

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11345 SENATE STATE AFFAIRS

Table 11, continued

- ◆ **Decisions and Review:** *OSH cases*—The OSH Review Board makes decisions after hearings and on dispositive motions. The hearing officer is the delegated authority to decide non-dispositive and procedural motions. *W&H Cases*—The hearing officer prepares a recommended decision for review by the division director. From the date of the final agency decision, a party has 30 days to appeal to the Superior Court.
- ◆ **Written Decisions and Public Information:** Decisions are written and mailed to all interested parties. They are also available through the division.
- ◆ **Governing Statutes and/or Regulations:** *OSH*—AS 18.60.010 through AS 18.60.105, and 8 AAC 61.160-61.220. *Wage & Hour*—Employment Preference, AS 36.10.210; Title 36 Little Davis Bacon—AS 23.05.060, AS 36.10.075, AS 36.10.120, AS 36.05.030; Hearings, 8 AAC 30.100 and 8 AAC 30.110; Debarment, AS 23.050-060; 36.05.030; AS 36.05.090, and 8 AAC 30.200-.240.

Source: Robert Landau, Hearing Officer (907) 272-2266.

Table 12: Department of Labor, Division of Vocational Rehabilitation

- ◆ **Positions:** *Disability Determination Services:* One part-time Disability Hearing Officer, range 19, for Disability Determination Services (DDS), at 420 hours per year in FFY 02. *Vocational Rehabilitation Client Services:* By state and federal law, Vocational Rehabilitation Client Services must randomly select from a list of qualified attorneys maintained by the division to contract for impartial hearing officer services. The division and the State Rehabilitation Council (the governor's committee on employment and rehabilitation of individuals with disabilities) must identify hearing officers included on the list.
- ◆ **Qualifications:** *Disability Determination Services:* Three years of professional experience in reviewing and adjudicating Social Security and Supplemental Income disability insurance claims.
- ◆ **Types of Cases:** *Disability Determination Services:* Continuing disability review with cessation of benefits. Under Social Security Act, DDS must provide pre-hearing review prior to Administrative Law Judge appeal by Social Security Administration. *Vocational Rehabilitation Client Services:* Individuals served by the Division of Vocational Rehabilitation who are dissatisfied with any determination made by personnel of the division that effects the provision of vocational rehabilitation services.
- ◆ **Number of Hearings:** *Disability Determination Services:* 42 in FFY 02. *Vocational Rehabilitation Client Services:* The division emphasizes informal resolution of complaints. An informal review is conducted by an administrator of the division who nearly always resolves the matter. Mediation is also an option under the federal regulations. Full hearings are rare: there has been only one such hearing since FY 00.
- ◆ **Average Length of Time Required:** *Disability Determination Services:* 10 hours per review—includes reviewing the file, conducting the hearing, and writing the decision. *Vocational Rehabilitation Client Services:* Federal Regulation requires the hearing to be held within 60 days of the request; findings and the written decision must be provided to the individual within 30 days of the completion of the hearing.
- ◆ **Prevailing Party:** *Disability Determination Services:* The State is not a party in these cases. The dispute is between the claimant for disability benefits and the Social Security Administration. *Vocational Rehabilitation Client Services:* The State prevailed in the one case heard in the last three years.
- ◆ **Contract or "In-house" Hearing Officers:** *Disability Determination Services:* Currently, all hearings are conducted by the part-time hearing officer employed by the division; however, consideration is being given to contracting the hearings due to the expertise required and the minimum amount of time required. Retired, experienced, trained DDS hearing officer/adjudicators are available. *Vocational Rehabilitation Client Services:* All hearings are conducted by contracted hearing officers trained by the division with the help of national Rehabilitation Continuing Education Programs.

Table 12, continued

- ◆ **Other Duties: Disability Determination Services:** As hearings are only part time duties, the experienced adjudicator also performs duties as a disability adjudicator.
- ◆ **Agency Representation at Hearings: Disability Determination Services:** The part time DDS hearing officer is the agency representative. Attorneys or family members frequently represent claimants. **Vocational Rehabilitation Client Services:** The chief of Rehabilitation Services represents the division with help from an attorney from the Department of Law. A representative from the client assistance program may represent the individual.
- ◆ **Decisions and Review: Disability Determination Services:** The hearing officer conducts a file review, meets with the claimant, and writes a decision. Appeals are to the to an administrative law judge with the Social Security Administration. **Vocational Rehabilitation Client Services:** The contracted impartial hearing officer presides over the hearing with evidentiary rules applicable. A written decision is provided to the individual. Decisions are final; appeals are to the Superior Court.
- ◆ **Written Decisions and Public Information: Disability Determination Services:** All information is confidential under the Social Security Act. **Vocational Rehabilitation Client Services:** All information is confidential under the Rehabilitation Act of 1973 as amended.
- ◆ **Governing Statutes and/or Regulations: Disability Determination Services:** Social Security Act, section 205(b); 20 CFR 404.900-404.922, 404.992, 404.993, 404.1546, 416.946, 416.1400-416.1422, 416.1492, and 422.140. **Vocational Rehabilitation Client Services:** AS 23.15.010-23. The Rehabilitation Act of 1973 as amended in 1998—Title IV(I), P.L. 105-220, "The Workforce Investment Act." 34 CFR 361.57, and 8 AAC 98.510-550.

Sources: Sandra Kelley, chief, Disability Determination Service, (907) 777-8109; and David Quisenberry, acting director, Division of Vocational Rehabilitation, (907) 465-6931.

**Table 13: Department of Natural Resources,
Division of Mining, Land & Water**

An appeal to DNR is typically a request that the commissioner review the work of subordinates to determine whether the commissioner's judgment applied to the facts would revise the answer. This question is almost never suited to a hearing officer, and so, it is no surprise that DNR holds very few hearings. What the department terms a "hearing officer" or "appeals officer" does very different work than in other agencies. It is usually someone skilled in working through the case to identify the issues involved for review by the commissioner.

This description of appeals within the Division of Mining, Land and Water is based on new reporting techniques implemented in the past seven months.

- ◆ **Positions:** Appeals Officer (Natural Resource Specialist III), range 18, classified. However, the first draft of almost every appeal decision is assigned to other division staff members, based on area of expertise. In addition, the division director, deputy commissioner, and commissioner have acted as hearing officers in a few cases.
- ◆ **Qualifications—Law Degree and Experience:** A law degree is not required. The minimum qualifications for a Natural Resource Specialist III are at least two years of journey level professional experience in natural resource management or a master's degree from an accredited institution in a natural resource field, law, public administration, planning, or economics. The incumbent has over 20 years' experience with the department.
- ◆ **Types of Cases:** State's best interest findings resulting in disposition of interest in State lands, or decision permitting the use of State lands—grazing leases, tideland leases, land conveyances, forest lands, surface mining, etc.
- ◆ **Number of Hearings and Appeals:** Approximately one oral hearing per year. Approximately 56 appeals per year.
- ◆ **Average Length of Time Required:** Median time to complete appeals is 51 days; mean (average) time to complete appeals is 6 months. Oral hearings are rarely held—they are discretionary. Because oral hearings are expensive and can cause long delays, they are only held when they are the best way to resolve a factual controversy, which is hardly ever the case. Approximately 11 hearings have been held in the last 11 years. In three cases, a contract hearing officer was hired; a division staff person handled one case; a staff person from another division handled one case; the division director acted as a hearing officer in two cases; the deputy commissioner handled one case; and the commissioner acted as the hearing officer for three cases.
- ◆ **Prevailing Party:** The State prevails in approximately 67 percent of the cases. The remaining appeals are granted, granted-in-part, or remanded back to the office that issued the original decision.

Table 13, continued

- ◆ **Contract or "In-house" Hearing Officers:** All appeals are handled by division staff. In the case of the approximately one oral hearing per year, a contract hearing officer handled the hearings on three occasions for 30 percent of the cases over the last 11 years.
- ◆ **Other Duties:** The appeals officer has other natural resource duties but mostly administers the division's appeal process in addition to finalizing draft appeal decisions (track incoming appeals, notify the appellant that the appeal has been received, assign the first draft of a decision to an appropriate staff person, draft some decisions). Other division staff members who draft appeal decisions all have other natural resource duties as their primary responsibility: land management, mineral management, water management, surveying, property appraisal, land planning, and land title tasks.
- ◆ **Agency Representation at Hearings:** In the approximately one oral hearing held per year, staff represents the division. The hearing officer does not serve as an advocate, but as a neutral party.
- ◆ **Decision and Review:** Appeals are only to the commissioner. Division staff members draft decisions for the approval of the commissioner; the commissioner makes the decision. Appellants may appeal the commissioner's decision to the Superior Court.
- ◆ **Written Decisions and Public Information:** All decisions are written and are public information as part of the State's public land records (unless they qualify for confidentiality under AS 38.05.035(a)(9), which is rarely the case). Any member of the public may inspect these records during normal business hours at the department's offices, or purchase a copy for 25 cents per page.
- ◆ **Governing Statutes and/or Regulations:** 11 AAC 02; AS 27.21.150, AS 27.21.240 (coal surface mining reclamation program); AS 41.17.082, AS 41.17.136-143 (Forest Practices Act); AS 38.05.065(d).

Source: Greg Curney, Natural Resource Specialist III, (907) 269-8510.

**Table 14: Department of Natural Resources,
Division of Forestry**

- ◆ **Positions:** The two Division of Forestry Regional Foresters act as hearing officers for Forest Resources and Practices Act (FRPA) appeals. The Northern Region forester handles appeals on decisions made within the Coastal Region; the Coastal Region forester handles appeals on decisions made within the Northern Region. Both are full-time, classified, Forester IV positions, range 22. Hearing officer duties are only a small part of their responsibilities.
- ◆ **Qualifications—Law Degree and Experience:** The incumbents in these positions have 3.5 years' (Northern Region) and 4 years' (Coastal Region) experience. Both incumbents have many years of experience in forest management in Alaska prior to holding their current position. These positions require a degree in forestry, but not a law degree. Both are trained as foresters, and neither has formal law training. The Department of Law has provided some training to the hearing officers in a formal session as well as through ongoing consultation on individual appeals and hearings. Hearing officers are expected to have a thorough knowledge of the FRPA and of forestry practices appropriate to the area under appeal.
- ◆ **Types of Cases:** FRPA appeals address implementation and enforcement actions on private, municipal, and trust land rather than state land.
- ◆ **Numbers of Hearings and Appeals:** Most forest practices issues are resolved without the need for a formal hearing process. As such, hearings are relatively rare. During 2000, there was 1 FRPA hearing and the decision was appealed. Since that time, there have been no hearings. The 2000 case required 62.5 hours of work by the hearing officer.
- ◆ **Average Length of Time Required:** Under pertinent statutory provisions, the state forester must immediately refer a matter to a hearing officer for determination of the validity of a stop work order. The hearing officer must consider any arguments and evidence presented by the respondent within 5 workdays after receipt of the stop work order and must make an immediate decision sustaining or reversing the order. The respondent can request the commissioner to reconsider the hearing officer's decision. This process must be completed within 30 days. Most cases—95 percent—are completed within this 5 day plus 30 day timeline. If the commissioner orders additional administrative review, such as additional fieldwork to gather information, the process could take up to twelve months to complete.
- ◆ **Prevailing Party:** The state prevailed in the last case.
- ◆ **Contract or "In-house" Hearing Officers:** All hearings are conducted by in-house personnel.
- ◆ **Other Duties:** Hearing officer duties constitute only a very small part of the responsibilities for FRPA hearing officers. The regional foresters are responsible for implementation of the forest management, fire management, and forest practices programs in their regions.

Table 14, continued

- ◆ **Agency Representation at Hearings:** An attorney from the Office of the Attorney General represents the Division of Forestry and works closely with a prosecution coordinator, and various Regional and Central Office staff members. The hearing officer is not acting as the division's representative and must "fully and impartially represent the interests of the state and the respondent." The hearing officer does not participate in preparation of the division's case.
- ◆ **Decisions and Review :** A decision by a hearing officer or by the commissioner under constitutes final agency action. A party may ask the commissioner to reconsider a hearing officer's decision, or appeal directly to Superior Court.
- ◆ **Written Decisions and Public Information:** Hearing officer decisions are written, and final decisions are public information. A member of the public may obtain a copy by submitting a request to the Division of Forestry.
- ◆ **Governing Statutes and/or Regulations:** Enforcement decisions under the Forest Resources and Practices Act (FRPA) are subject to the appeal and hearing process established by the Act in AS 41.17.131-.143 and 11 AAC 95.250. This process is specifically separate from the process under the Administrative Procedure Act (AS 41.17.139[a]).

Source: Martha Welbourn Freeman, Natural Resource Manager IV/Forest Resources Program Manager, (907) 269-8473.

Table 15: Department of Natural Resources, Division of Oil and Gas

- ◆ **Positions:** The Division of Oil and Gas manages the state's oil and gas resources with a permanent staff of 55, consisting of highly specialized technical experts schooled as petroleum geologists, petroleum geophysicists, petroleum engineers, petroleum land managers, attorneys, petroleum economists, accountants, and natural resource specialists, who are assigned to five sections: resource evaluation, leasing and licensing, commercial, royalty accounting, and lease, permit and unit administration. All of these sections are involved with drafting some type of agency decision.
- ◆ **Qualifications—Law Degree and Experience:** A law degree is not required. Division staff members who handle oil and gas appeals have a variety of specialized experience. Most have advanced degrees and experience in petroleum geology, geophysics, engineering, and/or economics. Two staff members have law degrees with specializations and/or experience in natural resources law (the deputy director, who is also a lawyer with almost 15 years' experience in oil and gas issues, does not typically work on appeal decisions). The Department of Law provides assistance with all appeals and reconsideration decisions.
- ◆ **Types of Cases:** Permitting, reconsiderations of competitive oil and gas best interest findings, licensing, Alaska Coastal Management Plan consistency determinations, unitization decisions (expansions, contractions, formations, terminations), discovery royalty, royalty reduction, and termination of leases.
- ◆ **Contract or "In-house" Hearing Officers:** Most appeals have been handled "in-house" by a hearing officer who is qualified to understand the technical aspects of the facts or law involved but who did not take part in the original decision. In some cases, the commissioner may decide to sit as the hearing officer.
- ◆ **Other Duties:** All individuals that serve as decision makers on appeals have other duties as their primary responsibility: petroleum geologists, petroleum geophysicists, petroleum engineers, petroleum economists, lease sales manager, permitting manager, petroleum land manager, natural resource specialists.
- ◆ **Agency Representation at Hearings:** In an oral hearing, division staff represents the agency. The hearing officer or decision maker is a neutral party and does not serve as an advocate. If requested by the hearing officer, an attorney from the Department of Law attends the hearing and provides any procedural advice.
- ◆ **Decision and Review:** Professional staff from the appropriate section will draft a decision for either the director to sign or for the director and commissioner to cosign. Those decisions which only the director signs may be appealed to the commissioner. Once the commissioner makes a decision on the appeal, it is a final decision for purposes of appeal to the Superior Court. For division decisions that are co-signed by the director and the commissioner, the appropriate review is a request for reconsideration made to the commissioner. A decision on reconsideration is a final decision for purposes of appeal to the Superior Court. Some oil and gas decisions such as best interest findings on royalty-in-kind sales are made by the commissioner and ratified by the Legislature.

Table 15, continued

- ◆ **Written Decision and Public Information:** All Division of Oil and Gas decisions are written. In accordance with AS 38.05.035(9)(C) and (D), geological, geophysical, and engineering data, as well as cost and financial data, are confidential. Many written decisions made by the division contain confidential information. Decisions regarding administration of oil and gas leases and licenses, permitting decisions, and best interest findings for competitive oil and gas lease sales are examples of decisions that do not contain confidential information and are open to the public.

- ◆ **Governing Statutes and Regulations:** AS 38.05.035 and 11 AAC 02.

Source: Marie Crosley, Natural Resource Specialist V, (907) 269-8802.

Table 16: Department of Revenue, Office of the Commissioner

- ◆ **Positions:** One Revenue Hearing Examiner II, range 24, and two Revenue Hearing Examiner Is, range 22. All three are fulltime, partially exempt positions.
- ◆ **Qualifications—Law Degree and Experience:** Law degrees are not required by statute, but the Department policy has always been to hire lawyers for hearing officer positions. All three incumbents are licensed attorneys with several years' experience practicing law. Incumbents have been in their current positions from approximately two and a half to seven years.
- ◆ **Types of Cases:** Oil & gas taxes, child support, permanent fund dividend, gaming, unclaimed property, State Assessment Review Board (oil and gas property assessment appeals—see AS 43.56.210 [7]).
- ◆ **Number of Hearings:** During 2002, hearing examiners received approximately 887 cases and issued approximately 725 substantive decisions (less substantive decisions occur when parties withdraw, settle, or cases are remanded to a lower level).
- ◆ **Average Length of Time Required:** *Permanent Fund Dividend* appeals: approximately 90 days. *Child Support* appeals: approximately 60 days. *Tax, gaming, and unclaimed property appeals:* about 120 days. These time frames include the time before the actual hearing, used for scheduling, sending notice to the parties, pre-hearing conferences and orders relating to matters such as discovery and dispositive motions. *State Assessment Review Board* appeals (oil & gas property assessment appeals) are scheduled for the board's annual meeting, a few weeks after the deadline for filing appeals. The hearings are completed in a few days, and decisions are issued within 10 days after the hearing.
- ◆ **Prevailing Party:** The *Permanent Fund Dividend Division* prevails in about 60 percent of its cases. (A large percentage of these cases are disposed of by motions because the applicant is disqualified as a matter of law, based on the undisputed facts of the case.) In *child support cases*, the division's administrative order is upheld only about 40 percent of the time. This is because new income information usually becomes available after the parties appeal. *Tax, gaming, and unclaimed property* cases usually settle under the hearing officer's supervision, so both parties prevail in most cases. In cases that actually go to hearing, the State prevails over 90 percent of the time. *State Assessment Review Board* cases are more complex—the State may be only one of three potential parties (the State, the taxpayer, and any affected municipality)—but the State prevails about 70 percent of the time. In 2001, for example, the board heard only one appeal, but it was an appeal of the assessed valuation of the entire Trans Alaska Pipeline System. Values argued by the parties ranged from \$2.1 billion to \$5.8 billion. The Board rejected the state's assessed valuation of \$2.75 billion, and ordered that the property be assessed at \$3.1 billion. None of the parties prevailed on all their litigation positions.
- ◆ **Contract or "In-house" Hearing Officers:** *Hearing section* staff handle about 95 percent of the cases; contract hearing officers do about 5 percent of the work. The Office of Tax Appeals in the Department of Administration has been contracted with in the past to take some oil & gas tax appeals.

Table 16, continued

- ◆ **Other Duties:** The senior hearing examiner supervises the other hearing examiners and support staff and also serves as the legal counsel for the State Assessment Review Board, which hears appeals of oil and gas property tax assessments. In this capacity, the hearing examiner advises the board and drafts the board's decision for the chair's signature. The hearing section also provides paralegal and clerical support for the board. The senior hearing examiner also serves as the ethics supervisor for the Department of Revenue. Hearing examiners provide comments on language in draft regulations and may provide recommendations to clarify ambiguous language. Hearing examiners meet regularly with agency staff to try to improve the administrative appeals process by making it more efficient and easier for members of the public to understand and to participate.
- ◆ **Agency Representation at Hearings:** The agency is generally represented at child support and permanent fund dividend hearings, but not by attorneys. An auditor or an attorney with the Tax Division generally represents the state in gaming appeals. Two assistant attorneys general usually represent the state at State Assessment Review Board appeals.
- ◆ **Decisions and Review:** The hearing officers write proposed decisions for review by the commissioner or his/her designated representative. The senior hearing examiner has, in cases other than gaming and unclaimed property, the delegated authority to adopt decisions for the commissioner. Parties may appeal final decisions to the Superior Court.
- ◆ **Written Decisions and Public Information:** Parties are sent copies of decisions, but child support, permanent fund dividend, and oil and gas property tax decisions are confidential. Decisions by the State Assessment Review Board and gaming and unclaimed property decisions are public. Copies may be obtained at the division.
- ◆ **Governing Statutes and/or Regulations:** Department of Revenue hearing procedures are codified at 15 AAC 5.010-050; child support matters are governed by AS 25.27 and 15 AAC 125; permanent fund dividend matters are under AS 43.23.005-095 and 15 AAC 23; oil and gas exploration, production and pipeline transportation property tax is at AS 43.56 and 15 AAC 56.015-040. Gaming is at AS 5.15 and 15 AAC 160.

Source: Mark Handley, Revenue Hearing Examiner II, (907) 465-3752.

**Table 17: Department of Transportation & Facilities,
Office of the Commissioner**

- ◆ **Position:** Chief Contracts Officer, Range 23, classified position; approximately 20 percent of the position's duties involve protest and claim appeals, including administering hearing officer services contracts.
- ◆ **Qualifications—Law Degree and Experience:** A law degree is not required for the position, and the incumbent does not have one. But, he does have 20 plus years' experience in government procurement, contracting, and contract dispute resolution.
- ◆ **Types of Cases:** Disputes relating to bid procedures, bid/contract language, contract awards, contract performance, etc.
- ◆ **Number of Hearings:** Approximately six appeals per year go to hearing. In addition, an additional 6 appeals per year are adjudicated via an appeals officer directed decision (AOD).
- ◆ **Average Length of Time Required:** Complex hearings typically average 300 days to adjudicate.
- ◆ **Prevailing Party:** For the 10-year period of 1992 through September 12, 2002, 63 construction-related (claim & protest) appeals were directed to hearing. (This does not include those appeals receiving a directed decision). Of the 63 appeals, 33 were claims, 26 were protests, and 4 were in the lease category. In regard to resolution, 15 were settled by mutual agreement before a hearing was started; 43 were adjudicated through the hearing process or, in some instances, partially heard (i.e., settlement was reached during the hearing process); as of Sept. 11, 2002, 5 appeals were still before hearing officers. Of the 43 appeals adjudicated through the formal hearing process, 11 were resolved in appellate court as follows: 1 was remanded for settlement; the State prevailed on 10 (i.e., the original administrative decision of the department, after the hearing, was upheld).
- ◆ **Contract or "In-house" Hearing Officers:** The chief contracts officer does not act as the hearing officer in the administrative hearing. An attorney or other qualified professional with experience in construction-related protest or claim adjudication, as determined by the chief contracts officer, typically serves as the hearing officer. The chief contracts officer solicits for the hearing officer and administers all of the department's construction-related hearing officer services contracts.
- ◆ **Other Duties:** The chief contracts officer also administers certain construction related contracts and special procurement requests; provides various assistance and training; supervises subordinate staff members; prepares fiscal notes and position papers; and ensures compliance with department policies and procedures and state and federal laws and regulations.
- ◆ **Agency Representation at Hearings:** As an assist to the appeals officer, the chief contracts officer is instrumental in reviewing and applying case law to appeals adjudicated without the hearing process. He is also responsible for establishing and maintaining the guidelines under which the hearing is held.

Table 17, continued

- ◆ **Decisions and Review:** A hearing officer's decision is a recommendation for consideration. After review and recommendation by the chief contracts officer of the hearing officer's decision, the appeals officer can adopt, modify, remand for further consideration, or reject the decision for good cause. Either party to the appeal may then elevate their appeal to the Superior Court.
- ◆ **Written Decisions and Public Information:** All administratively adjudicated decisions are written. Parties are sent copies of final decisions, which are public documents.
- ◆ **Governing Statutes and/or Regulations:** The administrative adjudication of construction-related hearings is governed by the State Procurement Code (AS 36.30). Under AS 36.30.670(b), the provisions of the Administrative Procedure Act do not apply to hearings conducted under this chapter.

Source: Mark O'Brien, Chief Contracts Officer, (907) 465-6990.

We hope you find this information to be useful. Please contact us if you have questions or need additional information.

Attachment A

Memorandum from Mark Handley regarding the APA

MEMORANDUM

STATE OF ALASKA DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

TO: Patricia Young
Legislative Research Services

DATE: February 27, 2003

TELEPHONE: 465-3752

FROM: Mark T. Handley
Senior Revenue Hearing Examiner

SUBJECT: Request for Information

You have asked for a brief explanation or history of why Department of Revenue administrative appeals are not governed by the Administrative Procedures Act (APA).

Appeals within the Department of Revenue are exempted from the administrative procedure act under AS 44.62.330(a).

The Administrative Procedures Act (APA).

The APA adjudicative procedures are tailored for the types of appeal that are governed by the APA. These appeals can be characterized as appeals that are likely to be rare and involve complex issues surrounding an agency's decision to take away an important vested right such as an individual's livelihood, a doctor's license to practice, for example. These appeals are the equivalent of capital crime trials in the world of administrative adjudications. The APA process is very formal, expensive and complicated. Both the state and the appellant are usually represented by attorneys. The APA process is designed to ensure the maximum procedural protections for all parties, much more than is required for the resolution of most administrative disputes. This process is relatively difficult for members of the public and lay agency staff to understand. Parties who are un-represented will be at much more of a disadvantage in one of these proceedings than they would be in most non-APA adjudications.

The APA only applies to a few types of cases. These tend to be low volume complex cases that require little special subject matter expertise, but a high level of legal expertise, to hear and litigate. The procedures are designed for attorneys, who litigate and sit as hearing officers in APA Hearings. APA procedure is more similar to court procedure, the procedure that attorneys are familiar with and are comfortable using, than the less formal procedure used in administrative adjudications where the parties are un-represented and the hearing officers are not

process to be followed in each case. This is true for tax and non-tax cases. These rules allow the hearing officer to tailor the process to the individual case to ensure that it is both fair and efficient.

Evolution of the Department of Revenue Hearing Procedures

Over the years, Revenue's administrative appeals caseload has shifted away from tax cases to a greater emphasis on permanent fund dividend, child support, and gaming appeals. The flexibility provided to the hearing officer at the formal hearing level, however, has allowed for the procedure in each of these types of cases to be tailored to the type of appeal without many changes in the regulations. Over the years the process has been steadily tweaked and fine-tuned by the hearing section with feedback from agencies and members of the public who participate in the process. The goal has been to make the process more efficient, less complicated, fairer and more accessible and understandable for the members of the public and agencies it serves. These parties are usually un-represented.

In CSED and PFD cases the informal conference has evolved into a quick internal agency review of the disputed agency action. This process ensures that someone other than the individual who made the original agency determination looks at the complaint, reviews the agency action and changes the determination if necessary. An agency review does not guarantee that a "conference" in the sense of a meeting between the parties takes place. With PFD and CSED, this step resolves a significant portion of the appeals. This is because either the agency corrects its determination or the member of the public decides not to appeal the agency determination after it has been explained in the administrative review decision.

Making this process more streamlined has helped to reduce both backlogs and the repetitive effort required by appellants. The current system is quicker and does not require the appellant to appear for two hearings to get a final order. This reduces the "wearing down effect" on appellants of the two-tiered appeals process, while maintaining its positive aspects.

These administrative reviews and informal conferences do not meet the due process requirements for a formal hearing, let alone an APA hearing, but this step reduces overall costs to both the agencies and the appellants. It is a simple review conducted by less expensive employees with very high caseloads. They succeed in significantly reducing the number of appeals that would otherwise require a formal hearing. Members of the public are well served by this system because many have their disputes resolved and their questions answered without having to take time off work to attend a formal hearing.

Appellants who do choose to go on to a full formal hearing still find the procedure to be fast, understandable, and user-friendly. The majority of PFD hearings, for example, seldom take more than 30 minutes, and a hearing officer might hear 8-10 cases in a day. In cases with limited issues, it is not uncommon for the hearing officer to explain the procedure, swear in the appellant, hear the testimony and cross-examination, and conclude the hearing in less than 15 minutes, with a written decision mailed at a later time. This level of efficiency could never be accomplished under the APA.

CORRECTION

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



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

MEMORANDUM

STATE OF ALASKA DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

TO: Patricia Young
Legislative Research Services

DATE: February 27, 2003

TELEPHONE: 465-3752

FROM: Mark T. Handley
Senior Revenue Hearing Examiner

SUBJECT: Request for Information

You have asked for a brief explanation or history of why Department of Revenue administrative appeals are not governed by the Administrative Procedures Act (APA).

Appeals within the Department of Revenue are exempted from the administrative procedure act under AS 44.62.330(a).

The Administrative Procedures Act (APA).

The APA adjudicative procedures are tailored for the types of appeal that are governed by the APA. These appeals can be characterized as appeals that are likely to be rare and involve complex issues surrounding an agency's decision to take away an important vested right such as an individual's livelihood, a doctor's license to practice, for example. These appeals are the equivalent of capital crime trials in the world of administrative adjudications. The APA process is very formal, expensive and complicated. Both the state and the appellant are usually represented by attorneys. The APA process is designed to ensure the maximum procedural protections for all parties, much more than is required for the resolution of most administrative disputes. This process is relatively difficult for members of the public and lay agency staff to understand. Parties who are un-represented will be at much more of a disadvantage in one of these proceedings than they would be in most non-APA adjudications.

The APA only applies to a few types of cases. These tend to be low volume complex cases that require little special subject matter expertise, but a high level of legal expertise, to hear and litigate. The procedures are designed for attorneys, who litigate and sit as hearing officers in APA Hearings. APA procedure is more similar to court procedure, the procedure that attorneys are familiar with and are comfortable using, than the less formal procedure used in administrative adjudications where the parties are un-represented and the hearing officers are not

always lawyers.

The APA process starts out like a criminal prosecution with the agency filing an accusation. This is similar to an indictment in a criminal case. From start to finish the process is very structured, formal and adversarial.

Alaska Department of Revenue Administrative Appeals

The Tax Model

The appeals procedures in the Department of Revenue are somewhat exceptional. The regulations are found at 15 AAC 5. The process can be described as a streamlined, flexible APA modeled procedure, with an added informal internal agency review process. Much of the language was lifted from the APA. It was historically based on a tax model. This was probably because tax appeals were viewed as the most important function of the appeals process in the Department. It was also the process most familiar to the Department employees who used these proceedings, that is tax specialists. Tax systems do not work well without a high level of voluntary compliance. The tax model is designed to maximize voluntary compliance with the tax laws and reduce the number of adversarial formal administrative hearings.

The first official stage of the appeals process under the tax model is the informal conference, which the taxpayers can request if they disagree with an agency action. Often however, the agency action was preceded by some other contact with the taxpayer, for example an audit or a letter, which gave the taxpayer an opportunity to provide information and explain her or his position. The informal conference is a formal opportunity for the taxpayer to meet with the agency and attempt to resolve a dispute without starting the formal hearing process. The informal conference is more like a meeting between the parties and less like a trial. It saves both the agency and the taxpayers time and money if disputes can be resolved without a formal hearing.

If a party appeals the informal conference decision, formal hearings in tax cases tend to be fairly formal, but the structure tends to be less like a complex trial as in APA hearings and more like a complex appeal before a special court. If the APA is the administrative version of the trial for capital crime, administrative tax appeals are more similar to the specialized proceedings before the bankruptcy, patent, and federal tax courts. Issues tend to center more around esoteric considerations such as classification or characterization of activities and property, or choosing mathematical models and extrapolating from them, and less around the normal gist of administrative disputes such as judging credibility of a witness.

The amounts at issue in tax cases are larger than in most other types of administrative hearings. The substantive issues are complicated. The hearing officer needs to have tax expertise and expertise in different types of business structures. There tend to be a lot of complicated evidentiary and discovery issues that are specific to tax cases. Revenue hearing officers have historically been very independent and highly qualified. The Revenue formal hearing process, following the tax model, gives the hearing officer a great deal of discretion in establishing the

process to be followed in each case. This is true for tax and non-tax cases. These rules allow the hearing officer to tailor the process to the individual case to ensure that it is both fair and efficient.

Evolution of the Department of Revenue Hearing Procedures

Over the years, Revenue's administrative appeals caseload has shifted away from tax cases to a greater emphasis on permanent fund dividend, child support, and gaming appeals. The flexibility provided to the hearing officer at the formal hearing level, however, has allowed for the procedure in each of these types of cases to be tailored to the type of appeal without many changes in the regulations. Over the years the process has been steadily tweaked and fine-tuned by the hearing section with feedback from agencies and members of the public who participate in the process. The goal has been to make the process more efficient, less complicated, fairer and more accessible and understandable for the members of the public and agencies it serves. These parties are usually un-represented.

In CSED and PFD cases the informal conference has evolved into a quick internal agency review of the disputed agency action. This process ensures that someone other than the individual who made the original agency determination looks at the complaint, reviews the agency action and changes the determination if necessary. An agency review does not guarantee that a "conference" in the sense of a meeting between the parties takes place. With PFD and CSED, this step resolves a significant portion of the appeals. This is because either the agency corrects its determination or the member of the public decides not to appeal the agency determination after it has been explained in the administrative review decision.

Making this process more streamlined has helped to reduce both backlogs and the repetitive effort required by appellants. The current system is quicker and does not require the appellant to appear for two hearings to get a final order. This reduces the "wearing down effect" on appellants of the two-tiered appeals process, while maintaining its positive aspects.

These administrative reviews and informal conferences do not meet the due process requirements for a formal hearing, let alone an APA hearing, but this step reduces overall costs to both the agencies and the appellants. It is a simple review conducted by less expensive employees with very high caseloads. They succeed in significantly reducing the number of appeals that would otherwise require a formal hearing. Members of the public are well served by this system because many have their disputes resolved and their questions answered without having to take time off work to attend a formal hearing.

Appellants who do choose to go on to a full formal hearing still find the procedure to be fast, understandable, and user-friendly. The majority of PFD hearings, for example, seldom take more than 30 minutes, and a hearing officer might hear 8-10 cases in a day. In cases with limited issues, it is not uncommon for the hearing officer to explain the procedure, swear in the appellant, hear the testimony and cross-examination, and conclude the hearing in less than 15 minutes, with a written decision mailed at a later time. This level of efficiency could never be accomplished under the APA.

CORRECTION

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



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

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Advantages for Alaskans for non-APA procedures at Revenue

APA = Attorneys, Paperwork and Airlines

This process of adapting administrative appeals procedures in Revenue to better serve the public would be much more limited and difficult if the APA governed the process. The main beneficiaries of a change requiring that all Revenue administrative appeals follow the APA would be attorneys and airlines. The agencies would need more Assistant Attorney Generals and the Department more hearing officers. Members of the public would need to hire attorneys more often to help them navigate through the more complicated and formal process of the APA. The AAGs and the hearing officers would have to travel frequently around the state.

Especially problematic for example would be the limitations imposed on telephonic hearings under the APA. Most Revenue hearings are conducted by teleconference. There are almost no requests for in-person hearings and those requests are almost always accommodated. Under the APA however, there is an implicit presumption that the hearing will be held in person in the judicial district where appellant lives. Telephonic hearings are more convenient and less expensive for members of the public and agencies. Many of the problems associated with demeanor evidence are reduced by the use of telephonic hearings. It is also easier to protect the safety of the parties, the hearing officer and agency staff in emotionally charged hearings such as child support appeals through the routine use of telephonic hearings.

Parties at Revenue hearings have not complained that the hearing should be conducted under the APA or that they are being denied important due process rights because the APA does not apply. Un-represented parties generally want the procedure to be as simple as possible. They want their case to be dealt with quickly. They want to get the chance to make their case before someone who is impartial, and who has the authority to order the agency to correct a mistake if one has been made. If they want something unusual, discovery for example, they can either request it or the hearing officer will suggest that they request it, if it appears this might address the concerns that a party is expressing about the process.

A comparison of duration and average costs of APA and Revenue hearings would probably indicate that it is much more cost effective to maintain the current non-APA flexibility to tailor the procedure to the case.

Revenue's Complex Caseload

Revenue's current non-APA procedures work very well for complex cases such as tax and gaming cases, CSED cases involving issues such as self-employment income or closely held corporate income, and PFD cases that involve complex legal issues such as immigration law. In complex cases, the hearing officer can establish the process in consultation with the parties by holding a pre-hearing conference. If a case turns out to be more complex than it originally appeared, the hearing officer can expand the process by continuing the hearing and scheduling a series of status conferences to keep the pre-hearing process moving.

For example, in 2001 the State Assessment Review Board heard the appeal of the state's assessed valuation of the Trans-Alaska Pipeline System using non-APA procedures. The board was able to establish a procedure in the TAPS appeal that allowed the hearing to be scheduled less than 50 days after the notice of assessment and limited the hearing to three days. A final decision was issued less than ten days after the hearing. Tens of millions of dollars in annual tax liability were in dispute. There were eight attorneys representing the parties, thousands of pages of exhibits and at least six expert witnesses. In addition to establishing the procedure for the hearing, the board had to make several procedural rulings before and during the hearing. None of the parties appealed the board's decision, an indication that they were satisfied with the procedure. This case would not have been resolved as efficiently if the APA procedure had applied. The discovery issues alone would probably have taken several months to resolve.

Revenue's High Volume Caseload

CSED and PFD cases are the biggest part of the Hearing Section's workload. These cases tend to be much less complex than the type of appeals that follow APA procedures, although there are CSED and PFD cases that are very complex. Revenue procedures can be tailored to deal with these cases as efficiently as possible.

The PFD Division, for example, has developed a very strong motion practice, which is fairly unique in administrative appeals. In a large percentage of the cases the PFD Division files Motions to Dismiss or Motions for Summary Adjudication. This means that most cases that do not have merit can be decided without a hearing. In many other cases PFD applicants chose to conduct the hearing by correspondence. This allows the hearing officer to make factual determinations without an in-person or telephonic hearing.

Child support can be established or modified either in court or administratively. When child support is established or modified administratively, the hearing officer is filling a function served by Superior Court judges in divorce cases. The law that governs these cases is a court rule, Alaska Civil Rule of Procedure 90.3. This rule is the subject of a great deal of appellate case law. The rule places a great deal of responsibility on the judge or hearing officer applying the rule to balance conflicting equitable and legal principles to prevent injustice. The hearing officer really needs to be an attorney with expertise in family law.

In high-volume non-APA administrative hearings in departments other than the Department of Revenue, the hearing officer is often given much less discretion in establishing the procedure. This is often done so that non-attorney hearing officers with limited training can conduct hearings on a high volume basis, where there is not much at stake in the dispute, the issues are relatively simple, the hearing officer's authority to make substantive and procedural rulings is limited, and time is of the essence. Examples these would be DMV, public assistance, and unemployment cases.

This approach would not work as well with PFD or CSED cases. Alaskans view PFDs as an important right. It is one of the biggest benefits they receive as Alaskans. Because everyone

receives one, there are over half a million chances every year to create some very strange cases. It takes a high level of ingenuity, legal expertise and knowledge of the program to correctly apply the PFD eligibility requirements. The continued success of the program is due in part to the quality of the decision making in these difficult cases. Having a well-qualified attorney hearing officer review these cases to ensure the correct result serves the Department and the PFD applicants. It also serves the Court System by keeping the PFD appeals to court down to a very small number.

Both PFD and CSED cases need an attorney-hearing officer. The vast majority of both CSED and PFD cases do not need the full procedure of the APA.

Conclusion

The short answer for why the Department of Revenue administrative appeals are not governed by the APA is the apparent recognition by the legislature, the courts, and Commissioners of Revenue that procedure set out in the APA is too complex and cumbersome for the parties in the Department's high volume caseload, (most Child Support and PFD appeals) and that it is not flexible enough for the fair and efficient disposition of the Department's complex caseload (most tax and gaming cases, some of the CSED and PFD cases.)

SB

211

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 5/1/03

FURTHER: Finance

Date of 5-Day Notice: 24 hour rule
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 5/14/03

State Affairs Committee considered SENATE BILL NO. 211

SB 211 REGULATIONS: NOTICE AND DISTRIBUTION

"An Act relating to the publishing and furnishing of certain public notices regarding regulations or rules of certain state agencies; relating to distribution of the Alaska Administrative Code, Alaska Administrative Register, and supplements to the code or register; 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:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
ALL	5/9/03	✓		

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>[Signature]</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>[Signature]</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHAIR: <i>[Signature]</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 211
 () Publish Date: _____

Revision Date/Time (Note if correction): 5/9/03 Dept. Affected: All
 Title An Act relating to the publishing and BRU
furnishing of certain public notices 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 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual	(258.0)	(258.0)	(258.0)	(258.0)	(258.0)	(258.0)
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(258.0)	(258.0)	(258.0)	(258.0)	(258.0)	(258.0)

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 (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would result in reduced costs for newspaper advertising by state agencies for public notices related to state regulations. The savings shown above are an approximate estimate for all state agencies, and are comprised of a mix of general funds and other fund sources. These savings will be utilized by agencies to absorb various budget reductions and cost increases.

Prepared by: Jack Kreinhoder, Senior Analyst Phone 465-4676
 Division Office of Management and Budget Date/Time 5/9/03 2:30 PM
 Approved by: Jay Hogan, Deputy Director Date 5/9/2003
 Agency Office of Management and Budget

Sectional Analysis of HB 295/SB 211 (Regulation Notices and Distribution)

(Prepared by the Department of Law, May 8, 2003)

HB 295/SB 211 would make notices of proposed regulations more readable, and would reduce the newspaper publishing costs for those notices, by requiring less detail in newspaper notices; by guiding the public to more detailed information, especially through the Internet; by making notice distribution requirements, such as publication in newspapers and on the Internet and by mail or electronic mail, more consistent across agencies; and by omitting newspaper notice for a few specialized subject areas, where interested businesses, firms, and other persons rely on the Internet or other means other than newspapers for notice.

I. Changes to requirements in the Administrative Procedure Act (AS 44.62) for publishing notice (Sections 23 - 24):

Sec. 23: *Abbreviated newspaper notice:* Section 23 amends the distribution requirements in AS 44.62.190(a) for a notice of proposed regulations, to allow an abbreviated notice in a newspaper of general circulation or in a trade or industry publication, and makes technical changes to improve readability.

Sec. 24: *Content requirements:* Section 24 amends the content requirements of AS 44.62.200, specifying requirements for the abbreviated notice that include:

- a statement of what is being changed;
- a brief general description of the changes;
- information on how to obtain more detailed information, through the Alaska Online Public Notice System or from a contact person at the state agency;
- a statement of when hearings, if any, will take place.

II. Changes to make notice distribution consistent across agencies (Sections 3 - 6, 8 - 9, 14 - 15, 17 - 18, and 25):

Under the Administrative Procedure Act (APA), newspaper notice of proposed regulations is required in only one newspaper. For some agencies not subject to the requirements of the APA, newspaper notice of proposed regulatory changes is required in three or more newspapers. The bill allows the publication of notice in only one newspaper, the same as the minimum APA requirement.

The bill also allows agencies not subject to the APA to furnish notice by a means other than mailing, such as electronic mailing. As in the APA, the agency would, in most cases, still have to mail a paper copy of the notice to a person who requests one. This

amendment brings these agencies in conformance with other agencies whose statutes were similarly revised in 2000.

Secs. 3 - 4: Alaska Teachers' Retirement Board

Sec. 5: Alaska Aerospace Development Corporation

Sec. 6: Alaska Housing Finance Corporation

Secs. 8 - 9: Judicial Retirement System (Department of Administration)

Secs. 14 - 15: Public Employees' Retirement Board

Secs. 17 - 18: Alaska Railroad Corporation

Sec. 25: Alaska Industrial Development and Export Authority

III. Notice of proposed regulations for certain specialized subject areas (Sections 1 - 2, 7, 10 - 13, 16, 19 - 20, 26 - 27):

The bill allows some agencies that are subject to the APA to omit newspaper publication of a notice of proposed regulations, for regulations in certain highly specialized subject areas listed in statute, where interested persons are most likely to rely on the Internet or other means to obtain such information.

Sec. 1: Department of Community and Economic Development, Division of Banking, Securities, and Corporations, with respect to all regulations implementing the Revised Trust Company Act (AS 06.26)

Sec. 2: Office of the Lieutenant Governor, with respect to electronic signatures (AS 09.25.510)

Sec. 7: Department of Community and Economic Development, Division of Insurance, with respect to regulations implementing the Insurance Code (AS 21)

Sec. 10: Alaska Oil and Gas Conservation Commission with respect to all regulations adopted by the Commission (AS 31.05)

Sec. 11: Department of Natural Resources, with respect to oil and gas leases, including: competitive bidding regulations; standards, criteria, and definitions of terms that apply to the filing of applications for, and the review and certification of, discovery oil and gas royalty certifications; bidding methods; the rental rate for a plugged or abandoned well; issuance of certain state shoreland leases covering land within the boundaries of existing federal or private leases; cooperative or unit plans among lessees; and the offering of land for lease that

was subject to a best interest finding within the previous ten years (AS 38.05.180)

Secs. 12 - 13: Department of Administration, with respect to the state personnel rules; while not specifically referencing the APA, this change would eliminate the requirement of publication of changes to personnel rules in one newspaper and add a requirement that notice of such changes be posted on the Alaska Online Public Notice System (AS 39.25.140)

An additional change allows furnishing of notice by a means other than mailing, and requires mailing of notice to a person who requests it

Sec. 16: Regulatory Commission of Alaska, with respect to the Pipeline Act and including such matters as issuance of certificates of public convenience and necessity, standards of service and facilities for oil and gas pipeline facilities, tariffs, records, reporting and enforcement (AS 42.06.140)

Secs. 19 - 20: Department of Revenue, with respect to corporate income taxes and oil and gas property taxes (AS 43.20; AS 43.56)

Sec. 26: Department of Community and Economic Development, Division of Banking, Securities, and Corporations, with respect to regulations implementing the Alaska Securities Act (AS 45.55)

Sec. 27: Department of Health and Social Services, with respect to Medicaid regulations related to the setting of rates for service providers (AS 47.07.070, 47.07.073, 47.07.075)

IV. Changes to requirements in the Administrative Procedure Act (AS 44.62) for distribution of the Alaska Administrative Code (AAC) to local government units (Sections 21 - 22):

Sec. 21: *Distribution of the Alaska Administrative Code (AAC) to local government units:* Existing AS 44.62.140 requires the lieutenant governor to supply a paper copy of the Alaska Administrative Code (AAC) to the clerk of a local government unit, at no cost and regardless of whether the local clerk requests or wants the copy. Section 21 amends the statute to require that the local clerk first request a copy, and that the local government unit pay for it. The local clerk could request either a paper or an electronic copy.

Sec. 22: *Disclosure of costs:* Section 22 requires the lieutenant governor to tell a requesting local clerk the costs of complying with a request for the AAC.

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FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 211
(S) Publish Date: 5/1/03

Revision Date/Time (Note if correction): _____ Dept. Affected: All
Title An Act relating to public notices BRU _____
Sponsor Rules Committee Component _____
Requester Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would result in savings from increased use of online public notices instead of newspaper advertisements. The amount of this savings is currently being researched and will be included in a revised fiscal note.

Prepared by: Jack Kreinheder, Senior Analyst Phone 465-4676
Division OMB Date/Time 4/23/03 1:10 PM
Approved by: Cheryl Frasca, Director Date 4/23/2003
Agency OMB

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April 30, 2003

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

Dear President Therriault: *Gene*

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to change the Alaska Administrative Procedure Act and make other statutory improvements to provide for better and more cost-effective notice of regulatory changes.

First, the bill would allow certain state agencies to publish, in a newspaper or other publication, an abbreviated notice of proposed regulatory changes that clearly describes the changes and how an interested person may obtain more detailed information through the Internet or in written form. Second, the bill also would amend a variety of state statutes to allow agencies the flexibility of sending out individual notices by means other than regular mail. This change would make these newspaper publication requirements consistent with the provision in the Administrative Procedure Act, that notice need be published in only one newspaper of general circulation in the state.

Under the Administrative Procedure Act, public notice of changes to regulations must be published in a newspaper of general circulation or other specified type of publication. This notice is to include an informative summary of the changes, which has been interpreted to require a comprehensive description. In practice this results in lengthy notices, usually in the classified advertisement section of the newspapers, that are expensive and often difficult to understand.

This bill would change this practice to allow for a more abbreviated notice in newspapers or other publications, clearly describing the subject matter of the changes and directing interested persons to more detailed information sources. Recognizing the utility and efficiency of the Internet, the bill requires detailed information on the changes to be available on the Alaska

Online Public Notice System. Also, recognizing that the Internet is not available to all citizens, the bill would provide that detailed information be made available to interested persons by other means, if requested. Thus, the bill would allow state agencies to use the Internet to improve communications regarding regulatory changes, while still providing notice for those who do not yet have the access or ability to use the Internet.

The bill also would change statutory notice provisions for specific government entities to allow for the flexibility to use methods of communication other than regular mail in providing public notice of regulation or rule changes. There is a provision that notices shall be delivered by mail, upon request. This flexible approach was put into place in 2000 for regulations under the Administrative Procedure Act, and has proven effective. The changes in this bill would simply extend that flexibility to certain named state agencies. In addition, the bill would amend the statutes relating to publication of newspaper notices to make it consistent with the requirement in the Administrative Procedure Act that notice be published in a single newspaper of general circulation. The governmental entities affected by these changes include the Alaska Teachers' Retirement Board, Alaska Aerospace Development Corporation, Alaska Railroad Corporation, Alaska Housing Finance Corporation, Department of Administration, Public Employees' Retirement Board, and the Alaska Industrial Development and Export Authority.

This bill also excludes specific government entities from having to publish an abbreviated notice in a newspaper or other publication relating to topics of concern to larger institutions and groups that have the ability to or already regularly communicate with the state through electronic means. These statutes include such areas as the Alaska Securities Act, the Alaska Trust Company Act, oil and gas leasing, state personnel rules, certifying authority for an electronic signature, Medicaid rate setting for facilities, and the Pipeline Act. When adopting regulations or rules under these specific statutes, the government agencies would continue to post the notice on the Alaska Online Public Notice System and furnish the notice to interested parties and other government entities, but would not be required to publish the abbreviated notice. The government entities affected by these changes include the lieutenant governor, Department of Administration, Department of Revenue, Department of Health and Social Services, State Assessment Review Board, Alaska Oil and Gas Conservation Commission, Department of Natural Resources, Department of Community and Economic Development, and the Regulatory Commission of Alaska.

The changes to public notice procedures made by the bill would be applicable to public notices issued on or after the effective date of the Act.

The Honorable Gene T. Moriault

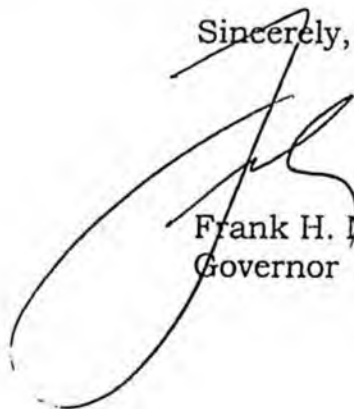
April 30, 2003

Page 3

Lastly, this bill would amend the requirement for the lieutenant governor, at state expense, to supply a complete set of the Alaska Administrative Code, the Alaska Administrative Register, and each supplement to the code or register to the clerk of each local government unit. This bill allows local government units' clerks to request a paper or electronic copy of the publications, and would require payment for the requested copy. Because electronic access to the Alaska Administrative Code is currently available through the legislature's website, and through links to that website found on various state agency websites, local governments still would have a "no-cost" option for access to the information.

I urge your prompt consideration and passage of this bill.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to be 'F. Murkowski', written over the typed name.

Frank H. Murkowski
Governor

SB

215

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 5/9/03

FURTHER: Finance

Date of 5-Day Notice: 5/10/03
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 5/14/03

State Affairs Committee considered SENATE BILL NO. 215

SB 215 SEAFOOD AND FOOD SAFETY LABORATORY

"An Act giving notice of and approving the entry into and the issuance of certificates of participation for a lease-purchase agreement for a seafood and food safety laboratory facility; relating to the use of certain investment income for certain construction costs; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB215 (STA)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
<u>DEC</u>	<u>5/8/03</u>	<input checked="" type="checkbox"/>		<u>1</u>

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<u>John J. Conduley</u>			<input checked="" type="checkbox"/>	
<u>Frank...</u>	<input checked="" type="checkbox"/>			
<u>...</u>			<input checked="" type="checkbox"/>	
CHAIR: <u>[Signature]</u>			<input checked="" type="checkbox"/>	

LEGAL SERVICES

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

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


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

MEMORANDUM

May 10, 2003

SUBJECT: SB 215: title suggestion (Work Order No. 23-GS1134A)

TO: Senator Gary Stevens
Chair, Senate State Affairs Committee
Attn: Katrina

FROM:  Theresa L. Bannister
Legislative Counsel

I would recommend allowing this office to prepare an amendment to alter the title of SB 215 because it does not appear to quite give notice of everything in the bill. The following suggestion has not had the full review in this office that an amendment would, so it is offered only as an idea of what may be needed:

"An Act relating to a lease-purchase agreement for, the construction and equipping of, and the financing of a seafood and food safety laboratory facility to be operated by the Department of Environmental Conservation, including the issuance of certificates of participation, and the use of certain investment income for certain construction and equipping costs; and providing for an effective date."

If you would like an amendment prepared, please advise.

TLB:lmb
03-193.lmb

23-GS1134\D
Bannister
5/12/03

CS FOR SENATE BILL NO. 215()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a lease-purchase agreement for, the construction and equipping of,
2 and the financing of a seafood and food safety laboratory facility to be operated by the
3 Department of Environmental Conservation, including the issuance of certificates of
4 participation, and the use of certain investment income for certain construction and
5 equipping costs; and providing for an effective date."

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

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

9 INTENT. It is the intent of the legislature that the amount of money to be used for the
10 construction and equipping of a new seafood and food safety laboratory facility is
11 \$14,285,000. Of that amount, it is the intent of the legislature that

12 (1) \$14,145,000 shall come from the proceeds of the certificates of
13 participation to be issued by the state bond committee under sec. 2 of this Act; and

1 (2) \$140,000 shall come from the investment income earned on the proceeds
2 of the sale of the certificates of participation described in sec. 2 of this Act.

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

5 NOTICE AND APPROVAL OF ENTRY INTO AND FINANCING OF A LEASE-
6 PURCHASE AGREEMENT. (a) Subject to annual appropriation, the Department of
7 Administration is authorized to enter into a lease-purchase agreement for a seafood and food
8 safety laboratory facility to be constructed under the lease-purchase agreement and to be
9 operated by the Department of Environmental Conservation.

10 (b) The state bond committee is authorized to provide for the issuance of certificates
11 of participation in one or more series in the aggregate principal amount of \$14,145,000 for the
12 construction of a seafood and food safety laboratory facility under the lease-purchase
13 agreement authorized in (a) of this section. The remaining balance of the construction and
14 equipping costs shall be paid from investment income of \$140,000 earned on the proceeds of
15 the sale of the certificates of participation. The estimated total cost of construction,
16 acquisition, and other costs of the project is \$14,285,000. The estimated annual amount of
17 rental obligations under the lease-purchase agreement is \$1,391,000. The estimated total
18 lease payments for the full term of the lease-purchase agreement is \$20,862,400. In this
19 subsection, "cost of construction" includes credit enhancement and underwriting expenses,
20 rating agency fees, bond counsel fees, financial advisor fees, printing fees, advertising fees,
21 capitalized interest, and interest earnings used for lease payments.

22 (c) The state bond committee may contract for credit enhancement, underwriting,
23 credit ratings, bond counsel, financial advisor, printing, advertising, and trustee services that
24 the committee considers necessary in financing the project described in this section.

25 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 APPROVAL OF AGREEMENT. Section 2 of this Act constitutes the approval
28 required by AS 36.30.085.

29 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

DEC Seafood and Food Safety Laboratory

Using Certificates of Participation, the Department will build a new Seafood and Food Safety Laboratory in Anchorage that is prepared to respond to unanticipated outbreaks of disease or presence of a contaminant in food, water or animals; and

Protects Alaskans by

- Preventing disease through sanitation and sanitary practices.
- Providing essential risk screening services.
- Monitoring animals for zoonotic diseases--transferred from animals to humans—such as Brucellosis and rabies.
- Testing food products for Salmonella, Listeria and fecal coliforms to ascertain they are safe to eat.
- Testing public drinking water for Giardia and Cryptosporidium.

Supports industry by

- Working with industry to pre-certify areas for safe harvesting of geoducks so that a more valuable product can be sold live.
- Testing geoducks, oysters and mussels for PSP contamination prior to sale.
- Analyzing seafood samples for contaminants such as mercury and pesticides through its seafood-monitoring program.
- Testing dairy products so they can be sold to the military and schools.

Supports Alaska's private laboratories by

- Conducting on-site evaluations of, and certifying drinking water laboratories and water system operators for bacteriological monitoring as required by Safe Drinking Water Act.
- Training 190 private lab staff a year in EPA approved procedures for testing drinking water.
- Making available its expertise, knowledge, and resources.

Based on lab functions, proximity to a major airport, sample movement, cost of utilities, and access to Alaska's Public Health Laboratory, Anchorage was chosen as the best site for the new facility.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 215
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
 Title Seafood/Food Safety Lab Facility Construction BRU Environmental Health
 Component Laboratory Services
 Sponsor Rules
 Requester Senate State Affairs Committee Component No. 2065

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	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	98.6	197.2	197.2	197.2	197.2
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	98.6	197.2	197.2	197.2	197.2

CAPITAL EXPENDITURES	14,285.0					
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CHANGE IN REVENUES ()						
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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	98.6	197.2	197.2	197.2	197.2
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1163 Certificates of Participation	14,145.0	0.0	0.0	0.0	0.0	0.0
1173 Miscellaneous Earnings	140.0	0.0	0.0	0.0	0.0	0.0
TOTAL	14,285.0	98.6	197.2	197.2	197.2	197.2

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

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)

The bill would authorize financing and construction of a new Seafood and Food Safety Laboratory to be operated by the Department of Environmental Conservation (DEC).

The Department of Administration (DOA) pays the current lease costs for the lab. DEC reimburses DOA for a portion of these costs through an RSA. DEC will directly pay for all of the utilities and maintenance costs for the new building. These new costs are shown in the contractual line. Annual lease savings partially offset these new utility and maintenance costs as shown on the attached chart.

Prepared by: Kristin Ryan, Director Phone (907) 269-7645
 Division Environmental Health Date/Time 5/14/03 9:15 AM
 Approved by: Kurt Fredriksson, Deputy Commissioner Date 5/14/2003
 Agency Department of Environmental Conservation

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS CONTINUATION

Line Item Description	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Contractual Line 300					
* (Operating Expenses)					
Utilities (estimated) DEC will incur costs for utilities at the new facility starting mid - 2005. Utility costs at the existing leased facility are included in the lease paid by DOA and DEC. These costs are offset by the lease savings shown below and shown on DOA's fiscal note.		\$52,965	\$105,930	\$105,930	\$105,930
Building Maintenance (estimated) DEC will incur costs for building maintenance at the new facility starting mid - 2005. Maintenance costs at the existing leased facility are also included in the lease paid by DOA and DEC. These costs are offset by the lease savings shown below and shown on DOA's fiscal note.		\$54,800	\$109,600	\$109,600	\$109,600
* (Lease Savings - Palmer Lab) DEC portion of current lease paid to DOA/GS through a RSA, will no longer be required after completion of the new facility.		(\$9,177)	(\$18,353)	(\$18,353)	(\$18,353)
Total Contractual:	\$0	\$98,588	\$197,177	\$197,177	\$197,177

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB215
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Seafood and Food Safety Lab BRU Revenue Operations
Component Treasury Division
Sponsor Rules Committee
Requester Senate State Affairs Component No. 121

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel	10.0					
Contractual	190.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Debt Service		1,362.8	1,362.8	1,362.8	1,362.8	1,362.8
TOTAL OPERATING	200.0	1,362.8	1,362.8	1,362.8	1,362.8	1,362.8

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1,362.8	1,362.8	1,362.8	1,362.8	1,362.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
COP proceeds	200.0					
TOTAL	200.0	1,362.8	1,362.8	1,362.8	1,362.8	1,362.8

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB215 authorizes the sale of \$14.145 million in certificates of participation (COPs) for a lease-financing to finance construction of a new seafood and food safety lab for the Department of Environmental Conservation. The COPs would be issued by the State Bond Committee. Construction costs and issuance costs are expected to total \$14.285 million, which is the amount of the COP sale proceeds plus \$140,000 in estimated construction fund earnings. The \$200.0 in Fiscal 2004 expenses are bond counsel and financial adviser expenses, and the costs of credit ratings and printing for the COP prospectus.

Financing assumptions are 15-year level debt service beginning in FY05 and a 5% interest rate/true interest cost. The actual interest rate is very likely to be lower.

Prepared by: Tom Boutin, Deputy Commissioner Phone 465-3669
Division Department of Revenue Date/Time 5/11/03 11:26 AM
Approved by: Landa Baily, Special Assistant to the Commissioner Date 5/11/2003
Agency Department of Revenue

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
COMMISSIONER BALLARD SB 215 TESTIMONY

Imagine it is 5:00pm on Friday, you are a dairy processor and your pasteurization equipment breaks down. The scenario is not uncommon. To fulfill your school and military contracts, FDA requires that a State lab certify your equipment is operating correctly again and test the product to make sure. Milk can't wait until Monday morning. The Seafood and Food Safety Laboratory staff are there to make sure your product is safe for consumption and makes it to market while its fresh. Ours is the only lab certified in Alaska to test dairy products to ensure successful pasteurization so they can be sold to the military and schools.

SB 215 provides the funding mechanism to build a new Seafood and Food Safety Lab. The expense is already in our proposed capital budget. The facility we have leased for 34 years will not be available after 2006. It is overcrowded and not fully compliant with safety codes and laboratory design standards. It was developed in Palmer when the principal lab business was agriculture and dairy. In recent years entrepreneurs in coastal Alaska have developed a wide variety of value added seafood products adding a significant and time sensitive testing responsibility for our lab. Our proposed new lab will be in Anchorage where valuable hours can be saved between sample collection and test results for raw and live seafood industries.

A core function of government is protection of human health and the environment. Government must be prepared to respond to unanticipated outbreaks of disease or the presence of contamination in food, water and animals. The Alaska seafood and food safety laboratory fulfills these functions. We analyze raw, finished, and value-added food products for bacteria, chemicals, and toxic contaminants.

The laboratory protects Alaskans by monitoring animals for zoonotic diseases--transferred from animals to humans—such as Brucellosis. Lab technicians test food products for Botulism, Salmonella, Listeria and fecal coliforms and also test public drinking water for Giardia, a common contaminant found in surface water, and Cryptosporidium.

The laboratory supports the seafood, dairy and shellfish industries.

To successfully market Alaska's high quality shellfish and seafood, the public must be assured they are safe. Federal requirements for shellfish are very strict because the health risks are great. Through monitoring and testing the lab assures the safety of Alaska's growing shellfish industry, including geoducks, mussels and oysters. Through new PSP sampling and testing procedures, live geoduck sales have begun to enable the industry to ship approximately 50-60 percent of its geoduck quota live, increasing its value from three fold. When the industry reaches its goal of 85 percent live shipment, the industry's value will be worth approximately \$2.5 million.

A perfect example of how this lab has and will continue to help Alaska's economy grow is the farmed oyster industry. As I'm sure you all know, Alaskan oysters are top quality and easily merit their good wholesale price. In the recent past, this industry did not exist. DEC lab staff are some of the experts who helped oyster farmers get started. With our assistance, farmers set up operations that met National Shellfish Sanitation standards which must be met to sell raw product. Those standards require that DEC sample the growing water to ensure it is free from contamination. As the industry grew, it became more difficult for our staff to travel to remote

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
COMMISSIONER BALLARD SB 215 TESTIMONY

locations for the collection of water samples. We developed a method for harvesters to collect their own water samples thereby increasing the opportunity for growing areas to be approved.

The laboratory is also providing proof that Alaska's commercial fish species are of the highest quality and free of contaminants by monitoring commercially caught species for pollutants. Over 600 samples were collected last year and the results will be available next month.

The laboratory supports Alaska's private labs by certifying them to conduct drinking water analysis. We train 190 private lab staff a year on how to test drinking water according to EPA standards, and assist private laboratories in obtaining certification and approval to perform federally regulated tests.

We cannot depend on private laboratories to maintain testing and analytical capabilities for situations when there is no profit margin. When private markets develop, our laboratories get out of the business. For example, the Seafood and Food Safety Laboratory does not test drinking water for fecal coliform because private labs are capable of conducting those tests. The DEC laboratory only conducts tests that are federally required to be done by a State lab or are not provided elsewhere in the state.

The health of Alaskans and the success of Alaska's seafood, shellfish, and dairy industries are contingent upon the smooth and continued operation of the seafood and food safety laboratory. Through our testing, monitoring, and technical support, the laboratory assures the health of Alaskans and our environment, and supports the development of our abundant resources.

MAY 12 2003



UNITED FISHERMEN OF ALASKA

May 12, 2003

211 Fourth Street, Suite 110
Juneau, Alaska 99801-1172
(907) 586-2820
(907) 463-2545 Fax
E-Mail: ufa@ufa-fish.org
www.ufa-fish.org

Senator Gary Stevens
Chairman, Senate State Affairs Committee
State Capitol (MS 3100)
Juneau, AK 99801-1182

RE: SB 215 – State Seafood Safety Lab

Dear Senator Stevens,

UFA supports SB 215, regarding the construction of a new Seafood Safety Lab in Anchorage. This is very important to commercial dive fishermen and other shellfish harvesters, and for testing done on other fisheries in the seafood industry.

Anchorage is a great central location that will provide service to statewide users of the lab. While it is unfortunate for Palmer to lose the current facility, the increased access to transportation provided in Anchorage will benefit the users of the lab, and the seafood industry in general. In seafood testing, sometimes minutes or hours can be of great importance.

The mariculture and shellfish industry is growing in the state, and is ready to benefit from the selling of live geoducks and the increased prices this will bring to the state and coastal communities. Testing is critically time-sensitive in providing for live sales. We feel that the seafood testing lab established through SB 215 will provide a return on the investment that the state is making.

We urge your support for SB 215.

Sincerely,


Jerry McCune

Government Relations

Copy: Governor Frank Murkowski

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Druggers Association • Alaska Longline Fishermen's Association • Alaska Trollers Association • At-sea Processors Association • Bristol Bay Reserve
Chignik Regional Aquaculture Association • Chignik Soiners Association • Concerned Area "M" Fishermen • Cook Inlet Aquaculture Association • Cordova District Fishermen United
Crab Rationalization and Buyback Group • Douglas Island Pink and Chum • Groundfish Forum • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
Kodiak Soiners Association • North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Old Harbor Fishermen's Association
Petorsburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association • Seafood Producers Cooperative
Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Soiners Association • Southern Southeast Regional Aquaculture Association
United Cook Inlet Drift Association • United Salmon Association • United Southeast Alaska Gillnetters • Western Gulf of Alaska Fishermen

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER

410 Willoughby Ave., Ste 303
Juneau, AK 99801-1795
PHONE: (907) 465-5065
FAX: (907) 465-5070
<http://www.state.ak.us/dec/>

May 9, 2003

The Honorable Gary Stevens
Chairman, Senate State Affairs Committee
Alaska State Senate
State Capitol, Room 417
Juneau, Alaska 99801

Dear Senator Stevens:

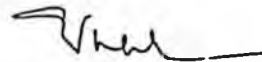
The Department of Environmental Conservation requests a hearing on SB 215 an "Act giving notice of and approving the entry into and the issuance of certificates of participation for a lease-purchase agreement for a seafood and food safety laboratory facility." The State Seafood and Food Safety Laboratory plays a vital role in protecting the health of Alaskans and supporting the growth and development of a vibrant seafood industry.

The state's bivalve and growing geoduck industry cannot exist without the ability to guarantee the safety of these products. The lab is the only facility certified to test for paralytic shellfish poisoning a deadly toxin. The state must be prepared with laboratory services capable of providing essential tests that will allow these industries to prepare to respond to an unanticipated outbreak of disease or the presence of contamination in food, water and animals.

The Department has been planning for construction of a Seafood and Food Safety Laboratory for over six years. The funding mechanism is certificates of participation. I look forward to coming before the Senate State Affairs Committee to further explain the importance of this laboratory to Alaska.

Kristin Ryan, Director of the Division of Environmental Health, and Mike Maher, the Director of Administrative Services can provide you with any additional information you might require regarding this bill. You can contact Ms. Ryan at 269-7645, Mike Maher at 465-5256, or Melanie Lesh, the department's legislative liaison, at 465-5290. Thank you for your consideration.

Sincerely,



Ernesta Ballard
Commissioner

cc: Mike Tibbles, Legislative Director, Office of the Governor
Kristin Ryan, Environmental Health, DEC
Mary Siroky, Legislative Liaison, DEC

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



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 8, 2003

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

Dear President Therriault:

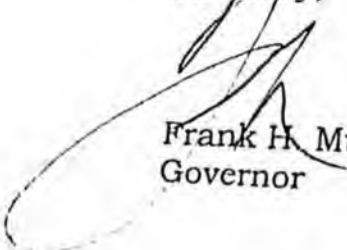
Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to issuing certificates of participation to fund a new seafood and food safety laboratory.

The state's food safety laboratory plays a vital role in protecting the health of Alaskans. The seafood and food safety laboratory tests crabs, geoducks, and other shellfish for toxins, a service not offered in the private sector. Local dairy products must be tested by a state laboratory before they can be sold to schools and the military. Federal law also requires a state laboratory to certify private laboratories to perform drinking water compliance testing for public water systems. Additionally, the new laboratory will have an area designated as bio safety level III for testing of anthrax or other bio-terrorism agents. The new laboratory would not duplicate existing laboratories in the state.

The current lease will soon expire, requiring the facility to be relocated. Building a state-owned facility is cheaper than leasing a privately-owned facility, and the state owns a parcel of land ready for development. The Alaska State Legislature has recognized the need for replacement through previous planning and design appropriations. The bill I transmit today is the next and final step in providing Alaskans with a worthwhile facility by setting up a bonding structure for its construction. The proposed method is the issuance of certificates of participation for a lease-purchase agreement.

In the interests of public health for Alaskans and consumers of Alaskan food, fish and dairy products, as well as the economic health of these industries, I urge your prompt and favorable action on this measure.

Sincerely,



Frank H. Murkowski
Governor

MEMORANDUM

STATE OF ALASKA
Department of Revenue

TO: Mike Maher
Administrative Services Director
Department of Environmental Conservation

DATE: March 28, 2003

FROM: Deven Mitchell
Debt Manager

TELEPHONE: 465-3750

SUBJECT: Food and Safety Laboratory Financing

The Department of Revenue has been asked to explain what impacts there might be from issuing Certificates of Participation to fund construction of a new Food and Safety Laboratory in the Alaska Seafood International (ASI) building. This is not a new matter for the Department as the Department of Environmental Conservation has been attempting to replace the lab over the past several years using different financing options. The type of financing that has been proposed in each of the last three legislative sessions is called Certificates of Participation. How this type of financing works is a lease is created and investors are asked to participate (Certificates of Participation (COPs)) in the lease. This means that the state can offer an investment that pays interest semi-annually until it matures at some point during the lease life, and use the investors' money to build the proposed facility. The lease payments are subject to annual appropriation by the legislature and as a result the COPs have achieved credit ratings one level below the state's general obligation ratings.

The lease in the COP structure is created by giving a trustee bank (that is obligated to act on behalf of COP purchasers) a title position on the facility being financed and the state entering a lease for the facility (in the amount of the annual interest and principal payments to investors). A failure to pay would result in the trustee bank claiming the facility on behalf of COP holders and either obtaining an alternate use or liquidating the facility to pay COP holders.

Folks have proposed using roughly 5 percent of the ASI facility to house the proposed Food and Safety Laboratory. If the cost of building the lab are funded with COPs it will require the Alaska Industrial Development and Export Authority (AIDEA) give a title interest to a trustee on the ASI building and the ground upon which it resides. From a credit perspective this is a significant credit enhancement as a failure to appropriate on the lab not only causes a loss of use of the proposed laboratory for the state, but also a loss of use of the entire ASI building. From AIDEA's perspective this financing would impact the ability to sell the ASI building (due to the title interest), and possibly also impact the rental value of the remaining 95% of the building due to the inability of AIDEA to provide a guarantee on space availability (in the event of a payment default by the state).

The Seafood and Food Safety Lab funding mechanism is Certificates of Participation (COP) Lease/Purchase Bonds

The department plans to construct a laboratory facility to replace the badly outmoded facility using Certificates of Participation as the funding mechanism.

Certificates of Participation:

- Do not require general fund appropriation.
- Is a funding mechanism that gives a trustee bank a title interest in the entire structure, similar in concept to a home mortgage
- Allow a lease/purchase contract.
- Take advantage of currently low bond interest rates.
- Do not require a vote as would GO bonds.
- Allow the state to conserve its GO debt capacity for future situations where other revenues are not available.

Using COP's means the project can be started and finished faster.

Authority to expend the COP's is in the Department's approved Capitol budget

S	Southeast
A	Alaska
R	Regional
D	Dive
F	Fisheries
A	Association



Mission Statement: To develop, expand, and enhance new and existing dive fisheries in Southeast Alaska.

Julie Decker, Executive Director
 Box 2138, Wrangell, AK 99929
 Ph: 907-874-3110; Fax: 907-874-4270
 info@sardfa.org
 www.sardfa.org

Governor Frank Murkowski
 P.O. Box 110001
 Juneau, Alaska 99801
 Ph: 907-465-3500; FAX: 907-465-3489
 Email: Governor@gov.state.ak.us

May 9, 2003

RE: Support for New Seafood & Food Safety Lab

Dear Governor Murkowski,

On behalf of the Southeast Alaska Regional Dive Fisheries Association, SARDFA, I would like to express support of your bills, SB 215 and HB 312, regarding the construction of a new Seafood & Food Safety Lab in Anchorage.

For two years, SARDFA has been supportive of building a new lab in Anchorage for two reasons. First, the lab is a necessary infrastructure component in order to conduct the commercial geoduck fishery (as well as for other shellfish fisheries and all aquatic farming activities). The lab runs tests for water quality and paralytic shellfish poison (PSP), along with many other tests for the seafood industry.

Second, the new location in Anchorage will be an overall better site for the statewide users of the facility. Relocating the lab in Anchorage may, unfortunately, be a hit to Palmer residents, however, it will be better for the statewide users of the lab who will no longer need to have samples make the extra journey from Anchorage to Palmer. This can be a critical factor in getting samples to the lab in time. For example, the water samples, which are taken in remote areas of Southeast Alaska, must make it to the lab within 30 hours in order to perform testing. If the samples are even one hour late, they must be taken again by sending planes out to the remote areas again, which is very costly.

The cost of building a new lab is significant, however, this facility will be able to serve the seafood industry, and its projected growth, for decades into the future.

Thank you for your time and consideration.

Sincerely,

Julie Decker, Executive Director

Members of:
Southeast Conference,
United Fishermen of Alaska, &
Alaska Fisheries Development Foundation

Cc: Commissioner Ballard, DEC
Senator Lyda Green, Co-Chair, Senate Finance
Senator Gary Wilken, Co-Chair, Senate Finance
Senator Gary Stevens, Chair, Senate State Affairs
Representative Bill Williams, Co-chair, House Finance
Representative John Harris, Co-Chair, House Finance
Representative Bruce Weyrauch, Chair, House State Affairs
Bobbie Thorstenson, President, UFA
Tom Gemmel, Executive Director, UFA
Steve LaCroix, President, SARDFA
Kristin Ryan, DEC

Hicks, Molly

From: Ballard, Ernesta
Sent: Friday, May 09, 2003 11:05 AM
To: Fredriksson, Kurt; Ryan, Kristin J.; Lesh, Melanie; Siroky, Mary; Hicks, Molly
Subject: FW: New Seafood and Food Safety Lab Bill.

fyi

-----Original Message-----

From: John Scoblic [mailto:jscoblic@norquest.com]
Sent: Friday, May 09, 2003 9:01 AM
To: Governor@gov.state.ak.us
Cc: Ernesta_Ballard@dec.state.ak.us
Subject: New Seafood and Food Safety Lab Bill.

Dear Governor Murkowski,

Yesterday late in the afternoon it was brought to my attention that you may be looking for testimony for a new Seafood and Food Safety lab. I whole heartedly support any new development of a Seafood and Food Safety lab. In particular the people of Southeast in the Seafood Industry and Foodservice Industry would benefit greatly with the addition of a lab somewhere in Southeast.

In the current situation it is very cumbersome process to get seafood products needing testing to the Palmer D.E.C lab from Southeast. In the best of situations it takes the better part of a day in transportation time to get products to the Palmer lab for testing. Once the specimens are to the lab it take half a day to do the test. In the blossoming Geoduck fishery I have many first hand experiences with the pitfalls one must endure to get a geoduck sample to the Palmer lab for Paralytic Shellfish Testing in a timely manner. Having a new Seafood and Food Safety lab here, in Southeast, a region were we harvest products needing testing would save time and money for all of those involved. Having a lab in the region would speed up the testing process. If the transportation time to the lab took less time to transpire, we could offer an even fresher product to our customers. Once again using Geoduck as an example, live product is the product of choice in the market. If the Geoducks test clean of PSP we can ship them live as soon as we get lab results. So you can see if we have to wait a day to a day and a half for test results, the freshness and liveliness of the products diminishes greatly. Time is money, and in this case a lot a revenue has slipped away due to the time an logistics involved in getting Geoducks tested for PSP in Palmer.

Mr. Governor, thank you for your time. I appreciate the opportunity to have given you this brief report. Please take into serious consideration what I have stated here in this e-mail. I support development of a Seafood and Food Safety Lab. I also think that a lab would be best positioned in Ketchikan.

John M. Scoblic
Fleet Manager

NorQuest Seafoods Inc. (Ketchikan Division)
1705 Tongass Ave. KTN, AK 99901
Office (907) 225-6664
Cellular (907) 723-1234

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Fax 907-465-3835



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

Representative Ken Lancaster
District 8

April 12, 2001

MEMORANDUM

To: Representative Eldon Mulder, Co-chairman
Representative Bill Williams, Co-chairman
House Finance Committee

From: Representative Ken Lancaster

Subject: Department of Environmental Conservation, Division of Environmental Health,
Seafood and Food Safety Laboratory, Cost and Location,

Per your request, I have conducted a fact finding mission to help determine the reasonable cost for the proposed DEC Seafood and Food Safety Laboratory.

The cost per square foot for a laboratory is high, when compared to an office building, or warehouse. This is do impart to the fact that laboratories require a more powerful heating, ventilating, air conditioning, (HVAC) system. This system must not only move more air (minimum 10 to 12 air exchanges per hour) but also pressurizes parts of the building. This pressurization is very important as it keeps that area of the building not used for testing completely separated environmentally from pathogens used in the test area. In addition, higher requirement for lights, power distribution system and special construction to facilitate cleaning is required in this type of complex.

I have made informal inquires with several architectural engineer's firms and based on that have concluded that \$400.00 per square foot, less equipment, is a fair and reasonable cost.

The location also makes good, logical sense. With the building built in Anchorage, at the Tudor Road location, it would help develop a State campus setting. This concept could make for cost saving in the future, by allowing for the combining of services, building maintenance, snow removal, etc.

The proximity to a major airport, and the availability of ground transportation, should better serve the people of the State of Alaska in conducting business with the lab.

I have enclosed three reports prepared by Livingston Stone, Inc for your information; Laboratory Cost Factors, Laboratory Plan Efficiency, and a Timeline for Seafood and Food Safety Laboratory Replacement. This information helps explain the process that the Department went through, in addition to cost factors.

Should you require more information or have any question, please fell free to contact me.

Seafood and Food Safety Laboratory

Division of Environmental Health, Department of Environmental Conservation

The lab will close without an appropriation to build a new one. *Here's how we got to this point:*

1997

- Department of Administration determines it can no longer allow long-term leases at the facility because statutory rent reduction requirements.

1998

- Department of Transportation and Public Facilities hires Livingston Slone to produce feasibility study that considers leasing versus owning, best location, and consolidation of the two labs the Department of Environmental Conservation operates.
- Legislature appropriated \$145.7 to evaluate replacement options.

1999

- Private contractor assessment concludes Seafood and Food Safety Lab cannot be co-located with Public Health Lab primarily because construction of the Public Health Lab is already under way and its lab activities are very different, requiring detached, separate labs.

2000

- Department of Environmental Conservation explores the possibility of housing its lab at Alaska Seafood International. However, according to Alaska Seafood International, its microbiological laboratory cannot fully meet the department's requirements. Alaska Seafood International lab space is 540 square feet and was never intended to be a broad-spectrum test facility. (The new Seafood and Food Safety lab is designed to be 19,312 square feet.)
- Department of Environmental Conservation selects site near Boniface and Tudor with Dept. of Transportation & Public Facilities oversight based on lab functions (proximity to major airport), cost of utilities, and access to Public Health lab. The Anchorage Planning and Zoning Commission approves the site selection report.
- Livingston Slone, hired by Dept. of Transportation & Public Facilities, determines that any existing market rental space would require a major renovation; and that building a new facility on state owned land is more cost effective than renovating an existing space or contracting for the construction of a leased facility.
- Legislature appropriates \$240.0 updating Livingston Slone's 1998 Feasibility Study to reflect the facility's being located on state land.

2001

- Dept. of Natural Resources initiates land exchange with Municipality of Anchorage to acquire parcel.
- Dept. of Transportation & Public Facilities develops a construction timeline and budget.
- Dept. of Transportation & Public Facilities selects Livingston Slone for the design and engineering work with an expected completion date of June 2003.
- Legislature appropriates \$1,300.0 to design the facility.

2002

- The design contractor, Livingston Slone, updates the construction cost estimate after completing the schematic design: \$14,085,200.
- Dept. of Administration easing approves extending the lease until December 2006 under the provision DEC actively pursue another option.
- A bond bill (HB51), designating lab construction funds, is introduced in the first session, but dies before final adjournment.

February 6, 2003

- Anchorage Assembly approves the land exchange and Dept. of Natural Resources completes an Interagency Land Management Agreement giving DEC the authority to manage the selected site adjacent to the Public Health Lab.

What the Seafood and Food Safety Lab does

- Conducts product and water sampling required by the National Shellfish Sanitation Program so that bivalve shellfish can be commercially marketed.
- Routinely tests commercial bivalve shellfish for marine toxins responsible for paralytic shellfish poisoning and domoic acid poisoning.
- Is analyzing over 600 samples of salmon (all five species), halibut, pacific cod, sablefish, black rockfish, lingcod and pollock for heavy metals (methyl mercury, lead, and cadmium).
- Conducts on-site evaluations of, and certifies drinking water laboratories and water system operators for bacteriological monitoring as required by Safe Drinking Water Act.
- Works with commercial industries to develop safe, ready-to-eat food products to make sure the water activity, water phase salt, and salt moisture of their products are within acceptable levels.
- Evaluates raw and finished dairy products for bacterial contamination, antibiotics, butter fat content, and effectiveness of pasteurization.
- Performs animal testing to maintain USDA brucellosis- and TB-free certification, which is required for interstate and international shipment of cattle.
- Tests for equine infectious anemia in horses intended for interstate shipment or that will be entered in state fairs or other special events.

-
- **No other lab in Alaska tests for PSP (paralytic shellfish poisoning).**
 - **A lab does not currently exist within the State of Alaska with the authority to test food or water that's been potentially poisoned with highly dangerous contaminants.**
 - **To be sold in international markets, Alaska's food products must be tested for compliance with federal food standards.**
 - **The shellfish industry depends on the Food Safety Lab to quickly test for marine toxins so they can sell their products in interstate commerce.**
 - **The Food lab is the only lab in the state that is permitted by the Food and Drug Administration to evaluate dairy products.**

For more information, please contact Kristin Ryan at 907-269-7644

February 6, 2003

Samples processed at the Seafood and Food Safety Laboratory

Department of Environmental Conservation, Division of Environmental Health

Samples received:

	FY00	FY01	FY02
Samples received	9,148	7,282	6,256
Tests ran on those samples	21,337	25,346	26,926

The amount of samples received varies greatly each year. We are expecting a big jump in 2003. The number of tests ran has not increased over the past years but our tracking has. In FY00, we did not track every test ran such as quality control tests when we make sure the result gotten is correct. In FY01 and FY02, we implemented a tracking system so that we could capture every analysis done.

Samples broken down by category

	FY00	FY01	FY02	Areas
Animal Health & Dairy	5993	4067	3519	South Central
Drinking Water	541	569	545	State wide
Food	0	26	54	Anchorage
Seafood	2351	2393	1908	South Central (30%) Southeast (70%)
Miscellaneous	89	114	39	State wide
Training sessions	174	113	191	At laboratory

Vibration sensitive equipment:

Microscopes: When looking at a liquid at a magnification of 100+, significant vibration such as a machine shop would make it impossible to identify the organism.

Torsion Balance: Used to weigh chemicals as light as 1 millionth of a gram. Since the scale is on a fulcrum, it is extremely sensitive to movement. When in use, no one is allowed to enter the room because of vibration.

Concern also exists with the Liquid Chromatograph and Atomic Absorption processes. Both send a beam of light through a minute amount of substance and measure the refraction.

Kristin Ryan, Director, 269-7644

DEC Seafood and Food Safety Laboratory

Using Certificates of Participation, the Department will build a new Seafood and Food Safety Laboratory in Anchorage that is prepared to respond to unanticipated outbreaks of disease or presence of a contaminant in food, water or animals; and

Protects Alaskans by

- Preventing disease through sanitation and sanitary practices.
- Providing essential risk screening services.
- Monitoring animals for zoonotic diseases--transferred from animals to humans—such as Brucellosis and rabies.
- Testing food products for Salmonella, Listeria and fecal coliforms to ascertain they are safe to eat.
- Testing public drinking water for Giardia and Cryptosporidium.

Supports industry by

- Working with industry to pre-certify areas for safe harvesting of geoducks so that a more valuable product can be sold live.
- Testing geoducks, oysters and mussels for PSP contamination prior to sale.
- Analyzing seafood samples for contaminants such as mercury and pesticides through its seafood-monitoring program.
- Testing dairy products so they can be sold to the military and schools.

Supports Alaska's private laboratories by

- Conducting on-site evaluations of, and certifying drinking water laboratories and water system operators for bacteriological monitoring as required by Safe Drinking Water Act.
- Training 190 private lab staff a year in EPA approved procedures for testing drinking water.
- Making available its expertise, knowledge, and resources.

Based on lab functions, proximity to a major airport, sample movement, cost of utilities, and access to Alaska's Public Health Laboratory, Anchorage was chosen as the best site for the new facility.

SB

219

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 5/11/03

FURTHER: Judiciary

Date of 5-Day Notice: 4/1/04
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 4/7/04

State Affairs Committee considered SENATE BILL NO. 219

SB 219 OFFENSES AGAINST UNBORN CHILDREN

"An Act relating to offenses against unborn children."

and recommends:

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

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DOL	4/5/04		✓	
DDA	4/5/04	✓		
ACS	4/6/04		✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
CHAIR: <i>[Signature]</i>	✓			

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 219
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to offenses against unborn BRU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Senator Dyson
 Requester Senate State Affairs Component No. 1631

Expenditures/Revenues (Thousands of Dollars)
 Note: Amounts do not include inflation unless otherwise noted below.

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

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

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	*	*	*	*	*	*

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 will likely have a fiscal impact on the operations of the Agency, but it is impossible to determine with any accuracy what that impact will be. Creating numerous felony offenses for death or harm done to an unborn child, mostly at the felony level, will increase the caseload and workload of the Agency. Making it a felony to knowingly cause serious physical injury to an unborn child that is subsequently born alive would certainly have a fiscal impact if it includes children born after inadequate prenatal care. It is impossible however to predict with any accuracy how many new cases this legislation would generate if enacted, therefore an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division: Public Defender Agency Date/Time 4/5/04 12:00 AM
 Approved by: Kevin Jardell, Assistant Commissioner Date 4/5/2004
 Agency: Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: SB219-LAW-CDCO-04-0
 Bill Version: SB219
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to offenses against unborn RDU CRIMINAL
children." Component CDCO
 Sponsor Senator Dyson
 Requester Senate State Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)
 Note: Amounts do not include inflation unless otherwise noted below.

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill amends AS 11.41 by creating new felonies involving murder, manslaughter, negligent homicide or assault of an unborn child.

 Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhelee, Director Phone 465-3673
 Division Administrative Services Date/Time 4/5/04 9:53 AM
 Approved by: Kathryn Daughhelee for Gregg D. Renkes, Attorney General Date 4/5/2004
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB219-ACS-TC-4-6-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Offenses Against Unborn Children BRU Alaska Court System
 Component Trial Courts
 Sponsor Senator Dyson
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Senate Bill 219 creates new criminal offenses for certain acts that result in harm to unborn children. Although these new offenses will likely result in an increase in the number of cases brought before the court system, that increase is not anticipated to be significant enough to warrant a fiscal note.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 4/6/04 10:05 AM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 4/6/2004
 Agency: Alaska Court System



SENATOR FRED DYSON

SPONSOR STATEMENT

SB 219—*"An Act relating to offenses against unborn children."*

Twenty-nine states have enacted laws that recognize unborn children as victims of violent crimes covered by *state* laws. Recently, the U.S. Congress passed the Unborn Victims of Violence Act, and President Bush subsequently signed the bill into law. This federal law recognizes that when a person attacks a pregnant woman, and injures or kills her unborn child, the attacker has harmed two victims. The bill establishes that if an unborn child is injured or killed during the commission of a federal crime of violence, then the assailant may be charged with a second offense on behalf of the second victim, the unborn child. The exact charge would depend on which federal law is involved, the degree of harm done to the child, and other factors. Recently, this issue has saturated the media in the highly publicized case involving Scott, Laci, and Conner Peterson.

Thus far, it has been consistently established that unborn victims laws do *not* conflict with the U.S. Supreme Court's pro-abortion decrees (*Roe v. Wade*, etc.). Many legal challenges have been brought against state unborn victims laws, based on *Roe* and other constitutional arguments, but state and federal courts have rejected all such challenges.

Pregnant women who have been harmed by violence, and their families, know that there are two victims -- the mother and the unborn child -- and both victims should be protected by law. SB 219 recognizes this value of life and establishes, in law, defense for the unborn victims of violent crime.

SB 222 establishes the following crimes against an unborn child: murder, manslaughter, criminally negligent homicide, and assault. Explicit exceptions from these crimes are made for legal abortion and for customary medical treatment. This bill also defines "unborn child" within the criminal statutes.

The Washington Times

www.washingtontimes.com

Bush signs fetus-protection bill

By Joseph Curl

THE WASHINGTON TIMES

Published April 2, 2004

President Bush yesterday signed legislation that criminalizes harming a fetus while assaulting a pregnant woman during a federal crime, the first national law granting an unborn child a status separate from the mother.

In a high-profile ceremony in the White House's East Room, attended by parents and relatives of murdered pregnant women, the president signed the Unborn Victims of Violence Act, a narrow law that mirrors statutes now in place in 29 states.

"As of today, the law of our nation will acknowledge the plain fact that crimes of violence against a pregnant woman often have two victims," Mr. Bush said.

"Under this law, those who direct violence toward a pregnant woman will answer for the full extent of the harm they have done, and for all the crimes they have committed," he said to applause.

Although the law applies only in assaults that are already federal, such as a drug-related shooting, the statute pleases social conservatives, who make up the president's political base and overwhelmingly oppose abortion. The law applies to fetuses at "any stage of development."

More than 80 percent of Americans think the murder of a pregnant woman takes two lives, according to three national public opinion polls. Fewer than 10 percent think such a crime has only one victim.

Democratic presidential candidate John Kerry voted against the bill last month in the Senate. Yesterday, his spokesman called the new law an infringement of a woman's right to choose.

"John Kerry strongly supports making it a federal crime to commit an act of violence against a pregnant woman," David Wade said. "He agrees with the vast majority of Americans who want tough punishment for anyone who would commit such heinous crimes and know we can do so without undermining a woman's right to choose."

The House passed the bill by a 245-163 vote; the Senate by a 61-38 margin.

The law states that "nothing in this section shall be construed to permit the prosecution ... of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained."

Despite that clause, Kate Michelman, president of NARAL Pro-Choice America, said Mr. Bush "is making good on his pledge to do everything in his power to restrict a woman's right to choose."

"Pro-choice Americans aren't going to forget this president's record, with its steady drumbeat of attacks on reproductive freedom," she said in a statement.

David Seldin, a spokesman for the group, said his organization supported a bill that did not establish the unborn child as a separate entity.

"What they insisted on that was so unnecessary to the goal of protecting women and punishing criminals was to grant separate legal status to embryos, fetuses and two-cell zygotes at the moment of conception," he said.

Opponents of abortion said the new law will protect unborn children and took issue with

Mr. Kerry's contention that it will infringe on a woman's right to abortion.

"If there ever was a bill to protect a woman's right to choose, it is this bill that seeks to deter violence against or at least provide justice to the pregnant woman who is choosing life for her unborn child only to see her choice deprived by a crime of violence against her and/or her child," said Samuel B. Casey, head of the Christian Legal Society.

Mr. Bush said the new statute, often referred to as the "Laci and Conner" law, after Laci Peterson, who was eight months pregnant with a boy she planned to name Conner when she was slain, simply corrects a legal "omission." Her husband, Scott, is accused of two counts of murder.

"The death of an innocent unborn child has too often been treated as a detail in one crime, but not a crime in itself," he said.

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One Victim or Two?

The Unborn Victims of Violence Act (S. 1019) would recognize as a legal victim an unborn child who is injured or killed during commission of a *federal* crime against the baby's mother. A substitute amendment to be offered by Senator Dianne Feinstein would increase penalties for federal crimes against pregnant women – but would recognize only *one* victim, the mother, and without recognizing any loss of human life if the mother survives the assault. Sharon Rocha, mother of Laci Peterson and grandmother of Conner Peterson, has called such a single-victim proposal “a step away from justice, not toward it.” But what does the general public say? If a criminal assaults a woman who carries an unborn child, does that crime have two victims, or only one? Here are three recent national polls on that issue.

Polls	One Victim	Two Victims
<p>“If a violent physical attack on a pregnant woman leads to the death of her unborn child, do you think prosecutors should be able to charge the attacker with murder for killing the fetus?”</p> <p>Yes 79% (including 69% of “pro-choice”) No 10% Not sure 11%</p> <p>Fox News/Opinion Dynamics, July 15-16, 2003. (900 registered voters. Margin of error: +/- 3%.)</p>	10%	79% <i>(includes 69% of “pro-choice”)</i>
<p>“We’re interested in how you think the criminal justice system should deal with cases involving the murder of a pregnant woman. When, if ever, do you think prosecutors should be able to bring SEPARATE murder charges against someone who kills a fetus still in the womb? In other words, try them for two murders instead of one. Do you think this should be done in ALL cases where a pregnant woman is murdered, only in cases where the fetus is viable – that is, is able to survive outside the womb, or not at all?”</p> <p>All cases 56% Fetus Viable 28% Not at all 9% DK 7%</p> <p>Newsweek/Princeton Survey Research Associates, May 29-30, 2003. (1,009 adults, age 18+. Margin of error: +/- 3%.)</p>	9%	84% <i>(total “all cases” 56% and “fetus viable” 28%)</i>
<p>“If Scott Peterson is convicted of killing his pregnant wife Laci, do you think he should be charged with one count of homicide for murdering his wife or two counts of homicide for murdering both his wife and unborn son?”</p> <p style="text-align: right;">One</p> <p>count 7%</p> <p style="text-align: right;">Two</p> <p>counts 84%</p> <p>Something else (vol.) 1% sure 8%</p> <p>Fox News/Opinion Dynamics, April 22-23, 2003. (900 registered voters. Margin of error: +/- 3%.)</p>	7%	84%

To go to the main unborn victims (fetal homicide) page, please click [here](#).

Constitutional Challenges to State Unborn Victims (Fetal Homicide) Laws

February 16, 2004

(All challenges were unsuccessful. All challenges were based at least in part on *Roe v. Wade* and/or denial of equal protection, unless otherwise noted.)

California

In *People v. Davis* [872 P.2d 591 (Cal. 1994)], the California Supreme Court upheld the legislature's addition of the phrase "or a fetus" to the state murder law in 1970, but held that the term "fetus" applies "beyond the embryonic stage of seven to eight weeks." (California Penal Code 187(a) says, "Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.") In *People v. Dennis* [950 P.2d 1035 (Cal. 1994)], the California Supreme Court upheld inclusion of fetal homicide under Penal Code 190.2(3), which makes a defendant eligible for capital punishment if convicted of more than one murder.

Georgia

A three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit unanimously upheld the conviction of Richard James Smith, Sr., under Georgia's "feticide" statute. Smith argued that the law conflicted with *Roe v. Wade*, but the court rejected this assertion as "without merit." The court held: "The proposition that Smith relies upon in *Roe v. Wade* -- that an unborn child is not a "person" within the meaning of the Fourteenth Amendment -- is simply immaterial in the present context to whether a state can prohibit the destruction of a fetus." *Smith v. Newsome*, 815 F.2d 1386 (11th Cir. 1987). Related state supreme court decision: *Brinkley v. State*, 322 S.E.2d 49 (Ga. 1984) (vagueness/due process challenge).

Illinois

U.S. ex rel. Ford v. Ahitow, 888 F.Supp. 909 (C.D.Ill. 1995), and lower court decision, *People v. Ford*, 581 N.E.2d 1189 (Ill.App. 4 Dist. 1991).

People v. Campos, 592 N.E.2d 85 (Ill.App. 1 Dist. 1992). Subsequent history: *appeal denied*, 602 N.E.2d 460 (Ill. 1992), *habeas corpus denied*, 827 F.Supp. 1359 (N.D. Ill. 1993), *affirmed*, 37 F.3d 1501 (7th Cir. 1994), *certiorari denied*, 514 U.S. 1024 (1995).

Louisiana

Re double jeopardy -- *State v. Smith*, 676 So.2d 1068 (La. 1996), *rehearing denied*, 679 So.2d 380 (La. 1996).

Minnesota

State v. Merrill, 450 N.W.2d 318 (Minn. 1990), *cert. denied*, 496 U.S. 931 (1990).

Re establishment clause -- *State v. Bauer*, 471 N.W.2d 363 (Minn. App. 1991).

Missouri

In the 1989 case of *Webster v. Reproductive Health Services* (492 U.S. 490), the U.S. Supreme Court refused to invalidate a Missouri statute (Mo. Rev. Stat. 1.205.1) that declares that "the life of each human being begins at conception," that "unborn children have protectable interests in life, health, and well-being," and that all state laws "shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state," to the extent permitted by the Constitution and U.S. Supreme Court rulings. A lower court had held that Missouri's law "impermissibl[y]" adopted "a theory of when life begins," but the Supreme Court nullified this ruling, and held that a state is free to enact laws that recognize unborn children, so long as the state does not include restrictions on abortion that *Roe* forbids.

In *State v. Knapp*, 843 S.W. 2nd (Mo. en banc) (1992), the Missouri Supreme Court held that the definition of "person" in this law is applicable to other statutes, including at least the state's involuntary manslaughter statute.

Pennsylvania

Commonwealth of Pennsylvania v. Corrine D. Wilcott, No. 2426 A & B of 2002 (Court of Common Pleas of Erie County, Pennsylvania, Criminal Division). Rejected challenges that Pennsylvania Crimes Against Unborn Children Act is unconstitutionally vague, violates U.S. Supreme Court abortion cases, violates equal protection clause, and conflicts with state tort law on definition of "person." January 24, 2003.

Utah

State of Utah v. Roger Martin MacGuire. MacGuire was charged under the state criminal homicide law with killing his former wife and her unborn child. He argued that the law, which covered "the death of another human being, including an unborn child," was unconstitutional because the term "unborn child" was not defined. The Utah Supreme Court upheld the law as constitutional, holding that "the commonsense meaning of the term 'unborn child' is a human being at any stage of development in utero. . ." MacGuire was also charged under the state's aggravated murder statute, which applies a more severe penalty for a crime in which two or more "persons" are killed; the court ruled that this law was also properly applied to an unborn victim and was consistent with the U.S. Constitution. January 23, 2004.

Wisconsin

Re due process -- *State v. Black*, 526 N.W.2d 132 (Wis. 1994) (upholding earlier statute).

SB

223

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 5/14/03

FURTHER:

Date of 5-Day Notice: 24 hr. rule
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 5/17/03

State Affairs Committee considered SENATE BILL NO. 223

SB 223 NAMING THE FERRY LITUYA

"An Act naming the state ferry first operating to serve between Metlakatla and Ketchikan; and providing for an effective date."

and recommends:

Senate Bill:

be replaced with _____ CS _____ (_____)

same title

adopt previous _____ CS _____ (_____)

new title

House Bill:

attached amendment(s)

same title

technical title

new: SCR # _____

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DOT	5/14/03		✓	1

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

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

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB223
 () Publish Date: _____

Revision Date/Time (Note if correction): 05/07/03 Dept. Affected: DOT&PF
 Title Naming the Ferry Lituya BRU Marine Highway System
 Component Marine Vessel Operations
 Sponsor SRUL
 Requester SSTA Component No. 2604

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Dennis R. Poshard Phone 465-3900
 Division Special Assistant to Commissioner Date/Time 5/16/03 10:34 AM
 Approved by: Commissioner Mike Barton Date 5/16/2003
 Agency Alaska Department of Transportation and Public Facilities



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STATE OF ALASKA
OFFICE OF THE LT. GOVERNOR
JUNEAU

May 16, 2003

Senator Gary Stevens, Chairman
Senate State Affairs Committee

Dear Senator Stevens:

Gary

It is late in the session, however I ask your cooperation in getting passage of legislation to name a state ferry currently under construction. The only way this can be accomplished is through legislation. Schoolchildren in Metlakatla are awaiting the Legislature's action.

The ferry to serve Metlakatla and Ketchikan will be launched in October 2003 and should be in service by May 2004.

A selection committee commissioned under the Office of the Lieutenant Governor selected the name M/V *Lituya* from a number of essay nominations written by the school children of Metlakatla. I have attached a copy of the selected essay from second grader Josiah Milne.

As also required by the statute (AS 19.65.020), maritime vessels are to be named after glaciers. Lituya Glacier is located near Mount Fairweather and Glacier Bay National Park in Southeast Alaska.

Thank you for your consideration and assistance in officially naming this new State ferry to improve the marine transportation system of Alaska.

Sincerely,

Loren

Loren Lemman
Lieutenant Governor

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