

12059

SENATE

STATE

AFFAIRS

SJR

14

ALASKA STATE LEGISLATURE

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Charlie Huggins Senator

3/18/05

Sponsor Statement

SJR 14 – Urging the United States Congress to amend the tax code to permanently repeal the federal estate and generation-skipping transfer tax.

SJR 14 urges Congress to permanently repeal the estate tax, commonly known as the death tax, on inherited estates.

There is a fundamental problem with people accumulating assets with income that has already been taxed, then requiring their survivors to pay taxes on those assets again through an inheritance tax. The tax is unfair, first of all, to the decedent and to his or her heirs. We are talking about people who work hard throughout their lives, perhaps start businesses, or buy homes or property where real estate values are skyrocketing, and then the heirs are left, in some instances, with not enough cash to pay the applicable tax so they are forced to liquidate the family business, farm, or home.

In 2001 Congress, working with President Bush, enacted bipartisan legislation, under the Economic Growth and Tax Relief Reconciliation Act of 2001, to phase out and eventually repeal the death tax until 2010. At that time they did not have the votes to make the repeal permanent so under Senate rules, the cuts could only be extended for the term of the budget, which is 10 years. Therefore in 2010 the estate tax is repealed, however it springs back to life in 2011 at its old rate of 55 percent and at an exemption level of only \$1 million dollars.

President Bush has included the permanent repeal of the estate tax in his Fiscal Year 2006 budget proposal. Legislation has also been introduced this year in the U.S. Senate and U.S. House to permanently repeal the estate tax.

With passage of this legislation we will offer our support to Congress to act this year ending this tax on virtue, work, savings, job creation and the American dream.

Contact Information – Deborah Grundmann 465-4711

The tax credit is formally known as the "applicable credit amount" or the "unified credit," referring to the unified estate and gift tax. The amount of the tax credit is equal to the estate tax that would be due on the "applicable exclusion amount" for a decedent dying in the particular calendar year. For 2001, the applicable credit amount is \$220,550, corresponding to the tentative tax on a taxable estate of \$675,000. The credit is non-refundable. That is, it cannot reduce the tax on an estate below zero. **Table 1** presents the applicable exclusion amount and the corresponding applicable credit amount scheduled under the tax law enacted in June 2001, for each year from 2001 until 2009.³

Table 1. Applicable Exclusion Amount and Corresponding Applicable Credit Amount, 2001 to 2009

(In the case of estates of decedents dying, and gifts made, during) Calendar Year	Applicable Exclusion Amount	Applicable Credit Amount (Equal to the tentative estate tax on the corresponding applicable exclusion amount)
2001	\$675,000	\$220,550
2002-2003	1,000,000	345,800
2004-2005	1,500,000	555,800
2006-2008	2,000,000	780,000
2009	3,500,000	1,455,800

Sources: Applicable exclusion amount from Sec. 2010(c) of the Internal Revenue Code as of June 7, 2001. Applicable credit amount calculated by CRS.

Marginal Tax Rates

Table 2 presents the graduated schedule of federal estate tax rates for 2001. Rising marginal tax rates apply to different portions of an estate. The statutory rates range from 18% for the taxable value of estates below \$10,000, up to 55% for taxable value over \$3 million. A 5% surtax raises the effective marginal tax rate to 60% on the taxable value of estates between \$10 million and \$17.184 million.

In practice, however, the lowest marginal estate tax rate for 2001 is not 18%, but 37%, the rate corresponding to taxable estates in the range of \$500,000 to \$750,000. This occurs because the "applicable exclusion amount" for 2001 exempts from tax the first \$675,000 in taxable estate per decedent. This is emphasized in **Table 2** by gray shading over the first nine rows of the table, which cover taxable estate values from \$0 to \$500,000, and the corresponding statutory marginal tax rates

³An estate tax return must be filed if the gross value of the estate exceeds the applicable exclusion amount for the particular year. This filing requirement holds even if the estate's taxable value falls below this amount after subtracting eligible deductions, such that no tax is owed.

Table A.3. Federal Estate Tax Rate Schedule for 2004

Taxable Estate		Tentative Tax	
(a) Bottom of bracket	(b) Top of bracket	(c) Tax on bottom of bracket	(d) Marginal tax rate on bracket
Over	But not over	Tax on amount in column (a)	Plus: Rate of tax on amount over bottom of bracket, in column (a), up to top of bracket, in column (b)
\$ 0	\$ 10,000	\$0 +	18% of such amount
10,000	20,000	1,800 +	20% of excess over \$10,000
20,000	40,000	3,800 +	22% of excess over 20,000
40,000	60,000	8,200 +	24% of excess over 40,000
60,000	80,000	13,000 +	26% of excess over 60,000
80,000	100,000	18,200 +	28% of excess over 80,000
100,000	150,000	23,800 +	30% of excess over 100,000
150,000	250,000	38,800 +	32% of excess over 150,000
250,000	500,000	70,800 +	34% of excess over 250,000
500,000	750,000	155,800 +	37% of excess over 500,000
750,000	1,000,000	248,300 +	39% of excess over 750,000
1,000,000	1,250,000	345,800 +	41% of excess over 1,000,000
1,250,000	1,500,000	448,300 +	43% of excess over 1,250,000
Applicable Exclusion Amount is \$1.5 Million for 2004			
1,500,000	2,000,000	555,800 +	45% of excess over 1,500,000
2,000,000	--	780,800 +	48% of excess over 2,000,000

Note: In 2004, tax rates above 48% are repealed. The tax rate on taxable estate values over \$2 million will fall from 49% to 48%. The applicable exclusion amount will rise from \$1 million to \$1.5 million.

Table A.4. Federal Estate Tax Rate Schedule for 2005

Taxable Estate		Tentative Tax	
(a) Bottom of bracket	(b) Top of bracket	(c) Tax on bottom of bracket	(d) Marginal tax rate on bracket
Over	But not over	Tax on amount in column (a)	Plus: Rate of tax on amount over bottom of bracket, in column (a), up to top of bracket, in column (b)
\$ 0	\$ 10,000	\$0 +	18% of such amount
10,000	20,000	1,800 +	20% of excess over \$10,000
20,000	40,000	3,800 +	22% of excess over 20,000
40,000	60,000	8,200 +	24% of excess over 40,000
60,000	80,000	13,000 +	26% of excess over 60,000
80,000	100,000	18,200 +	28% of excess over 80,000
100,000	150,000	23,800 +	30% of excess over 100,000
150,000	250,000	38,800 +	32% of excess over 150,000
250,000	500,000	70,800 +	34% of excess over 250,000
500,000	750,000	155,800 +	37% of excess over 500,000
750,000	1,000,000	248,300 +	39% of excess over 750,000
1,000,000	1,250,000	345,800 +	41% of excess over 1,000,000
1,250,000	1,500,000	448,300 +	43% of excess over 1,250,000
Applicable Exclusion Amount is \$1.5 Million for 2005			
1,500,000	2,000,000	555,800 +	45% of excess over 1,500,000
2,000,000	--	780,800 +	47% of excess over 2,000,000

Note: In 2005, tax rates above 47% are repealed. The tax rate on taxable estate values over \$2 million will fall from 48% to 47%. The applicable exclusion amount will remain at \$1.5 million.

Table A.5. Federal Estate Tax Rate Schedule for 2006

Taxable Estate		Tentative Tax	
(a) Bottom of bracket	(b) Top of bracket	(c) Tax on bottom of bracket	(d) Marginal tax rate on bracket
Over	But not over	Tax on amount in column (a)	Plus: Rate of tax on amount over bottom of bracket, in column (a), up to top of bracket, in column (b)
\$ 0	\$ 10,000	\$0 +	18% of such amount
10,000	20,000	1,800 +	20% of excess over \$10,000
20,000	40,000	3,800 +	22% of excess over 20,000
40,000	60,000	8,200 +	24% of excess over 40,000
60,000	80,000	13,000 +	26% of excess over 60,000
80,000	100,000	18,200 +	28% of excess over 80,000
100,000	150,000	23,800 +	30% of excess over 100,000
150,000	250,000	38,800 +	32% of excess over 150,000
250,000	500,000	70,800 +	34% of excess over 250,000
500,000	750,000	155,800 +	37% of excess over 500,000
750,000	1,000,000	248,300 +	39% of excess over 750,000
1,000,000	1,250,000	345,800 +	41% of excess over 1,000,000
1,250,000	1,500,000	448,300 +	43% of excess over 1,250,000
1,500,000	2,000,000	555,800 +	45% of excess over 1,500,000
Applicable Exclusion Amount is \$2.0 Million for 2006			
2,000,000	--	780,800 +	46% of excess over 2,000,000

Note: In 2006, tax rates above 46% are repealed. The tax rate on estate values over \$2 million will fall from 47% to 46%. The applicable exclusion amount will rise from \$1.5 million to \$2 million.

Table A.6. Federal Estate Tax Rate Schedule for 2007 and 2008

Taxable Estate		Tentative Tax	
(a) Bottom of bracket	(b) Top of bracket	(c) Tax on bottom of bracket	(d) Marginal tax rate on bracket
Over	But not over	Tax on amount in column (a)	Plus: Rate of tax on amount over bottom of bracket, in column (a), up to top of bracket, in column (b)
\$ 0	\$ 10,000	\$0 +	18% of such amount
10,000	20,000	1,800 +	20% of excess over \$10,000
20,000	40,000	3,800 +	22% of excess over 20,000
40,000	60,000	8,200 +	24% of excess over 40,000
60,000	80,000	13,000 +	26% of excess over 60,000
80,000	100,000	18,200 +	28% of excess over 80,000
100,000	150,000	23,800 +	30% of excess over 100,000
150,000	250,000	38,800 +	32% of excess over 150,000
250,000	500,000	70,800 +	34% of excess over 250,000
500,000	750,000	155,800 +	37% of excess over 500,000
750,000	1,000,000	248,300 +	39% of excess over 750,000
1,000,000	1,250,000	345,800 +	41% of excess over 1,000,000
1,250,000	1,500,000	448,300 +	43% of excess over 1,250,000
Applicable Exclusion Amount is \$2.0 Million for 2007 and 2008			
1,500,000	--	555,800 +	45% of excess over 1,500,000

Note: In 2007, tax rates above 45% are repealed. The tax rate on taxable values over \$2 million will be lowered from 46% to 45%. The tax rate is already 45% on taxable estate values from \$1.5 million to \$2 million, under prior law. Thus, the tax rate will be 45% on taxable values over \$1.5 million. The law for 2008 remains the same as for 2007.

Table A.7. Federal Estate Tax Rate Schedule for 2009

Taxable Estate		Tentative Tax	
(a) Bottom of bracket	(b) Top of bracket	(c) Tax on bottom of bracket	(d) Marginal tax rate on bracket
Over	But not over	Tax on amount in column (a)	Plus: Rate of tax on amount over bottom of bracket, in column (a), up to top of bracket, in column (b)
\$ 0	\$ 10,000	\$0 +	18% of such amount
10,000	20,000	1,800 +	20% of excess over \$10,000
20,000	40,000	3,800 +	22% of excess over 20,000
40,000	60,000	8,200 +	24% of excess over 40,000
60,000	80,000	13,000 +	26% of excess over 60,000
80,000	100,000	18,200 +	28% of excess over 80,000
100,000	150,000	23,800 +	30% of excess over 100,000
150,000	250,000	38,300 +	32% of excess over 150,000
250,000	500,000	70,800 +	34% of excess over 250,000
500,000	750,000	155,800 +	37% of excess over 500,000
750,000	1,000,000	248,300 +	39% of excess over 750,000
1,000,000	1,250,000	345,800 +	41% of excess over 1,000,000
1,250,000	1,500,000	448,300 +	43% of excess over 1,250,000
Applicable Exclusion Amount is \$3.5 Million for 2009			
1,500,000	--	555,800 +	45% of excess over 1,500,000

Note: In 2009, the applicable exclusion amount will rise from \$2 million to \$3.5 million. There are no additional reductions in tax rates.



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REASONS TO ELIMINATE THE FEDERAL ESTATE TAX

- ❑ Estate tax rates, which range from 41% to 48%, are substantial. , higher than othe the lowest estate tax rate is almost as high as the highest income tax rate of 39.6% the estate tax is imposed on earnings and assets that have already been subject to social security, and other taxes at the federal and state level.
- ❑ Under the current tax system, it is cheaper to sell the family-owned business before rather than pass the business to one's heirs. Growing business can not remain in a tax regime that imposes rates as high as 48% upon the death of the founder/owner.
- ❑ Small business has long been recognized as the backbone of America's economy almost 60% of the workforce and creating about two-thirds of the new jobs in the 1970's. Our tax laws should encourage rather than discourage the perpetuation of businesses.

- ① The estate tax costs jobs. Potential employment is lost when business owners don't expand or open another store because of the ever looming death tax, and current jobs are destroyed when businesses are liquidated to pay estate taxes. If estate and gift taxes were eliminated in 1999, 275,000 jobs would be created between 1999 and 2010. (IPI Report #150)
- ① With Americans living longer, we need to encourage individuals/families to save in order to plan for their future. However, the estate tax creates a disincentive to save instead, encourages consumption. The more assets one has at death, the more he/she has to pay to the federal government.
- ① The estate tax, which was intended to break up large concentrations of wealth and create economic opportunity, has instead become a barrier to economic growth and job creation. This "disincentive to growth" effect of the estate tax is equivalent to doubling income taxes. (Tax Foundation)
- ① The estate tax has a negative impact on current business decisions. Critical resources are diverted away from investing in people and growth, and spent on attorneys, accountants, and insurance. It is estimated that family-owned businesses spent approximately \$33 billion in 1995 on attorneys, accountants and financial experts to assist in estate planning. (1995)
- ① The estate tax amounts to less than 2% of total federal revenues while costing the government and taxpayers approximately the same amount collected for enforcement and collection. (Joint Economic Committee Report, 1998)

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1 Reduces the Inequality of Wealth and Income?

In Alan Blinder's (a President Clinton appointee) book 'Toward an Economic Theory of Distribution', he concludes a "radical reform of inheritance policies can accomplish comparatively little income redistribution" and one of his findings was that only 2% inequality was attributable to the unequal distribution of inherited wealth.

Joseph Stiglitz, who served as Chairman of President Clinton's Council of Economic Advisors, found that the estate tax may ultimately cause an increase in income inequality (Journal of Political Economy).

Death Taxes penalize work and saving and encourages large-scale consumption by the rich. If an individual knows that they will be unable to pass on their wealth, then they choose to simply produce less wealth or to consume their wealth, Professor Edward McCaffery, USC - Liberal Democrat.

2 Deduction for Charitable Bequests Encourages Giving to Nonprofit Organizations

Because charitable donations are also deductible for income tax purposes, the tax system is much friendlier to gifts during life than to gifts made at death.

Total charitable bequests increased in real terms by nearly 23% in the first five years after the last major reduction in the death tax rate (1982-1986).

Over 1992-1995, more than four out of five estates (82%) did not take advantage of the charitable deduction.

3 Revenue Raised Warrants the Existence of Death Tax?

Alicia Munnell, a former member of President Clinton's Council of Economic Advisors, estimates that the costs of complying with estate tax laws are roughly the same magnitude as the revenue raised, or about \$23 billion in 1998.

In this century, the stock of capital in the economy has been reduced by approximately \$500 billion due to the death tax and the death tax only raised \$585 billion.

The distortionary effects of the death tax result in losses under the income tax that the same size as the death tax revenue.

(Joint Economic Committee Report, Dec

A Brief History of Federal Estate, Gift and Generation-Skipp

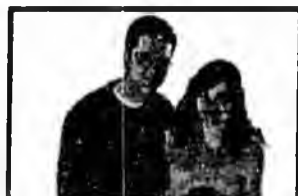
The current federal estate tax has been in effect since 1916. The original legislation provided a \$50,000 exemption with marginal tax rates ranging from 1% to 10%, for estates over \$100,000. In 1924, concerned about the erosion of the base for estate taxes through lifetime gifts, Congress enacted the first gift tax with rates from 1% to 25%. This gift tax was repealed two years later and was reinstated in 1932. Donors were allowed a \$50,000 exemption and a \$5,000 annual exclusion. During the years 1943-1976, the basic provisions of the federal estate and gift taxes remained substantially unchanged. The law allowed a \$60,000 Estate tax exemption with marginal rates ranging from 3% to 77%. The gift tax exemption was fixed at \$30,000 with an annual exclusion of \$3,000 per donee. During this period, the gift tax rates were lower than the estate tax rates, making gifts more attractive.

With the Tax Reform Act (TRA) of 1976, the structure of the federal estate and gift taxes changed considerably. This Act unified estate and gift taxes with a single rate structure provided for a maximum tax rate of 70%. With the Economic Recovery Tax Act of 1981, the estate and gift tax was substantially changed with a graduated increase in the equivalent exemption to \$600,000 in 1987. The marginal tax rate was decreased from 70% to 55%. The marital deduction was removed, and the annual gift tax exclusion was raised to \$10,000.

With the Deficit Reduction Act of 1984, the Tax Reform Act of 1986, and the Omnibus Budget Reconciliation Acts of 1987, 1990 and 1993, various changes were made in Estate and Gift tax laws. The 1986 Tax Act also instituted the current generation-skipping tax on transfers to grandchildren and more remote descendants. With the Taxpayer Relief Act of 1997, Congress provided for an increase in uneven increments in the unified credit to an equivalent of a \$1 million exemption by the year 2006. It also allowed for a special exclusion for qualified family limited partnerships and other provisions. Currently the top Estate and Gift tax rate is 48%, with a 50% rate on assets in excess of \$650,000 (the current equivalent exemption). A marital deduction is allowed on all assets passed from one spouse to another. There is a \$11,000 per year, per donor exclusion from gift taxes and a \$1 million generation-skipping lifetime exemption allows for an effective rate assessed of 80% on money transfers to grandchildren after use of the \$1 million exemption.

Under the 2001 Tax Act, the rate of Estate Tax and Generation-Skipping Tax is reduced to 55% in 2009 and the lifetime exemption increases to \$3.5M then both are repealed in 2010 and brought back in 2011 at a 50% rate with a \$1M exception.

The gift tax is reduced to 35% with a \$3.5M exception but not repealed.



THE FUTURE

"The Death Tax has created perverse incentives that encourage people to spend their savings now, rather than pass them on to their children later. As the National Commission on Economic Growth

report: 'It makes little sense and is patently unfair to impose on people who choose to pass their assets on to their children and grandchildren spending them lavishly on themselves. Families faced with these confiscatory tax themselves forced to sell off farms or businesses, destroying jobs in the process.' This is c

CONCLUSION

"The estate tax is simply unfair. It tells every American that no matter how hard you work or how wisely you manage your affairs, in the end the Federal Government is going to step in and take it away. The estate tax is double and, in some cases triple taxation, it punishes hard work and savings, and it fails to raise the revenues that could possibly justify the damage it causes. It has been destroying businesses and ruining lives for four generations. Let us not make this mistake with our children. End the Death Tax now."



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IT'S WRONG!

WF

- 1 It is the wrong tax**
It collects just one percent of the nation's revenues, and dollar for dollar, it costs as much to collect Death Taxes as it raises.
- 2 It comes at the wrong time**
A core principle behind repealing the Death Tax is the idea that people should not be burdened at the most difficult time of their lives. Newt Gingrich has the best line: "You have to visit the undertaker and the taxman on the same day."
- 3 It hurts the wrong people**
If you saved for the future, put away money for your children, built a small business, farm, or achieved the American Dream in other ways, the Death Tax punishes you.
- 4 It helps the wrong people**
The only people who are helped by the estate tax are the army of fancy lawyers and tax accountants - and IRS agents.

SOME NUMBERS

❑ The value to Washington and the cost to the family

Americans are surprised to learn that the estate tax raises a little more than total Federal revenues and costs are of the same magnitude. To personalize then add, "Though they account for only one percent of Federal revenues, es have forced the sale of thousands of farms, ranches, and businesses through country, and we can only guess at the jobs and economic potential lost."

❑ The jobs argument

Economists calculate that if the money paid in estate taxes in 1999 were to be the total savings in 2010 would be \$1.7 trillion higher, the economy would be larger, and we would have 275,000 more jobs.

THE FARM ARGUMENT

"Imagine owning a family farm that you have worked for 30 years. You have built and developed the land with the hope of passing it along to your children so that they may have a better life. But after your death, your children tragically find that the farm will not be staying in the family. This is not a rare occurrence. Many family farms must be sold off to pay the Federal taxes due on the property. It's just plain wrong."

"Death taxes hits the family farmer particularly hard, who may be cash poor but are tradition rich. The value of their farms is not in the IRS valuation of their equipment and land, but in the farm's ability to produce. Farmers make their living growing food and fiber, not speculation equipment."



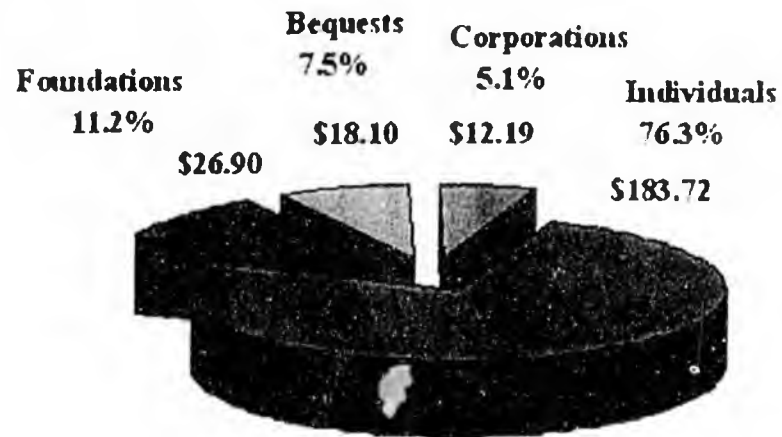
THE SMALL BUSINESS ARGUMENT

"Nothing penalizes the small business more than the Death Tax."

"It has been estimated that 70 percent of businesses never make it past the first generation, while 87% do not make it to the second generation. I believe the estate tax is responsible for much of this failure."

**REASONS CHARITABLE ORGANIZATIONS SHOULD NOT BE AFFECTIONATE
THE REPEAL OF THE DEATH TAX**

2002 Contributions = \$240.92 Billion



Source: Giving USA 2003/AFRC Trust for Philanthropy

- Charitable giving has increased each year, after inflation, for the past 40 years. Despite fluctuations in the levels of income tax, capital gains tax and estate tax rates. Even warnings that the reductions in marginal income tax rates that occurred in the mid-1980s decrease charitable giving, annual gifts by individuals rose by nearly 30% between 1989 and 2000.
- When the top estate tax rate was reduced from 70% to 50% between 1981 and 1997, the amount of annual bequests grew approximately 80.8% (adjusted for inflation) during that period. There is simply no empirical evidence to suggest that charitable contributions decline if there is no death tax.
- Giving USA 2000 reflects that those who have more give a larger percent of their assets to charity. People that make more than \$1 million dollars give twice as much, as a percent of income, than those who make less.
- It is obvious that if families and individuals are not forced to pay 48% of their assets in taxes, they will have 48% more to give to charity.

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March 16, 2005

TAX REPORT

Washington Court Ruling Puts Spotlight on State Estate Taxes

By **RACHEL EMMA SILVERMAN**
 Staff Reporter of THE WALL STREET JOURNAL
 March 16, 2005; Page D3

A recent court ruling could prompt taxpayers to question their states' estate-tax laws.

Washington's Supreme Court recently struck down the state's estate tax, ordering that estate taxes collected since Jan. 1, 2002, be refunded. The court ruled Washington's estate tax was invalid because it didn't reflect current federal tax law.

State estate taxes have become a big issue in recent years as a result of federal tax-law changes in 2001 that phased out a federal credit for state estate taxes paid, among other things.

TAX RESOURCES


1 Read more about **deductions and tax preparation**². Plus, check out tax calculators and resources.

Before the tax-law changes, many states, including Washington, tied their tax rates to the amount of the federal credit. Afterward, some

states let their estate taxes phase out along with the federal credit. Others implemented separate estate-tax systems, which means that some estates in those states face higher tax bills.

This year, for example, the biggest New York estates face a combination of state and federal taxes at a maximum estate-tax rate of 55.48%. Meanwhile, in states that have no estate tax this year, such as Florida, Nevada and California, large estates face only the top federal tax rate of 47%. That's because when the credit disappeared on Jan. 1, those states' estate taxes effectively did as well. (The credit was replaced by a federal deduction for state estate taxes paid.)

To help fill state coffers, at least 18 states and jurisdictions "decoupled," or separated, their estate taxes from the federal system, setting their own tax rules that no longer tied their estate taxes to the current federal system, according to tax-information provider CCH Inc. Among them: New York, New Jersey, Massachusetts, Maryland, Illinois and the District of Columbia.

DOW JONES REPRINTS

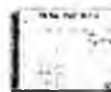
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While the Washington case had some unique circumstances that might not apply to other states, the ruling "might encourage taxpayers in other states to look at the situation in their states to see if it's analogous," says John Logan, senior state tax analyst at CCH in Riverwoods, Ill.

Whether Washington state validly separated its estate taxes from the federal system was at the heart of the recent class-action case. In 1981, Washington voters approved a ballot initiative that effectively tied state estate taxes to the federal credit. But the state never updated its estate-tax statute to reflect the credit's phaseout. Instead, the state continued to collect taxes at amounts set before the tax-law changes.

In a class-action suit, representatives from three estates sued the state's department of revenue, arguing that the state's estate tax was invalid and should have disappeared with the federal credit. The state Supreme Court sided with the taxpayers, ruling that under state law, "any amount of a state estate tax not fully absorbed by a current federal credit is an invalid independent tax."

Now, the state must return an estimated \$152 million back to taxpayers, and stands to lose a projected \$279 million in estate taxes over the next couple of years. Before the ruling, the state was already facing a \$1.8 billion budget shortfall, says a department of revenue spokesman. The Legislature, however, could propose new laws for a state estate tax to ease the shortfall.

What can you do if you live in a state with an estate tax? For one thing, create a flexible estate plan. Cheryl Hader, a partner with law firm Drinker Biddle & Reath in New York, suggests the use of so-called disclaimers. The tax code allows nine months to give up -- or disclaim -- all or part of an inheritance. Disclaimers are complex but they can allow survivors to adjust their inheritance as tax rules change, while still keeping enough money to live on.

Things can get complicated for those who live in a state with no estate tax, but have homes in taxable states. One solution: Place the taxable state's property into an entity such as a limited liability company, says Jonathan Rikeon, a partner with law firm Debevoise & Plimpton in New York. When property is in an LLC, it can be taxed under the estate-tax laws of the state you live in, rather than those of the state where the property is located, he says.

State of the state : State tax revenues were strong for the last quarter of 2004, a new report says.

State tax rolls grew 7.8% during the fourth quarter, compared with a year earlier. The increase was the strongest fourth-quarter growth since 1991. Adjusted for inflation and tax-law changes, real state tax-revenue growth was only 2.3%. The biggest gains were in corporate income taxes, but revenues from personal income and sales taxes also grew.

The report cautions that "this growth is likely not sufficient, however, to solve all of the states' budget problems, both current and emerging." The research comes from the Nelson A. Rockefeller Institute of Government in Albany, the public-policy research arm of the State University of New York.

Dude, where's my tax refund? Tax-preparation giants are trying to lure younger customers.

Intuit Inc., maker of TurboTax software, recently launched ttrefund.com³, a Web site geared toward tax filers age 18 to 24. Customers can file their taxes online and put their refunds toward trips or purchases at **Best Buy** stores. Meanwhile, **H&R Block Inc.** has launched a Web site for teens called "Get Yours," www.hrblock.com/goto/firstfilers⁴. The site has free online federal-tax preparation for teens under the age of 18 and an education section with tax basics for teens and their parents.

* * *

BRIEFS: Former U.S. Sen. Connie Mack, who heads President Bush's Advisory Panel on Federal Tax Reform, has joined law firm King & Spalding's Washington office to be the co-chairman of the firm's government relations practice. ... The IRS designated the Indian Ocean tsunami a "qualified disaster," which allows corporate foundations to make grants to employees who are tsunami victims. Without that designation, such grants would generally be considered improper. ... Filers in New York and California can now donate to prostate-cancer research on their state tax returns. See prostatecancerfoundation.org⁵.

• E-mail Tom Herman at taxreport@wsj.com⁶.

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HB

83

ALASKA STATE LEGISLATURE



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Representative Gabrielle LeDoux *GL*

MEMO

DATE: 4/14/2005
TO: SENATE STATE AFFAIRS
SENATOR GENE THERRIAULT, CHAIRMAN
FROM: REPRESENTATIVE GABRIELLE LEDOUX
RE: HEARING REQUEST FOR HB 83, AN ACT RELATING TO THE ALASKA
HAZARDS SAFETY COMMISSION

I respectfully request that House Bill 83 be scheduled for a hearing in the Senate State Affairs Committee.

Attached you will find:

- Current version of the CS for House Bill 83 (24-LS0372M)
- Sponsor Statement
- Additional documentation relating to the bill
- The Kodiak Legislative Information Office (907) 486-8116 would like to be online for the teleconference; Dr. Gary Carver, if available, will be testifying.
- There will be at least one representative from DNR present and Pat Davidson from Audit and Budget will be notified and try to be available.
- My staff member assigned to this legislation is Suzanne Hancock, direct line 465-4230.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 83(MLV)
 (H) Publish Date: 2/4/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title An Act relating to the Alaska Seismic RDU Resource Development
Hazards Safety Commission Component Geological Development
 Sponsor Rep. LeDoux, Rep. Guttenberg
 Requester (H) MLV Component No. 1031

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: _____
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact to DNR associated with implementation of this legislation.

Prepared by: Rod Comhellick Phone 907-451-5007
 Division Geological & Geophysical Surveys Date/Time 2/1/2005
 Approved by: Tom Irwin, Commissioner Date 2/1/2005
 Agency Natural Resources

ALASKA STATE LEGISLATURE



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Representative Gabrielle LeDoux

SPONSOR STATEMENT

CS for HB 83 (24-LS0372I)

“An Act relating to the Alaska Seismic Hazards Safety Commission; and providing for an effective date”

The CS for HB 83 extends the termination date for the Alaska Seismic Hazards Safety Commission until June 30, 2008 and adds the word “tsunami” to all of the sections addressing the scope of the work of the Alaska Seismic Hazards Safety Commission. This will increase the focus of that Commission to include tsunamis.

This CS for HB 83 is conditional on the governor making the appointments to the Alaska Seismic Hazards Safety Commission before June 30, 2006 or the commission will sunset on that date.

With more than 33,000 miles of shoreline, Alaska has been and can be devastated by earthquakes and tsunamis. Since about 1900, Alaska has had 80 magnitude 7 or larger earthquakes. This includes the second- and third- largest worldwide earthquakes, which were larger than the recent earthquake in Indonesia.

Tsunamis can and will greatly affect the fishing industry in coastal Alaska as was evidenced in the 1964 Alaska earthquake, which greatly impacted the coastal communities of Prince William Sound and has caused immense damage recently in the fisheries and aquaculture sectors of the affected countries in the Indian Ocean.

Alaska accounts for more than half of all the earthquakes that occur in the U.S. and about ten percent of all earthquakes worldwide. One of the roles of a Seismic Hazards Safety Commission would be to provide a proactive resource for state and local government officials and Alaskan communities that want assistance in acquiring information and guidance necessary to help mitigate earthquake and tsunami hazards.

Alaska’s population is growing and the state’s infrastructure is developing. The Alaska Seismic Hazards Safety Commission can play a vital role in reducing earthquake related losses. The Alaska Seismic Hazards Safety Commission is an invaluable asset in promoting the earthquake preparation essential to reducing our earthquake threat and future losses to the state that, without effective mitigation measures, are inevitable.

Representative_Gabrielle_LeDoux@legis.state.ak.us

from Dr. Gary Carver

Honorable Gabrielle LeDoux
Representative
State of Alaska

Gabrielle

Thanks for the call concerning the State of Alaska Seismic Hazards Safety Commission. I am particularly concerned that the Commission has never been filled and is facing expiration soon unless commissioners are appointed in the near future. Of all the states, none has a greater need for such a group.

Here are several contacts that may be very helpful. I suggest you contact them.

Representative Dave Guttenberg, House District 8 – Fairbanks. Rep. Guttenberg is also interested in the Seismic Hazards Safety Commission and has both information and expertise.

Commissioner Tom Irwin, Department of Natural Resources. I have been told he has reports and documents related to the Seismic Hazard Safety Commission that have not been released to the public but probably could be made available to members of the state legislature. Ph. 907-465-2400, email: <tom_irwin@dnr.state.ak.us>

Dr. Rod Combellick, Acting Director of the Division of Geological & Geophysical Surveys. Rod is very knowledgeable regarding the Seismic Hazards Safety Commission, the history of its formation, and a lot more. Ph. 907-451-5007, email <rod@dnr.state.ak.us>

Consider the following:

ALASKA IS EARTHQUAKE COUNTRY

Alaska is the most seismically active state in the union. For comparison, California, widely regarded as the benchmark state for earthquake hazards nationally, has experienced 16 magnitude 7 or larger earthquakes historically (since about 1900). A magnitude 7 or larger earthquake is very powerful and if such an earthquake occurs in a populated region will cause widespread and severe damage and may result in casualties. During the same period Alaska has had 80 magnitude 7 or larger earthquakes, including the second- and third-largest worldwide, the 1964 magnitude 9.2 (Prince William Sound - Kodiak) and 1957 magnitude 9.1 (eastern Aleutian Islands) earthquakes. Both of these were larger than the recent earthquake in Indonesia that generated the catastrophic tsunami in the Indian Ocean, and both generated killer Pacific-wide tsunamis. Indeed, Alaska accounts for more than half of all the earthquakes that occur in the United States and about ten percent of all earthquakes worldwide.

MOST ALASKANS LIVE NEAR BIG ACTIVE FAULTS

Alaska's population is largely concentrated in the seismically active regions of the state. The largest and most active faults in Alaska (and North America) are the Aleutian subduction zone and the Queen Charlotte-Fairweather fault. The Aleutian subduction zone extends from northern Prince William Sound near Cordova and Seward southwest to Kodiak and further

west along the Pacific side of the Alaskan Peninsula and Aleutian chain. This is one of the largest faults in the world and one of the most active. It produced both the 1957 and 1964 earthquakes. The Queen Charolette–Fairweather fault system extends through southeast Alaska from the Yakutat-Sitka area south past Juneau, Ketchikan and the other communities in the panhandle. The Queen Charolette–Fairweather fault is the Alaska equivalent of California's San Andreas Fault, just as large, just as active, and for southeast Alaska communities, just as dangerous. Anchorage faces exposure to the Aleutian subduction zone, as illustrated by the damage it caused there in 1964. Anchorage and the Mat-Su valley are in close proximity to the large and highly active Castle Mountain fault and a host of potentially dangerous faults in northern Cook Inlet. Fairbanks also is located in an area of significantly high seismicity from buried active faults that lie beneath the Tanana lowlands.

ALASKANS HAVE BEEN "LUCKY" SINCE 1964

Although a number of strong earthquakes have occurred in Alaska since the devastating 1964 earthquake, all have fortunately been located far away from populated areas. This is somewhat remarkable considering the close correlation between population centers and our largest and most active faults. It is only a matter of time before we experience another serious earthquake that centers on one of our cities. Preparedness is the only antidote we have to mitigate our seismic exposure. The Seismic Hazards Safety Commission is a potentially invaluable asset in promoting the earthquake preparation essential to reduce our earthquake threat and reduce future losses to the state that, without effective mitigation measures, are inevitable.

RECENT LESSONS LEARNED (OR NOT LEARNED)

On Nov. 3, 2002 the Denali fault in the central Alaska Range ruptured and generated a magnitude 7.9 earthquake, the largest "continental" earthquake in North America in the past 150 years. Fortunately the Denali fault is located in a sparsely populated part of the state. However, the fault rupture intersected the Trans-Alaska Oil Pipeline and offset the pipeline about 18 feet. Much to the credit of Alyeska Pipeline Service Company, a thorough study of earthquake hazards to the pipeline was conducted prior to its construction. Where the pipeline crossed the Denali fault special engineering design was incorporated, which allowed the pipe to withstand the 18 feet of offset and strong shaking without failure. The pipeline was only briefly shut down and no oil was spilled. Without the special seismic design considerations the pipeline most certainly would have sustained significant damage and been off line for a much longer period at great cost to the state and the petroleum industry. Since the Denali fault-pipeline crossing is adjacent to the Delta River and the river was thawed and flowing at the time of the earthquake, a large oil spill could have been catastrophic, with oil entering the Delta River, the Tanana and Yukon rivers, and possibly the Bering Sea. The state of Alaska dodged that bullet only because of earthquake preparation in the form of knowledge and engineering design to accommodate the Denali fault hazard. Did we learn anything from this experience? Failure to establish a state Seismic Hazards Safety Commission would suggest we did not.

A REAL AND PRESENT NEED

One of the roles of a Seismic Hazards Safety Commission would be to provide a resource for state and local government officials and Alaskan communities that want assistance in acquiring information and guidance necessary to help mitigate earthquake hazards. For example, presently our community (Kodiak) has determined that there is significant cause to believe some of our schools may not be life-safe in the event of a strong local earthquake. To this end, the Kodiak Island Borough has raised funds through a voter-approved bond issued to investigate the earthquake safety of our schools. Inherent in this process is the need to follow complex FEMA guidelines and understand specialized technical information regarding earthquakes and engineering. Compliance with the FEMA regulations is necessary if we are to qualify for federal funds to accomplish mitigation goals. For almost a year our local government has been struggling with these issues without the necessary expertise and little in the way of sources for advice and guidance. Failure to meet strict FEMA requirements jeopardizes the possibility of federal financial support to mitigate our hazards. The Kodiak community has discovered first-hand how useful a Seismic Hazards Safety Commission would be and how difficult it is for small local governments in the state to dealing with the earthquake mitigation issue.

THE CLOCK IS TICKING

As Alaska grows and our state's infrastructure develops time is passing and the next severe earthquake is drawing closer. Meanwhile, no coherent statewide program is in place to specifically to promote and support earthquake preparedness, and no official group is available to assist Alaska's communities with the mitigation measures needed to reduce our exposure to this threat. Do we need to experience the potentially huge financial losses and casualties a large earthquake in an urban area will bring to our state before we take action to reduce the earthquake hazard? Mitigation pays great dividends and costs very little compared to such losses. However, it is effective only if the mitigation action is done before the earthquake. Alaska cannot afford to stand idly by and wait for the inevitable, the consequences are too great. Establishment of the Seismic Hazards Safety Commission is a powerful first step in saving Alaskan lives, property, and financial well-being. Failure to complete the process by appointing the commission is unconscionable.

Finally, what role could the Commission play in reducing earthquake related losses in the state? According to the Alaska Division of Legislative Audit, Audit Digest #10-20038-05 as posted on the State of Alaska Web Site:

<http://www.legaudit.state.ak.us/pages/digests/2005/20038dig.htm>

- The mitigation of seismic hazards refers to studying, identifying, and prioritizing actions that could be taken to reduce the impact of earthquakes. The most cited tangible mitigation measure has been modification of zoning and building codes. Accordingly, the actual implementation of many of the commission's earthquake mitigation recommendations would have to be done by local governments. Having local representatives as part of the commission may facilitate the implementation of the commission's recommendations.
- Many local governments adopted the International Building Code (IBC) and have, therefore, already been involved in deciding if they believe it is in the public's interest to

update local codes in conformity with IBC changes. Having more local government members would bring, to the commission, a sense of the local concerns about adding or modifying existing local ordinances for improved earthquake mitigation factors.”

Local jurisdiction representation on the commission is very important, but I think it is unfortunate that the legislative audit report's emphasis is placed on the use of building codes and zoning to mitigate seismic hazards. Code and zoning regulation is only a small part of a wide range of possible approaches the commission might take to reduce our exposure to seismic hazards. Some critics of the Commission construe such regulation negatively. Other more important and potentially more useful commission approaches could include coordination of state wide education and awareness, development of links with local, state, and federal agencies including FEMA, the US Geological Survey, Association of Structural Engineers, and a host of private and government agencies that could provide a range of assistance to local officials, private industry, and Alaska citizens.

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Anchorage Daily News

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Tsunami warning system won't end threat to Alaska

BUOYS: Purpose of devices is to warn rest of Pacific of waves from earthquakes here.

By TOM KIZZIA

Anchorage Daily News

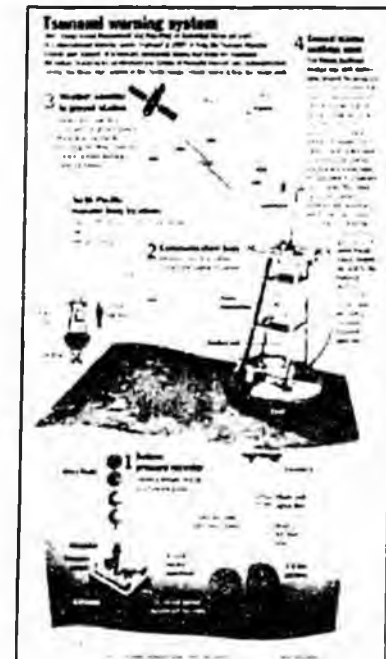
(Published: January 15, 2005)

Alaskans shouldn't be lulled by the existence of high-seas buoys in the Pacific Ocean into thinking they are much better protected from danger than residents of Banda Aceh in Indonesia, according to earthquake and tsunami experts here.

 [Photo gallery](#)

The buoys that detect passing waves are subject to breakdown -- as evidenced by the fact that three of the six currently deployed have been out of service for a year.

More significantly, earthquake and tsunami experts said in recent interviews, those buoys are deployed to warn the rest of the Pacific Rim about tsunamis generated by earthquakes in unstable Alaska. An Alaska-generated wave would probably hit the shore here before it reaches the first buoy heading south.



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[Click on photo to enlarge](#)

"By the time it gets to the buoy, you better have everybody evacuated," said Paul Whitmore, the scientist-in-charge at the West Coast/Alaska Tsunami Warning Center in Palmer.

The situation is the same in the Indian Ocean. A buoy warning system there might have provided advance warning to Sri Lanka, which was hit several hours after the triggering earthquake Dec. 26. But it would not have alerted the coast of Sumatra, adjacent to the rift zone in the Andaman Sea.

An expanded buoy system in the Pacific, such as the one proposed Friday by the Bush administration, would provide more notice to Alaska of tsunamis coming from other places. But it would be unlikely to help with Alaska's own waves, whether generated by shifting subsea faults or landslides. Both kinds of waves proved devastating here during the 1964 earthquake.

What Alaska does have going for it, compared with the Indian Ocean nations, is a much more extensive deployment of seismometers and a notification system ready to put out alerts of a possible tsunami in a matter of minutes. Alaska also has a series of tidal gauges in coastal communities, helpful to some extent in confirming the existence of a wave as it passes, and a civil defense system drilled in the potential dangers to coastal towns. People have been told not to wait for a siren to evacuate.

"If the ground is shaking hard enough so that you have trouble standing, it's close," state seismologist Roger Hansen said. "I would say go to higher ground."

How high is high enough? Alaska is now mapping its tsunami danger zones. In Homer, for example, state and University of Alaska experts just released last month a new map showing the

expected high-water mark of waves generated by the two likeliest subsea earthquake hazards. The result was surprisingly good news, with only a small segment of the low-lying Homer Spit likely to get washed over. Even so, city officials said, they would evacuate the Spit if the Palmer center reported a wave heading into Cook Inlet.

"We're in the prevention business," Homer fire chief Bob Painter said.

The new "inundation map" is based on mathematical formulas -- accounting for such things as fault lines and sea bottom contours -- first worked out for Kodiak and calibrated against the actual waves that killed six people there after the 1964 Alaska earthquake. The numbers are run through a supercomputer at the University of Alaska Fairbanks. Similar hazard maps are being prepared for Seward and Sitka, Hansen said.

Anchorage is believed to have virtually no danger from long-distance tsunamis because it is at the end of Cook Inlet, whose long shallow straits would dissipate any wave's energy, Hansen said.

The new Homer map doesn't account for what has long been thought the most serious tsunami threat in the area, an eruption and landslide at Augustine Volcano about 60 miles away. Scientists have grown sharply divided over whether the island volcano presents a major tsunami threat.

Apart from Augustine, subsea landslides often trigger local tsunamis with little warning. Chris Waythomas, a hydrologist with the Alaska Volcano Observatory, said five of the seven fatal tsunamis in Alaska history were probably landslide-induced, including the most recent one, in Skagway in 1994.

The Pacific alert system for long-distance waves began to take shape after a 1946 earthquake in the Aleutians produced a wave that surprised Hawaii, killing 159 people along the waterfront in Hilo. Major waves from that quake hit Chile 12 hours later.

Prediction efforts took another big step forward after the magnitude-9.2 earthquake in Alaska in 1964, with establishment of a central information gathering point in Palmer. Most of the deaths caused by the 1964 quake were due to waves, including 10 as far away as Crescent City, Calif.

Today, the Palmer facility is hooked into 150 seismic sites around the world, including 50 outside the Pacific region. When these sites send information of a serious shake, employees notified by beepers are expected on the scene in five minutes. They assess the data and decide whether the quake may have generated a wave. An automatic warning system sends alarms to the National Weather Service, the Coast Guard and various emergency response agencies.

They won't know whether the subsea rumble really created a tsunami until they start to pick up information from tidal gauges at docks in a scattering of coastal towns. Some of those gauges feed information to Palmer via satellite steadily, while others beam data only every half hour, Hansen said.

The deep-sea buoys in the Pacific can pass along more precise measures of a wave's size. But their most important role may be in calling off false alarms. Presumably a tsunami alert has already been issued by the time the wave passes the so-called DART buoys (for "Deep-ocean Assessment and Reporting of Tsunamis"), which are set in water several miles deep. The DART buoys have sensors on the ocean floor capable of gauging the pressure change of waves only half an inch tall as they pass. If no wave is detected, the alarms are called off, saving coastal evacuations that may cost tens of millions of dollars, officials say.

Indeed, the buoy system won kudos in November 2003 when they allowed Hawaii to cancel an evacuation after an ominous 7.5-magnitude quake in the western Aleutians.

"They're better for canceling warnings than issuing them," said Whitmore, at the Palmer center.

Unfortunately, the western Aleutian DART buoy that gave the all-clear in 2003 is currently out of service, as is the buoy off Unalaska and one other off the Oregon coast.

"Some of us on the steering committee are concerned that half the system is down now," state seismologist Hansen said, referring to a national tsunami hazard group made up of five Pacific rim states and three federal agencies.

One of the three broken DART buoys has already been pulled and repaired and is ready for redeployment when winter sailing weather allows, according to National Weather Service spokesman Greg Romano.

"We are taking steps to make it a more rugged system," Romano said.

Increasing the number of deep-sea buoys would provide faster information and would also help triangulate the source and direction of waves, Whitmore said. The wave off Sumatra was over a 600-mile zone, not simply from the quake's epicenter, he said.

For Alaskans near the source of a wave, though, more buoys may not be much help. The first seismographic report of a potential tsunami may be the only useful warning Alaska gets.

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January 27, 2005

Representative Gabrielle LeDoux
State Capitol, Room 412
Juneau, Alaska 99801

Re: House Bill 84

Dear Representative LeDoux:

I am writing to you on behalf of State Farm Insurance Companies with respect to House Bill 84. State Farm supported the creation of the Alaska Seismic Hazards Safety Commission and supports your proposal to extend the Commission through another five years. If there is any assistance or information we can provide to you, please feel free to call.

Sincerely,



Sheldon E. Winters

SEW/caf
RepLeDoux01SEW.wpd

SEAFOOD.COM NEWS [FAO Press statement] 13 January 2005, Washington and Rome -- The tsunami waves have had a devastating impact on the fisheries sector in many countries of the Indian Ocean, FAO said today.

In Sri Lanka, more than 7 500 fishers have been killed by the tsunami and over 5 600 are still missing. More than 5 000 Sri Lankan fishing families have been displaced and 80 percent of coastal fishing vessels have been completely destroyed or very seriously damaged, including around 19 000 boats. Ten out of the 12 main fishing harbours in the country have been completely devastated including infrastructure such as ice plants, cold rooms, workshops and slipways.

FAO has already sent fisheries experts to Sri Lanka to advise the government on the repair and rehabilitation of fishing harbours and infrastructure, fishing boats and fishing gear.

In the Nanggroe Aceh Darussalam Province of Indonesia, where 42 000 fishers and their families live, 70 percent of the small-scale fishing fleet have been destroyed. In Nias Island, about 800 fishing canoes have been destroyed. Two thirds of local fisherfolk from the capital Banda Aceh were killed by the waves.

Fish farming was severely affected in northern Sumatra with about 1 000 fish cage farms having been completely destroyed.

'FAO is currently assessing the damage and will help the government and local authorities to repair and replace fishing boats and gear and start with the initial repair of water fishponds and infrastructure so that fish production can be resumed as soon as possible,' said Jeremy Turner, Chief of the Fishery Technology Service.

In the affected coastal areas of Thailand, 386 fishing villages with a population of around 120 000 people have lost about 4 500 fishing boats, or their fishing gear has been seriously damaged. Most fishing boats are owned by small-scale, traditional fishers. The total damage to marine capture fisheries alone is estimated at around \$16.6 million.

Eight fishing harbours and their infrastructure have been seriously damaged. The affected aquaculture industry has suffered a serious setback. A total of around 15 800 fishing cages have been damaged, this has caused losses of about \$33 million. In some areas, seafood supplies have dropped by 90 percent since the tsunami.

FAO is preparing support measures for fisherfolk in six southern Provinces of Thailand providing essential fisheries inputs and assisting in the repair of damaged fishing vessels and damaged fishery infrastructure.

In the Maldives, where a very large part of the population depends on fishing for their livelihood, more than one third of all inhabited islands were severely damaged and hundreds of boats and harbours were destroyed. FAO is planning to assist the country with the repair and replacement of fishing boats, engines and fishing gear as well as with

the repair and rehabilitation of fisheries infrastructure.

In the state of Andhra Pradesh in India, fishers along the 1 000 km coastline were the worst hit by the tsunamis. Around 2 000 fishing boats and about 48 000 fishing gears were lost, about 300 000 fishers have lost their jobs. In the state of Tamil Nadu, 591 fishing villages and 30 islands of the Andaman and Nicobar islands have been badly affected by the tsunamis. India's seafood exports may decline by around 30 percent as a result of the tsunami.

In Myanmar, some 200 villages spread along the southern coast and heavily relying on fishing have been hit by tsunamis and lost fishing vessels, fishing gear and infrastructure. Some 17 seaside fishing villages have been reported as destroyed and at least 53 people as killed by the tsunamis. FAO is preparing for a long-term participation in relief and rehabilitation measures for the affected fishing communities.

In Malaysia, the livelihoods of about 6 000 fishers have been affected by the disaster.

In Somalia, around 2 600 fishing boats have been destroyed. FAO is assisting in damage and needs assessments and making preparations for the repair of damaged fishing vessels and for the provision of essential fishing inputs in six southern provinces of the country. FAO will also provide short-term financial aid and training in improved fishing techniques and boatbuilding to about 2 000 fishers.

In the Seychelles, coastal fish farms and the artisanal fisheries sector suffered extensively. A great number of fishing vessels were damaged or lost. The two fish processing plants and cold storage facilities located at the fishing port in Victoria were also affected by the tsunamis. FAO is preparing assistance programmes for the repair and replacement of fishing vessels and landing facilities and for the restoration of sustainable livelihoods in the fisheries sector.

The damage caused by the recent tsunamis in the fisheries and aquaculture sectors of the affected countries is worse and more complex than expected, Turner said.

FAO's Fisheries Department has embarked on a concerted effort to assist the fisheries and aquaculture sectors of the tsunami effected countries through relief and rehabilitation measures and projects.

**Written Testimony by Dr. John L. Aho
In Support of the State of Alaska HB 83
Establishing the Alaska Seismic Hazards
Safety Commission**

I thank you for the opportunity to submit written testimony in support of HB 83, an act establishing the Alaska Seismic Hazards Safety Commission (ASHSC).

My name is Dr. John Aho and I reside at 2015 Shepherdia Drive in Anchorage, Alaska. I have over 30 years of engineering experience in Alaska having recently retired as a vice president and principal project manager with CH2M HILL. I have been involved as a designer and/or project manager in over 300 projects throughout the State and, during my career, have had the privilege of being actively involved in earthquake risk mitigation activities in Alaska. I currently serve on the Board of Directors of the Earthquake Engineering Research Institute.

As you know, Alaska is unique for having the highest earthquake hazard in the nation. Because of the high probabilities of strong ground motion, the high tsunami hazard, and the presence of very high risk infrastructure there is an increasing need for a Commission that has the goal to reduce earthquake risk by supporting the advancement of the science and practice of earthquake engineering, improving understanding of the impact of earthquakes, and promoting measures to reduce the harmful effects of earthquakes.

The ASHSC will be able to harness the expertise of committed earthquake professionals and interested individuals with opportunities to provide advice in the generation of valuable guidance documents, identify areas of seismic vulnerability that need attention by other agencies or the legislature, and evaluate seismic programs throughout State government. The ASHSC will provide an effective means of integrating public, private, local and state government input into important seismic decisions.

As the population of Alaska grows and the supporting infrastructure expands we have an increasing risk of loss of life and property due to damaging earthquakes. We have been extremely fortunate not to have suffered a devastating earthquake since 1964 but were certainly reminded of the potential for disaster by the 2002 Denali Earthquake. However, it is just a matter of time before a significant earthquake will cause damage and loss of life in one or more of Alaska's urban centers. We need the ASHSC now to provide leadership, and to ensure that as much as possible is done to reduce those damages. After an earthquake, we will need the ASHSC to provide wisdom and guidance for a rapid and full recovery.

For all these reasons, I urge you to recommend the establishment of the ASHSC through HB 83 and that you stand solidly behind this important piece of legislation. This legislation will have a positive effect on the safety of generations of Alaskans.

Dr. John L. Aho
2015 Shepherdia Drive
Anchorage, Alaska 99508

**STATE EMERGENCY RESPONSE COMMISSION
RESOLUTION NUMBER 06-01**

**A RESOLUTION OF THE STATE EMERGENCY RESPONSE COMMISSION
SUPPORTING HOUSE BILL 83, RETAINING THE ALASKA SEISMIC HAZARDS
SAFETY COMMISSION**

WHEREAS, the State Emergency Response Commission (SERC) has determined there is no duplication of responsibility between its duties and that of the Alaska Seismic Hazards Safety Commission (ASHSC); and

WHEREAS, earthquakes and tsunamis continue to present hazards worldwide; and

WHEREAS, Alaska is located in one of the world's most active seismic zones; and

WHEREAS, the ASHSC, composed of knowledgeable professionals, was created primarily to:

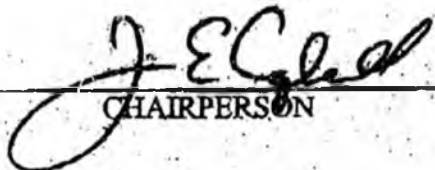
- (1) Recommend goals and priorities for seismic and tsunami hazard risk mitigation to the public and private sectors;
- (2) Recommend policies to the Governor and the legislature, including needed research, mapping, and monitoring programs;
- (3) Offer advice on coordinating disaster preparedness and seismic and tsunami hazard risk mitigation activities of government at all levels, review the practices for recovery and reconstruction after a major earthquake or tsunami, and recommend improvements to mitigate losses from similar future events;
- (4) Gather, analyze, and disseminate information of general interest on seismic and tsunami hazard risk mitigation;
- (5) Establish and maintain necessary working relationships with other public and private agencies;
- (6) Review predictions and warnings issued by the Federal government, research institutions, and other organizations and persons and suggest appropriate responses at the State and local levels; and
- (7) Review proposed seismic and tsunami hazard notifications and supporting information from State agencies, evaluate possible socioeconomic consequences, recommend the Governor issue formal seismic and tsunami hazard notifications when appropriate, and advise State and local agencies of appropriate responses.

NOW, THEREFORE, be it resolved that the Alaska State Emergency Response Commission, hereby supports retention of the Alaska Seismic Hazards Safety Commission with the passage of House Bill 83.

ATTEST:



COORDINATOR



CHAIRPERSON

Adopted: January 19, 2006

A Resolution of the Local Emergency Planning Committee Association (LEPCA) Urging the Alaska State Senate to pass HB 83, an Act extending the sunset date for the Alaska Seismic Hazards Safety Commission

WHEREAS, with more than 33,000 miles of shoreline, Alaska has been, in the past and will be in the future, devastated by earthquakes and tsunamis. Since about 1900, Alaska has had 80 magnitude 7 or larger earthquakes. This includes the second- and third- largest earthquakes worldwide, which were larger than the December 2004 earthquake in Indonesia; and

WHEREAS, Alaska accounts for more than half of all the earthquakes that occur in the U.S. and about ten percent of all earthquakes worldwide; and

WHEREAS, Alaska's population is growing and the state's infrastructure is developing; and

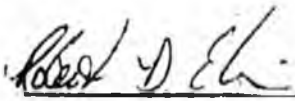
WHEREAS, the Alaska Seismic Hazards Safety Commission can play a vital role in reducing earthquake and tsunami related losses; and

WHEREAS, the Alaska Seismic Hazards Safety Commission can be a valuable asset in promoting earthquake preparation, which is essential to reducing Alaska's earthquake threat and future losses that without effective mitigation measures, are inevitable; and

WHEREAS, one of the roles of the Alaska Seismic Hazards Safety Commission is to provide a proactive resource for state and local government officials and Alaskan communities that want assistance in acquiring information and guidance necessary to help mitigate earthquake hazards; and

WHEREAS, House Bill 83 extends the sunset date for the Alaska Seismic Hazards Safety Commission to June 30, 2008.

NOW, THEREFORE BE IT RESOLVED that the Local Emergency Planning Committee Association (LEPCA) respectfully urges the Alaska State Senate to move HB 83 through the committee process and vote to extend the sunset date for the Alaska Seismic Hazards Commission to June 30, 2008 with the adoption of HB 83.



LEPCA Co-Chair

Sept 15 2005
Date



LEPCA Co-Chair

9/15/05
Date

Audit Report



DEPARTMENT OF NATURAL RESOURCES
ALASKA SEISMIC HAZARDS
SAFETY COMMISSION
SUNSET REVIEW

October 22, 2004



Audit Control Number:

10-20038-05

Division of Legislative Audit
P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from the Senate and two from the House. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$6 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed as mandated by Alaska Statutes or at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in Juneau, Anchorage, or at our web site <http://www.legaudit.state.ak.us>

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Pat Davidson, CPA
Legislative Auditor

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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November 10, 2004

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF NATURAL RESOURCES ALASKA SEISMIC HAZARDS SAFETY COMMISSION

October 22, 2004

Audit Control Number

10-20038-05

This audit was conducted as required by AS 44.60.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 44.66.010(a)(21), the Alaska Seismic Hazards Safety Commission is scheduled to terminate on June 30, 2005. If the legislature takes no action to extend the termination date, the commission would be allowed one year in which to conclude its administrative operations. Because the commission has been inactive since it was created in 2002, we recommend its termination date not be extended.

The sunset review was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing this report are set out in the Objectives, Scope, and Methodology section.

A handwritten signature in cursive script that reads "Pat Davidson".

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of, and circumstances surrounding, the Alaska Seismic Hazards Safety Commission (ASHSC). As required by AS 44.66.050(a), the legislative committees of reference are to consider this report during the legislative oversight process involved in determining if the commission should be reestablished. Currently, AS 44.66.010(a)(21) states that the commission will expire on June 30, 2005. If the legislature does not extend the termination date for the commission, ASHSC will have one year to conclude its administrative operations.

Objectives

There are two central, interrelated objectives of our report are:

1. To determine if the termination date of ASHSC should be extended.
2. To determine if ASHSC is operating in the public interest.

Scope and Methodology

The assessment of the operations and performance of the commission is to be based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the commission. However, since the Alaska Seismic Hazard Safety Commission was never actually constituted, we are unable to provide an evaluation of the commission's activities in accordance with AS 44.66.050(c).

Therefore, the major areas of our review were legislative committee minutes and various documentation developed and presented in the course of deliberations involved in the passage of legislation establishing ASHSC. Additionally, we:

- Reviewed applicable statutes related to ASHSC.
- Reviewed minutes of legislative committee hearings related to the legislation that established ASHSC.
- Reviewed Executive Order 105, issued by Governor Murkowski in January 2003.
- Reviewed the activities and publications of state organizations in the western United States with missions and objectives similar to that of ASHSC.

- Interviewed the Department of Natural Resources' commissioner and the manager responsible for activities related to the mission and objectives of ASHSC.
- Interviewed local government building officials regarding how various communities in the states deal with seismic issues through adoption and enforcement of building codes.
- Reviewed correspondence of Commissioner Irwin of the Department of Natural Resources regarding his position and comments on the public policy objectives related to both the past and the future of ASHSC.

ORGANIZATION AND FUNCTION

In 2002, the legislature established the Alaska Seismic Hazards Safety Commission (ASHSC). In committee testimony, the primary sponsor of the legislation characterized the commission as having an "umbrella status" over various state agencies that would permit it to coordinate a seismic hazard mitigation policy for the state.

To better promote intergovernmental coordination, the commission was originally established in the Office of the Governor. ASHSC was transferred to the Department of Natural Resources by Executive Order Number 105, issued by Governor Murkowski in January 2003.

ASHSC is comprised of a cross section of members from government, business, and academia

The Seismic Hazards Safety Commission was designed to be made up of individuals from a wide cross section of government and private sector representatives. The nine commission members were to be representatives from:

1. the University of Alaska;
2. local government;
3. Department of Natural Resources;
4. Department of Military and Veterans' Affairs;
5. an appropriate federal agency;
6. the insurance industry; and,
7. three members from the general public "*who are expert in the fields of*"
 - a) geology,
 - b) seismology,
 - c) hydrology,
 - d) geotechnical engineering,
 - e) structural engineering,
 - f) emergency services, or
 - g) planning.

ASHSC was structured in such a way to address what the legislature saw as a "*pressing need to provide consistent policy framework and a means for continuing coordination of programs and public safety practices related to seismic hazards at all governmental levels and in the private sector.*"

The legislature mandated that the commission recommend goals and priorities for seismic hazard mitigation to both governmental agencies and the private sector. ASHSC was also to

recommend policies to the governor and legislature related to such things as research, mapping, and monitoring programs necessary for effective seismic mitigation.

Department of Natural Resources, Division of Geological and Geophysical Surveys

Alaska Statute 41.08.010 establishes in the Department of Natural Resources (DNR), a division of geological and geophysical surveys under the direction of the state geologist. The state geologist is appointed by the commissioner of DNR, and responsible for conducting geological and geophysical surveys to determine the potential of Alaskan land for:

1. production of metals, minerals, fuels, and geothermal resources;
2. the locations and supplies of groundwater and construction materials; and,
3. the potential geologic hazards to buildings, roads, bridges, and other installations and structures.

The state geologist is also responsible for conducting other surveys and investigations necessary to advance the geology of the State. With the approval of the commissioner, the state geologist may acquire, by gift or purchase, geological and geophysical reports, surveys, and similar information.

State law further specifies that the Division of Geological and Geophysical Surveys shall:

1. *collect, record, evaluate, and distribute data on the quantity, quality, and location of underground, surface, and coastal water of the state;*
2. *publish or have published data on the water of the state;*
3. *require the filing with it of the results and findings of surveys of water quality, quantity, and location;*
4. *require of water well contractors, the filing with it of basic water and aquifer data normally obtained, including but not limited to well location, estimated elevation, well driller's logs, pumping tests and flow measurements, and water quality determinations;*
5. *accept and spend funds for the purposes of this section, AS 41.08.017, and 41.08.035 and enter into agreements with individuals, public or private agencies, communities, private industry, state agencies, and agencies of the federal government;*
6. *collect, evaluate, and distribute geologic data on seismic events and engineering geology of the state;*
7. *identify potential seismic hazards that might affect development in the state;*
8. *inform public officials and industry about potential seismic hazards that might affect development in the state.*

BACKGROUND INFORMATION

Mitigation of seismic hazards refers to studying, identifying, and prioritizing actions that could be taken to reduce the impact of earthquakes. Accordingly, seismic hazards mitigation can involve everything from considering where earthquakes are most likely to strike to how buildings, bridges, other infrastructure, and even topography can be built or modified to reduce damage.

Mitigation involves studying seismic risks and coordinating action to minimize damage

Similar organizations in other states have taken such actions as studying earthquake-prone areas and evaluating infrastructure and topography in regions that have been identified as being at highest risk. These other state commissions work with local, state, and federal governments in addition to private sector interests to construct or modify buildings, bridges, highways, and power lines to reduce the damage earthquakes may cause. Such commissions also coordinate activities such as the evaluation of the topography of high risk areas. From such evaluations the organization considers what measures could be taken to avoid such things as flood damage from rivers and lakes or other damage from landslides or avalanches that may be precipitated by an earthquake.

Mitigation is distinguished from response because it involves trying to anticipate earthquake damage and taking steps to reduce or avoid damage and loss of human life. Response, in contrast, involves actions taken after an earthquake strike, which are necessary to restore and protect public health and safety. Response stems from preparedness, and the legislature made a formal finding in the enabling legislation that

[A]lthough the state has made significant improvements in disaster preparedness since the great earthquake of 1964, there has been little corresponding improvement in measures to reduce the disaster potential of major earthquakes and, consequently, to reduce the dependence on disaster relief.

Legislation establishing the Alaska Seismic Hazards Safety Commission (ASHSC) had extensive legislative support

The legislation setting up ASHSC passed with overwhelming support. In April 2001 the bill, HB 53, was adopted by the House of Representatives by a vote of 36-2. In May 2002 the legislation was adopted by the Senate by a vote of 17-3. The measure was signed into law by Governor Knowles in August 2002 – with an effective date of September 29, 2002. The 2002 legislature also made an FY 03 appropriation of \$33,500 for commission operations.

Outgoing Governor Knowles did not make any appointments to the commission prior to the November 2002 elections. In March 2003, Governor Murkowski issued an executive order transferring ASHSC from the Office of the Governor to the Department of Natural Resources (DNR). Governor Murkowski, however, made no appointments and, at the end of FY 03, the

commission's entire appropriation lapsed unspent and was swept into the state's Insurance Catastrophe Reserve Fund.¹

In FY 04, the \$28,900 in funding for ASHSC was transferred to DNR and included in the general fund base budget for the Geological Development allocation. While there was no financial activity related to ASHSC, the Geological Development general fund allocation is lapsing just under \$10,000 which is less than \$28,900 intended for ASHSC. In FY 05, there were no budgetary transactions specifically related to the commission that either increased or decreased the portion of the Geological Development allocation related to ASHSC.

It is likely no appointments were made because DNR Commissioner Irwin recommended ASHSC statutes be repealed. The commissioner's recommendation was based on his belief that the cost of ASHSC was too high. In correspondence with Legislative Audit, the commissioner stated that after receiving further information regarding ASHSC – and satisfying himself that the annual operating costs could be kept to \$10,000 rather than a previous budget projection of \$28,000 – he had changed his opinion and recommendation with regard to continuance of the commission.

Accordingly, he recommended that the Boards and Commission staff in the Office of the Governor proceed with appointments. In the view of the commissioner, there is a need for active coordination of earthquake-hazard mitigation activities between all levels of government and the private sector in the state. Having ASHSC in place to advise the governor, legislature, local governments, and the private sector on ways to reduce future economic losses and casualties from earthquakes is a valuable and necessary function. As of mid-October 2004, Governor Murkowski has yet to make an appointment to the commission.

¹State law, AS 37.05.289 (b), allows a sweeping of certain funds at the end of each fiscal year under the following provision:

If the amount necessary to satisfy claims or judgments for which payment may be due under the state insurance program in a fiscal year exceed the unexpended balance of the amounts allocated to the account, the department may charge an additional amount from the unencumbered balance of any appropriation that is determined by the commissioner of administration to be available for lapse at the end of the fiscal year.

REPORT CONCLUSIONS

Under state law, the burden of demonstrating a continuing public need for a given board, commission, or agency that is subject to termination rests with the entity subject to sunset review.² Accordingly, since the commission has not been active since it was created in 2002, it is difficult to make the argument there is a demonstrated public need for the commission's termination date to be extended.

Since there is no functioning commission, we recommend that the legislature not extend the termination date of the commission. By not extending the termination date the Commission will have one year to administratively conclude its operations, and will cease to exist at June 30, 2006.

We recognize when the commission was created it received overwhelming support from the legislature. Additionally, other western states that are prone to earthquakes have created boards and commissions with duties similar to that of the Alaska Seismic Hazards Safety Commission. If there is legislative interest in continuing the commission, we offer a recommendation regarding the composition of the commission that would enhance its operational effectiveness.

² AS 44.66.050(b) states

During a public hearing, the board, commission or agency shall have the burden of demonstrating a public need for its continued existence or the continuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest. [emphasis added]

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FINDINGS AND RECOMMENDATION

Recommendation No. 1

The legislature should consider, if it extends the termination date of the Alaska Seismic Hazards Safety Commission, altering the composition of the commission to provide more representation of local government.

Much of the testimony heard in support of the commission's enabling legislation (HB 53) stressed the importance of communicating policy and possible mitigation measures that could be taken by all levels of government. A major area of concern involved the development of local community zoning ordinances and building code requirements to minimize the impact that the seismic shock would have on residential, government, and commercial buildings. Staff working with similar seismic mitigation agencies, in other western states we surveyed, often cited improvements to local planning requirements and building code restrictions as a major, if not primary, tangible benefit of their organization's accomplishments.

As mentioned in the Background Information section, it was the finding of the 2002 legislature that there had been little *"improvement in measures to reduce the disaster potential of major earthquakes..."* since the great earthquake of 1964. In many respects, at both the state and local government level this may be the case. However, the evolution of building codes as reflected in the recently developed 2003 International Building Code (IBC) has resulted in increasingly stronger seismic-related construction requirements – primarily in response to the devastating destruction of earthquakes outside of the United States in recent years.

At the present time the standard code that is increasingly being recognized and adopted by local governments is the 2003 IBC. All building officials we spoke to commented that extensive seismic-related requirements were already incorporated into the IBC and that they varied depending on a region's seismic risk rating. One local building official adamantly maintained that the IBC seismic requirements were already too stringent for his region, and any statewide policy group that would want more extensive requirements would not be welcomed.

We contacted numerous local government building officials in the State regarding how the recommendations of the Alaska Seismic Hazard Safety Commission could be put in place through local building codes. Most communities have a building code advisory commission that makes recommendations about local construction codes. A modification of the code generally involves making local exception to the "standard" code, which most communities have adopted by reference.

The commission would benefit from additional representation by local government for two primary reasons:

- As discussed above, the mitigation of seismic hazards refers to studying, identifying, and prioritizing actions that could be taken to reduce the impact of earthquakes. The most cited tangible mitigation measure has been modification of zoning and building codes. Accordingly, the actual implementation of many of the commission's earthquake mitigation recommendations would have to be done by local governments. Having local representatives as part of the commission may facilitate the implementation of the commission's recommendations
- Many local governments adopted the IBC and have, therefore, already been involved in deciding if they believe it is in the public's interest to update local codes in conformity with IBC changes. Having more local government members would bring, to the commission, a sense of the local concerns about adding or modifying existing local ordinances for improved earthquake mitigation factors.

The commission membership is currently defined as a nine-member commission with one representative of local government. If the legislature is considering continuation of the commission, we believe that a statutory revision or expansion to the commission membership should include at least three local government representatives from seismically different geographic areas of the state.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

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December 27, 2004

RECEIVED
DEC 27 2004
LEGISLATIVE AUDIT

Ms. Pat Davidson
Legislative Auditor
Legislative Budget and Audit Committee
P.O. Box 113300
Juneau, AK 99811-3300

Re: Seismic Hazards Safety Commission Report
10-20038-05

Dear Ms. Davidson:

Thank you for the opportunity to review the Alaska Seismic Hazards Safety Commission (ASHSC) Preliminary Report to the Legislative Budget and Audit Committee. As I stated in my prior letter to Mr. Griffen the draft report is very thorough and actually emphasizes the need for the ASHSC. I disagree with the conclusion that the ASHSC has not been active and it is therefore difficult to argue that there is not a demonstrated public need. I support the ASHSC and I urge the Legislature to extend the sunset date.

Alaska is the most seismically active state in the country. The legislature approved the ASHSC because they listened to the concrete arguments provided by professionals for the need for the commission. They recognized the success of similar commissions in other states for reducing earthquake losses and they took assertive action to address the issues in Alaska.

The risk of earthquake losses is steadily increasing and it should be clear as we witness the devastation caused by the earthquake in Asia that we need to minimize the state's risk as Alaska's population and infrastructure expand. Reducing losses at reasonable cost requires public commitment at the highest level. To earthquake-conscious siting, design, and construction. I believe that the ASHSC will provide the focus for this commitment. Governor Murkowski is currently reviewing nominees for appointments.

I concur with the Report's Recommendation No. 1 to increase representation of local government. Hazard mitigation occurs primarily at the local level and I agree that local governments in diverse regions of the state should be represented on the commission. This will ensure that proposed mitigation measures are appropriate, reasonable, and effective.

The report states that it is likely that no appointments were made to the commission because I initially recommended that the enabling statutes be repealed. As recognized in the report that initial recommendation was due to the cost of the Commission. It is a sad

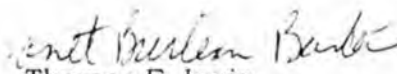
"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

Ms. Davidson
December 27, 2004
Page 2 of 2

state of affairs if a commission of this type is not extended because of my intent to be fiscally responsible. I take my job as Commissioner seriously and I weigh the benefits of an issue in light of the budget and my stewardship responsibilities. To act otherwise would be irresponsible. Once I was assured that the commission could be supported with a reduced budget I fully supported the commission and I recommend that the sunset date be extended. I expect the ASHSC's future recommendations to enhance public safety in our seismically active state.

Please contact me, Rod Combellick (451-5007; rod@dnr.state.ak.us) or Janet Burleson Baxter, 465-4730, if you would like further clarification on the department's recommendation on this issue.

Sincerely,


Thomas E. Irwin
for Commissioner

cc: Rod Combellick
Janet Burleson Baxter
Marty Rutherford
Lorraine Derr
Linda Hay

State of Alaska

Office of Boards and Commissions Roster

SEISMIC HAZARDS SAFETY COMMISSION (208)

Member	Date Appointed	Reappointed	Term Expires
John L. Aho, Ph.D. Public/Restricted -- Chair CH2M HILL 2015 Shepherdia Drive Anchorage, AK 99508	5/26/2005		6/30/2005
Gary A. Carver, Ph.D. Public/Restricted -- Vice-Chair P.O. Box 52 Kodiak, AK 99615	5/26/2005		6/30/2005
Rod Combellick Designated DNR Representative Department of Natural Resources P.O. Box 82422 Fairbanks, AK 99708	5/26/2005		6/30/2005
Linda L. Freed Local Governments Representative City of Kodiak 710 Mill Bay Road Kodiak, AK 99615	5/26/2005		6/30/2005
Roger A. Hansen, Ph.D. Designated University of Alaska Representative UAF, Geophysical Institute P.O. Box 757320 Fairbanks, AK 99709	10/13/2005		6/30/2005
Laura W. Kelly Designated Federal Agency 2020 Beaver Lake Drive Kodiak, AK 99615	5/26/2005		6/30/2005
Dennis Nottingham, P.E. Public/Restricted 1506 West 36th Avenue Anchorage, AK 99503	5/26/2005		6/30/2005
Roger Schnell Designated DMVA Representative	5/26/2005		6/30/2005

Department of Military and Veterans Affairs
P.O. Box 5800
Fort Richardson, AK 99505-0800

Michael R Wilkinson
Designated Insurance Industry Rep
2810 Devin Circle
Anchorage, AK 99516

5/26/2005

6/30/2005

Return to the fact sheet

Boards & Commissions

State of Alaska > Governor > Boards and Commissions

Seismic Hazards Safety Commission

Board: Alaska Seismic Hazards Safety Commission

Board identification number: 208

Department: DEPARTMENT OF NATURAL RESOURCES

Authority: 44.19.635

Status: Active

Sunset date: 6/30/2005

Requirements: No Legislative Confirmation or Financial Disclosure required

Prohibitions: None

Term: 3 years

Description: Nine members appointed by the Governor for 3-year terms each. Members include: a representative from the University of Alaska, a representative from local government; a representative from the Department of Natural Resources; a representative of the Department of Military and Veterans' Affairs; a representative from the appropriate federal agency; a representative of the insurance industry; and 3 members of the public who are experts in the fields of geology, seismology, hydrology, geotechnical engineering, structural engineering, emergency services, or planning. Six members constitute a quorum.

Function: The commission shall recommend goals and priorities for seismic hazard mitigation to the public and private sectors; recommend policies to the Governor and Legislature, including needed research, mapping, and monitoring programs; offer advice on coordinating disaster preparedness and seismic hazard mitigation activities of government at all levels, review the practices for recovery and reconstruction after a major earthquake, and recommend improvements to mitigate losses from similar future events; gather analyze and disseminate information on seismic hazard mitigation; establish and maintain necessary working relationships with public and private agencies; review predictions and warnings issued by the federal government and appropriate organizations and suggest appropriate responses; review proposed seismic hazard notifications and information from state agencies and evaluate possible socioeconomic consequences and recommend that the Governor issue formal seismic hazard notifications when appropriate and advise state and local agencies of appropriate responses.

Chair: Commission elects

Special facts:

Compensation: Standard Travel and Per Diem.

Meetings:



The governor holds state operating bud the assembled repc public officials and i public some of the i vetoed from the bur Wednesday



The governor signs the Knik Arm Bridge flanked (from left) b sponsor Sen. John Anchorage Mayor C former Gov. (and ct Anchorage director

Quick Links

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Of Interest

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Boards and Co

For further information contact:

Vickie Butherus

Administrative Assistant

Geological and Geophysical Surveys

3354 College Road

Fairbanks, AK 99709-3707

Phone: (907) 451-5002, FAX: (907) 451-5223

Governor's News



Seismic Hazards Safety Commission Roster

We appreciate your interest in boards and commissions. For further information contact the boards and commissions staff at (907) 465-3500 or at B&C@gov.state.ak.us.

[State of Alaska](#) - [Governor](#) - [First Lady](#) - [Office Locations](#) - [Email Governor](#)



Alaska Division of Legislative Audit Audit Report #10-20038-05

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* Requires Acrobat Reader 

November 10, 2004

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF NATURAL RESOURCES ALASKA SEISMIC HAZARDS SAFETY COMMISSION

October 22, 2004

Audit Control Number

10-20038-05

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 44.66.010(a)(21), the Alaska Seismic Hazards Safety Commission is scheduled to terminate on June 30, 2005. If the legislature takes no action to extend the termination date, the commission would be allowed one year in which to conclude its administrative operations. Because the commission has been inactive since it was created in 2002, we recommend its termination date not be extended.

The sunset review was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing this report are set out in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

ORGANIZATION AND FUNCTIONBACKGROUND INFORMATIONREPORT CONCLUSIONSFINDINGS AND RECOMMENDATIONAGENCY RESPONSE

Department of Natural Resources

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of, and circumstances surrounding, the Alaska Seismic Hazards Safety Commission (ASHSC). As required by AS 44.66.050 (a), the legislative committees of reference are to consider this report during the legislative oversight process involved in determining if the commission should be reestablished. Currently, AS 44.66.010(a)(21) states that the commission will expire on June 30, 2005. If the legislature does not extend the termination date for the commission, ASHSC will have one year to conclude its administrative operations.

Objectives

There are two central, interrelated objectives of our report are:

1. To determine if the termination date of ASHSC should be extended.
2. To determine if ASHSC is operating in the public interest.

Scope and Methodology

The assessment of the operations and performance of the commission is to be based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the commission. However, since the Alaska Seismic Hazard Safety Commission was never actually constituted, we are unable to provide an evaluation of the commission's activities in accordance with AS 44.66.050(c).

Therefore, the major areas of our review were legislative committee minutes and various documentation developed and presented in the course of deliberations involved in the passage of legislation establishing ASHSC. Additionally, we:

- Reviewed applicable statutes related to ASHSC.
- Reviewed minutes of legislative committee hearings related to the legislation that established ASHSC.
- Reviewed Executive Order 105, issued by Governor Murkowski in January 2003.

- Reviewed the activities and publications of state organizations in the western United States with missions and objectives similar to that of ASHSC.
- Interviewed the Department of Natural Resources' commissioner and the manager responsible for activities related to the mission and objectives of ASHSC.
- Interviewed local government building officials regarding how various communities in the states deal with seismic issues through adoption and enforcement of building codes.
- Reviewed correspondence of Commissioner Irwin of the Department of Natural Resources regarding his position and comments on the public policy objectives related to both the past and the future of ASHSC.

ORGANIZATION AND FUNCTION

In 2002, the legislature established the Alaska Seismic Hazards Safety Commission (ASHSC). In committee testimony, the primary sponsor of the legislation characterized the commission as having an "umbrella status" over various state agencies that would permit it to coordinate a seismic hazard mitigation policy for the state.

To better promote intergovernmental coordination, the commission was originally established in the Office of the Governor. ASHSC was transferred to the Department of Natural Resources by Executive Order Number 105, issued by Governor Murkowski in January 2003.

ASHSC is comprised of a cross section of members from government, business, and academia

The Seismic Hazards Safety Commission was designed to be made up of individuals from a wide cross section of government and private sector representatives. The nine commission members were to be representatives from:

1. the University of Alaska;
2. local government;
3. Department of Natural Resources;
4. Department of Military and Veterans' Affairs;
5. an appropriate federal agency;
6. the insurance industry; and,
7. three members from the general public *"who are expert in the fields of"*
 - a) geology,
 - b) seismology,
 - c) hydrology,
 - d) geotechnical engineering,
 - e) structural engineering,
 - f) emergency services, or
 - g) planning.

ASHSC was structured in such a way to address what the legislature saw as a *"pressing need to provide consistent policy framework and a means for continuing coordination of programs and public safety practices related to seismic hazards at all governmental levels and in the private sector."*

The legislature mandated that the commission recommend goals and priorities for seismic hazard mitigation to both governmental agencies and the private sector. ASHSC was also to recommend policies to the governor and legislature related to such things as research, mapping, and monitoring programs necessary for effective seismic

mitigation:

Department of Natural Resources, Division of Geological and Geophysical Surveys

Alaska Statute 41.08.010 establishes in the Department of Natural Resources (DNR), a division of geological and geophysical surveys under the direction of the state geologist. The state geologist is appointed by the commissioner of DNR, and responsible for conducting geological and geophysical surveys to determine the potential of Alaskan land for:

1. production of metals, minerals, fuels, and geothermal resources;
2. the locations and supplies of groundwater and construction materials; and,
3. the potential geologic hazards to buildings, roads, bridges, and other installations and structures.

The state geologist is also responsible for conducting other surveys and investigations necessary to advance the geology of the State. With the approval of the commissioner, the state geologist may acquire, by gift or purchase, geological and geophysical reports, surveys, and similar information.

State law further specifies that the Division of Geological and Geophysical Surveys shall:

1. *collect, record, evaluate, and distribute data on the quantity, quality, and location of underground, surface, and coastal water of the state;*
2. *publish or have published data on the water of the state;*
3. *require the filing with it of the results and findings of surveys of water quality, quantity, and location;*
4. *require of water well contractors, the filing with it of basic water and aquifer data normally obtained, including but not limited to well location, estimated elevation, well driller's logs, pumping tests and flow measurements, and water quality determinations;*
5. *accept and spend funds for the purposes of this section, AS 41.08.017, and 41.08.035 and enter into agreements with individuals, public or private agencies, communities, private industry, state agencies, and agencies of the federal government;*
6. *collect, evaluate, and distribute geologic data on seismic events and engineering geology of the state;*
7. *identify potential seismic hazards that might affect development in the state;*
8. *inform public officials and industry about potential seismic hazards that might affect development in the state.*

BACKGROUND INFORMATION

Mitigation of seismic hazards refers to studying, identifying, and prioritizing actions that could be taken to reduce the impact of earthquakes. Accordingly, seismic hazards mitigation can involve everything from considering where earthquakes are most likely to strike to how buildings, bridges, other infrastructure, and even topography can be built or modified to reduce damage.

Mitigation involves studying seismic risks and coordinating action to minimize damage

Similar organizations in other states have taken such actions as studying earthquake-prone areas and evaluating infrastructure and topography in regions that have been identified as being at highest risk. These other state commissions work with local, state, and federal governments in addition to private sector interests to construct or modify buildings, bridges, highways, and power lines to reduce the damage earthquakes may cause. Such commissions also coordinate activities such as the evaluation of the topography of high risk areas. From such evaluations the organization considers what measures could be taken to avoid such things as flood damage from rivers and lakes or other damage from landslides or avalanches that may be precipitated by an earthquake.

Mitigation is distinguished from response because it involves trying to anticipate earthquake damage and taking steps to reduce or avoid damage and loss of human life. Response, in contrast, involves actions taken after an earthquake strike, which are necessary to restore and protect public health and safety. Response stems from preparedness, and the legislature made a formal finding in the enabling legislation that

[A]lthough the state has made significant improvements in disaster preparedness since the great earthquake of 1964, there has been little corresponding improvement in measures to reduce the disaster potential of major earthquakes and, consequently, to reduce the dependence on disaster relief.

Legislation establishing the Alaska Seismic Hazards Safety Commission (ASHSC) had extensive legislative support

The legislation setting up ASHSC passed with overwhelming support. In April 2001 the bill, HB 53, was adopted by the House of Representatives by a vote of 36-2. In May 2002 the legislation was adopted by the Senate by a vote of 17-3. The measure was signed into law by Governor Knowles in August 2002 – with an effective date of September 29, 2002. The 2002 legislature also made an FY 03 appropriation of \$33,500 for commission operations.

Outgoing Governor Knowles did not make any appointments to the commission prior to the November 2002 elections. In March 2003, Governor Murkowski issued an executive order transferring ASHSC from the Office of the Governor to the Department of Natural Resources (DNR). Governor Murkowski, however, made no appointments and, at the end of FY 03, the commission's entire appropriation lapsed unspent and was swept into the state's

[1]

Insurance Catastrophe Reserve Fund.

In FY 04, the \$28,900 in funding for ASHSC was transferred to DNR and included in the general fund base budget for the Geological Development allocation. While there was no financial activity related to ASHSC, the Geological Development general fund allocation is lapsing just under \$10,000 which is less than \$28,900 intended for ASHSC. In FY 05, there were no budgetary transactions specifically related to the commission that either increased or decreased the portion of the Geological Development allocation related to ASHSC.

It is likely no appointments were made because DNR Commissioner Irwin recommended ASHSC statutes be repealed. The commissioner's recommendation was based on his belief that the cost of ASHSC was too high. In correspondence with Legislative Audit, the commissioner stated that after receiving further information regarding ASHSC – and satisfying himself that the annual operating costs could be kept to \$10,000 rather than a previous budget projection of \$28,000 – he had changed his opinion and recommendation with regard to continuance of the commission.

Accordingly, he recommended that the Boards and Commission staff in the Office of the Governor proceed with appointments. In the view of the commissioner, there is a need for active coordination of earthquake-hazard mitigation activities between all levels of government and the private sector in the state. Having ASHSC in place to advise the governor, legislature, local governments, and the private sector on ways to reduce future economic losses

and casualties from earthquakes is a valuable and necessary function. As of mid-October 2004, Governor Murkowski has yet to make an appointment to the commission.

REPORT CONCLUSIONS

Under state law, the burden of demonstrating a continuing public need for a given board, commission, or agency that is subject to termination rests with the entity subject to sunset review. [2] Accordingly, since the commission has not been active since it was created in 2002, it is difficult to make the argument there is a demonstrated public need for the commission's termination date to be extended.

Since there is no functioning commission, we recommend that the legislature not extend the termination date of the commission. By not extending the termination date the Commission will have one year to administratively conclude its operations, and will cease to exist at June 30, 2006.

We recognize when the commission was created it received overwhelming support from the legislature. Additionally, other western states that are prone to earthquakes have created boards and commissions with duties similar to that of the Alaska Seismic Hazards Safety Commission. If there is legislative interest in continuing the commission, we offer a recommendation regarding the composition of the commission that would enhance its operational effectiveness.

FINDINGS AND RECOMMENDATION

Recommendation No. 1

The legislature should consider, if it extends the termination date of the Alaska Seismic Hazards Safety Commission, altering the composition of the commission to provide more representation of local government.

Much of the testimony heard in support of the commission's enabling legislation (HB 53) stressed the importance of communicating policy and possible mitigation measures that could be taken by all levels of government. A major area of concern involved the development of local community zoning ordinances and building code requirements to minimize the impact that the seismic shock would have on residential, government, and commercial buildings. Staff working with similar seismic mitigation agencies, in other western states we surveyed, often cited improvements to local planning requirements and building code restrictions as a major, if not primary, tangible benefit of their organization's accomplishments.

As mentioned in the Background Information section, it was the finding of the 2002 legislature that there had been little *"improvement in measures to reduce the disaster potential of major earthquakes..."* since the great earthquake of 1964. In many respects, at both the state and local government level this may be the case. However, the evolution of building codes as reflected in the recently developed 2003 International Building Code (IBC) has resulted in increasingly stronger seismic-related construction requirements – primarily in response to the devastating destruction of earthquakes outside of the United States in recent years.

At the present time the standard code that is increasingly being recognized and adopted by local governments is the 2003 IBC. All building officials we spoke to commented that extensive seismic-related requirements were already incorporated into the IBC and that they varied depending on a region's seismic risk rating. One local building official adamantly maintained that the IBC seismic requirements were already too stringent for his region, and any statewide

policy group that would want more extensive requirements would not be welcomed.

We contacted numerous local government building officials in the State regarding how the recommendations of the Alaska Seismic Hazard Safety Commission could be put in place through local building codes. Most communities have a building code advisory commission that makes recommendations about local construction codes. Modification of the code generally involves making local exception to the "standard" code, which most communities have adopted by reference.

The commission would benefit from additional representation by local government for two primary reasons:

- As discussed above, the mitigation of seismic hazards refers to studying, identifying, and prioritizing actions that could be taken to reduce the impact of earthquakes. The most cited tangible mitigation measure has been modification of zoning and building codes. Accordingly, the actual implementation of many of the commission's earthquake mitigation recommendations would have to be done by local governments. Having local representatives as part of the commission may facilitate the implementation of the commission's recommendations.
- Many local governments adopted the IBC and have, therefore, already been involved in deciding if they believe it is in the public's interest to update local codes in conformity with IBC changes. Having more local government members would bring, to the commission, a sense of the local concerns about adding or modifying existing local ordinances for improved earthquake mitigation factors.

The commission membership is currently defined as a nine-member commission with one representative of local government. If the legislature is considering continuation of the commission, we believe that a statutory revision or expansion to the commission membership should include at least three local government representatives from seismically different geographic areas of the state.

AGENCY RESPONSES

Department of Natural Resources

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

- 400 WILLOUGHBY AVENUE
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FAX: (907) 465-3336
- 550 WEST 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431
FAX: (907) 269-8518

December 27, 2004

Ms. Pat Davidson
Legislative Auditor
Legislative Budget and Audit Committee
P.O. Box 113300
Juneau, AK 99811-3300

Re: Seismic Hazards Safety Commission Report
10-20038-05

Dear Ms. Davidson:

Thank you for the opportunity to review the Alaska Seismic Hazards Safety Commission (ASHSC) Preliminary Report to the Legislative Budget and Audit Committee. As I stated in my prior letter to Mr. Griffen the draft report is very thorough and actually emphasizes the need for the ASHSC. I disagree with the conclusion that the ASHSC has not been active and it is therefore difficult to argue that there is not a demonstrated public need. I support the ASHSC and I urge the Legislature to extend the sunset date.

Alaska is the most seismically active state in the country. The legislature approved the ASHSC because they listened to the concrete arguments provided by professionals for the need for the commission. They recognized the success of similar commissions in other states for reducing earthquake losses and they took assertive action to address the issues in Alaska.

The risk of earthquake losses is steadily increasing and it should be clear as we witness the devastation caused by the earthquake in Asia that we need to minimize the state's risk as Alaska's population and infrastructure expand. Reducing losses at reasonable cost requires public commitment at the highest levels to earthquake-conscious siting, design, and construction. I believe that the ASHSC will provide the focus for this commitment. Governor Murkowski is currently reviewing nominees for appointments.

I concur with the Report's Recommendation No. 1 to increase representation of local government. Hazard mitigation occurs primarily at the local level and I agree that local governments in diverse regions of the state should be represented on the commission. This will ensure that proposed mitigation measures are appropriate, reasonable, and effective.

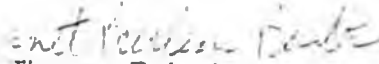
The report states that it is likely that no appointments were made to the commission because I initially recommended that the enabling statutes be repealed. As recognized in the report that initial recommendation was due to the cost of the Commission. It is a sad

Ms. Davidson
December 27, 2004
Page 2 of 2

state of affairs if a commission of this type is not extended because of my intent to be fiscally responsible. I take my job as Commissioner seriously and I weigh the benefits of an issue in light of the budget and my stewardship responsibilities. To act otherwise would be irresponsible. Once I was assured that the commission could be supported with a reduced budget I fully supported the commission and I recommend that the sunset date be extended. I expect the ASHSC's future recommendations to enhance public safety in our seismically active state.

Please contact me, Rod Combellick (451-5007; rod@dnr.state.ak.us) or Janet Burleson Baxter, 465-4730, if you would like further clarification on the department's recommendation on this issue.

Sincerely,


Thomas E. Irwin
Commissioner

cc: Rod Combellick
Janet Burleson Baxter
Marty Rutherford
Lorraine Derr
Linda Hay

[1] State law, AS 37.05.289 (b), allows a sweeping of certain funds at the end of each fiscal year under the following provision:

If the amount necessary to satisfy claims or judgments for which payment may be due under the state insurance program in a fiscal year exceed the unexpended balance of the amounts allocated to the account, the department may charge an additional amount from the unencumbered balance of any appropriation that is determined by the commissioner of administration to be available for lapse at the end of the fiscal year.

[2] AS 44.66.050(b) states

During a public hearing, the board, commission or agency shall have the burden of demonstrating a public need for its continued existence or the continuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest. [emphasis added]

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Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

In Anchorage: 3709 Spenard Road / Anchorage, Alaska 99503 / (907) 277-7222 / FAX (907) 277-4523

In Valdez: P.O. Box 3089 / 339 Hazelet Avenue / Valdez, Alaska 99686 / (907) 835-5957 / FAX (907) 835-5926

MEMBERS

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Community of
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Kenai Peninsula
Borough

Kodiak Island
Borough

Kodiak Village Mayors
Association

Oil Spill Region
Environmental
Coalition

Prince William Sound
Aquaculture
Corporation

Resolution 06-02

Supporting Passage of House Bill 83
in the Legislature of the State of Alaska
Twenty-Fourth Legislature - Second Session

WHEREAS, Section 500² (a)(D) of the Oil Pollution Act of 1990 finds that a mechanism should be established which fosters the long-term partnership of industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals;

WHEREAS, the Prince William Sound Regional Citizens' Advisory Council, an independent non-profit corporation whose mission, as mandated by the Oil Pollution Act of 1990, is to promote environmentally safe operation of the Valdez Marine Terminal and associated tankers;

WHEREAS, Alaska is located in one of the most seismically active areas of the world;


WHEREAS, the most severe seismic event ever recorded in North America occurred in 1964 in the vicinity of the Valdez Marine Terminal;

WHEREAS, the Alaska Seismic Hazards Safety Commission was formed to "recommend goals and priorities for seismic hazard mitigation to the public and private sectors" and to "gather, analyze and disseminate information on seismic hazard mitigation," and to "establish and maintain necessary working relationships with public and private agencies;" and

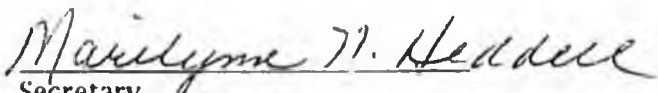
WHEREAS, a severe seismic event has the potential to cause catastrophic oil spills;

NOW, THEREFORE, BE IT RESOLVED, that because of the potentially catastrophic impacts of major seismic events on crude oil transportation in Prince William Sound, the Prince William Sound Regional Citizens' Advisory Council hereby supports the retention of the Alaska Seismic Hazards Safety Commission with the passage of House Bill 83.

PASSED AND APPROVED by the Prince William Sound Regional Citizens' Advisory Council on the 26 day of January, 2006.



President



Secretary

HB

90

ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:
345 W. Sterling Highway
Suite 102B
Homer, Alaska 99603
907-235-2921
907-235-4008 FAX



Session:
Alaska State Capitol, Room 102
Juneau, Alaska 99801
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HOUSE STATE AFFAIRS

REPRESENTATIVE PAUL SEATON, CHAIRMAN

MEMORANDUM

Date: March 10, 2005

To: Senator Gene Therriault, Chair
Senate State Affairs Committee

From: House State Affairs

Re: House Bill 90

A handwritten signature in cursive script that reads "Paul Seaton".

We respectfully request that House Bill 90, "An act requiring warrants drawn on the Department of Administration against the state treasury to be negotiable instruments," be scheduled for hearing in the Senate State Affairs Committee at your earliest possible convenience.

Included with this request is

- Current version of the bill
- Fiscal note
- Sponsor Statement
- Sectional Analysis
- Talking Points
- Copy of Following Alaska Supreme Court Case
 - *National Bank of Alaska v. Univentures 123 and State of Alaska*
- Letter of Support from the Alaska Bankers Association

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 90
 (H) Publish Date: 2/4/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: An Act requiring warrants drawn on RDU: Centralized Administrative Services
the state treasury to be negotiable instruments Component: Finance
 Sponsor: House State Affairs
 Requester: House State Affairs Component No.: 59

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill has no fiscal impact. It simply codifies in law a 1992 ruling by the Alaska Supreme Court (National Bank of Alaska vs. Univentures and the State of Alaska, Department of Administration, file #S-4087) that reversed a Superior Court ruling on the negotiability of warrants issued by the state. The Supreme Court held that state warrants are negotiable instruments subject to the UCC rules governing holders in due course.

 Since that Supreme Court decision, the state has administered its warrants as negotiable instruments, so no administrative changes are necessary if this legislation passes. It will simply codify in statute the ruling of the Supreme Court.

Prepared by: Kim J. Garnero, Director Phone: 465-3435
 Division: Finance Date/Time: 2/1/05 1:40 PM
 Approved by: Michael Tibbles, Deputy Commissioner Date: 2/1/2005
 Agency: Department of Administration

ALASKA STATE HOUSE OF REPRESENTATIVES

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HOUSE STATE AFFAIRS

REPRESENTATIVE PAUL SEATON, CHAIRMAN

Sponsor Statement

HB 90

Requiring state treasury warrants to be negotiable instruments.

House Bill 90 continues the committee's work last session on House Bill 373—State Dated Warrants. It clarifies existing statutes governing state treasury warrants by providing that warrants, like bank checks, are negotiable instruments under the Uniform Commercial Code.

During the 1980s, there was a long-standing dispute between commercial banks and the State of Alaska regarding the negotiability of state treasury warrants. This dispute was ultimately resolved by the Alaska Supreme Court in National Bank of Alaska v. Univentures 1231, 824 P.2d 1377 (Alaska 1992), which held that state treasury warrants were negotiable instruments under the Uniform Commercial Code and were therefore subject to the "holder in due course" defense. This was an important protection for businesses with financial dealings with the State. Although the Division of Finance amended its business practices to comply with the Supreme Court ruling, Alaska statutes have never been amended to incorporate this holding. HB 373 simply codifies the holding the National Bank of Alaska v. Univentures 1231.

The State Affairs Committee is introducing this legislation in order to clarify Alaska statutes and continue the modernization of the state treasury warrant system.

Contact: Peter Naoroz
465-2840

Released: January 21, 2005

ALASKA STATE HOUSE OF REPRESENTATIVES

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HOUSE STATE AFFAIRS

REPRESENTATIVE PAUL SEATON, CHAIRMAN

Sectional Analysis

HB 90

Requiring state treasury warrants to be negotiable instruments.

Section 1. Payment of warrants.

Adds language that clarifies the nature of a warrant issued by the Department of Administration against the state treasury. The language originates in a 1992 Supreme Court decision, *National Bank v. Univentures*, and it states that state treasury warrants (those things that we think of as "checks") constitute a negotiable instrument, and they must be paid according to the terms of the Uniform Commercial Code § 3-104(1)(b).

Adds language stating that "negotiable instrument" has the meaning given in AS 45.03.104(a).

Title 45 TRADE AND COMMERCE
Chapter 45.03 NEGOTIABLE INSTRUMENTS

Sec. 45.03.104. Negotiable instrument.

(a) Except as provided in (c) - (d) of this section, "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if the unconditional promise or order

- (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- (2) is payable on demand or at a definite time; and
- (3) does not state any other undertaking or instruction by the person promising or ordering payment to do an act in addition to the payment of money, but the promise or order may contain an undertaking or power to give, maintain, or protect collateral to secure payment, an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or a waiver of the benefit of a law intended for the advantage or protection of an obligor.

Talking Points
HB 90

House Bill 90 continues the work of the House State Affairs Committee work last session on House Bill 373—Stale Dated Warrants.

It clarifies existing statutes governing state treasury warrants by providing that warrants, like bank checks, are negotiable instruments under the Uniform Commercial Code.

During the 1980s, there was a long-standing dispute between commercial banks and the State of Alaska regarding the negotiability of state treasury warrants.

This dispute was ultimately resolved by the Alaska Supreme Court in National Bank of Alaska v. Univentures in 1992, which held that state treasury warrants were negotiable instruments under the Uniform Commercial Code.

This was an important protection for businesses with financial dealings with the State. Although the Division of Finance amended its business practices to comply with the Supreme Court ruling, Alaska statutes have never been amended to incorporate this holding.

HB 90 simply codifies the holding the National Bank of Alaska v. Univentures 1231. The House State Affairs Committee introduced this legislation in order to clarify Alaska statutes and continue the modernization of the state treasury warrant system.

LEXSEE 824 P.2d 1377

**NATIONAL BANK OF ALASKA, National Banking Association, Appellants, v.
UNIVENTURES 1231 and STATE OF ALASKA, DEPARTMENT OF
ADMINISTRATION, Appellees.**

No. 3799, Supreme Court File No. S-4087

SUPREME COURT OF ALASKA

824 P.2d 1377; 1992 Alas. LEXIS 10; 17 U.C.C. Rep. Serv. 2d (Callaghan) 482

January 24, 1992, Decided

PRIOR HISTORY:

[**1] Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, J. Justin Ripley, Judge. Superior Court File No. 3AN-88-278 Civil

CASE SUMMARY

PROCEDURAL POSTURE: Appellant sought relief from an order by the Superior Court of the State of Alaska, Third Judicial District, Anchorage, that held the appellant was not a holder in due course under *Alaska Stat. § 45.03.302(a)* because the state treasury warrant was not a negotiable instrument.

OVERVIEW: Appellee government agency was directed to hold its rent in abeyance until a court-appointed receiver was named after a dispute arose among the partners of appellee business. The state treasury placed a stop-payment order on the state treasury warrant that was issued to pay the lease. Appellant paid appellee business on the warrant but did not debit the appellee government agency's account because of the stop-payment order. Appellant moved for summary judgment and claimed it was a holder in due course. The lower court denied the appellant's motion and held that the state treasury warrant was not a negotiable instrument. The supreme court reversed the lower court's holding. The court looked to *Alaska Stat. § 45.03.104(a)* and determined that the warrant met the statutory definition of a negotiable instrument. Therefore, the appellant's claim that it was a holder in due course under *Alaska Stat. § 45.03.302(a)* was valid.

OUTCOME: The supreme court reversed the lower court's decision and held that the state treasury warrant

met the statutory definition of a negotiable instrument, therefore entitling the appellant to claim itself as a holder in due course of the negotiable instrument.

CORE TERMS: holder, negotiable instrument, negotiability, stop-payment, state treasury, summary judgment, notice, non-negotiable, negotiable, statutory definition, definite time, cross-motion, warrant issued, transferee, unconditional promise, improvement district, general principles, payable to order, third person, order to pay, municipal, customer, sanitary, drawer, reasonable opportunity, simple contract, deference, evidenced, clearing, deposit

LexisNexis(TM) HEADNOTES - Core Concepts

Commercial Law (UCC) > Negotiable Instruments (Article 3) > Rights of a Holder

[HN1] *Alaska Stat. § 45.03.305* provides that the holder in due course of an instrument takes the instrument free of all but a very limited class of defenses that the original payor might have against the original payee.

Commercial Law (UCC) > Negotiable Instruments (Article 3) > Rights of a Holder

[HN2] *Alaska Stat. § 45.03.302(a)* defines a holder in due course as one who takes a negotiable instrument for value, in good faith, and without notice that the instrument is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

Commercial Law (UCC) > Negotiable Instruments (Article 3) > Rights of a Holder

[HN3] If a holder of an instrument is not a holder in due course, the holder takes the instrument subject to all

valid claims to the instrument, as well as subject to several classes of defenses. *Alaska Stat. § 45.03.306.*

Civil Procedure > Appeals > Standards of Review > De Novo Review

Commercial Law (UCC) > Negotiable Instruments (Article 3)

[HN4] Whether a warrant is a negotiable instrument is a question of law, which the supreme court examines de novo.

Commercial Law (UCC) > Negotiable Instruments (Article 3)

[HN5] See *Alaska Stat. § 45.03.104(a).*

Governments > Legislation > Interpretation

[HN6] See *Alaska Stat. § 45.01.102(a).*

Commercial Law (UCC) > Negotiable Instruments (Article 3) > Discharge & Payment

[HN7] A promise or order otherwise unconditional is not made conditional by the fact that the instrument is limited to payment out of a particular fund if the instrument is issued by a government or governmental agency or unit. *Alaska Stat. § 45.03.105(a)(7).*

Commercial Law (UCC) > Negotiable Instruments (Article 3) > Discharge & Payment

[HN8] See *Alaska Stat. § 45.03.109(a)(1).*

Commercial Law (UCC) > Negotiable Instruments (Article 3) > Discharge & Payment

[HN9] An instrument is payable to order if by its terms it is payable to the order or assigns of a person specified in the instrument with reasonable certainty. *Alaska Stat. § 45.03.110(a).*

Governments > Legislation > Interpretation

[HN10] While attorney general opinions are entitled to some deference in matters of statutory construction, they are not always correct.

COUNSEL:

Appearances: David Floerchinger and Deirdre D. Ford, Staley, DeLisio, Cook & Sherry, Inc., Anchorage, for Appellants.

Sally J. Kucko and Rick L. Owen, Groh, Eggers & Price, Anchorage, for Appellees Univentures 1231

Jeffrey W. Bush, Assistant Attorney General, and Charles E. Cole, Attorney General, Juneau, for Appellee State of Alaska, Department of Administration

JUDGES:

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton and Moore, Justices.

OPINIONBY:

MOORE

OPINION:

[*1377] OPINION

MOORE, Justice.

National Bank of Alaska (NBA) brought an action against the State of Alaska, Univentures 1231 (Univentures), Charles D. LeViege, and Lee D. Garcia to recover the amount which NBA paid on a warrant issued by the state. The superior court held that the warrant is not a negotiable instrument under the Uniform Commercial Code as enacted in Alaska, and that NBA therefore could not recover as a holder in due course under the code. NBA appeals. The sole issue on appeal is whether the superior court was correct in finding that the state treasury [**2] warrant is a non-negotiable instrument under Article III of the Uniform Commercial Code. We reverse.

I

The State of Alaska is a tenant in a large office building which is owned by Univentures. On November 24, 1987, the state made a lease payment of \$ 28,143.47 to Univentures with state treasury warrant No. 21045102. Charles LeViege, the managing partner of Univentures, assigned the warrant on behalf of Univentures to Lee Garcia.

As a result of a dispute which arose among the partners of Univentures, the state was notified on November 25, 1987 that it should no longer pay Charles LeViege the monthly rent due the partnership. The state was directed to hold the rent in abeyance pending the naming of a court-appointed receiver. On November 27, 1987, the state treasury placed a stop-payment order on warrant No. 21045102.

Garcia presented the warrant to NBA, the state's clearing bank, on November 30, 1987. NBA paid Garcia \$ 28,143.47 on the warrant but did not debit the state's account [*1378] because of the stop-payment order. On January 14, 1988, NBA filed an action against the State of Alaska, Charles LeViege, and Lee Garcia, to recover the sum of \$ 28,143.47 which NBA had paid [*3] to Lee Garcia in exchange for the warrant. The state deposited an equivalent sum with the court and moved to join Univentures as a party. Samuel and Catherine LeViege answered on behalf of Univentures.

NBA moved for summary judgment claiming that it is a holder in due course under AS 45.03.302(a). NBA

argued that the warrant is a negotiable instrument and that it paid the warrant in good faith, without knowledge of facts which would indicate the instrument may not be payable as its terms provide. As such, NBA maintained that it took the warrant free from the defenses presented by Univentures and the state. The state and Univentures opposed NBA's motion, arguing that NBA is not a holder in due course because the warrant is not a negotiable instrument, and because NBA had notice of the stop-payment order when it paid Garcia on the warrant. Univentures filed a cross-motion for summary judgment.

The superior court granted Univentures' cross-motion for summary judgment and denied NBA's motion for summary judgment. Judge Ripley, in ruling for Univentures, specifically found that the warrant is not a negotiable instrument and that NBA therefore is not a holder in due course. Pursuant to [**4] the parties' stipulation, \$ 16,000.00 of the money deposited with the court was immediately disbursed to Univentures and NBA in equal amounts. The court ordered that the remaining \$ 12,143.47 be held by the court pending appeal of the court's determination that the warrant is not negotiable. This appeal followed.

II.

[HN1] Article III of the Uniform Commercial Code provides that the holder in due course of an instrument takes the instrument free of all but a very limited class of defenses that the original payor might have against the original payee. AS 45.03.305. n1 [HN2] The code defines a holder in due course as one who takes a negotiable instrument for value, in good faith, and "without notice that [the instrument] is overdue or has been dishonored or of any defense against or claim to it on the part of any person." AS 45.03.302(a). [HN3] If a holder of an instrument is not a holder in due course, the holder takes the instrument subject to all valid claims to the instrument, as well as subject to several classes of defenses. AS 45.03.306 n2

n1 AS 45.03.305 provides:

To the extent that a holder is a holder in due course the holder takes the instrument free from
(1) all claims to it on the part of any person; and
(2) all defenses of any party to the instrument with whom the holder has not dealt except
(A) infancy, to the extent that it is a defense to a simple contract;
(B) such other incapacity, or duress, or illegality of the transaction as renders the obligation of the party a nullity;

(C) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms;
(D) discharge in solvency proceedings; and
(E) any other discharge of which the holder has notice when the holder takes the instrument.
[**5]

n2 AS 45.03.306 provides:

Unless the person has the rights of a holder in due course, a person takes the instrument subject to

- (1) all valid claims to it on the part of any person;
- (2) all defenses of a party which would be available in an action on a simple contract;
- (3) the defenses of want or failure of consideration, nonperformance of a condition precedent, nondelivery, or delivery for a special purpose (AS 45.03.408); and
- (4) the defense that the person or a person through whom the person holds the instrument acquired it by theft, or that payment or satisfaction to the holder would be inconsistent with the terms of a restrictive endorsement, the claim of a third person to the instrument is not otherwise available as a defense to a party liable on the instrument unless the third person personally defends the action for the party.

The superior court held that NBA was not a holder in due course because the state treasury warrant involved is not a negotiable instrument to which the Uniform [**1379] Commercial Code applies. n3 As a result, the superior court concluded that NBA took the warrant [**6] subject to the state's defense that it had issued a valid stop-payment order pursuant to AS 45.04.403(a). n4 NBA argues that the warrant is a negotiable instrument, and that NBA is therefore a holder in due course. [HN4] Whether the warrant is a negotiable instrument is a question of law, which we examine de novo. See *Hucklin v. Orbeck*, 565 P.2d 159, 163 n.6 (Alaska 1977) rev'd on other grounds, 437 U.S. 518, 57 L. Ed. 2d 397, 98 S. Ct. 2482 (1978).

n3 Univentures argued in its cross-motion for summary judgment that even if the warrant is a negotiable instrument, NBA is not a holder in due course because NBA had notice of the stop-payment order when it paid Garcia on the warrant. Univentures claimed that NBA was given notice of the stop-payment order on

November 27, 1987, in its role as the clearing bank for state treasury warrants. The superior court apparently found that NBA did not have knowledge of the stop-payment order when it accepted the warrant, for the final judgment provides that NBA is entitled to the funds on deposit with the court if this court determines warrant No. 21045102 is a negotiable instrument. We do not consider whether NBA had knowledge of the stop-payment order, for that issue is not a stated point on appeal, and was not briefed by either party. [**7]

n4 AS 45.04.403(a) provides:

A customer may, by order to the bank, stop payment of an item payable for the customer's account, but the order must be received at a time and in a manner which afford the bank a reasonable opportunity to act on it before an action by the bank with respect to the item described in AS 45.04.303.

[HN5] Alaska Statute 45.03.104(a) provides that for a writing to be a negotiable instrument it must:

- (1) be signed by the maker or drawer;
- (2) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation, or power given by the maker or drawer except as authorized by this chapter;
- (3) be payable on demand or at a definite time, and
- (4) be payable to order or to bearer.

[HN6] Alaska Statute 45.01.102(a) provides that the Code is to be "liberally construed and applied to promote the underlying purposes and policies." The underlying purposes and policies of the Uniform Commercial Code are:

- (1) to simplify, clarify, and modernize the law governing commercial transactions;
- (2) to permit the continued expansion of commercial practices through [**8] custom, usage, and agreement of the parties;
- (3) to make uniform the law among the various jurisdictions.

AS 45.01.102(b).

Warrant No. 21045102 satisfies all four elements of the definition of a negotiable instrument. First, the warrant is signed by the maker, Governor Steve Cowper. Second, the warrant contains an unconditional promise or order to pay a sum certain of \$ 28,143.47. [HN7] A

promise or order otherwise unconditional is not made conditional by the fact that the instrument is limited to payment out of a particular fund if the instrument is issued by a government or governmental agency or unit. AS 45.03.105(a)(7). Third, the warrant is payable at a definite time. Although the warrant states that it "will be deemed paid unless redeemed within two years after the date of issue," [HN8] AS 45.03.109 provides that an instrument is payable at a definite time if by its terms it is payable on or before a stated date. AS 45.03.109(a)(1). Finally, the warrant clearly indicates that it is payable to the order of Univentures. [HN9] An "instrument is payable to order if by its terms it is payable to the order or assigns of a person specified in the instrument with reasonable certainty." AS 45.03.110(a). [**9] Because the warrant meets the statutory definition in AS 45.03.104, we hold that the warrant is a negotiable instrument. n5

n5 AS 45.03.104(b) classifies certain writings which satisfy the definition of "negotiable instrument" as drafts, checks, certificates of deposit, and notes. We reject the state's argument that an instrument must fit within one of these categories before it can qualify as a negotiable instrument. Negotiability is determined by the four-pronged test of AS 45.03.104, not by the name affixed to a particular writing. If it were necessary to categorize the warrant at issue in this case, it would be a draft. An instrument is a draft if it is an order. AS 45.03.104(b)(1).

[*1380] The purposes for which the Uniform Commercial Code was enacted support the conclusion that warrants which satisfy the statutory definition of negotiability must be deemed negotiable. Univentures claims that state warrants should be deemed non-negotiable because the state must retain its rights to assert the defenses of a [**10] maker in order to maintain and protect its fiscal policies, practices, and procedures. This argument is directly contrary to the Code's policy of promoting commercial transactions by allowing a party to ascertain the negotiability of an instrument from its face. 5 R. Anderson, Uniform Commercial Code, § 3-104:4 (1984) ("The whole idea of the facilitation of easy transfer of notes and instruments requires that a transferee be able to trust what the instrument says, and be able to determine the validity of the note and its negotiability from the language in the note itself."). To carve out an exception to the statutory definition of negotiability would jeopardize Article III's purposes of clarifying and modernizing commercial transactions by allowing

reliance on written instruments. The transferee of an instrument must be able to rely on the negotiability of the instrument as evidenced by the instrument's terms, so that the transaction is not stalled while the transferee verifies its rights on the instrument. n6

n6 If the state truly believes that the non-negotiability of treasury warrants is essential to maintain and protect its fiscal policies, the state could make its warrants non-negotiable simply by printing "non-negotiable" on the face of the warrants

[**11]

No Alaska case law addresses the issue of whether a state treasury warrant constitutes a negotiable instrument. Prior to the enactment of the Uniform Commercial Code, warrants issued by states, local governments, and municipalities were almost universally deemed non-negotiable. See, e.g., *Negotiability of County, Municipal, School, State, or Town Warrants*, 36 A.L.R. 949, 949 (1925); *Hamilton Nat'l Bank v. Pool*, 144 S.W.2d 670, 671 (Tex. App. 1940); *State v. Liberty Nat'l Bank & Trust Co.*, 414 P.2d 281, 283 (Okla. 1966). The drafters of the Uniform Commercial Code apparently intended to change this body of law, however, as evidenced by the Official Code Comment to § 3-105.5 R. Anderson, Uniform Commercial Code, § 3-105.1, at 228 (1984) ("[Section 3-105(1)(g)] will permit some municipal warrants to be negotiable if they are in proper form.") n7

n7 All of the cases cited by Univentures and the state are distinguishable from the present case for the reason that all were based upon the "law merchant" which has now been replaced in Alaska by the Uniform Commercial Code. See *Prince v. LeVan*, 486 P.2d 959, 962 (Alaska 1971) ("By legislative declaration the code is the law, and if general principles appear inconsistent, they must be considered displaced under [this section]. Moreover, even where inconsistency does not exist, the code must be regarded as supreme; general principles even when consistent with the code are merely supplementary.")

[**12]

Those courts which have considered the negotiability of government warrants have generally found those warrants to be negotiable so long as they satisfy the codes requirements. The Louisiana Court of Appeals held that a warrant issued by a levee district to

pay a construction company was a negotiable instrument. *St. James Bank & Trust Co. v. Board of Comm'rs*, 354 So. 2d 233 (La. App. 1978). The construction company in that case had negotiated the warrant to a bank. After the levee's Board of Commissioners stopped payment on the warrant, the warrant was returned to the bank unpaid. The court found that the warrant was a negotiable instrument because it satisfied the requirements of § 10:3-104 of the Louisiana statutes. That section is identical to AS 45.03.104. *Id.* at 234.

Similarly, the Supreme Court of Nebraska held that a warrant issued by a county sanitary and improvement district was a negotiable instrument. *Sanitary & Improvement Dist. v. Continental Western*, 215 Neb. 843, 343 N.W.2d 314 (Neb. 1983). In that case, the sanitary and improvement district which had issued capital and improvement warrants sought [**13] a judicial declaration of the invalidity of the warrants. After examining the warrants in light of § 3-104 of the Nebraska Uniform Commercial [*1381] Code, which is almost identical to AS 45.03.104, the Supreme Court of Nebraska held that they were negotiable instruments.

We are mindful of a 1987 attorney general opinion which concluded that state treasury warrants are not negotiable. [HN10] While attorney general opinions are entitled to some deference in matters of statutory construction, they are not always correct. n8 In this instance we are unconvinced by the attorney general's opinion. It fails to consult the language and policies of the Uniform Commercial Code, and it relies mainly on cases examining the negotiability of warrants arising prior to the enactment of the Uniform Commercial Code.

n8 *Carney v. State Board of Fisheries*, 785 P.2d 544, 548 (Alaska 1990) ("Opinions of the attorney general, while not controlling on matters of statutory interpretation, are entitled to some deference"), *Girves v. Kenai Peninsula Borough*, 536 P.2d 1221, 1225 (Alaska 1975) ("We hold that the 1962 Attorney General's opinion is in error insofar as it concludes that the territorial government of Alaska had no power to accept the right-of-way granted in 43 U.S.C. § 932 (1964).")

[**14]

The decision of the superior court is REVERSED. The \$ 12,143.47 on deposit with the court is awarded to NBA. n9

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n9 The parties to this appeal stipulated that if we reverse the superior court's determination that the warrant is a negotiable instrument, Univentures waives all other claims to the interpled money against NBA and the state,

including the claim that NBA was not a holder in due course of the instrument.