

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

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February 27, 2004

The Honorable John Harris, Co-Chair
House Finance Committee
Alaska State Capitol, Room 507
Juneau, Alaska 99801-1182

The Honorable Bill Williams, Co-Chair
House Finance Committee
Alaska State Capitol, Room 515
Juneau, Alaska 99801-1182

RE: HB 378 (House Finance Committee) – Support

Dear Co-Chairs Harris and Williams:

On behalf of the Alaska members of AARP, we recommend you and your colleagues on the House Finance Committee support your Committee bill HB 378.

According to the Centers for Disease Control and Prevention, 76 million illnesses and 5,000 deaths in the United States each year are linked to food-borne pathogens. Older Alaskans, along with children and people with suppressed immune systems, are particularly vulnerable to these pathogens.

Food-borne pathogens are found in all types of food. The federal and state government has a responsibility to ensure that the food supply is safe. This is particularly important for food which we purchase and eat away from our homes. Unfortunately, almost half the health problems related to food-borne pathogens resulted from eating in some type of a food service establishment. Any of us that have ever suffered "food poisoning" from a visit to a restaurant can vouch for the significant consequences we have suffered, both physically and economically through lost work, productivity, etc.

Certification of food protection managers has been found to improve food sanitation practices. Training for workers by those certified managers does decrease food-borne illnesses.

Our state food safety and sanitation staff have methods to train and certify food protection managers, even in remote areas.

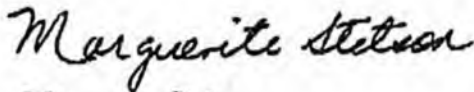
HB 378 will provide for this training. It also will provide fines for failing to comply with out public health and food safety standards. AARP believes that both the certification process and the ability to impose fines are important to food safety in Alaska.

AARP recommends an "AYE" vote on HB 378.

Should you have any questions about our position, please feel free to contact Marie Darlin, Coordinator of the AARP Capital City Task Force (907- 586-3637); Patrick Luby, AARP Legislative Representative (907-762-3314); or me (907-245-5259).

Thank you for your consideration.

Sincerely,



Marguerite Stetson
AARP State Coordinator for Advocacy
3009 Northwood Street
Anchorage, AK 99517-1871
907-245-5259 (voice)
907-245-5279 (fax)
ffmas@aurora.uaf.edu

CC: Vice-Chair Kevin Meyer
Representative Mike Chenault
Representative Bud Fate
Representative Richard Foster
Representative Mike Hawker
Representative Bill Stoltze
Representative Eric Croft
Representative Richard Joule
Representative Carl Moses
Marie Darlin
Patrick Luby

Audits and Inspections

Audits

- ▶ New and existing establishments will initially be required to submit their SOPs, records, and self-inspections for review.
- ▶ Annually, and as part of the permit review process, a percentage of randomly selected establishments will be required to submit their self-inspections and records.

Inspections

- ▶ On-site evaluations of establishments will be conducted to determine their control of risk factors, to review SOPs and how they are implemented, and to audit required records and self-inspections.
- ▶ Enforcement actions, including administrative fines, may be initiated for risk factors that are not being controlled, imminent health hazards and other serious violations of the regulations.

Implementing the New System

Target Schedule

- ▶ Public Notice Food Code Spring 04
- ▶ Revisions Adopted Fall 04
- ▶ CFPM Required Fall 04
- ▶ Food Worker Training Fall 04
- ▶ AMC Workshops Fall 04
- ▶ AMC Required Fall 05



Elements of this new food safety system will be included in draft revisions to the Food Code (18 AAC 31). Food Establishment operators are encouraged to comment and will be directly notified when the draft regulations go out for public notice.

Your input is important, and can improve the regulations. Every comment will be considered, and changes may be made based on the comments received.

For more information visit our website:

www.state.ak.us/dec/deh/



Food Safety & Sanitation

12/01/2003

Active Managerial Control: Improving Alaska's Food Safety System



Active Managerial Control is a comprehensive food safety system. It includes operators and staff who are knowledgeable about food safety issues, and are responsible for controlling practices and procedures that contribute to foodborne illness. It can be implemented in both urban and remote settings.

This new system offers greater assurance that safe food is served throughout Alaska.

Alaska Department of Environmental
Conservation
Division of Environmental Health
Food Safety and Sanitation Program
555 Cordova Street
Anchorage, AK 99501
(907) 269-7501 FAX (907) 269-7510

Elements of "Active Managerial Control"

Elements of Alaska's Food Safety System include trained food workers, standard operating procedures, monitoring and recordkeeping of certain risk factors, self-inspections, audits, and field evaluations. The details of these elements are explained below.

1. Training

- ▶ Establishments that serve unpackaged food will need to have a Certified Food Protection Manager (CFPM). She/he must pass a nationally recognized exam to become certified.
- ▶ All food workers must have food safety training and pass an exam.
- ▶ Many options will be available for both manager and food worker training, including self-study, online, and classroom training.

2. Written SOPs (Standard Operating Procedures)

Establishments must have SOPs that describe their policies on,

- ▶ proper handwashing,
- ▶ employee health,
- ▶ training,
- ▶ food sources,
- ▶ receiving and storage,
- ▶ chemical use and storage, and
- ▶ sanitation.

3. **SOPS, monitoring, and recordkeeping** will also be required, where applicable, for the following:

- ▶ hot and cold holding
- ▶ cooking,
- ▶ cooling,
- ▶ reheating, and
- ▶ handling ready-to-eat food.

4. Food Safety Checks

- ▶ Regular food safety checks, conducted by the operator, will help verify that the establishment's procedures, and good retail practices are being followed, and any required records are maintained.

The 5 Risk Factors for Foodborne Illness

Unsafe Holding Temperatures
Inadequate Cooking
Contaminated Equipment
Food from Unsafe Sources
Poor Personal Hygiene

Food Safety and Sanitation Program: Operator Assistance

DEC will hold workshops and provide training to help operators understand and implement Active Managerial Control. In addition, FSS plans to:

Provide Food Safety Training Opportunities

- ▶ Publish a list of CFPM Training Courses and Exams.
- ▶ Conduct Train the Trainer courses for employers and others who want to provide food worker employee training.
- ▶ Offer food worker training, testing, and certification online.
- ▶ Provide free training materials online and in print.

Provide Model SOPs and Forms

- ▶ Publish a Compliance Manual which will include permit applications, plan review requirements, instructions on identifying processes and risk factors, templates for writing customized SOPs, and example forms for recordkeeping and self-inspections. It will be available online and in print.
- ▶ Publish a Resource Manual to help operators implement their active managerial control system. It will include procedures for controlling risk factors, examples of policies, reproducible signs, and other information.

Food Safety and Sanitation Program Redesign 12/02/03

ID	Task Name	Start	Finish	2004												2005												2006	
				Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
1	Legislation Introduced	1/1/2004	5/15/2004	██████████ Legislation																									
2	Regulations Drafted	1/1/2004	5/15/2004	██████████ Regs Drafted																									
3	Public Notice	5/16/2004	7/16/2004	██████████ Public Notice																									
4	New Regs Implemented	11/1/2004	11/1/2004													★ REGULATIONS FINAL													
5	Software Purchase/ Implementation	7/1/2004	11/1/2004	Worker Cert Software ██████████																									
6	EHO / EHT Hired	7/1/2004	7/1/2004	Hire EHO & EHT ▲																									
7	Food Worker Certification	11/2/2004	1/1/2006	Train / Certify Workers ██████████																									
8	Revised Permit Fee Schedule	1/1/2005	1/1/2005													Revised Permit Fees ▲													
9	EHO Hired	7/1/2005	7/1/2005													Hire EHO ◆													
10	Enforcement / Fines	11/1/2005	1/1/2006													Enforcement / Fines ██████████													

Fiscal Note Assumptions:

- Legislation Passed
- Revised Regulations Effective Nov, 2004
- Revised Permit Fees Implemented Jan 1, 2005
- Enforcement Grace Period Nov, 2004 to Nov, 2005
- 8,000 Workers certified in FY 05

Dirty dining?
**'Dateline' hidden
cameras investigate
cleanliness of America's
top 10 fast food chains**

Fast food: It's served fast and you eat it fast, maybe too fast to notice the restaurant is a little dirty. The fact is that no one has ever done a national survey looking at the cleanliness of fast food chains — until now. Recently, we took our Dateline cameras undercover for the first-ever investigation of whether America's top 10 fast food chains are clean and safe. How did your favorite restaurant do? We're a nation fueled by fast food: burgers and fries, tacos, fried chicken. It's hot, tasty and easy. And with millions and millions of meals sold every day, most of us just assume it's all clean and safe. But when it's not, it can be devastating.

After eating at this McDonald's in Erwin, Tenn., last March, one hundred people became violently ill. Some ended up in the hospital, dehydrated and even hallucinating. The Centers for Disease Control says sick restaurant employees very likely contaminated food with a virus, although McDonald's disputes that.

Meanwhile, after eating at a KFC in Colorado, Gianni Velotta was infected with a dangerous salmonella bacteria. His mother says he almost died.

Natalie Velotta: "His kidneys weren't working. I mean, there's just no words to explain how bad it actually was."

How do your favorite restaurants rate?

Was there any way to prevent it? Well, had Natalie Velotta checked, she'd have learned health inspectors had cited and fined that KFC just a few months earlier.

Velotta: "If I would have known that they had several health violations, I would not have eaten there."

But who has time to check health inspection reports before they go to a fast food restaurant? Virtually no one, so Dateline decided to do it.

The biggest 10 chains have 75,000 restaurants. We couldn't look at all of them, so we hired a survey company to choose a sample, 100 restaurants from each chain, 1,000 in all, spanning 38 states.

We then collected and examined local health inspection reports for the last year and a half on each of those 1,000 restaurants. Some were inspected just once, some more often during that period.

In a first of its kind national investigation, Dateline is going to use these health inspection reports to find out which fast food chains in our survey are the cleanest and the dirtiest. What we found may do more than surprise you. Some of the horror stories in Dateline's dirty dining survey just might turn your stomach.

In a Chicago, in a Wendy's, inspectors found dead rodent decomposing on a rat trap. At a California Taco Bell, someone bit into a taco, only to find chewing gum. An inspector in Texas found a worm in a Wendy's salad. At a Hardee's in Florida, a customer was handed a cup of soda with blood dripping from it. There was blood on her change as well.

The list goes on. A cockroach in someone's soda, a sharp metal object in a man's sandwich. But as disgusting as those things are, they are rare. Experts say the things you can't see can be even more hazardous.

So what can be done about all this? Well, health inspectors tell us it's not that easy to just close down a restaurant, and they say their power is limited when it comes to even imposing heavy fines. What they can do is cite restaurants for what is known as a hazardous or critical violation.

Caroline Smith-Dewaal is with the Center for Science in the Public Interest, a food safety watchdog group.

Smith-Dewaal: "A critical violation is something that happens in a restaurant that may result in the food becoming contaminated."

Lea Thompson: "By definition, is a critical violation something that could make you sick?"

Smith-Dewaal: "Yes."

Critical violations are a benchmark for judging a restaurant's cleanliness. Most food regulations mandate they be corrected immediately, and they are the only type of violations we counted in our survey. They include things like handling ready-to-eat food with bare hands or unwashed hands, undercooked meat, improper food holding temperatures, sick employees preparing food, and a host of other potentially

hazardous problems.

What may shock you is just how many restaurants had critical violations. More than sixty percent of all fast food restaurants in our sample had at least one critical violation in the last year and a half.

How many total violations did each chain have? Here comes Dateline's dirty dining survey — it's a top 10 list where no fast food restaurant wants to come in number one:

10: TACO BELL

The 100 Taco Bells we sampled had the fewest total critical violations, 91, making it the best performer in our survey. But it was not without problems. Recurring violations included dirty food preparation counters and rodent droppings.

9. MCDONALD'S

The golden arches, the 100 McDonald's we looked at came in with a total of 136 critical violations. Some didn't have a trained and certified food handler on the job, required by law in many states.

Thompson: "It's that important?"

Smith-Dewaal: "Absolutely. We can't have food prepared by people who don't know that you can't combine raw meat with cooked meat, with people who don't understand the importance of proper temperatures in food preparation."

8. KFC

The 100 KFCs we sampled tallied up 157 critical violations, and two thirds of the "finger lickin' good" restaurants had at least one critical violation. Remember, it was at a KFC, the Health Department says, little Gianni Velotta picked up salmonella poisoning last year. We've now learned that another child was also sickened there, and the same restaurant has since been cited for three more critical violations.

While the Velotta's have settled a lawsuit against the restaurant, a lawyer for the owner of the franchise contends the salmonella cases did not originate there.

7. SUBWAY

The 100 Subways we looked at totaled 160 critical violations. A recurring problem at the sandwich chain was improper food holding temperatures.

Thompson: "What does that mean?"

Smith-Dewaal: "That means that bacteria in the food that's already cooked can start to grow, and it can reach levels that can cause serious illness for someone who consumes it."

6. JACK IN THE BOX

The 100 Jack in the Box restaurants had a total of 164 critical violations. A Ventura, Calif., Jack in the Box was a trouble spot. It had several customer complaints of food borne illness.

5. DAIRY QUEEN

The 100 Dairy Queens we examined totaled 184 total critical violations. One Dairy Queen in Hampton, Va., rang up a number of critical violations last summer for grime, debris, and an inaccurate thermometer.

When Dateline went back recently to take a look, the restaurant invited us in, and showed it had fixed the problem.

4. HARDEES

The 100 Hardee's tallied 206 critical violations. Again and again inspectors cited the presence of insects and rodents.

Smith-Dewaal: "Rodents and roaches are gross. But more importantly, they can also spread germs from food to food, and carry germs into a restaurant."

Last May, one restaurant was cited for not having soap in the employee's sink. Yet, inspectors found employees handling ready-to-eat food with their bare hands.

3. WENDY'S

100 Wendy's had 206 critical violations. That's the same as Hardees, but more Wendy's restaurants had violations. So Wendy's is number three in our Dateline dirty dining survey.

At a Wendy's in Mesa, Ariz., inspectors noted repeated problems with food holding temperatures, mice droppings on the shelves, bare hand food contact, and one food borne illness complaint.

2. ARBY'S

The 100 Arby's had 210 critical violations. The roast beef specialists had recurring violations for improper hand-washing and employees handling ready-to-eat foods with their bare hands.

Smith-Dewaal: And clearly, if the person isn't washing their hands or using other sanitation practices, they can really make people very sick.

1. BURGER KING

So which fast food chain finished number one on Dateline's dirty dining list? It's Burger King. The 100 Burger Kings we sampled rang up a whopping 241 total critical violations. Health inspectors cited a Virginia Burger King for 14 separate critical violations: employees not washing their hands, uncovered food in the fridge, grime and debris found on this ice chute, and on the drink machine at the drive-thru window. We observed one employee scooping ice into a cup with his bare hands, an apparent critical violation.

SO WHAT'S THE BIG PICTURE?

The 1,000 restaurants we sampled totaled 1,755 critical violations, and 613 restaurants were cited at least once. That's more than 60 percent with problems inspectors consider potentially hazardous to your health.

Still, in an industry where millions of meals are served...

Thompson: "Is it unrealistic to expect a fast food restaurant to come up with a clean bill of health every single time an inspector walks in the door."

Smith-Dewaal: "The government inspector is the last checkpoint. The restaurant itself should be doing inspections and checking for critical violations every day. They shouldn't wait for a government inspector to tell them they're doing it wrong."

Steve Grover of the National Restaurant Association represents fast food restaurants. He's a former health inspector himself.

Thompson: "Does Dateline's survey concern you?"

Steve Grover: "It concerns me. I do not find critical violations acceptable."

Thompson: "Why are they there in the first place?"

Grover: "Because no one's perfect. I tell the executives every day, 99.9 percent is not good enough, when it comes to food safety."

Thompson: "What about 60 percent?"

Grover: "Sixty percent is not good enough when it comes to food safety."

Grover argues as long as critical violations are being corrected promptly, then the system is working. Inspectors are doing their job, and the restaurants are following the advice of the inspectors as they come through.

Most fast food restaurants are owned by individuals, but most chains say they inspect every restaurant that has their name on it.

In a letter to Dateline, Burger King says it is "Extremely disappointed" by (the) findings... We want to assure our guests we will quickly investigate... and take immediate and appropriate actions..." The president of Wendy's writes, "one critical violation on a health inspection report is one too many." And Hardees says, "We must always do better. Any critical deficiency is unacceptable - which is why we address them immediately." McDonald's says "No one cares more about operating clean, safe restaurants than McDonald's."

All are unanimous in agreeing with KFC that "Food safety is our number one priority." The Velottas, whose little boy became almost died, hope that's true.

Velotta: "Every single time I go to a fast food restaurant, there's that doubt in the back of my mind that they could get sick. Every single time."

Memorandum

DATE: November 7, 2000

TO: FOR THE RECORD

FROM: Michael Beller, M.D., M.P.H.
Medical Epidemiologist

THRU: Sue Anne Jenkerson, R.N.C., M.S.N., F.N.P.
Nurse Epidemiologist

FROM: Kim Mynes-Spink, R.N., B.S.N.
Nurse Epidemiologist

SUBJECT: Final Report - Escherichia coli O157:H7 outbreak-Kenai Peninsula

Introduction

On July 18, 2000, the microbiologist at Central Peninsula General Hospital in Soldotna reported four laboratory-diagnosed cases of Escherichia coli O157 infection and said other patients with diarrhea had been seen in the emergency department. An outbreak investigation was immediately begun. This report summarizes Interim Reports of July 20, 21, and 28 and presents additional information collected since the last Interim Report.

Methods

We interviewed persons living on or visiting the Kenai Peninsula in July who developed an acute gastrointestinal illness (diarrhea, abdominal cramping, or bloody diarrhea) or had a positive stool specimen for E. coli O157. Initially, subjects were interviewed because they presented to Central Peninsula Hospital with gastrointestinal symptoms. After notification of Kenai Peninsula physicians of the outbreak and news media coverage beginning on July 20, other ill persons contacted the Section of Epidemiology. A questionnaire was used for the interviews (Attachment 1).

Because the interviews suggested that the source of the outbreak was the Mad Moose restaurant in Sterling (see Results), we interviewed all workers there. We obtained

worker schedules and compared shifts with times and dates that ill patrons had eaten at the restaurant.

Stool specimens were collected from all restaurant workers (irrespective of illness status) and requested from ill persons identified during the interviews. Some ill persons did not submit specimens. Positive specimens from hospital laboratories were sent to the State Public Health Laboratory and the U.S. Centers for Disease Control and Prevention (CDC) for confirmation, complete identification, and pulsed field gel electrophoresis (PFGE), a type of "genetic fingerprinting." The enzymes used for the PFGE were XbaI and BlnI. PFGE also was performed on an Anchorage E. coli O157:H7 isolate from July 2000 and a Sterling isolate from September 2000. In order to examine isolates unrelated to the outbreak, PFGE was done on three E. coli O157:H7 isolates from sporadic Alaska cases during 1998.

On July 19, the Department of Environmental Conservation (DEC) inspected the implicated restaurant. Food samples, including ground beef and hamburger patties, were obtained and sent to the State Public Health Laboratory and cultured for E. coli O157. The next day, the DEC inspector used culturette swabs to collect samples from a cutting board, a meat slicer, and kitchen surfaces. The swabs were sent to the DEC laboratory in Palmer and used as cleanliness indicators and for quality control at the laboratory.

On July 18, the U.S. Department of Agriculture issued a recall for ground beef contaminated with E. coli O157 that had been sold by an Anchorage meat supplier. We obtained information on the ground beef sold by the supplier and the sources of meat used by the restaurant. CDC compared the PFGE pattern of the E. coli O157 isolate from the recalled ground beef to the isolates from ill restaurant patrons and workers.

We obtained from the restaurant owner a list of 28 patrons that had eaten at the restaurant during July 6 to 9, 2000 and paid by check. They were interviewed about illness in their households.

On August 23, Dr. Michael Beller and Kim Mynes-Spink met with the restaurant owner to review our findings and answer questions. The owner was given information about E. coli O157:H7, graphs used in the investigation, and the PFGE results.

Results

In all, 58 persons were investigated who either had gastrointestinal illness or worked at the restaurant. Stools were collected from 39 of them, including all 12 restaurant workers. Since all persons with a positive stool culture had eaten at the Mad Moose 2 to 7 days before becoming ill and no other common exposures - restaurants, grocery stores, or social gatherings - were identified, we defined cases as follows:

1. A **confirmed case** was a person who within 8 days eating or working at the Mad Moose on or after July 1, 2000 either
 - had a stool culture positive for E. coli O157:H7, or

- met the clinical case definition (see below) **and** had eaten one or more meals at the restaurant with a person with a positive stool culture.
2. A **clinical case** was a person who ate or worked at the Mad Moose on or after July 1 and within 8 days had diarrhea, abdominal cramping or bloody diarrhea but did not have a positive stool culture.
 3. A **secondary case** was a person with a stool culture positive for E. coli O157:H7 who developed acute gastrointestinal symptoms within 3 weeks of having contact with a household member who had eaten or worked at the Mad Moose.

There were 19 confirmed cases (16 patrons and three workers; all but two of which were laboratory confirmed), 10 clinical cases (nine patrons and one worker), and two secondary cases (both were siblings of a worker). This left 18 persons who reported being ill but had not eaten at the Mad Moose (five submitted stool for culture; all were negative) and nine employees who did not report having gastrointestinal symptoms and had negative stool cultures. All persons with E. coli O157:H7 infection in Alaska during April to August 2000 (except for an Anchorage resident with E. coli O157:H7 infection during June, see below) had either eaten or worked at the Mad Moose or lived with someone who had.

The most common symptoms experienced by cases were bloody diarrhea and abdominal cramping (Table 1). Cases ranged from 10 months to 73 years of age. Nearly 75% of the cases (23/31 or 74%) resided on the Kenai Peninsula; 12 in Kenai or Soldotna and 11 in Sterling. The remaining cases resided in Anchorage (n = 3), the State of Arizona (n = 3), and Wasilla (n = 2). For confirmed cases, 11 were male and eight were female; clinical cases included five males and four females; both secondary cases were male. Eleven cases were hospitalized; there were no deaths or serious sequelae, such as hemolytic uremic syndrome.

Among Mad Moose patrons, illness onset dates ranged from July 10 to July 24 (Figure 1). Patrons ate at the restaurant from July 7 to July 19 (Figure 2). The restaurant was closed on July 10, July 17, and July 20 to August 4. The mean interval between eating at the Mad Moose and onset of symptoms was 2.8 days (range: 2 – 7 days).

Among the 25 patron cases, none reported eating breakfast at the restaurant, 11 had lunch, 11 had dinner, and three had more than one lunch or dinner. Two were unsure of meal dates. No common food items were identified: nine had hamburgers, five had prime rib, three had club sandwiches, and one each had cashew salad, chef's salad, turkey sandwich, bacon-lettuce-tomato sandwich, and chicken fried steak (Table 2). Because patrons had difficulty recalling food items other than the main course, we did not ask them about salads, side dishes, or beverages.

Four restaurant workers reported having gastrointestinal symptoms during July, onsets were from July 11 to July 16 (Figure 2). Three of the four had positive stool cultures. The ill worker with a negative culture had illness onset on July 11 but did not submit a stool specimen until July 31. Employees had meal privileges at the restaurant and ill workers had eaten multiple meals.

Nine of the E. coli O157:H7 isolates were submitted to CDC; all were confirmed. The State Public Health Laboratory conducted PFGE on isolates from 17 confirmed cases, an isolate from an Anchorage infection in July 2000, an isolate from a Sterling infection in September 2000, and three unrelated isolates from 1998. Twelve patron isolates and three employee isolates had an indistinguishable PFGE pattern, which was termed the "outbreak pattern." Two of the outbreak pattern isolates were submitted to the State Public Health Laboratory by an Arizona laboratory since the patients, both patrons of the Mad Moose, had returned home to Arizona by the time of illness onset. Two patron isolates were indistinguishable from the outbreak pattern with the BlnI enzyme but had a one band difference with XbaI enzyme. The three isolates from previous infections and the July Anchorage isolate had PFGE patterns markedly different from the outbreak pattern (the ill Anchorage resident had not eaten at the restaurant). The September Sterling isolate was similar to the outbreak pattern though the patient had not eaten at the restaurant (see attachment).

Findings from the DEC inspection conducted on July 19 were: inadequate separation of cooked meat, uncooked meat and other foods; use of a cutting board that could not be cleaned thoroughly; inappropriate cooling process for prime rib; and inadequate hand washing between handling uncooked meat and other foods.

All 13 food samples taken on July 19 tested negative for E. coli O157:H7. Results from the culturette swabs varied from common organisms such as Streptococcus to Enterobacter cloacae; no E. coli O157:H7 was identified.

A small amount of ground beef used by the restaurant was purchased from a major retail store in Soldotna. Most of the ground beef served during the outbreak was purchased from a supplier on the Kenai Peninsula. From July 6 to July 18 the restaurant received three 80-pound shipments. The supplier had purchased meat from an Anchorage distributor. This distributor had sold ground beef to multiple suppliers including the Kenai Peninsula supplier and an Anchorage supplier that had been the subject of the USDA recall.

The PFGE pattern of the E. coli O157:H7 isolate obtained by USDA from the recalled ground beef was different than the outbreak pattern. The restaurant owner denied purchasing any meat from the Anchorage supplier. The sausage and bacon served during breakfast were purchased from a different supplier on the Kenai Peninsula. The restaurant also obtained steak, prime rib, seafood, produce and miscellaneous items from this supplier.

We completed telephone interviews with 29 residents from 14 households on the list of restaurant patrons that had paid by check during July 6 to July 9. Five patrons had breakfast, five had lunch, and 21 had dinner; two of the lunch patrons also had breakfast during July 6 to July 9 (Table 3). Four reported having diarrhea 2 to 7 days after eating at the restaurant, all four reported having lunch or dinner at the restaurant on July 7 or July 9. The restaurant owner said 150 to 200 patrons ate lunch or dinner each day during July.

By applying the attack rate for lunch and dinner patrons in the survey (4/26 or 15%) to the estimated 1,500 to 2,000 lunch or dinner patrons served during July 7 to 19, we estimated at 225 to 300 persons may have been ill after eating at the restaurant.

All three workers with laboratory confirmed infection worked during the outbreak period. The other ill worker (with a negative stool culture) last worked on July 8 and became ill on July 11. All employees were involved in some food handling, preparation, or serving. There was no individual work schedule that matched the dates that ill patrons ate at the restaurant.

After the restaurant re-opened on August 4, one case of E. coli O157:H7 was reported from Sterling through the end of September. This case was not linked to the implicated restaurant (see attachment). There were seven other E. coli O157:H7 infections reported in Alaska between August 4 and September 30: five in Anchorage and one each in Seward and Fairbanks. None of these were linked to the restaurant

Discussion

Alaska has had very few E. coli O157:H7 infections reported (an average of 6.3 per year during 1997-1999), so the occurrence of almost 20 cases in less than a month is very unusual. The facts that all 19 laboratory confirmed cases either ate or worked at the Mad Moose and that 15 had an identical PFGE pattern were overwhelming evidence of a link between illness and the restaurant. The conclusion is further supported by the:

- absence of any other common exposure despite careful and extensive questioning,
- presence of serious sanitation deficiencies at the restaurant,
- mean interval between eating at the restaurant and illness onset was the same as the established incubation period (3 to 4 days, range 2 to 8 days) for E. coli O157:H7 infection, and
- observation that the outbreak stopped when the restaurant closed.

Although the epidemiologic and laboratory evidence demonstrated that the restaurant was the source of the outbreak, the investigation did not implicate any particular food item, food handler, or practice. This does not alter the conclusion that the outbreak came from the restaurant. Nearly all the patrons who became ill after eating on July 7, 9, and 11 had eaten hamburgers or prime rib. Given the well-established link between beef and E. coli O157:H7 and DEC's observation of food handling deficiencies, it is possible that the initial patrons and employees became ill after eating undercooked meat. Subsequently, infected restaurant workers could have been the source of illness among patrons who ate during July 13 to 19. A ground beef recall which occurred at the same time as the outbreak had no connection to the outbreak.

Food and kitchen surface samples taken on July 19 and 20 tested negative for E. coli O157:H7. These samples were collected 10 to 12 days after the outbreak started and were not from the same food shipments the ill patrons ate. Environmental swabs were collected after the restaurant closed and cleaning had occurred. Clearly, the culture results do not mean that meat served earlier did not contain E. coli O157:H7, that kitchen

surfaces were not contaminated, or that foods were not cross-contaminated with E. coli O157:H7 from meat.

Humans generally excrete E. coli O157:H7 for 1 or 2 weeks after being infected. Therefore, some of the nine workers who had negative stool cultures in mid- to late-July could have been culture positive earlier in the month. In particular, the worker with illness onset on July 11 could have had E. coli O157:H7 infection despite a negative culture of a stool collected on July 31.

Because the infectious dose is low, E. coli O157:H7 is readily transmitted from one person to another. Since the three workers with positive stool cultures worked while ill, a worker could have passed infection to patrons. We did not find a link between employee schedules and when patrons dined. However, the restaurant owner said the work schedule we were given was not the actual schedule (employees were allowed to trade days off or shifts). We requested a copy of the actual work schedule, but the owner did not provide one.

This outbreak was probably larger than the 31 cases identified. Investigation suggested that 15% of lunch and dinner patrons during the outbreak, or 225 to 300 persons, might have been sickened. Since some persons with E. coli O157:H7 infection have relatively mild symptoms, and many persons with diarrhea do not obtain medical care, we suspect that the true number of cases was substantially larger than the number of confirmed and clinical cases. The restaurant was in a community with a large influx of out-of-state tourists and additional cases may have returned home before becoming ill.

In conclusion, our investigation traced an E. coli O157:H7 outbreak to a restaurant. The restaurant was closed and the outbreak stopped. DEC worked with the owner and employees to correct all deficiencies before the restaurant re-opened. Because the source of the outbreak was quickly identified, disease transmission was stopped even though the precise mechanism of spread was not determined.

Acknowledgments: Janet Gleason and Lenore Winkopp at Central Peninsula Hospital were extremely helpful in providing up-to-date information as the outbreak progressed. Patty Little, PHN at the Kenai Health Center quickly and efficiently completed interviews and collected stool specimens.

Attachments: Interim Reports

Memo to the Record, Escherichia coli O157 – Sterling

CC: Brad Tufto, DEC
Jerry Ferrington, DEC
Cory Willis, DEC
Janet Gleason, Central Peninsula Hospital
Patty Little, Kenai Health Center

The Eating and Drinking Industry

by Neal Fried
Brigitta Windisch-Cole
and Lorraine Cordova
Labor Economists

Many Alaskans find work at eating and drinking places

"A man hath no better thing under the sun, than to eat, and to drink and to be merry."
Ecclesiastes 8:15

"The finest landscape in the world is improved by a good inn in the foreground."
Samuel Johnson

It is not just your imagination that eating places appear to be popping up literally everywhere these days—in gas stations, schools, airports, hotels, stores, along with those ubiquitous coffee shacks, and your actual stand-alone fast food eateries, bars, and sit-down restaurants. The eating and drinking industry is mushrooming across the nation. A third of all adults in the nation have worked in it some time in their lives. According to the National Restaurant Association, the average person eats 4.2 meals away from home every week, a frequency that has some home economists worried that cooking at home is becoming just a hobby, rather than a basic skill.

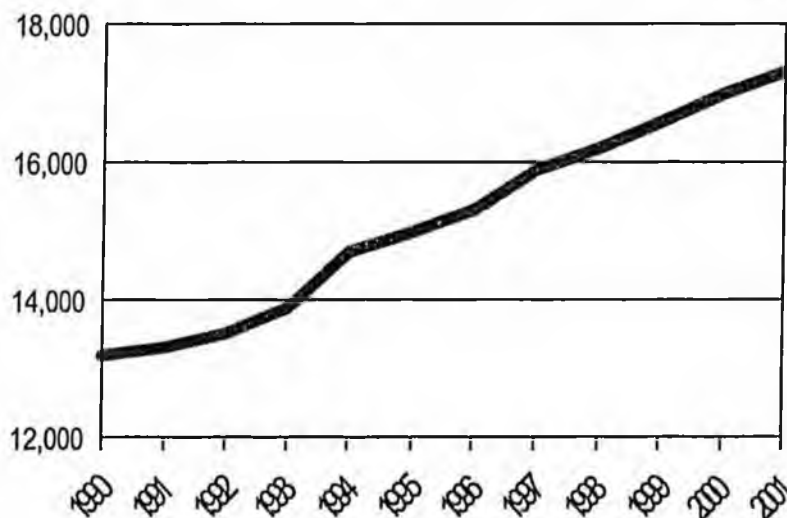
Alaska had 1,811 eating and drinking places in 2000, with sales projected to reach \$982 million in 2001, according to the National Restaurant Association. These numbers grow every year, and competition intensifies. Eating and drinking is one of Alaska's more dynamic and competitive sectors, growing faster than most other industries. The industry's shape and look is constantly in flux, driven by changes in demographics, the economy, technology, fashions, tastes, and the state's visitor industry.

Recognizing eating and drinking places

An eating and drinking place is defined as any business that prepares food and drink away from

home, that is consumed either at a restaurant, bar, cafeteria, at home, at a grocery store, in sports facilities, in jail, on the go, at work, or in a car. In fact, it is estimated that one-fifth of all meals are eaten in a car. Employment data for eating and drinking places include nearly all of the above-mentioned kinds of places. However, this employment count does miss some players. Many hotels have restaurants and bars incorporated in their business and this employment is most likely captured in the hotel industry, not eating and

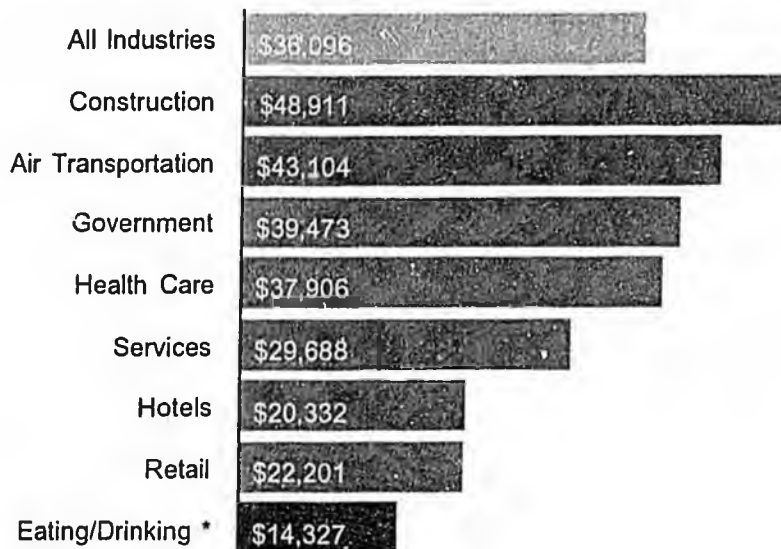
Restaurants Show Strong Growth In employment



Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

2 Wages in Eating and Drinking Compared to other industries

2001 average annual wage

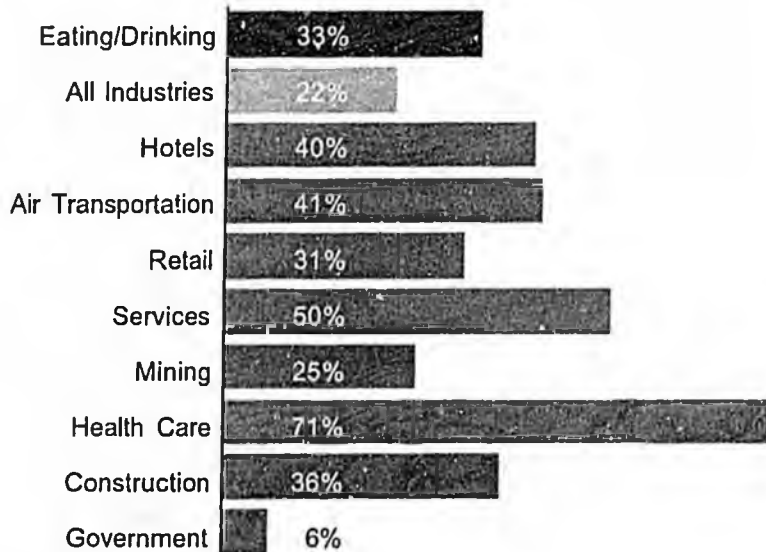


* Not including tips

Source: Alaska Department of Labor and Workforce Development,
Research and Analysis Section

3 Employment Growth Eating and Drinking vs. other industries

Percent employment growth 1990-2001



Source: Alaska Department of Labor and Workforce Development,
Research and Analysis Section

drinking. Nationally, estimates project that about 4.4% of all food consumed away from home is eaten in hotel restaurants. That figure may be higher in Alaska because of the size of the visitor industry. Another example of missed eating and drinking places employment is today's supermarket, which often devotes a large slice of the business to ready-to-eat or ready-to-heat meals. Employment numbers are counted in the grocery store category. So, impressive as these eating and drinking employment numbers are, they tend to underestimate employment in the food-away-from-home businesses.

The industry employs more than 17,300

During the past decade, employment in Alaska's eating and drinking establishments has grown 2.8% per year versus 1.8% for total employment. This industry has grown steadily and without interruption for over a decade. (See Exhibit 1.) It supports 4,200 more jobs today than a decade ago. In 2001, 17,300 jobs in Alaska were directly tied to the eating and drinking industry—more jobs than oil, or construction, the federal government, or a number of other industries. Measured by payroll, the figures tell a different story. Total payroll for eating and drinking places was \$248 million compared to \$736 million for construction in 2001. Lower wages and the pervasiveness of part-time or seasonal employment put the average eating and drinking wage at the bottom of all industries. (See Exhibit 2.)

Employment for eating and drinking establishments grew quickly, faster than overall employment in Alaska, (see Exhibit 3) and in the nation as a whole over the past decade. The industry's share of the Alaska employment pie has expanded over the past two decades. In 1980, eating and drinking establishments generated four percent of all wage and salary employment in Alaska. By 2001, that share had more than doubled to 8.5 percent of all employment, compared to 6 percent nationwide. Nevertheless, the average Alaska consumer spends a smaller portion on food away from home than other Americans.

Eating and drinking employment is concentrated on the road system

More than 82 percent of all eating and drinking employment occurs in Anchorage, Fairbanks, the Kenai Peninsula, and the Mat-Su Borough. More than half of all workers are in Anchorage alone. Most of Alaska's population lives in these four urban areas, which are road accessible and on the most traveled visitor routes. Among the rural areas, the heaviest concentration of eating and drinking workforce is at the entrance to Denali National Park. There, the population to industry worker ratio is extreme, with only four residents per eating and drinking employee. (See Exhibit 4.) This underscores the tremendous impact the summer workforce, catering to visitors, has on the Denali Borough. Tourist areas in Southeast employ over nine percent of the state's eating and drinking workforce, but their ratio of population to industry worker is much larger. Most tourists in Southeast are cruise ship passengers, who typically take their meals on board. It is interesting to note that in the two places that can be reached by road, Skagway and Haines, the concentration of eating and drinking worker to population intensifies. Rural areas off the beaten path typically have much smaller eating and drinking industries. The exception is the North Slope Borough, where a relatively large food service workforce supports the oil industry.

More than a third of food dollars spent away from home

The average Anchorage consumer spent \$2,498 per year on food away from home—which was 17 percent more than the average U.S. consumer, who spent \$2,126. Some of this higher expense for Anchorage can be explained by higher costs, higher income and other factors. Expenditures in eating and drinking establishments generate business activity in other industries. According to the National Restaurant Association, each dollar spent in Alaska's eating and drinking industry generates another \$.62 in sales elsewhere. But

Restaurant Employment And population by area—2001 **4**

	Restaurant Employment 2001	Population	Ratio of Population to Restaurant Emp'oyment
Statewide	17,301	626,932	36
Aleutians East Borough	2	2,697	1,349
Aleutians West Census Area	51	5,465	107
Anchorage, Municipality	9,820	260,283	27
Bethel Census Area	26	16,006	616
Bristol Bay Borough	15	1,258	84
Denali Borough	479	1,893	4
Dillingham Census Area	26	4,922	189
Fairbanks North Star Borough	2,212	82,840	37
Haines Borough	62	2,392	39
Juneau Borough	708	30,711	43
Kenai Peninsula Borough	1,216	49,691	41
Ketchikan-Gateway Borough	337	14,070	42
Lake and Peninsula Borough	n/a	1,823	n/a
Northwest Arctic Borough	36	7,208	200
Kodiak Island Borough	322	13,913	43
Matanuska-Susitna Borough	1,009	59,322	59
Nome Census Borough	110	9,196	84
North Slope Borough	271	7,385	27
Prince of Wales Census Area	91	6,146	68
Sitka Borough	192	8,835	46
Skagway-Hoonah-Angoon	92	3,436	37
Southeast Fairbanks Area	90	6,174	69
Valdez-Cordova Area	175	10,195	58
Wade Hampton Census Area	n/a	7,208	n/a
Wrangell-Petersburg CA	95	6,684	70
Yakutat Borough	19	808	43
Yukon Koyukuk Census Area	14	6,551	468

Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

5 Restaurant Sales by State Projected 2001

	Sales	Per Capita Sales
Alabama	\$3,785,512,000	\$848
Alaska	981,836,000	1,546
Arizona	5,803,522,000	1,093
Arkansas	2,108,463,000	783
California	38,791,181,000	1,124
Colorado	5,532,611,000	1,252
Connecticut	3,556,800,000	1,038
Delaware	1,028,488,000	1,292
Florida	19,977,170,000	1,218
Georgia	9,372,042,000	1,118
Hawaii	2,729,595,000	2,229
Idaho	1,183,084,000	896
Illinois	13,447,511,000	1,077
Indiana	6,507,865,000	1,064
Iowa	2,743,588,000	939
Kansas	2,589,664,000	961
Kentucky	3,876,847,000	954
Louisiana	3,976,505,000	891
Maine	1,278,021,000	993
Maryland	5,949,301,000	1,107
Massachusetts	7,887,413,000	1,236
Michigan	10,386,132,000	1,040
Minnesota	5,207,177,000	1,047
Mississippi	1,866,886,000	653
Missouri	5,909,281,000	1,050
Montana	1,053,856,000	1,165
Nebraska	1,768,602,000	1,032
Nevada	2,635,773,000	1,252
New Hampshire	1,374,268,000	1,091
New Jersey	8,435,056,000	994
New Mexico	1,953,459,000	1,068
New York	18,624,395,000	980
North Carolina	8,565,399,000	1,046
North Dakota	618,254,000	974
Ohio	12,108,456,000	1,065
Oklahoma	3,276,514,000	947
Oregon	3,961,123,000	1,141
Pennsylvania	11,757,078,000	957
Rhode Island	1,112,729,000	1,051
South Carolina	4,350,145,000	1,071
South Dakota	737,355,000	975
Tennessee	6,033,354,000	1,051
Texas	22,516,648,000	1,056
Utah	2,035,897,000	897
Vermont	672,066,000	1,096
Virginia	7,163,242,000	997
Washington	7,223,415,000	1,206
West Virginia	1,357,741,000	753
Wisconsin	5,504,860,000	1,019
Wyoming	577,941,000	1,169
U.S.	303,326,361,000	1,065

Source: National Restaurant Association

among all U.S. states, Alaska's multiplier not surprisingly ranked weakest. Very little of the food and drink consumed by patrons is produced in the state. Other economic leakages also exist.

The 2000 expenditure survey conducted by the U.S. Department of Labor established that Anchorage residents spent more than a third (36 percent) of their food budget on food consumed away from home, while the average American consumer spent 42 percent of their food dollar away from home—a significantly higher figure. The difference is puzzling, given Anchorage's demographics that favor dining out. Per capita expenditures on dining out paint an altogether different picture. Per capita spending in eating and drinking places was \$1,546 in Alaska versus \$1,065 nationally—a full 45 percent above the national average, according to the National Restaurant Association's 2001 figures. In proportion of food dollars spent on meals eaten out, Alaska is below the national norm, suggesting room for more growth. The per capita expenditures, on the other hand, mean Alaska's eating and drinking industry benefits from the patronage of non-Alaskans.

Visitors are big patrons of eating and drinking

Visitors are important patrons of the eating-away-from-home industry, and the visitor industry in Alaska has grown much faster than most other industries. According to a 1999 visitor expenditure study, visitors spent \$63 million for eating and drinking and generated 4,120 eating and drinking jobs in Alaska in 1998. This represents nearly a third of all of the jobs in the industry. Only hotels and lodging generated more jobs. The Denali Borough, where the visitor industry reigns king, provides a special example of the influence visitors have on the eating and drinking sector. In 2001, there were 36 Alaskans for each eating and drinking job in the state, and only four residents for each such job in the Denali Borough. (See Exhibit 4.) Visitors, of course, are not counted in resident population figures, and during the summer months they far outnumber the resident population. Visitors spend most of their food dollar in local eating establishments, boosting the jobs-to-residents ratio way above the statewide average. Visitor impact on

this industry also probably explains why Alaska ranks number two among the states in per capita eating and drinking sales, bested only by Hawaii. (See Exhibit 5.)

The visitor share of the eating and drinking industry also explains most of its seasonal nature. In 2001, the low point in this industry's employment was January at 15,200 compared to its peak in August at 19,800. (See Exhibit 6.)

Restaurant food sales vary across state

Alaska's eating and drinking industry grossed over \$730 million in 1997. (See Exhibit 7.) On a statewide basis, full service restaurants took in the largest share of revenues, followed by fast food and food service companies. Bar sales were 11 percent of the statewide eating and drinking revenues in 1997. (See Exhibit 8.) Anchorage claimed well over half of all restaurant and bar sales in the state, a disproportionately large share. Fairbanks, the Kenai Peninsula, Juneau, and the Mat-Su Borough fell in line in descending order. In 1997, 41.7% of Alaska's population lived in Anchorage but it booked 56 percent of Alaska's restaurant/bar industry sales. As Alaska's commercial center, Anchorage entertains business and in-state travelers, tourists, commuters, and its own growing population. Anchorage's relative high income compared to the rest of the state also helps to support the large number and variety of dining places.

Anchorage's restaurants tend to be large

Anchorage, the culinary hot spot of the state, had nearly 600 eating and drinking places in 2001. According to municipal records, about a third of Anchorage restaurants are small with seating up to 25; nearly 17 percent of the restaurants can seat between 26 and 50 patrons; but over half can seat more than 50 guests. (See Exhibit 9.) Many of the small places sell take-out fast food such as pizzas, hamburgers, sandwiches, Asian, and Mexican food specialties. Cafés, delis, and snack bars in hotels, meeting places, and grocery and convenience stores are sub-groups of the small eating establishments. The medium and large

sized establishments sell similar food items but many are more specialized and offer more variety on their menus.

Asian food leads Anchorage's specialty menu

Among the specialty eating establishments, Asian restaurants, pizza, and hamburger places claim the top spots. (See Exhibit 10.) Many other specialty places present choices. Steakhouse and seafood restaurants are classified in the all variety section, which forms the largest portion of Anchorage's restaurant mix. Among Asian restaurants the Chinese kitchen dominates, and Mexican restaurants are in the runner-up position in the foreign food specialty group. (This assumes that pizza is an all-American food.) In continental specialties, restaurants featuring Italian cuisine (excluding pizzerias) are in the lead spot.

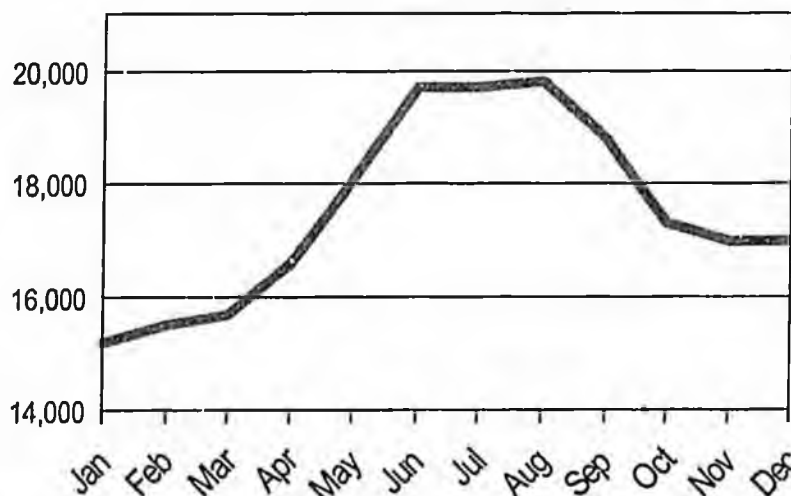
In restaurants, services personnel dominate the employment mix

Eating places have distinct occupational patterns by type. In catering establishments or camp kitchens, for example, food preparation workers

Employment Swings Seasonally In the eating and drinking business

6

Employment 2001



Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

form the largest portion of the staff. In Alaska, they are the largest occupation in the eating and drinking industry because of full food service support to industries with remote work site locations such as the North Slope and the Northwest Arctic Borough. Cafeterias, fast food, take-out places, and even delis tend to have more kitchen staff, but restaurants employ mainly services personnel.

Data compiled from a sample of 28 full service restaurants in the state show waiters and waitresses claiming the largest occupational slice. (See Exhibit 11.) In combination with other service personnel, nearly 52 percent of all staff had direct contact with the customer. Basic kitchen functions were carried out by 34 percent of the employees, and support functions, including management, make up the remaining 14 percent of all restaurant staff.

Alaska's eating and drinking workforce is large and dynamic

In 2001, the eating and drinking industry employed more than 49,600 individual workers, which compares with an average annual job count of 17,300. This indicates considerable turnover in the industry. Seasonality, lower wages, and part-time employment help drive turnover. In 2000, over 30,650 new hires were recorded for the industry. A new hire is a worker who did not work for the same employer in the previous four quarters. According to national statistics, 38 percent of all eating and drinking industry workers are part-time employees, double the overall average, and they work typically 25.5 hours per week. The industry is attractive to workers seeking a flexible schedule, income during slack times such as for students, or to supplement existing employment in other industries. Many employees in Alaska work only the summer season, which implies that students from other places and transient workers form a large group within the seasonal workforce. In 2000, nearly 6,400 or 23 percent of Alaska's eating and drinking workforce were non-resident workers, considerably above the all-industry average of 18 percent.

Workforce is young and female

According to a 1999 workforce age analysis, the typical eating and drinking industry worker is only 29.2 years old, making it the youngest major industry workforce in the state. The average age of an Alaska worker was 37.3 years. Women workers predominate in the industry, which has 130 women workers for every 100 men. Four out of every five wait-staff are females. But some

7 Eating and Drinking Sales By area—1997

	Restaurant Sales
Statewide	\$730,221,000
Aleutians West Census Area	n/a
Aleutians East Borough	n/a
Anchorage, Municipality	408,202,000
Bethel Census Area	1,115,000
Bristol Bay Borough	1,545,000
Denali Borough	2,659,000
Dillingham Census Area	n/a
Fairbanks North Star Borough	79,155,000
Haines Borough	2,935,000
Juneau Borough	40,315,000
Kenai Peninsula Borough	43,544,000
Ketchikan-Gateway Borough	15,485,000
Lake and Peninsula Borough	n/a
Northwest Arctic Borough	8,551,000
Kodiak Island Borough	10,773,000
Matanuska-Susitna Borough	37,854,000
Nome Census Borough	4,535,000
North Slope Borough	26,610,000
Prince of Wales-Outer Ketchikan CA	4,611,000
Sitka Borough	10,273,000
Skagway-Hoonah-Angoon CA	3,163,000
Southeast Fairbanks Census Area	3,623,000
Valdez-Cordova Census Area	9,897,000
Wade Hampton Census Area	n/a
Wrangell-Petersburg Census Area	n/a
Yakutat Borough	n/a
Yukon-Koyukuk Census Area	2,931,000

Source: U.S. Census Bureau, 1997 Economic Census

occupations are male dominated; the male/female ratio for cooks, for example, is 140 to 100.

Wages tend to be low

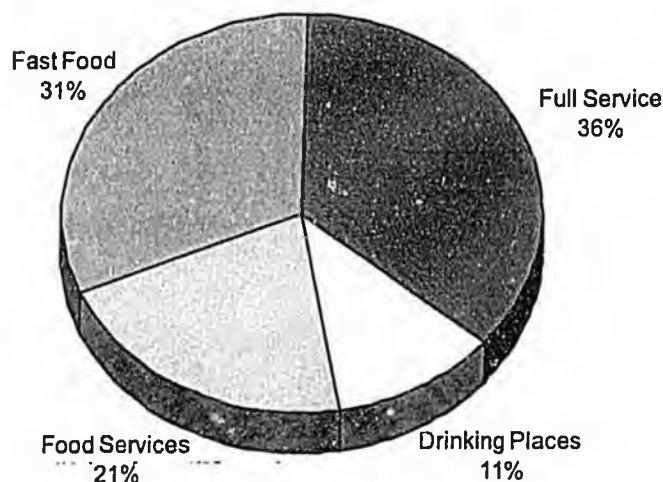
In general, eating and drinking jobs do not require previous training, which in part explains the relatively low hourly earnings. (See Exhibit 12.) The higher paying jobs in the industry usually require work experience and/or specialty training. Chefs/head cooks, food service managers, other food preparation supervisors, and bookkeepers belong to this group. In all, Alaska's hourly wages in 2000 compare favorably to the national averages. In some cases the differential is quite significant. The hourly pay rate for cooks in institutions or cafeterias in Alaska, for example, exceeded the national average by 62 percent. Fast food cooks and food preparation workers also earn substantially more per hour than their colleagues in the rest of the nation. Their differentials were 50 percent and 46 percent higher than the national average. Only a few exceptions countered the higher Alaska pay rule. Hourly pay rates for food service managers and drivers were a bit lower in the state than in the nation.

Tip earning personnel, such as waiters, waitresses and bartenders, gross more per hour than their posted wage rates. Many restaurant and bar patrons add about fifteen percent for tips to their food/bar bill for good service. Theoretically, tips are included in pay rates, but often only those noted on credit card sales are included. Cash tips may not be considered in wage rate surveys, simply because they bypass the employer's business records.

Geographic earning differentials exist within the state

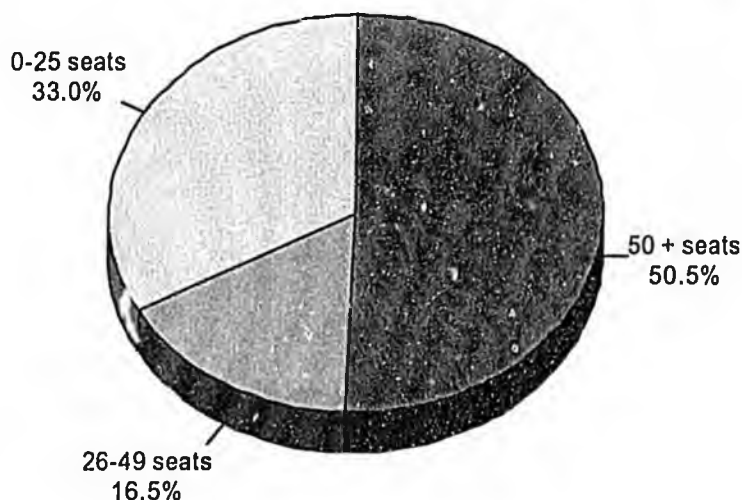
In some ways, the concentration of food service companies explains the vast disparities in earnings in different Alaska locations. In 2001, the highest average quarterly earnings per industry worker occurred on the North Slope, where the food service employees support the oil industry workforce on a year round basis. Overtime plays

Where the \$730M is Spent **8** In the state's eating/drinking places



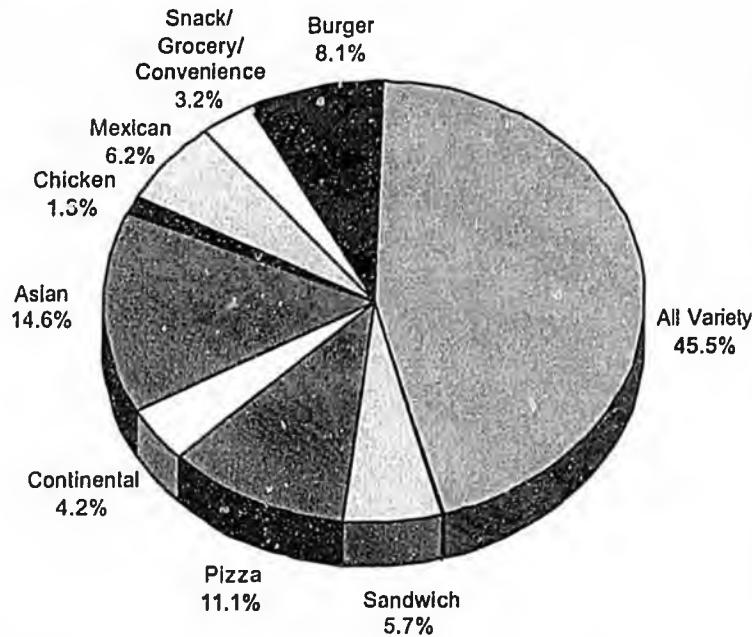
Source: U.S. Census Bureau, 1997 Economic Census

Large Restaurants Dominate **9** In Anchorage



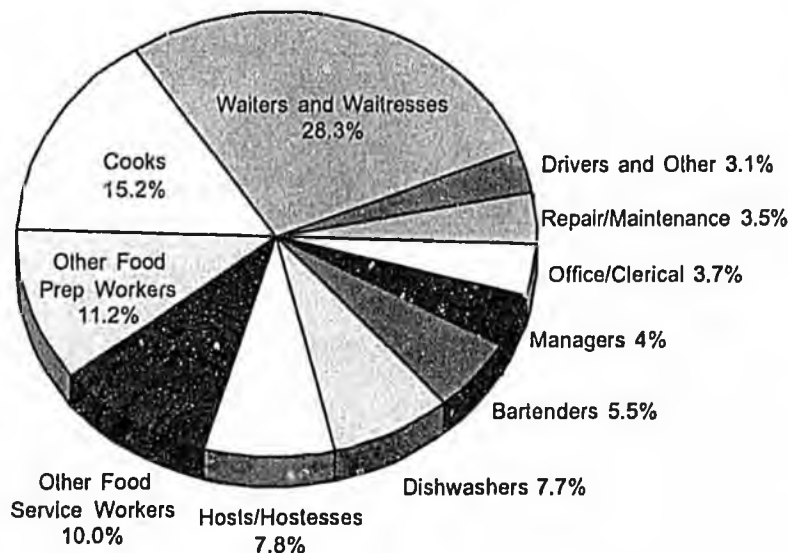
Source: Municipality of Anchorage, Food Safety and Sanitation Program

10 Anchorage Specialty Menus Offer variety



Source: Municipality of Anchorage, Food Safety and Sanitation Program

11 Employee Occupation Mix At 28 Alaska full service restaurants



Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

a big role in these wages. Food service workers typically are on shift rotation just like the oil industry workforce. The Northwest Arctic Borough's eating and drinking wages were the second highest because of the Red Dog Mine. Its remote work site location and year-round operation explain these higher wages. The Denali Borough's third place is harder to explain. Here, most money is earned during the second and third quarters of the year. Above average hourly pay and considerable overtime most likely play a role.

In some ways Alaska's eating and drinking industry is unique

Among the largest employers in Alaska's eating and drinking industry are food service companies and caterers. (See Exhibit 13.) Remote camp support, institutional kitchens, and resorts are their marketing niche. Companies such as Nana/Marriott, Doyon/Universal Ogden, Aramark Leisure Services, and Skychefs contract with oil, metal mining, resort, and airline industries. Currently, both Aramark and Nana/Marriott also have cafeteria contracts with the University of Alaska in Anchorage and Fairbanks. Several chain restaurants, managed by specific franchise holders in the state, also made the state's list of the largest eating and drinking employers. However, most eating and drinking industry employees work for small employers. (See Exhibit 14.)

The future of eating and drinking

Continued growth in the eating and drinking industry appears certain—particularly in Alaska's urban communities. A recent ten-year industry forecast predicted that the eating and drinking places industry will grow faster than the overall economy. Many factors will influence the rate and shape of this growth. The state of the economy, growth in consumer income and spending power, population growth, demographics, trends in the visitor industry, and consumer preferences will all be important determinants. The long-term outlook for Alaska's visitor industry remains a big positive—not just in urban Alaska but also in the more rural parts of the state. In ten years, the eating and drinking landscape in Alaska will offer residents even more entrée choices. *Bon appétit.*

Wage Rates for Eating and Drinking Occupations **2000** **12**

	Alaska Average Hourly Wage *	National Average Hourly Wage *
Food Preparation		
Combined Food Preparation and Serving Workers, Including Fast Food	\$7.42	\$6.84
Cooks, Restaurant	11.12	9.68
Food Preparation Workers	11.65	7.78
Food Preparation and Serving Related Workers, All Other	13.28	n/a
Cooks, Fast Food	9.87	6.78
Cooks, Short Order	9.83	7.92
First-Line Supervisors/Managers of Food Preparation and Serving Workers	14.00	11.83
Cooks, Institution and Cafeteria	14.10	8.68
Chefs and Head Cooks	14.68	13.73
Bakers	10.54	10.12
Food Service		
Waiters and Waitresses	7.39	7.09
Dishwashers	8.50	7.00
Bartenders	9.38	7.77
Dining Room and Cafeteria Attendants and Bartender Helpers	7.41	6.95
Counter Attendants, Cafeteria, Food Concession, and Coffee Shop	8.81	7.23
Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop	7.79	7.32
Food Servers, Nonrestaurant	8.47	7.77
Laborers		
Driver/Sales Workers	10.64	11.08
Janitors and Cleaners, Except Maids and Housekeeping Cleaners	11.40	9.17
Office/Clerical		
Food Service Managers	16.10	16.51
Bookkeeping, Accounting, and Auditing Clerks	14.75	12.96

* Based on Occupational Employment Statistics Survey data - 2000

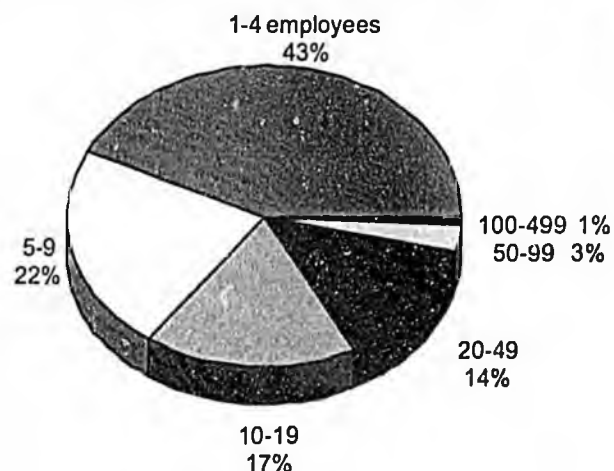
Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

13 Eight of the Top 100 Private sector employers Are in eating and drinking

	Employment 2000	Primary function
NANA/Marriott, Joint Venture	1,093	catering
Aramark Leisure Services	520	catering
Doyon/Universal Ogden, JV	519	catering
Pizza Hut	467	restaurants
Burger King	465	restaurants
Denali Food/Taco Bell	381	restaurants
Skychefs	277	catering
McDonalds	258	restaurants

Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

Most Employees **14** Work for small employers Eating and drinking industry employees-1999



Source: U.S. Department of Commerce, County Business Patterns 1999



Knowledgeable Workforce

Trained Workers

Certified Managers

Managing Risks

Quarterly Self Assessments

Standard Operating Procedures:

- Cleaning & Sanitizing
- Receiving & Storage
- Handwashing
- Employee Health
- Risk Factor related SOPs

Enforcement

Record Audits

Risk Based Inspections

Enforcement Actions

Testimony HB 378

Kristin Ryan - Director, Division of Environmental Health

- Restaurant industry sales account for 4 percent of the U.S. gross national product. According to the National Restaurant Association, Alaska saw sales of \$878 million in 2003, and is projected to see sales of \$922 million in 2004 (a 5% increase).
- Nationwide, the industry employs 12 million people, the nation's largest private-sector employer. In Alaska the numbers vary by season but averages to about 20,000 or 3% of the population (total pop 626,932).
- In 2000, an E. Coli outbreak at a Kenai restaurant resu'ted in 31 known sick Alaskans and an estimated 300 more unknown. The cause was infected workers, poor hand washing, food temperature control and cross contamination - All things easily avoided by a knowledgeable workforce. The operation permanently closed as a result.

Alaska needs a more effective food safety system - a system that ensures operators and staff are knowledgeable about food safety and accountable for controlling practices and procedures that contribute to foodborne illness. A system that sets reasonable standards, can be equitably implemented in both urban and rural settings, and does not rely on an infrequent government inspection to determine if standards are being met on a day-to-day basis.

- **Certification is a necessary part of an effective food safety system.**
- **Enforcement tools are necessary to promote compliance.**
- **Certification and enforcement are key components of Alaska's new Food Safety protection system called Active Managerial Control.**

1. Certification is a necessary part of an effective food safety system.

- a. Government food protection programs across the country are grappling with diminishing resources and ineffective delivery systems. Relying on government inspections as the primary tool to ensure high sanitary standards is no longer considered an effective method to ensure food offered or sold to the public is safe. The premise that inspections can improve sanitation of restaurants is flawed. Alaska has never been able to inspect frequently enough to truly protect public health. A national trend toward a more effective food safety program makes it a food worker's responsibility to practice established safe food handling skills 365 days a year, and prove it through certification and testing.
- b. A national study found restaurants for which managers were required to attend a training and certification program demonstrated significantly improved sanitation practices that were sustained over a two-year follow-up period.
- c. Alaska's food permit holders were asked what they needed for a safe food handling system. Out of 321 respondents 89% stated mandatory food manager certification was necessary and 82% believed mandatory food handler training was also necessary.

- d. Forty-one States or local governments have mandated certification requirements. Most remaining jurisdictions have voluntary programs like Alaska's current program.
- e. It is a mark of professionalism to meet criteria determined by one's peers. Lawyers take the bar examination, doctors pass boards, and public accountants become CPAs. The process of certification and demonstrated knowledge raises professional esteem and expectations.

2. Enforcement tools are necessary to promote compliance.

- a. Issuing a notice of violation, closing a facility, or pursuing criminal prosecution are currently the only enforcement tools DEC can use to promote compliance. Closing a facility is only appropriate when a serious health threat exists, and there are practical, procedural, and economic constraints to pursuing criminal prosecution for regulatory violations. Having the capacity to issue appropriate fines for violations that are significant or repeat violations provides a more reasonable, efficient, and effective mechanism to ensure food offered or sold to the public is safe and deter subsequent violations.
- b. Some say that the threat of consumer lawsuits is adequate motivation for operators to serve safe food. However, many foodborne illnesses go unreported and cannot be attributed to a specific eating establishment. The median reported cases were 25:1.

3. Certification and enforcement are key components of Alaska's new Food Safety protection system called Active Managerial Control.

Each individual in the food chain from farmer to processor to retailer to consumer has some responsibility for food safety. The ultimate responsibility at the retail level lies not with the regulator but with the food service operators.

What makes an effective food safety system or regulatory program?

- a. Unambiguous statutory authority. Alaska has a solid statutory foundation to ensure sanitary practices are used in the operation of a food handling establishment.
- b. Documented basis for concern.
 - 1. Centers for Disease Control estimates 76 million illnesses, 325,000 hospitalizations and 5,000 deaths a year caused by foodborne illness
 - 2. Foodborne illness can be traced to several sources--61% is traced to the foodservice industry, 32% to homes and 7% to food processing plants.
- c. Protective standards - With nearly 100 years of food safety regulation experience in the U.S. we know that the 5 risk factors that must be controlled are: food from unsafe sources, inadequate cooking, inadequate holding, contaminated equipment and poor personal hygiene.

- d. Rational regulatory scheme. 32 Alaska food safety experts (Food Safety and Sanitation staff) have reviewed how jurisdictions and industry ensure food safety in other states and developed Alaska's new regulatory scheme called Active Managerial Control. As the name implies, responsibility for food safety has been clearly placed on operators. It consists of food service workers that are knowledgeable about the causes of foodborne illness and practices to control them, written standard operating procedures and self-audits, and DEC enforcement implemented through on-sight inspections and record audits. HB 378 is needed to make the proposed rational regulatory scheme of AMC possible.
- e. Documented compliance. AMC incorporates various ways for operators to document and DEC health officers to verify compliance.
- f. Enforcement. Flexible mechanisms are needed to promote compliance through appropriate actions that prevent and deter rather than ineffective mechanisms that only react and punish.

- **Certification is a necessary part of an effective food safety system.**
- **Enforcement tools are necessary to promote compliance.**
- **Certification and enforcement are key components of Alaska's new Food Safety protection system called Active Managerial Control.**

HB

379

SENATE COMMITTEE REPORT

DATE: 04/28/04

FURTHER: Finance

DATE TURNED IN TO OFFICE: 5/2/04

State Affairs Committee considered HOUSE BILL NO. 379

HB 379 OFFICE OF CITIZENSHIP ASSISTANCE

"An Act establishing an office of citizenship assistance in the Department of Labor and Workforce Development."

and recommends:

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

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

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DL&WD	4/2/04	✓			2

APPROPRIATION - no fiscal note

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 379
(H) Publish Date: 3/24/04

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
Title: Office of Citizenship Assistance RDU: Office of the Commissioner
Sponsor: Representative Weyhrauch Component: Commissioner's Office
Requester: House L&C Component Number: 340

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	64.0	64.0	64.0	64.0	64.0	64.0
Travel	3.0	3.0	3.0	3.0	3.0	3.0
Contractual	35.6	35.6	35.6	35.6	35.6	35.6
Supplies	9.7	3.5	3.5	3.5	3.5	3.5
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	112.3	106.1	106.1	106.1	106.1	106.1

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	112.3	119.0	119.0	119.0	119.0	119.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	112.3	106.1	106.1	106.1	106.1	106.1

Estimate of any current year (FY2004) cost: None

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

POSITIONS

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

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

See attached analysis.

Prepared by: Guy Bell, Director Phone: 465-2720
Division: Administrative Services Division Date/Time: 2/27/04 8:22 AM
Approved by: Greg O'Claray, Commissioner Date: 2/27/2004
Agency: Department of Labor and Workforce Development

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

FISCAL NOTE #1

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: HB 379

ANALYSIS: (continued)

HB 379 establishes the Office of Citizenship Assistance. The Office will provide employment information and referrals to public and private resources to persons who reside in the state, are not a citizen of the United States, and are in compliance with federal visa requirements. The Office will have an office located in Juneau that will be staffed by an Employment Security Analyst II. The Office will establish a web page and retain the services of language interpreters. Costs are estimated at \$112,250 and include:

Personal Services

Employment Security Analyst II	Range 17	64,000
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Travel

4 trips to assist clients	3,000
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Contractual

Interpreter Fees (200 hrs @ \$120/hour)	24,000	
Phones (office and toll free number)	1,200	
Postage	1,000	
Office Lease	3,000	
Dept Overhead (10% of Pers Svcs)	6,400	
		35,600

Supplies

Office Supplies	2,000	
Informational Booklets and Publications	1,500	
One Time Items to Establish Office		
PC and Printer	3,750	
Phones and Fax Machine	1,250	
Desk and Chair	850	
Chairs for Waiting Clients	300	
		9,650

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 379
(H) Publish Date: 4/21/04

Revision Date/Time: 04-21-04 11:09 AM Department: Labor and Workforce Development
Title: Office of Citizenship Assistance RDU: Office of the Commissioner
Sponsor: Representative Weyhrauch Component: Commissioner's Office
Requester: House FIN Component Number: 340

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	64.0	64.0	64.0	64.0	64.0	64.0
Travel	3.0	3.0	3.0	3.0	3.0	3.0
Contractual	15.6	15.6	15.6	15.6	15.6	15.6
Supplies	9.7	3.5	3.5	3.5	3.5	3.5
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	92.3	86.1	86.1	86.1	86.1	86.1

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	92.3	86.1	86.1	86.1	86.1	86.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	92.3	86.1	86.1	86.1	86.1	86.1

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Guy Bell, Director Phone 465-2720
Division: Administrative Services Division Date/Time 4/21/04 11:20 AM
Approved by: Greg O'Claray, Commissioner Date 4/21/2004
Agency: Department of Labor and Workforce Development

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: HB 379

ANALYSIS: (continued)

HB 379 establishes the Office of Citizenship Assistance. The Office will provide employment information and referrals to public and private resources to persons who reside in the state, are not a citizen of the United States, and are in compliance with federal visa requirements. The Office will have an office located in Juneau that will be staffed by an Employment Security Analyst II. The Office will establish a web page and retain the services of language interpreters. Costs are estimated at \$92,250 and include:

Personal Services

Employment Security Analyst II	Range 17	64,000
--------------------------------	----------	--------

Travel

4 trips to assist clients	3,000
---------------------------	-------

Contractual

Interpreter Fees	4,000	
Phones (office and toll free number)	1,200	
Postage	1,000	
Office Lease	3,000	
Dept Overhead (10% of Pers Svcs)	6,400	15,600

Supplies

Office Supplies	2,000
Informational Booklets and Publications	1,500

One Time Items to Establish Office

PC and Printer	3,750	
Phones and Fax Machine	1,250	
Desk and Chair	850	
Chairs for Waiting Clients	300	9,650

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4

ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

SPONSOR STATEMENT

Citizen Assistance Office

“An act establishing an Office of Citizenship Assistance in the Department of Labor and Workforce Development.”

House Bill 379 would create an office to assist naturalized citizens and citizen candidates in Alaska.

HB 379 establishes the Office of Citizenship Assistance in the Department of Labor and Workforce Development. Naturalized citizens and people who are actively pursuing United States citizenship could receive help navigating through state employment and federal immigration agencies.

The Office of Citizenship Assistance would also act as a liaison between individuals, the office of the Commissioner and state and federal agencies as well as private sector. Under this legislation the Office would assist in immigration services, employment services, affordable legal service, medical services, and educational opportunities. Information would be available regarding job discrimination, sexual harassment, and unsafe working conditions.

Alaska has a rich history of immigration. Through this legislation, the Office would be sensitive to the diverse cultural backgrounds of those it would serve. This Office will bridge the transition of adjustment for incoming new citizens to Alaska.

Salvador S. Lumba
P.O. BOX 20514
Juneau, AK 99802
Tel (907) 586-1256
Cell (907) 321-6077

22 April 2004

Alaska State Legislature
REPRESENTATIVE BRUCE WEYHRAUCH

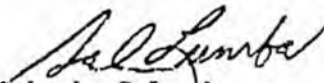
SUBJECT: HB 379
RE: Office of Citizenship Assistance

Sir Bruce:

The undersigned do hereby manifest his all-out support on the final approval and implementation of House Bill No. 379 Re: Office of Citizenship Assistance, including the finance appropriation, the Finance Committee public hearing thereof was held yesterday 0830 21 April 2004 at Rm. 519 Capitol Building, Juneau, Alaska.

The aforesaid enactment is of great importance and must be given utmost priority consideration. Likewise, the recipients to such services are looking forward to its immediate implementation statewide.

More Power,


Salvador S. Lumba

April 20, 2004

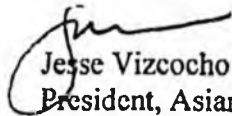
Dear Representative Weyrauch,

I am writing this letter in support of House Bill 379- an act establishing the office of citizenship assistance.

I appreciate all your efforts in sponsoring HB 379 which will greatly benefit not only the immigrants, minorities, and other under represented members of our community but also our great state, the State of Alaska.

Thank you once again for your care and hard work.

Sincerely,



Jesse Vizcocho

President, Asian American & Pacific Islander Association of Alaska.

Phone:(907) 562-0125

E-mail: jessviz@acsalaska.net

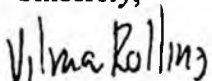
April 20, 2004

Dear Representative Weyrauch,

I am writing this letter in support of House Bill 379- an act establishing the office of citizenship assistance.

Thank you once again for your care and hard work.

Sincerely,



Vilma Rollins

Member, FCA

Phone:(907)248-1054

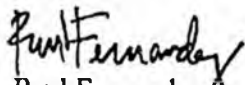
April 20, 2004

Dear Representative Weyrauch,

I am writing this letter in support of House Bill 379- an act establishing the office of citizenship assistance.

Thank you once again for your care and hard work.

Sincerely,

A handwritten signature in black ink that reads "Paul Fernandez". The signature is written in a cursive style with a large, stylized "P" and "F".

Paul Fernandez
Member, FCA
Phone:(907)336-1578

April 20, 2004

Dear Representative Weyrauch,

I am writing this letter in support of House Bill 379- an act establishing the office of citizenship assistance.

I appreciate all your efforts in sponsoring HB 379 which will greatly benefit not only the immigrants, minorities, and other under represented members of our community but also our great state, the State of Alaska.

Thank you once again for your care and hard work.

Sincerely,

Josie Isla
Owner, Blessed Assurance Assisted Living.
Phone:(907) 349-1402
E-mail: rccity7648697@msn.com

April 20, 2004

Dear Representative Weyrauch,

I am writing this letter in support of House Bill 379- an act establishing the office of citizenship assistance.

Thank you once again for your care and hard work.

Sincerely,


Finau Malupo
Tongan Community
Phone:(907)243-3080

April 20, 2004

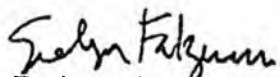
Dear Representative Weyrauch,

I am writing this letter in support of House Bill 379- an act establishing the office of citizenship assistance.

I appreciate all your efforts in sponsoring HB 379 which will greatly benefit not only the immigrants, minorities, and other under represented members of our community but also our great state, the State of Alaska.

Thank you once again for your care and hard work.

Sincerely,



Evelyn Falzerano

Phone:(907) 830-2202

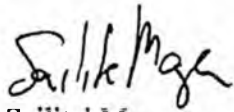
April 20, 2004

Dear Representative Weyrauch,

I am writing this letter in support of House Bill 379- an act establishing the office of citizenship assistance.

Thank you once again for your care and hard work.

Sincerely,



Sailitai Maga

Pastor, First Samoan United Methodist Church

Phone:(907) 223-5669

April 20, 2004

Dear Representative Weyrauch,

I am writing this letter in support of House Bill 379- an act establishing the office of citizenship assistance.

Thank you once again for your care and hard work.

Sincerely,

A handwritten signature in black ink that reads "Lauro Villareal". The signature is written in a cursive style with a large initial "L".

Lauro Villareal
Member, FCA
Phone:(907)336-4295

April 20, 2004

Dear Representative Weyrauch,

I am writing this letter in support of House Bill 379- an act establishing the office of citizenship assistance.

I appreciate all your efforts in sponsoring HB 379 which will greatly benefit not only the immigrants, minorities, and other under represented members of our community but also our great state, the State of Alaska.

Thank you once again for your care and hard work.

Sincerely,

Rolando Torralba
CEO, Eklutna Glacier Bottling Company
Phone:(907) 351-6622

April 22, 2004

Dear Rep. Bruce Weyrauch:

Please be informed that we are supporting the House Bill 379 for the purpose of creating the Office of Citizenship Assistance.

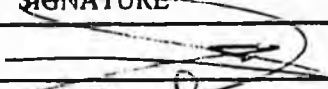
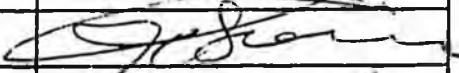
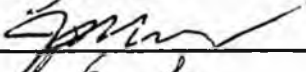




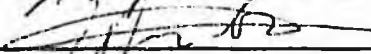

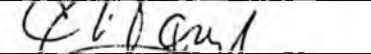
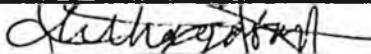
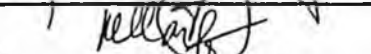
We are deeply touched by your commitment to bring the immigrant issues to the forefront of the legislative agenda. Through your leadership, your co-legislators will join you in your vision to bring this vital service to the people of the State of Alaska.



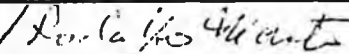
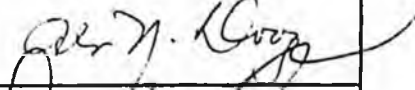
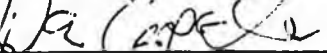

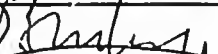


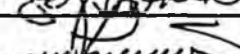
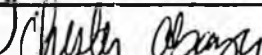
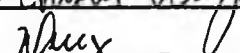
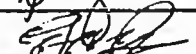
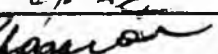

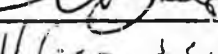
This is a win-win situation. You will win the confidence and respect of your constituents and in return they will win a vital service to improve the lives of the immigrants.

Thank you for your great service to the people of the State of Alaska.

Your constituents:

NAME	ADDRESS	TELEPHONE	SIGNATURE
Mary Ellen Madas	3000 - Riverwood Dr. ^{790 2151} Juneau AK 99801		Mary Ellen Madas
Carmencita T. Punahayan	6590 Glacier Hwy. # 89 Juneau AK 99801	789-3922	Carmencita T. Punahayan
FREDDIE ABAD	P.O. BOX 34895 JUNO AK 99803	957 0809	Freddie T. Abad
Elvie Holzenberg	3055 Wood Duck ^{5th} Juno AK 99801	(907) 789-7889	Elvie Holzenberg
		780-3664	
MATINO Medrano	5905 - CRUISE CHILL # 36	(907) 789-7889	MATINO
Jesse Newman	5821 N. Douglas Hwy.	(907) 723-8797	Jesse Newman
Lillian A. Lim	2496 Meander Way	789-5638	Lillian A. Lim
EDUARDO Y. SACCIA	3727 PORTAGE BLVD #A	790-1825	Eduardo Y. Saccia
WILACTUDTUD	9159 JERZY DR.	(907) 789-1849	Wilactudtud
AIDEN BALALONG	432 EAST FIRST ST.	(907) 586-4372	Aiden Balalong
MIRIAM E. BALALONG	432 East First St. JUNEAU AK.	(907) 586-4372	Miriam E. Balalong
Innocent J. Rawden	2901 Linda Ave. JUNEAU AK	(907) 789-1419	Innocent J. Rawden
EUGENE TABOADA	373 S. FRANKLIN ST.	(907) 463-3748	Eugene Taboada
Benjamin T. Sales	3441 Valley Blvd	(907) 789-0103	Benjamin T. Sales
Kenyon B. Cuarter	P.O. Box 34261 Juneau, AK-99803	(907) 789-7830	Kenyon B. Cuarter
Arlene S. Wiles	9115 Long Run Dr. Juneau AK 99801	(907) 789-6132	Arlene S. Wiles
SONNY NIERKA	2201 QUINN DR. AK JUNO AK.	(907) 463-5828	Sonny Nierka
ARNEL LACUIDA	4150 JUMP ST. JUNO AK	(907) 523-6968	Arnel Lacuida

NAME	ADDRESS	TELEPHONE	SIGNATURE
MARIO D. Lin	3492 Meander Way Jva	789 5638	
ALFONSO SORIANO	P.O. BOX 34351	789 2328	
James Tanner	6737 GRAY ST.	789 582225	
Merjia G. Sabalada	P.O. Box 34351	790-4443	S. G. S.
DUNG CAO	5905 CHURCHILL #58	780 4158	
NGA NGUYEN	5905 CHURCHILL # 58	780 4158	ntz
CLARIBEL R. SOLANO	8201 Dogwood Ln Juneau AK	780 4102	Claribel
Danielle M. Ames	6596 Glacier Hwy #219	780 4715	D. Ames
Heather George	8477-88 Thunder Mt	790-8024	
Claudia Santana	4520 Karotta Dye	523-1898	
LARRY MENDOZA	5850 LEMON ST	789 8414	
Violita Umba	6590 Glacier Hwy #22	790-3295	
CELIA LUMBARD	2422 MARSHA DUE	790-2455	
Catalina Flamy	3232 Meadow LN	790-5156	
DITHA ABAD	5950 WIND ST	780-3643	
Michael Slone	8435 Valley Blvd	789-0656	
Merjia R. Montu	851 Turner Place	790-1818	Merjia R. Montu
Virginia A. Laboca	9951 Stephen Richard Dr #35	789-4457	Virginia A. Laboca

NAME	ADDRESS	TELEPHONE	SIGNATURE
Lorenzo Jaravata	—	790-3537	
GERARDO JUAN	U MERDAN HALL LOP	463-8449	
Rodolfo MARTIN	P.O. Box 32636 Juneau	789-1819	
Nena T. Taborda	2578 Tubin St Juneau AK	789-2558	Nena Taborda
Alma Dodgan	9701 Emily Way INA. AK	796-2035	
Don Caple	1800 Northway Dr. I-7	522-5295	
HAROLD CAPRAS	8205 DEEWOOD LANE IN AK	209-7131	
DANTE M REYES	8445 VALLEY BLVD	790-6641	
ABRAHAM C. LAZO	6632- GULLWAY JUNE. AK	780-4647	
Spady Serrano	P.O. Box 32584 Juneau AK 99803	780-4308	
Lucia Luciano	1800 Northwood Dr. 178	789-7208	
Jolanda Cavilla	1800 Northwood Dr. J-8	789-2361	Jolanda Cavilla
Chester Araya	6590 Glacier Hwy #220	780-4922	
Nina PEREZ	4052 Delta Dr. C3	789-3743	
IRLEN TUNINGBAYAN	18846 (1st) AVE	789-2637	
Russel Pasion	4213 Taku BLD.	789-0357	
MARQUES DUMACIP	9319 STEPHEN RICHARDS	796-2016	
Alexander	6596 Elsie Hwy #135	780-1518	

NAME	ADDRESS	TELEPHONE	SIGNATURE
BERGARDON. OLAIM	1150 STEPHEN RICHARD 123	790 5582	
ANTONIO CHAVEL	1875 GLACIER HWY	780-2264	
EMERLITA PLINONGBANAN	8846 GAIL AVE	789-2637	
Ceraldine Carina	8900 Nancy St.	209-41-91	
Rebecca E. Pintang	# 370 ^{Palma Way} Switzer Mobile H Park Juneau AK	6408	Rebecca E. Pintang
Boncos Umbo	6590 Alouca Hwy #229	(907) 780-6733	
- Juan Yadao	" "	"	
BERNARD T. YADAO	" "	"	
Ariel T. YADAO	9950 STEPHEN RICHARDS #15	789-2383	
Vina C. Estigoy	P.O. Box 21012 Juneau AK 99	740-3235	
Magdalena B. Estigoy	P.O. Box 21012 Juneau AK. 99802	780-5211	
Julian R. Estigoy	P.O. Box 21012 Juneau AK. 99802	780-5211	
Joselyn Verdadero	6035 GULLWAY Juneau AK 99801	780-51-71	
Yordeliza Verdadero	6035 Gull way Juneau AK. 99801	780-51-71	
Louisea Dorian	6035 Gull Way Juneau AK 99801	780-51-71	
FRANCIS S. GACETA	6035 GULLWAY JUNEAU AK. 99801	780-51-71	
DANILO R. GACETA	6035 GULLWAY, JUNEAN, AK	780-51-71	
ASELA CARMELITA GACETA	6035 GULLWAY, JUNEAN, AK	780-51-71	

NAME	ADDRESS	TELEPHONE	SIGNATURE
Maria Lorenz	6031 Gullway Juneau AK 99801	788-51-71	M. Lorenz
Ygnis Elizalde	6032 Gullway	780-4647	Ygnis
Lopez R. Elizalde	6032 Gullway	780-4644	Lopez R. Elizalde
Clemente Lopez	6027 Gull Way	780-6271	C. Lopez
Fely Bizardo	6027 Gullway Juneau	780-6271	F. Bizardo
Lidia L. Lopez	6027 Gull Way	780-6271	Lidia L. Lopez
FELMPIO ZANDRIA	5000 GLACIER HI.	780-4616	F. Zandria
K. Uchi Tang	5000 GLACIER HWY	780-8690	K. Uchi Tang
Leticia Protulano	2212 K. Uchi Ave.	740-2370	L. Protulano
Efraim L. Yucile	3000 K. Uchi Way Dr	790-2151	E. Yucile
DENETRIO XARD	5950 LUND ST.	780-3643	D. Xard
Milagros C. Palao	6590 Glacier Hwy lot 277		M. Palao
	Juneau, AK	780-6291	M. Palao
Esther Echivane	#270 Blue Jay Summit	780-4408	E. Echivane
Vangie Laboca	Juneau, AK.	790-2310	V. Laboca
Tessie M. Purogayan	Juneau AK. 99801	789-1934	Tessie M. Purogayan
MARLYN RODRIGUEZ	JUNEAU, AK 99801	789-8420	M. Rodriguez
RODEL N. BOHULANO	JUNEAU, AK 99801	780-6910	R. Bohulano

NAME	ADDRESS	TELEPHONE	SIGNATURE
Jovita Harding	P.O. Box 70665 Juneau AK 99802	780-6299	Jovita Harding
Raymond Recalade	1021 Glacier Ave. Juneau AK	723-8400	Raymond Recalade
NEUMA K. GABLER	P.O. Box 20402 Juneau AK 99802	523-9023	Neuma K. Gabler
NATHANIEL SAUTAO	8425 CANYON DRIVE	523-1091	Nathaniel Sautao
LORELA T. SAGUCIO	4213 TAKU BLVD. JUNEAU AK	784-0351	Lorela T. Sagucio
Floriella C. Amilan	9340 Mirev Dr. JUNEAU AK	789-4712	Floriella C. Amilan
Onastacia Najera	1800 Northwood Dr. L 90 Juneau		Onastacia Najera
Kimberly Lee	2809 Marsha Dr.	789-2640	Kimberly Lee
Thelma Carilli	1800 Northwood	780-2574	Thelma Carilli
Maricel Pasion	4213 Taku Blvd	781-0351	Maricel Pasion
Naty Jose	6310 Glacier Hwy #2	780-3579	Naty Jose
Nora Ponce	4020 C Dexter Drive	465-1623	Nora Ponce
EDUVIGES P. ANTONIO	6310 Glacier Hwy 22 Juneau	780-6981	Eduviges P. Antonio
VICENTE A. HINSON	4482 ABBY way	780-8646	Vicente A. Hinson
Myrna B. Gonzales	9095 Sheip Way - Juneau AK	9801-789-5191	Myrna B. Gonzales

HB

405

SENATE COMMITTEE REPORT

DATE: 04/8/04

FURTHER: Health, Education and Social Services

DATE TURNED IN TO OFFICE: 5/2/04

State Affairs Committee considered **CS FOR HOUSE BILL NO. 405(EDU)**

HB 405 SCHOOL PERFORMANCE DESIGNATION/REPORT

"An Act relating to reports on school and school district performance; and relating to accountability of public schools and school districts; 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 Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DE+ED	5/2/04			✓	1

APPROPRIATION - no fiscal note

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 405
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Education & Early Development
 Title "An Act relating to reports on school and RDU _____
school district performance; and relating to accountability of..." Component _____
 Sponsor Representative Gatto _____
 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		0.0	0.0	0.0	0.0	0.0
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

Prepared by: Eddy Jeans, School Finance Manager Phone 465-8679
 Division: Education and Support Services Date/Time 2/27/04 1:58 PM
 Approved by: _____ Date 2/27/2004
 Agency: Education & Early Development

Alaska State Legislature

SESSION ADDRESS:
Alaska State Capitol
Juneau, Alaska 99801
Phone: (907) 465-3743
1-800-565-3743
Fax: (907) 465-2381

INTERIM ADDRESS:
600 E Railroad Avenue
Wasilla, AK 99654
Phone : 907-376-2679
Fax: (907) 373-4745

House Special Committee on Education

Representative Carl Gatto, Chair

SPONSOR STATEMENT

HOUSE BILL 405

"AN ACT RELATING TO ACCOUNTABILITY OF PUBLIC SCHOOLS AND SCHOOL DISTRICTS, AND REPORTS CONCERNING ASSISTANCE TO IMPROVE SCHOOL PERFORMANCE; AND PROVIDING FOR AN EFFECTIVE DATE."

Alaska currently has two systems of school designators: a state system and the Federal system. Alaska law requires schools be given the designations "distinguished," "successful," "deficient," or "in crisis," whereas federal law uses terms such as "distinguished," "proficient," "in improvement," "corrective action," and "restructuring." Alaska law should be amended to align itself with Federal law.

This bill holds districts and public schools accountable but does not increase their administrative burden. Although this bill retains the requirement that a school not meeting adequate performance must draft a school improvement plan, the bill removes from statute the detailed descriptions of a school improvement plan. Federal laws, and the regulations adopted by the state board, already comprehensively and satisfactorily prescribe the required contents of an improvement plan.

In addition, this bill eliminates unnecessary and unhelpful reports, but keeps the school report card system intact. For example, current law requires below-proficient schools report to the state board. Yet, the state board already has the school report card from all schools, including those that are below proficient. This requirement is a paperwork and time burden on schools, districts, and the state board, while failing to substantially aid in the goal of educating children. Similarly, current state law requires the Department of Education and Early Development to provide the legislature with a report, separate from the school report card, on the progress of schools and districts. Preparation of this report does little to advance the understanding of the legislature or the public not already accomplished by the school report card. A better approach is to eliminate these unnecessary reporting burdens ensuring that accountability information is contained in the school report card, and continuing to refine and rely on this valuable reporting tool.

I urge your consideration and support for this measure.

HB 405
Eliminating the "Thick Report"

There are nine components of the report that is required in AS 14.03.070. These components are listed below with an explanation of why EED believes this report is no longer necessary.

1. **School Report Card Information**
 - a. This information is already located on the EED website.
2. **Number and Percentage of students in each school who pass the examination and the number who pass each section**
 - a. This information is already located on the EED website.
3. **Progress of the department a) toward implementing the school accountability provisions and b) in assisting high schools to become accredited**
 - a. Much of the current information included in this report can be found on the EED website. EED already posts Adequate Yearly Progress (AYP) school and district designations and state goals, state Annual Measurable Objectives and testing participation rates.
4. **Description of the resources provided to each school and district for school improvement activities and staff training**
 - a. EED receives copies of all school and district School Improvement Plans. EED, by federal law, does not have any authority to approve these plans, but does have some Title I funding to issue to Level 2 or higher School Improvement sites. Grant information can be posted on the EED website.
5. **Description of each district's and each school's progress in aligning curriculum with state standards**
 - a. Almost all districts, if not all by the end of this fiscal year, report they have aligned their curricula to state standards. The bigger question is, "Have districts aligned their instructional practices to the standards?" Answering this question, without relying on self-reported data, would be difficult to impossible.
6. **Description of efforts by the department to assist a public school that receives a designation of deficient or in crisis**
 - a. Because NCLB requires that we have only one comprehensive state assessment system, EED has proposed that these state school designations be eliminated in statute. Instead, the department would post, annually, school and districts not meeting AYP and at which levels each is at.
7. **Description of intervention efforts by each school district and school for students not meeting state standards**
 - a. This report of the activities of the Quality School Grants would be done annually and could be posted on the EED website.
8. **Number and percentage of turnover in certificated personnel and superintendents**
 - a. This data is self-reported by districts and would not be compiled if not for the requirement in AS14.03.070.
9. **Number of teachers by district and school who are teaching outside the teacher's area of endorsement, but in areas tested by the high school competency examination**
 - a. This information will be included in each school report card, which is already located on the EED website



PRINCIPLE 1. A single statewide Accountability System applied to all public schools and LEAs.

CRITICAL ELEMENT	EXAMPLES FOR MEETING STATUTORY REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
<p>1.1 How does the State Accountability System include every public school and LEA in the State?</p>	<p>Every public school and LEA is required to make adequate yearly progress and is included in the State Accountability System.</p> <p>State has a definition of "public school" and "LEA" for AYP accountability purposes.</p> <ul style="list-style-type: none"> The State Accountability System produces AYP decisions for all public schools, including public schools with variant grade configurations (e.g., K-12), public schools that serve special populations (e.g., alternative public schools, juvenile institutions, state public schools for the blind) and public charter schools. It also holds accountable public schools with no grades assessed (e.g., K-2). 	<p>A public school or LEA is not required to make adequate yearly progress and is not included in the State Accountability System.</p> <p>State policy systematically excludes certain public schools and/or LEAs.</p>
<p>STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS</p>		

1.1- The State of Alaska defines a school in Alaska Administrative Code AAC 05.900(5). A school is also being defined under the revised regulations governing Report Cards to the Public. Charter schools, correspondence schools, alternative and special mission schools are included as public schools. Alaska's accountability system treats all these types of schools the same way in determining Adequate Yearly Progress (AYP).

The accountability system produces an AYP decision for each public school in the state. Schools with any and all combinations of grade configurations are included in calculating AYP and making an AYP decision in the same manner.

The standards-based student assessment system in Alaska consists of testing all students in grades 3 to 10 annually. The AYP calculation will aggregate test data across grade levels within each school. The **Performance Score** (overall percent of students enrolled for the full academic year who are proficient across grades) will be compared to the Annual Measurable Objective (AMO) for each year. More details on determining AYP are presented in later parts of this plan.

All schools in Alaska participate in the assessment system with the exception of a few schools who only serve students in grades K-2. The AYP decision made on the school that receives students from the K-2 schools will be applied to the K-2 school, so that all schools (including the K-2 schools) will receive an annual AYP determination.

Charter schools are considered public schools in Alaska and are required to participate in the state's assessment system and will receive an annual AYP determination. Alternative, Special Mission, Correspondence, Boarding schools, and schools located in youth correctional facilities also participate in state assessments and will receive an annual AYP determination using the same procedures as for all other schools.

During the 2003/2004 and 2004/2005 school years Alaska will study the validity of the statewide accountability system when applied to Alternative and Special Mission Schools. If the results of this study indicate that the accountability system is not valid for these types of schools Alaska will propose an alternate system to the US Department of Education. Until that occurs, these schools will receive an annual AYP determination using the same system as other schools.

This section describes the statutory and regulatory requirements concerning AYP, as well as ED's less formal interpretations that became apparent through the peer review process.

A. Single Statewide Accountability System

Every state must demonstrate in its state plan that it has developed and is implementing a single, statewide accountability system that will be effective in ensuring that all LEAs, public elementary schools and public secondary schools make AYP. The regulations clarify that this single system must be in place for the 2002-03 school year.

This single system must be the same accountability system the state uses for all public elementary schools and secondary schools and for all LEAs in the state, and must take into account the achievement of all public school students. It must be based on the state's standards, assessments, and "other academic indicators," as explained in this chapter. In its attempt to hold LEAs and public schools accountable for student achievement and for ensuring AYP, the accountability system must include both sanctions and rewards (such as teacher bonuses and school recognition).

This statutory and regulatory language suggests that states cannot continue the dual systems of accountability that often arose under IASA. However, states with well-established accountability systems vehemently objected to having to dismantle state systems that worked seemingly well. After considering formal comments submitted on the proposed regulations and negotiating informally with states, ED agreed that a state may continue to use its current state accountability system, consistent with earlier Dear Colleague letters released by ED, if that system integrates the federally-mandated AYP into its system. States were required to submit evidence through the peer review process that thoroughly described the state's accountability system and demonstrated how it integrated the AYP provisions required under Title I.

(Note that while all public schools must be included in AYP determinations, only public schools receiving Title I allocations are subject to sanctions under §1116 for school improvement, corrective action and restructuring. See Chapter 2.)

B. Defining the Measure of Adequate Yearly Progress

1) General requirements

Under NCLB, AYP is measured separately at the level of school, district, and state performance. (The requirement to set AYP for the *state* as a whole is new under NCLB.) The measures must be designed to narrow the achievement gaps among groups of students in the schools, LEAs and the entire state. A state must craft its AYP measure so that the same high standards of academic achievement apply to *all* public elementary school and secondary school students in the state, not just Title I students. The measure must be statistically valid and reliable, and result in continuous and substantial academic improvement for all students.

The state assessments must be the primary factor in the state's measure of AYP, as under IASA. Among many other topics, peer reviewers had to report whether the state's definition of AYP was based primarily on the academic assessments. Although

through other entities such as school support teams or educational service agencies.

"(8) ADMINISTRATIVE COSTS.—A State educational agency that receives a grant award under this subsection may reserve not more than 5 percent of such grant funds for administration, evaluation, and technical assistance expenses.

"(9) LOCAL AWARDS.—Each local educational agency that applies for assistance under this subsection shall describe how it will provide the lowest-achieving schools the resources necessary to meet goals under school and local educational agency improvement, corrective action, and restructuring plans under section 1116.

20 USC 6304.

"SEC. 1004. STATE ADMINISTRATION.

"(a) IN GENERAL.—Except as provided in subsection (b), to carry out administrative duties assigned under parts A, C, and D of this title, each State may reserve the greater of—

"(1) 1 percent of the amounts received under such parts;

or

"(2) \$400,000 (\$50,000 in the case of each outlying area).

"(b) EXCEPTION.—If the sum of the amounts appropriated for parts A, C, and D of this title is equal to or greater than \$14,000,000,000, then the reservation described in subsection (a)(1) shall not exceed 1 percent of the amount the State would receive, if \$14,000,000,000 were allocated among the States for parts A, C, and D of this title.

"PART A—IMPROVING BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES**"Subpart 1—Basic Program Requirements**

20 USC 6311.

"SEC. 1111. STATE PLANS.

"(a) PLANS REQUIRED.—

"(1) IN GENERAL.—For any State desiring to receive a grant under this part, the State educational agency shall submit to the Secretary a plan, developed by the State educational agency, in consultation with local educational agencies, teachers, principals, pupil services personnel, administrators (including administrators of programs described in other parts of this title), other staff, and parents, that satisfies the requirements of this section and that is coordinated with other programs under this Act, the Individuals with Disabilities Education Act, the Carl D. Perkins Vocational and Technical Education Act of 1998, the Head Start Act, the Adult Education and Family Literacy Act, and the McKinney-Vento Homeless Assistance Act.

"(2) CONSOLIDATED PLAN.—A State plan submitted under paragraph (1) may be submitted as part of a consolidated plan under section 9302.

"(b) ACADEMIC STANDARDS, ACADEMIC ASSESSMENTS, AND ACCOUNTABILITY.—

"(1) CHALLENGING ACADEMIC STANDARDS.—

"(A) IN GENERAL.—Each State plan shall demonstrate that the State has adopted challenging academic content standards and challenging student academic achievement

standards that will be used by the State, its local educational agencies, and its schools to carry out this part, except that a State shall not be required to submit such standards to the Secretary.

"(B) SAME STANDARDS.—The academic standards required by subparagraph (A) shall be the same academic standards that the State applies to all schools and children in the State.

"(C) SUBJECTS.—The State shall have such academic standards for all public elementary school and secondary school children, including children served under this part, in subjects determined by the State, but including at least mathematics, reading or language arts, and (beginning in the 2005-2006 school year) science, which shall include the same knowledge, skills, and levels of achievement expected of all children.

"(D) CHALLENGING ACADEMIC STANDARDS.—Standards under this paragraph shall include—

"(i) challenging academic content standards in academic subjects that—

"(I) specify what children are expected to know and be able to do;

"(II) contain coherent and rigorous content; and

"(III) encourage the teaching of advanced skills; and

"(ii) challenging student academic achievement standards that—

"(I) are aligned with the State's academic content standards;

"(II) describe two levels of high achievement (proficient and advanced) that determine how well children are mastering the material in the State academic content standards; and

"(III) describe a third level of achievement (basic) to provide complete information about the progress of the lower-achieving children toward mastering the proficient and advanced levels of achievement.

"(E) INFORMATION.—For the subjects in which students will be served under this part, but for which a State is not required by subparagraphs (A), (B), and (C) to develop, and has not otherwise developed, such academic standards, the State plan shall describe a strategy for ensuring that students are taught the same knowledge and skills in such subjects and held to the same expectations as are all children.

"(F) EXISTING STANDARDS.—Nothing in this part shall prohibit a State from revising, consistent with this section, any standard adopted under this part before or after the date of enactment of the No Child Left Behind Act of 2001.

"(2) ACCOUNTABILITY.—

"(A) IN GENERAL.—Each State plan shall demonstrate that the State has developed and is implementing a single, statewide State accountability system that will be effective in ensuring that all local educational agencies, public

*Standards
Single
Acts
Sys.*

elementary schools, and public secondary schools make adequate yearly progress as defined under this paragraph. Each State accountability system shall—

“(i) be based on the academic standards and academic assessments adopted under paragraphs (1) and (3), and other academic indicators consistent with subparagraph (C)(vi) and (vii), and shall take into account the achievement of all public elementary school and secondary school students;

“(ii) be the same accountability system the State uses for all public elementary schools and secondary schools or all local educational agencies in the State, except that public elementary schools, secondary schools, and local educational agencies not participating under this part are not subject to the requirements of section 1116; and

“(iii) include sanctions and rewards, such as bonuses and recognition, the State will use to hold local educational agencies and public elementary schools and secondary schools accountable for student achievement and for ensuring that they make adequate yearly progress in accordance with the State’s definition under subparagraphs (B) and (C).

“(B) ADEQUATE YEARLY PROGRESS.—Each State plan shall demonstrate, based on academic assessments described in paragraph (3), and in accordance with this paragraph, what constitutes adequate yearly progress of the State, and of all public elementary schools, secondary schools, and local educational agencies in the State, toward enabling all public elementary school and secondary school students to meet the State’s student academic achievement standards, while working toward the goal of narrowing the achievement gaps in the State, local educational agencies, and schools.

“(C) DEFINITION.—‘Adequate yearly progress’ shall be defined by the State in a manner that—

“(i) applies the same high standards of academic achievement to all public elementary school and secondary school students in the State;

“(ii) is statistically valid and reliable;

“(iii) results in continuous and substantial academic improvement for all students;

“(iv) measures the progress of public elementary schools, secondary schools and local educational agencies and the State based primarily on the academic assessments described in paragraph (3);

“(v) includes separate measurable annual objectives for continuous and substantial improvement for each of the following:

“(I) The achievement of all public elementary school and secondary school students.

“(II) The achievement of—

“(aa) economically disadvantaged students;

“(bb) students from major racial and ethnic groups;

“(cc) students with disabilities; and

“(dd) students with limited English proficiency;

except that disaggregation of data under subclause (II) shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student;

“(vi) in accordance with subparagraph (D), includes graduation rates for public secondary school students (defined as the percentage of students who graduate from secondary school with a regular diploma in the standard number of years) and at least one other academic indicator, as determined by the State for all public elementary school students; and

“(vii) in accordance with subparagraph (D), at the State’s discretion, may also include other academic indicators, as determined by the State for all public school students, measured separately for each group described in clause (v), such as achievement on additional State or locally administered assessments, decreases in grade-to-grade retention rates, attendance rates, and changes in the percentages of students completing gifted and talented, advanced placement, and college preparatory courses.

“(D) REQUIREMENTS FOR OTHER INDICATORS.—In carrying out subparagraph (C)(vi) and (vii), the State—

“(i) shall ensure that the indicators described in those provisions are valid and reliable, and are consistent with relevant, nationally recognized professional and technical standards, if any; and

“(ii) except as provided in subparagraph (I)(i), may not use those indicators to reduce the number of, or change, the schools that would otherwise be subject to school improvement, corrective action, or restructuring under section 1116 if those additional indicators were not used, but may use them to identify additional schools for school improvement or in need of corrective action or restructuring.

“(E) STARTING POINT.—Each State, using data for the 2001-2002 school year, shall establish the starting point for measuring, under subparagraphs (G) and (H), the percentage of students meeting or exceeding the State’s proficient level of academic achievement on the State assessments under paragraph (3) and pursuant to the timeline described in subparagraph (F). The starting point shall be, at a minimum, based on the higher of the percentage of students at the proficient level who are in—

“(i) the State’s lowest achieving group of students described in subparagraph (C)(v)(II); or

“(ii) the school at the 20th percentile in the State, based on enrollment, among all schools ranked by the percentage of students at the proficient level.

“(F) TIMELINE.—Each State shall establish a timeline for adequate yearly progress. The timeline shall ensure that not later than 12 years after the end of the 2001-2002 school year, all students in each group described

HB

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SENATE COMMITTEE REPORT

DATE: 3/5/04

FURTHER: Judiciary

DATE TURNED
IN TO OFFICE: 3/22/04

State Affairs Committee considered CS FOR HOUSE BILL NO. 414(JUD)

HB 414 U.S.SENATE VACANCY/DEF OF POLITICAL PARTY

"An Act relating to filling a vacancy in the office of United States senator, and to the definition of 'political party.'"

and recommends:

- be replaced with Sen CS 414 (STA)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to 414 Committee

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

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	Indet.	FN#
006	4/18/04		✓		

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	Indet.	FN#

APPROPRIATION - no fiscal note

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

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FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS HB 414(JUD)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
 Title An Act relating to filling the vacancy in the office RDU Elections
of United States senator, and to the definition of 'political party'. Component Elections
 Sponsor House Judiciary
 Requester House Judiciary Component No. 21

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill has no fiscal impact on the Division. However, if a special election is required in the future, the Division would need to seek a special appropriation for that purpose.

Prepared by: Leonard G. Jones Phone 465-3051
 Division: Division of Elections Date/Time 2/18/04 11:41 AM
 Approved by: Laura A. Glaiser, Director Date 2/18/2004
 Agency: Office of the Lt. Governor, Division of Elections

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Sponsor Statement

CSHB 414 (JUD)

"An Act relating to filling a vacancy in the office of United States senator, and to the definition of 'political party'"

HB 414 seeks to redress two current shortcomings in Alaska's Elections Act. There are two primary components to HB 414, each a response to a clear call for changes to Alaska Statutes so as to provide: firstly, for the fairest method of selecting individuals for a vitally important public office; and, secondly, to respect the will of the Alaskan people regarding choices they make to associate as political parties.

HB 414 will change the way a vacancy in one of Alaska's two seats in the United States Senate is filled when such a vacancy occurs. Currently, Alaska law provides that the Governor appoints a person of his or her choice from the same political party as the person who vacated the seat, when one of Alaska's two U.S. Senate seats becomes vacant, a process governed by the 17th Amendment to the U.S. Constitution. Last year a group of Alaskans calling itself "Trust the People" began gathering signatures to place an initiative on the ballot this year that would change Alaska Statutes to allow for a special election in the case of any vacancy in one of Alaska's two U.S. Senate seats. If it is determined that this group obtained enough signatures, the initiative will be certified and placed on the November 2004 ballot.

HB 414 listens to the will of the many Alaskans who signed petitions in favor of electing some one to fill a vacancy in one of Alaska's two U.S. Senate seats. The sections of the bill that change Alaska law relating to filling such vacancies are exactly the same, word for word, as the language of the initiative. Supporting HB 414 is a clear way to implement the will of a large number of Alaskan voters.

The second part of HB 414 addresses a lawsuit brought by the Green Party of Alaska against the State Division of Elections. The case grew out of the Green Party's dissatisfaction with the interplay between the results of the 2002 gubernatorial election and the definition of "political party" in the Alaska Elections Act. In order to obtain political party status, the current definition requires a party to have nominated a candidate for Governor who received at least three percent of the popular vote in the preceding gubernatorial election. Alternatively, a party is recognized if it has registered voters under its banner equal in number to three percent of the total number of votes cast for Governor in the immediately preceding general election.

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In 2002, the Green Party candidate for Governor garnered less than the minimum three percent needed to maintain the Green's status as a political party and, thus, the party sought an injunction of the law. The court acceded to the Green Party's request and enjoined enforcement of the law so that the Greens could avoid irreparable harm by continuing to participate in politics with the benefits of being a full political party. The order accompanying the court's injunction noted that the Green Party had been successful in winning over six percent of the vote in races for federal elective positions, namely U.S. Representative and U.S. Senator, and instructed the State to continue treating the Green Party with the deference due to a statutorily-defined political party until the General Election in November 2004 or until the Legislature, "corrects the problems with party eligibility in the statutes."

HB 414 responds directly to the court's order by expanding the types of statewide races to which the Division of Elections can look in ascertaining whether a party enjoys enough popular support to merit official status. It adds two different gauges to the law, so that if there is not a gubernatorial election, then an assemblage of voters can refer to its success in the most recent U.S. Senate or U.S. House race to earn official political party status under the statutes. The changes to the Alaska Elections Act wrought by the second half of HB 414 will inject fairness to the process of obtaining political party status in Alaska. Parties will be able to refer to their good showing in the most recent statewide race, never more than two years in the past, in order to demonstrate that they are supported by the voting public and deserve the statutory benefits conferred on political parties.

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Fax (907) 465-6592

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Sectional Analysis CSHB 414 (JUD)

**"An Act relating to filling a vacancy in the office of United States senator,
and to the definition of 'political party'"**

Section 1: This bill section is an intent section stating that it is the desire of this legislature that the provisions of this bill which are substantially similar to those proposed in the initiative, Sections 2-8, and 10 of this bill, not be repealed for at least two years after the Act's effective date.

Section 2: This bill section adds "United States senator" to the language that currently governs special elections held to replace vacancies in the office of U.S. representative. This bill section further clarifies the language controlling when a special election is not to be called, when a vacancy occurs 60 days or less before a primary election in a general election year.

Section 3: This bill section allows for the governor to temporarily appoint a qualified individual to fill a vacant U.S. Senate seat until the results of the special election are certified. This section will ensure that Alaska is not unrepresented in such an important seat while awaiting the special election results.

Section 4: This bill section adds a new statutory section that specifies that a U.S. senator elected in a special election will hold office for the remainder of the unexpired term of the U.S. senator who previously held the U.S. Senate seat. This section further states when a specially elected U.S. senator will take office.

Section 5: This bill section adds "United States senator" to the language that currently governs political party petitions submitted on behalf of candidates for U.S. representatives in special elections.

Section 6: This bill section adds "United States senator" to the language that currently governs the provisions for the conduct of special elections for U.S. representative, and further enumerates what these provisions are, deleting a reference to a statutory section relating to special elections for U.S. Senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 10 of the bill.

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House Judiciary Committee

Section 7: This bill section makes a conforming amendment that specifically enumerates the provisions that are to apply to special elections for governor and lieutenant governor, deleting a reference to a statutory section relating to special elections for U.S. senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 10 of the bill.

Section 8: This bill section makes a conforming amendment that specifically enumerates the provisions that are to apply to special elections for state senators, deleting a reference to a statutory section relating to special elections for U.S. senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 10 of the bill.

Section 9: This bill section expands the definition of "political party" to include results of statewide elections for U.S. senator or U.S. representative as secondary and tertiary criteria, respectively, that may enable an organized group of voters that represents a political program to qualify as a political party.

Section 10: This bill section deletes seven statutory sections from Chapter 40 of the Alaska Elections Act, in order to remove references from Alaska Statutes made unnecessary by the bill. These include: a reference to appointment of a person to fill a vacancy in the U.S. Senate; a reference to the timing of a special primary election made redundant by the bill; a reference to the proclamation calling a special election made inconsistent and unnecessary by the bill; a reference to the term to be served by the person elected in a special election made redundant by the bill; provisions pertaining to declaration of candidacy and date of nomination for a special election made redundant by the bill; provisions for the conduct of a special election made redundant by the bill; and, a definition of special primary election made unnecessary by the bill.

LEGAL SERVICES

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

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FAX (907) 465-2029
Mail Stop 3101


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

MEMORANDUM

February 6, 2004

SUBJECT: HB 414 and Initiative Relating to Filling Vacancies in the U.S. Senate (Work Order No. 23-LS1514)

TO: Representative Lesil McGuire
Attn: Vanessa Tondini

FROM: Kathryn Kurtz 
Legislative Counsel

You have asked whether HB 414 would be considered "substantially the same" as the proposed initiative to fill U.S. Senate vacancies exclusively by election for purposes of art. XI, sec. 4 of the Constitution of the State of Alaska. The two are substantially the same.

Constitutional and statutory provisions

The state constitution and statutes address what happens if legislation is enacted that addresses the subject matter of a proposed initiative. Under art. XI, sec. 4, of the Constitution of the State of Alaska, a proposed initiative is void if the legislature passes a law that is "substantially the same measure" as the proposed initiative.¹ Under AS 15.45.210, the lieutenant governor, with the concurrence of the attorney general, is responsible for determining whether an Act of the legislature is substantially the same as a proposed initiative.²

¹ Article XI, sec. 4, Constitution of the State of Alaska states:

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

² AS 15.45.210 states:

Determination of void petition. If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of

The test of how similar a measure enacted by the legislature and an initiative must be for the legislative measure to operate to invalidate the initiative was set out in Warren v. Boucher, 543 P.2d 731 (Alaska 1975). The Warren court noted:

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

Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. ...

The court fashioned the following as a general test:

... [i]f in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative.

543 P.2d at 736.

Analysis

The text of HB 414 mirrors that of the initiative except in two respects. The initiative has an effective date of January 1, 2005; HB 414 does not have an effective date. HB 414 has a section that amends the definition of political party; the initiative does not. These differences do not detract from the substantial similarity of the measures. HB 414, if enacted as introduced, would presumably take effect before January 1, 2005. But the changes proposed in the manner of filling vacancies would be exactly the same as if the initiative had been passed by the voters. That the bill contains additional material does not change this fact. If HB 414 is enacted as introduced, then the initiative would be void.

KLK:med
04-146.med

the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.

Source: [Legal](#) > [Area of Law - By Topic](#) > [Litigation](#) > [Statutes & Legislative Materials](#) > **USCS - United States Code Service: Code, Const, Rules, Conventions & Public Laws**

Terms: 17th amendment ([Edit Search](#))

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USCS Const. Amend. 17

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CONSTITUTION OF THE UNITED STATES OF AMERICA
AMENDMENTS
AMENDMENT 17

◆ [Review Court Orders which may amend this Rule.](#)

USCS Const. Amend. 17 (2003)

Election of Senators.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This **amendment** shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The **Seventeenth Amendment** of the Constitution of the United States was proposed to the legislatures of the several states by the Sixty-second Congress on May 13, 1912, and was declared, in a proclamation of the Secretary of State, dated May 31, 1913, to have been ratified by the legislatures of the following states: Arizona, June 3, 1912; Arkansas, February 11, 1913; California, January 28, 1913; Colorado, February 5, 1913; Connecticut, April 8, 1913; Idaho, January 31, 1913; Illinois, February 13, 1913; Indiana, February 19, 1913; Iowa, January 30, 1913; Kansas, January 17, 1913; Maine, February 11, 1913; Massachusetts, May 22, 1912; Michigan, January 28, 1913; Minnesota, June 10, 1912; Missouri, March 7, 1913; Montana, January 30, 1913; Nebraska, March 14, 1913; Nevada, February 6, 1913; New Hampshire, February 19, 1913; New Jersey, March 17, 1913; New Mexico, March 13, 1913; New York, January 15, 1913; North Carolina, January 25, 1913; North Dakota, February 14, 1913; Ohio, February 25, 1913; Oklahoma, February 24, 1913; Oregon, January 23, 1913; Pennsylvania, April 2, 1913; South Dakota, February 19, 1913; Tennessee, April 1, 1913; Texas, February 7, 1913; Vermont, February 19, 1913; Virginia, February 4, 1913; Washington, February 7, 1913; West Wisconsin, February 18, 1913; and Wyoming, February 8, 1913.

Ratification was completed on April 8, 1913.

The **amendment** was subsequently ratified by Louisiana on June 11, 1914.