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson
Division: Legislative Liaison
Approved by: Commissioner Kevin Duffy
Agency: Alaska Department of Fish & Game

Phone 465-6137
Date/Time: 1/25/04 11:55 AM
Date: 1/25/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 387
(S) Publish Date: 4/13/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Commercial Fishing Loans to Eligible RDU Investments (122)
Community Quota Entities Component Investments
Sponsor Rules
Requester By Request of the Governor Component No. 383

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 (1036)	0.0	0.0	0.0	0.0	0.0	0.0
------------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1036 Commercial Fishing Loan Fund						
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 would amend the Commercial Fishing Revolving Loan Fund (CFRLF) to allow the department to make loans to a new group of quota share purchasers, Community Quota Entities (CQE), eligible under federal statute or regulation. This bill would accommodate a new class of borrowers under the National Marine Fisheries Service (NMFS) proposed rule (50 CRR 679) that will allow Individual Fishing Quota Shares (IFQs) to be purchased by non-profit entities as identified by the NMFS. The total balances of loans may not exceed \$2 million per community eligible under federal statute or regulation. The department anticipates making approximately \$1 million in CQE loans in FY05 and approximately \$3 million in each fiscal year thereafter through FY10.

No additional administrative costs would be required to accommodate this amendment to the CFRLF.

Prepared by: Greg Winegar, Director Phone (907) 465-2510
Division Investments Date/Time 2/12/04 11:50 AM
Approved by: Edgar Blatchford, Commissioner Date 2/12/2004
Agency Department of Community & Economic Development

SB

396



ALASKA STATE LEGISLATURE

SENATE COMMITTEE ON COMMUNITY & REGIONAL AFFAIRS

Senator Bert K. Stedman, Chair

Official Business

Senator Tom Wagoner, Vice-Chair
Senator Kim Elton
Senator Georgianna Lincoln
Senator Gary Stevens

State Capitol, Room 30
Juneau, AK 99801-1182
Phone: (907) 465-4989
Fax: (907) 465-3922

SB 369

Interior Rivers Port Authority

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

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

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

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