ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 HRLS 12332

With this resolution, I am NOT advocating for or against subsistence rights for any person or community. It is my hope that the Federal Subsistence Board will revisit these C&T determinations, allowing for the States presentation of applicable facts and to take these and previous facts given in testimony, into account and follow more closely it's eight regulatory criteria to be used in making C&T determinations. When a governing body does not follow established criteria in making its decisions, we begin to travel the path down a slippery slope.

It is my hope that passage of this resolution and the intervention of Alaska's congressional delegation will help to sway the Board in its reluctance to reconsider its decision.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHJR 4(FSH)
(H) Publish Date: 3/5/2007

Revision Date/Time (Note if correction):
Title: Kenai/Kasilof Subsistence Priority
Sponsor: Rep. Olson
Requester:

Dept. Affected:
RDU:
Component:
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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)

FUND SOURCE	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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 (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

POSITIONS	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Full-time						
Part-time						
Temporary						

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

Prepared by: House Fisheries Committee Staff
Phone: 465-3923
Division:
Date/Time:
Approved by: Rep. Seaton, Chairman
Date: 3/2/2007
Agency: Legislature

(Revised 9/18/2006 OMB)

HOUSE COMMITTEE REPO

(7)
Date Returned to Committee: April 16, 2007 **FURTHER REFERRALS:**

Date of Committee Action: April 25, 2007

The RULES Committee considered: **HJR 4**

HOUSE JOINT RESOLUTION NO. 4 **KENAI/KASILOF SUBSISTENCE PRIORITY**

Requesting the Federal Subsistence Board to reconsider its decision regarding the subsistence fishery priority given to Ninilchik residents.

Recommends it be replaced with [ ] HCS *or* [X] CS for HJR 4 (RLS)
For Senate Bills with new title: [ ] Technic' Title [ ] New Title: HCR ________ **[ ] Same Title [X] New Title**

[ ] attach amendments
[ ] add new referral to ___________ Committee
[ ] Letter of Intent __________ Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	***FN#**	**Fiscal**	**Indet.**	**Zero**

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	**FN#**	**Fiscal**	**Indet.**	**Zero**

Signing with recommendations	**Printed Last Name**	**DP**	**DNP**	**NR**	**AM**
Anna I. Fairclough	Fairclough	✓			
[signature]	Samuels	X			
[signature]	Nadeli			✓	
[signature]	Gatenberg			✓	
Craig Johnson	Johnson	✓			
Chair: John Coghill	Coghill	✓			
Chair:					

HOUSE COMMITTEE REPORT

4-5-07

(9)
Date Referred to Committee: March 5, 2007 — **FURTHER REFERRALS:** Rules

Date of Committee Action: 04-07-07

The RESOURCES Committee considered: **HJR 4**

HOUSE JOINT RESOLUTION NO. 4 — **KENAI/KASILOF SUBSISTENCE PRIORITY**

Requesting the Federal Subsistence Board to reconsider its decision regarding the subsistence fishery priority given to Ninilchik residents.

Recommends it be replaced with [ ] HCS *or* [X] CS for HJR 4 (FSH)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR ______ [ ] Same Title [X] New Title

[ ] attach amendments
[ ] add new referral to ___________ Committee
[ ] Letter of Intent ___________ Committee

List of Abbrev for Depts.: ADM, CED, COR, CRT, EED, DEC, DFG, GOV, HSS, LWF, LAW, LEG, MVA, DNR, DPS, REV, DOT, UA

***NEW* FISCAL NOTES** (*Assigned by Chief Clerk's Office)

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
FSH CMTE	1			✓

Signing with recommendations	Printed Last Name	DP (5)	DNP (1)	NR	AM
Bob Roses	Roses	X			
Paul K Seaton	SEATON	X			
[signature]	Kohring	X			
[signature]	GUTTENBERG		X		
Chair: [signature] (Co)	Gatto	X			
Chair: Craig Johnson (Co)	Johnson	X			

D

HOUSE COMMITTEE REPORT

3.5.07

(9)

Date Referred to Committee: January 16, 2007 **FURTHER REFERRALS: Resources**

Date of Committee Action: 3/2/07

The HOUSE SPECIAL COMMITTEE ON FISHERIES considered: **HJR 4**

HOUSE JOINT RESOLUTION NO. 4 **NINILCHIK FISHING PRIORITY**

Requesting the Federal Subsistence Board to reconsider its decision regarding the subsistence fishery priority given to Ninilchik residents.

Recommends it be replaced with [ ] HCS *or* [X] CS *for* HJR 4 (FSH)

***For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR*____ [ ] Same Title [X] New Title**

[ ] attach amendments
[ ] add new referral to ____________Committee
[ ] Letter of Intent___________Committee

List of abbrev for Depts.:
ADM
CED
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HSS
LFG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
FSH CMTE	1			✓

PREVIOUS FISCAL NOTES

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP (3)	DNP	NR (1)	AM
[signature]	Johnson	x			
[signature]	LeDOUX			X	
Bryce Edgmon	EDGMON	X			
Chair: [signature]	SEATON	✓			
Chair:					

REQUEST FOR RECONSIDERATION OF FEDERAL SUBSISTENCE BOARD DETERMINATIONS ON PROPOSAL FRFR 06-02/03/08, including the Board's Determination that the Community of Ninilchik Has Customarily and Traditionally Harvested for Subsistence Purposes All Fish Located Within the Boundaries of the Kenai National Wildlife Refuge And Chugach National Forest, including the Upper Kenai River, Russian River, Swanson River, and their Lakes and Drainages

By State of Alaska

I. Introduction

The State of Alaska, through the Alaska Department of Fish and Game (ADF&G), respectfully requests that the Federal Subsistence Board (Board) reconsider and rescind its decision of November 17, 2006 upon Proposal FRFR 06-02/03/08, providing "to the community of Ninilchik a customary and traditional use determination for all fish in the waters north of and including the Kenai River drainage, within the Kenai National Wildlife Refuge and Chugach National Forest within the Kenai Peninsula district." *See* Transcript of Federal Subsistence Board November 16-17, 2006 Work Session (hereinafter "11/16-17/06 Tr."), at p. 169.[1]

Reconsideration is required because, in adopting that final rule, "the Board's interpretation of information, applicable law, or regulation [was] in error or contrary to existing law." 36 CFR §242.20(d); 50 CFR §100.20(d). In addition, reconsideration is required because, in making its determination, the Board assumed incorrect information, including unsupported speculation regarding fish stocks, resulting in a determination based on speculation. The Board must instead consider real, factual information not previously considered by the Board, of the type on which this request is partly based. *Id.*

The Board's aforementioned finding that the residents of Ninilchik have customarily and traditionally used the numerous fish stocks in the area affected, and thus may have a preferential right to harvest those fish by preferential means, is inconsistent with applicable law including the Board's regulations in 36 CFR §242.16 and 50 CFR §100.16, will create a preference for uses that are not within the definition of "subsistence uses" in Section 803 of the Alaska National Interest Lands Conservation Act (ANILCA), does not properly balance or further the competing purposes of ANILCA recognized by the Court in *Ninilchik Traditional Council v. United States,* 227 F.3d 1186, 1193 (9th Cir. 2000), and will cause unnecessary restriction of non-subsistence uses in violation of

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[1] As set out later in this Request for Reconsideration, the State also requests that the Board reconsider its failure to definitively decide ADF&G's previous requests for reconsideration dated May 5, 2006, of the Board's prior customary and traditional use determinations for Ninilchik as to the Kasilof River drainage fishery and for Cooper Landing and Hope as to the "Kenai River Area" drainage fisheries.

Section 815 of ANILCA. More detailed reasons for this Request for Reconsideration (RFR) include the following:

- The Board made its customary and traditional use determination without substantial supporting evidence and without a reasonable examination of the eight regulatory factors for making customary and traditional use determinations with regard to the various fish stocks and areas covered by the determination.

- The Board incorrectly determined that fishing for all fish in the affected, widespread area far removed from the community of Ninilchik is a customary and traditional subsistence use of that community without adequate supporting information for that determination on the record, thus rendering the determination arbitrary and capricious.

- The evidence presented to the Board did not demonstrate a long-term consistent, recurring pattern of subsistence use by the community of Ninilchik of the affected fish in the distant, expansive location of the determination.

- The evidence presented to the Board did not demonstrate that the salmon, rainbow trout, char, and other fish stocks in that distant, widespread area are the same fish stocks as those present in areas much closer to and historically and much more frequently used by Ninilchik, such as the Ninilchik River and Deep Creek.

- The Board unreasonably declined to defer consideration of the proposal which it determined pending compliance with directions from the Secretary of the Interior requiring the Board to develop written procedures and policies for rendering customary and traditional use determinations.

- The Board violated its own regulatory procedures and Secretarial direction by improperly and unreasonably denying the Alaska Department of Fish and Game Board Liaison the ability to provide and discuss relevant information during the critical point of Board deliberations resulting in the challenged determination.

- The Board lacked necessary jurisdiction to make the traditional and customary use determination because the Federal Government has not legally and properly established reserved water rights in the waters covered by its determination, as required by law.

This RFR is being submitted at this time because the State has been informed by the Regulation Specialist for the federal Office of Subsistence Management (OSM) that in his opinion the action which is the subject of this RFR went into effect immediately.[2]

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[2] Personal communication between Sarah Gilbertson and Bill Knauer on November 28, 2006.

PAGES 3 – 6 have intentionally been left out of this for brevity.

incorporated into the record of the Board's November 16-17, 2006, proceedings through the comments of the State of Alaska representative.[18]

In that October 26, 2006, correspondence and also at the Board proceedings, the State expressed its deep concern "that the Federal Subsistence Board is circumventing its normal public process in an effort to hastily grant the community of Ninilchik customary and traditional use of the Kenai River drainage based upon a faulty interpretation of Department [ADF&G] data" and Dr. Wolfe's unpublished papers regarding Ninilchik household and tribal use surveys. The State explained its concerns, including OSM staff's inaccuracies, mischaracterizations, and misanalysis of data being relied on by the Board and the lack of public notice and meaningful opportunity for the State and public to be timely heard.[19]

In addition, the State objected to the Board making determinations without the benefit of developed written procedures and policies for making C&T use determinations, as directed by the Secretary of the Interior on October 27, 2005, and the State stated its reasons for those objections.[20]

It was also shown that the evidence is insufficient – in terms of frequency of use, area of use, community use, lifetime use, or otherwise -- to support a determination that there has been a long-term consistent, recurring pattern of customary and traditional use for subsistence by Ninilchik of the fisheries located within the Kenai National Wildlife Refuge or Chugach National Forest, as is required by ANILCA and the regulations governing such determinations.[21] Among other reasons, it was pointed out that OSM's analysis misinterpreted and misused ADF&G survey findings; that the eight factors for determining C&T use under the Board's regulations were not met; that at most only 7% of Ninilchik households claimed annual use of the upper Kenai area fisheries at issue in even recent years, that only 13% (including the 7%) claimed frequent use (meaning almost every year) of that area for any of their fishing, that only 4% more claimed intermittent use, that only a total 28% of Ninilchik residents claimed any such use ever during their lifetimes, and that only 2-3% identified taking trout or any species of fish other than salmon from that area (and only 4% salmon); that Ninilchik residents had their highest use of the fisheries closest to Ninilchik (such as Ninilchik River and Deep Creek), used the lower Kenai River some, and used the upper Kenai River drainage areas "farther

[18] 11/16-17/06 Tr. pp. 121-127, 161-162. The State also submitted written comments into the record entitled "ADF&G Page-by-Page Detailed Comments on [OSM] Staff Analysis FRFR06-02/03/08 dated October 31, 2006" after that subsequent OSM Analysis was issued. *Id.* At 121-122.

[19] Campbell 10/26/06 Correspondence at 1-2; 11/16-17/06 Tr. at 122, 126.

[20] *See, e.g.*, Campbell 10/26/06 Correspondence at 2; 11/16-17/06 Tr. at 126-127.

[21] *See, e.g.*, Campbell 10/26/06 Correspondence at 3-4 & attachments thereto; 11/16-17/06 Tr. pp. 122-134, 161-162.

from the community" least; that Ninilchik and the NTC had not harvested all the fish they could under generous state-issued educational fishery permits already existing on the Kenai Peninsula closer to their homes; that no harvest *amounts* for fish taken by residents of Ninilchik in the upper Kenai areas covered by the Board's new C&T determination had been shown; that the sparse participation levels for Ninilchik residents of the upper Kenai River drainages demonstrated more of a *sportfishing* use (rather than traditional subsistence use), which was made easy by highway access, not unlike the use of that same area to harvest fish by residents of Anchorage and other urban areas; that there was little to no evidence of Ninilchik's use of that distant Kenai area prior to construction of the highway linking Ninilchik (and much of the rest of Alaska) to that area; that heretofore subsistence fishing by traditional subsistence means such as netting had not been allowed within that area under federal or state law; and that subsistence is not even listed as one of the purposes of the Kenai National Wildlife Refuge (explicitly created instead to provide opportunities for fish and wildlife recreation, etc.).[22] Even OSM's cultural anthropologist, H. Armstrong, who characterized Dr. Fall's surveys of Ninilchik households for ADF&G as "thorough", scientific, and "of the entire community", also acknowledged: "I mean there's no – nobody here is saying that the Ninilchik people used the Kenai River to a great extent. I mean that's a fact that it's not a really heavily used area [by Ninilchik], they're harvesting most of their resources close to the community."[23]

Furthermore, ADF&G was arbitrarily and capriciously denied the opportunity to be fully heard on those matters by being cut off during Board deliberations on the subject, upon the request of a Board member and upon incorrect advice of the Solicitor's Office to the Board Chair, in violation of the Board's own procedures and Secretarial direction.[24]

Very soon after making that erroneous ruling prohibiting the State from participation, the Board then introduced speculation into its deliberations and improperly relied upon that speculation as an important part of making its positive C&T determination. It speculated that the salmon, trout, and other fish stocks in the distant, widespread drainages of the Kenai National Wildlife Refuge and Chugach National Forest under consideration, including the Kenai River, Russian River, Swanson River, Summit Lake, and Resurrection Creek drainages, are the "same stock" as the fish in the

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[22] *Id.*

[23] 11/16-17/06 Tr. at 87.

[24] *See* 11/16-17/06 Tr. 161-163 (improperly prohibiting the State of Alaska representative from participating during deliberations); Correspondence in 2004 from Secretary Norton directing otherwise, attached hereto as Attachment 3; Transcript of December 11-12, 2006, Board Meetings (acknowledgement by Board Chair of erroneous ruling on November 17, 2006 improperly preventing State from participation contrary to Secretarial intent).

areas much closer to and much more commonly used by Ninilchik, such as the Ninilchik River and Deep Creek.[25]

However, ***no*** evidence, substantial or otherwise, had been presented that could support that speculation.[26] To the contrary, that topic did not arise until very late in the Board's deliberations, after all information had been submitted to the Board, none of which included factual information about specific fish stocks. The topic arose only in response to Board concerns that a C&T use for fishing by Ninilchik in the faraway Kenai River Area under consideration had not been shown. At that juncture, the Board's Solicitor countered: "We're trying to determine if there were customary and traditional uses of a *stock or population, that's all.* * * * And we're not – as far as I can tell, we're not tied to a location. It [where the use occurred or is created] could be on the Kenai River, it could be off, we're talking about the population and stock. There's a long, long stretch of fishable water where that stock or population could be harvested." 11/16-17/06 Tr. at 166 (emphasis added). Board Chairman Fleagle then immediately responded: "I'm glad you made that point. * * * And obviously this is going to be another one of those decisions where my vote is either going to allow this thing to pass or not . . . . [In my opinion] we are not looking at whether there is just a defined pattern of use for that portion of the river system that happens to be Federal, for the community of Ninilchik and Cooper Landing and Hope on the Kenai River . . . . To me it's pretty clear that *if you take that entire river system and even that entire area, if you include other river systems, other than the Kenai, you got the Kasilof, you got the Ninilchik, you got Deep Creek, you got several different systems that could be defined as the same fish stock,* I think it's overwhelmingly evident that you do have customary and traditional use, and that's where I have to fall." *Id.* at 166-167 (emphasis added). Immediately thereafter, the vote of the Board was taken and the motion to grant Ninilchik a C&T determination for the broad scope of the "Kenai River area" passed 5 to 1, with the last voter, Board member Oviatt, commenting: "I'm going to vote aye. And I was swayed by our Chairman . . . ." *Id.* at 168-169.

Indeed, it could be shown that the Board's speculation on that topic, which was decisive, is incorrect, but as noted the opportunity to do so was not given. If given the opportunity to address that topic the State could show that the salmon and other fish stocks, including trout and char, of the distant Kenai River drainages, streams and other water bodies affected by the Board's C&T determination, are not the same fish stocks as exist for the Ninilchik River, Deep Creek, Kasilof River or other streams and rivers within the Kenai Peninsula District. They are not one homogenous fish stock.[27] The

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[25] 11/16-17/06 Tr. pp. 166-169.

[26] *Id.*, Tr. pp. 78-169.

[27] For example, the National Marine Fisheries Service Northeast Fisheries Science Center (http://www.nefsc.noaa.gov/techniques/tech_terms.html#sa2) gives the following definition: "**Stock:** A part of a fish population usually with a particular migration

State requests Board reconsideration in order to be given the opportunity to show that. Otherwise, the Board's determination will remain founded on unsupported speculation contrary to law.

In addition, the State challenged the Board's claim to jurisdiction to make that C&T use determination and other determinations at issue here and in the additional RFRs being filed by the State this month and previously, because the Federal Government has not legally and properly established water rights in the waters covered by those determinations, as set out and pending in *Katie John, Gerald Nicolia, et al., Plaintiffs, v. The United States of America, et al., Defendants*, United States District Court for the District of Alaska Case No. A05-0006-CV (HRH) (Consolidated), incorporated herein by reference.

The effect of the Board's regulatory C&T determination is to provide a federal preference to residents of Ninilchik for harvest of all fish, including all types of salmon, Dolly Varden, rainbow trout, char, lake trout, grayling, and burbot, in all waters of the Kenai Peninsula District north of and including the Kenai River, Russian River, Swanson River, and their lakes and drainages within and adjacent to the boundaries of the Kenai National Wildlife Refuge and Chugach National Forest, as more fully described above. Nonlisted rural residents, along with other state users, of these highly popular and heavily used water bodies will not be eligible to participate in these federal fisheries and will be limited to participation in state fisheries. This federal customary and traditional use determination can be expected to lead to an increased harvest of fish, such as salmon, eligible for limited harvest within the area under state regulations, and to the harvest of other fish, such as rainbow trout, not generally eligible for harvest under state regulations within the area.

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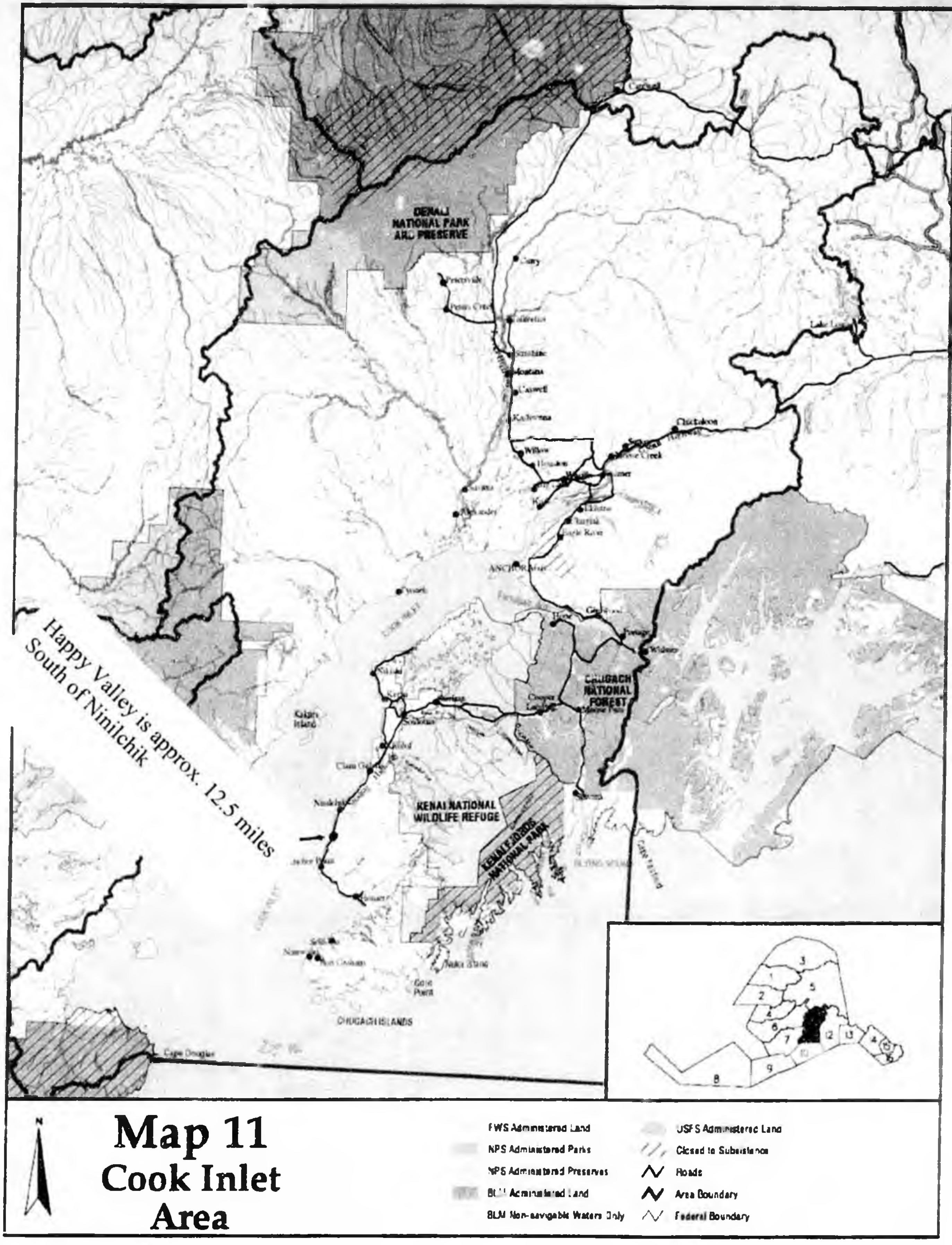
pattern, specific spawning grounds, and subject to a distinct fishery." The Washington Department of Fisheries has defined fish stock as "The fish spawning in a particular lake or stream(s) at a particular season, which fish to a substantial degree do not interbreed with any group spawning in a different place, or in the same place at a different season." WDF 1993, "1992 Washington State Salmon and Steelhead Stock Inventory". Similarly, as early as 1939 in the American Association for the Advancement of Science, Publ. 8, p. 106, it was stated: "The salmon of a given species may in locality, *e.g.*, a river, constitute a more or less distinct entity, for which the name 'stock' is to be preferred." In other words, the term "fish stock" denotes a fish of a particular species which may be found in a specific stream during a particular season, or at most, the fish of a particular species which may be found within a specific drainage during a particular season. Further information on the subject, particularly as it relates to the different fish stocks indiscriminately grouped together in the Board's determinations, can be provided to the Board by ADF&G senior biologists, including John Hilsinger and Jeff Regnert.



ATTACHMENT 2

REQUEST FOR RECONSIDERATION OF HOPE AND COOPER LANDING PORTION OF FEDERAL SUBSISTENCE BOARD PROPOSAL WP06-09
By State of Alaska

I. Introduction.

The State of Alaska, through the Alaska Department of Fish and Game ("ADF&G"), respectfully requests the Federal Subsistence Board (Board) to reconsider those portions of its January 13, 2006, decision on Proposal WP06-09, which adopts final rules establishing customary and traditional use determinations for the communities of Hope and Cooper Landing for the Kenai River drainage and waters north of the drainage. A separate request regarding those portions of the determination relating to Ninilchik and the Kasilof River drainage is being submitted. Reconsideration is not requested for the portions of FP06-09 relating to Tuxedni Bay.

Reconsideration is required because, in adopting the final rule, "the Board's interpretation of information, applicable law, or regulation [was] in error or contrary to existing law," and because new "information not previously considered by the Board" demonstrates that the Board's determination was based on incorrect information and assumptions. 36 C.F.R. § 242.20(d); 50 C.F.R. § 100.20(d).

The finding of customary and traditional use for the communities of Hope and Cooper Landing for the Kenai River drainage does not further ANILCA's purpose of providing an opportunity for rural residents engaged in a subsistence way of life to continue to do so, does not balance the competing purposes of ANILCA, is inconsistent with 36 C.F.R. § 242.16 and 50 C.F.R. § 100.16, creates a preference for uses that are not within the definition of "subsistence uses" in Section 803 of ANILCA, and will cause unnecessary restriction of nonsubsistence use in violation of section 815 of ANILCA. This determination was adopted despite a lack of support by residents of the area; was based on data that had not been fully analyzed; and was made without a reasonable examination of the eight regulatory factors for making customary and traditional use determinations. Further, the Board unreasonably declined to defer consideration of the proposal pending compliance with directions from the Secretary requiring the Board to develop written procedures or policies for customary and traditional use determinations. Because the adopted regulation designates fishing in an area as a customary and traditional use when such a designation was not supported on the record, it is arbitrary and capricious. As required by 36 C.F.R. § 242.20(d)(4) and 50 C.F.R. § 100.20(d)(4), a detailed statement follows.

REQUEST FOR RECONSIDERATION OF NINILCHIK PORTION OF FEDERAL SUBSISTENCE BOARD PROPOSAL WP06-09

By State of Alaska

I. Introduction.

The State of Alaska, through the Alaska Department of Fish and Game ("ADF&G"), respectfully requests that the Federal Subsistence Board (Board) reconsider those portions of the January 13, 2006, decision on Proposal WP06-09, adopting final rules establishing customary and traditional use determinations for the community of Ninilchik for the Kasilof River drainage, published in the Federal Register of March 29, 2006. A separate request for reconsideration is being submitted for those portions of the decision relating to Hope and Cooper Landing. Reconsideration is not being requested for the portions of FP06-09 relating to Tuxedni Bay.

Reconsideration is required because in adopting the final rule, "the Board's interpretation of information, applicable law, or regulation [was] in error or contrary to existing law." 36 CFR § 242.20(d); 50 CFR § 100.20(d).

The Ninilchik customary and traditional use determination for the Kasilof River drainage does not further ANILCA's purpose of providing an opportunity for rural residents engaged in a subsistence way of life to continue to do so, does not balance the competing purposes of ANILCA, is inconsistent with 36 CFR § 242.16 and 50 CFR § 100.16, will create a preference for uses that are not within the definition of "subsistence uses" in Section 803 of ANILCA, and will cause unnecessary restriction of nonsubsistence use in violation of section 815 of ANILCA. This determination was adopted based on data which had not been fully analyzed and was made without a reasonable examination of the eight regulatory factors for making customary and traditional use determinations. Further, the Board unreasonably declined to defer consideration of the proposal pending compliance with directions from the Secretary requiring the Board to develop written procedures or policies for customary and traditional use determinations. Because the adopted regulation designates fishing in an area as a customary and traditional use when such a designation was not supported on the record, it is arbitrary and capricious. As required by 36 CFR § 242.20(d)(4) and 50 CFR § 100.20(d)(4), a detailed statement follows.

II. Regulations Challenged.

At its meeting in January 2006, the Board considered Proposal WP06-09, amending the sections of 36 CFR § 242.24 and 50 CFR § 100.24 dealing with Cook Inlet

Federal Subsistence Board
Meeting Announcement

Forest Service

U.S. Fish and Wildlife Service
Bureau of Land Management
National Park Service
Bureau of Indian Affairs

For Immediate Release:
April 16, 2007

Contact: Maureen Clark
(800) 478-1456 or (907) 786-3953
maureen_clark@fws.gov

Upcoming Meetings of the Federal Subsistence Board

The Federal Subsistence Board will meet April 30-May 2 at the Sheraton Anchorage Hotel, 401 E. 6th Ave., Anchorage to consider changes to Federal subsistence hunting and trapping regulations. Also on the agenda at this meeting will be the State of Alaska's request for reconsideration of the Board's November 2006 decision recognizing the customary and traditional use of fish in the Kenai River area by residents of Ninilchik.

The Board will also meet May 8-10 at the Coast International Inn, 3450 Aviation Drive, Anchorage, to consider changes to Federal subsistence fishing regulations on the Kenai Peninsula. In addition the Board will take action regarding the proper balance of subsistence, sport, and commercial representatives on the subsistence regional advisory councils.

Additional information on the Federal Subsistence Management Program can be found on the web at http://alaska.fws.gov/asm/home.html.

- FSB -

April 7, 2007

Rep. Mike Hawker
State Capitol, Room 502
Juneau, AK 99801

Dear Representative Hawker,

I am writing in support of Representative Kurt Olson's House Joint Resolution 4. It is inconceivable that the Federal Subsistence Board would designate Ninilchik a rural community with subsistence fishing rights on the Kenai River. I urge you to vote for this bill as many of us here on the Kenai Peninsula work to reverse the Board's decision.

I have attached a copy of my March 19 letter to Denby Lloyd, Commissioner, ADF&G, which more fully explains my attitude toward this issue.

Please support HJR 4 and thank you for your other good works in Juneau.

Sincerely,

James Wilson
P.O. Box 4386
Soldotna, AK 99669

March 19, 2007

Denby S. Lloyd
Commissioner
Alaska Department of Fish & Game
P.O. Box 115526
Juneau, AK 99811

Dear Commissioner Lloyd,

I am writing to express my opposition to the Federal Subsistence Board's designation of Ninilchik as a rural community with subsistence fishing rights on the Kenai River.

This community rests squarely on the Sterling Highway, with easy access to major shopping centers in Homer, Soldotna and Kenai. Further, it has access to a modern airport in Kenai, capable of accommodating jet traffic, and to secondary airports at Homer and Soldotna. The Ninilchik community is also served by two hospitals, Central Peninsula Hospital in Soldotna and South Peninsula Hospital in Homer, with Central Peninsula Hospital currently undergoing a major expansion of its facilities and services. In fact, Ninilchik is often referred to as "Alaska's third largest city" as tourists, sportfishermen, clam diggers and outdoor enthusiasts gather there each year over the Memorial Day week-end. Why this community would be designated "rural" with subsistence fishing rights on two sections of the Kenai River is inexplicable, particularly since these sections are as much as 80 miles distant and have never been traditionally fished by residents of Ninilchik.

Accordingly, I urge the Department of Fish & Game to file suit in U. S. District Court to overturn the Federal Subsistence Board's designation of Ninilchik as a "rural" community.

Sincerely,

James Wilson
P.O. Box 4386
Soldotna, AK 99669

cc: Sarah Palin, Governor
Michael Fleagle, Chair, FSB

HJR

14

Open Congress

A project of the Sunlight Foundation and PPF

November 13, 2007

- *Senate:* In Session
- *House:* In Session

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S.552 - Exxon Valdez Oil Spill Tax Treatment Act

A bill to provide for the tax treatment of income received in connection with the litigation concerning the Exxon Valdez oil spill and for other purposes.

2/12/2007--Introduced.
Exxon Valdez Oil Spill Tax Treatment Act - Allows taxpayers who are plaintiffs in the civil action In re Exxon Valdez, No. 89-095-CV (HRH) (Consolidated) (D. Alaska), or their heirs or dependents, to: (1) elect to average, for income tax purposes, income received in settlement of such civil action for the period beginning on January 1, 1994, and ending on December 31 of the year in which any settlement income is received; and (2) make contributions of any amount of such settlement income to certain tax-exempt retirement plans in the year such income is received.
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Sponsor

- Sen. Lisa Murkowski [R, AK]

Co-Sponsors

- Sen. Ted Stevens [R, AK]

Bill Status

Introduced: **February 12, 2007** in the **110th Session of Congress**

Voted on by Senate
Voted on by House
Considered By President
Bill Becomes Law

Committees: ***Senate Finance***

Amendments: ***This bill has no amendments.***

Related Bills: ***H.R.1334***

Related Issue Areas:

- Taxation
- Actions and defenses
- Agriculture
- 18 more

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Blog Coverage

October 25, 2007 Supreme Court Decision on Exxon Valdez expected soon

The Oiled Fishermen are backing a bill (S.552) by Sen. Lisa Murkowski that would allow tax payments to be deferred over time. â□□As it stands now, most fishermen would be paying 35 percent of their award in year one,â□□ Mullen said. ...

source: An Alaskan Abroad

September 23, 2007 Blackwater Contractors

A recent bill provision S. 552, Clarification of Application of Uniform Code of Military Justice During a Time of War,intended to broaden their legal accountability does not apply to private contractors employed by the State Department. ...

source: Looking for a voice

March 08, 2007 soccer action figures

... action figures S. 552 Four Bottles soccer aciton figures 220- 260 1844 Six Bottles 900-1050 1603 Another Twelve socvcer action figures Bottles 880-1000 2003 CHATEAU GRAND soccer action figure MAYNE St. Emilion "94 out of 100 Bras. ...

source: Carol's Diary

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REPRESENTATIVE PAUL SEATON

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ALASKA STATE LEGISLATURE
House District 35

To: Representative John Coghill

From: Representative Paul Seaton *Paul*

Date: April 4, 2007

Re: CS HJR 14 Calendar request

I respectfully request that CS HJR 14 be calendared for the floor. In summary, CS HJR 14 supports Federal Legislation that would allow individuals or their dependents receiving a damage award from the Exxon Valdez oil spill the ability to place some or all of the award money into a qualified retirement plan or income average from the date of the award back to January 1, 1994.

Attached please find: CS HJR 14, HJR 14, bill history, sponsor statement, fiscal note, letters of support, signature pages, press release, Federal Legislation S552 and H.R. 1334.

Staff contact Mary Jane Shows, ext. 2689

http://www.RepPaulSeaton.com
Email: Rep_Paul_Seaton@legis.state.ak.us

ALASKA STATE LEGISLATURE

House Resources Committee

Carl Gatto, Co-Chair

State Capitol Building, Room 108
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(907) 465-3743
FAX (907) 465-2381
Rep_Carl_Gatto@legis.state.ak.us

Craig Johnson, Co-Chair

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MEMORANDUM

TO: Representative John Harris, Speaker
Alaska State House

FROM: Rep. Carl Gatto and Rep. Craig Johnson
Co –Chairs, House Resources Committee

DATE: April 2, 2007

SUBJECT: Waiver of CS for HJR 14(FSH) From Committee

The undersigned members of the House Resources Committee request CSHJR 14(FSH), SUPPORT FOR FED SB 552; EXXON PLAINTIFFS, be waived from committee. The bill was thoroughly heard and amended in Fisheries committee action on March 19th. and passed out without objection.

Rep. Carl Gatto, Co-Chair

Rep. Craig Johnson, Co-Chair

Rep. Vic Kohring

Rep. Bob Roses

Rep. Paul Seaton

Rep. Peggy Wilson

Rep. Bryce Edgmon

Rep. David Guttenberg

Rep. Scott Kawasaki

1 retirement accounts, Roth IRAs, and other qualified retirement plans to the extent of the
2 amount of the damage award; and

3 **WHEREAS** the bill would authorize individual plaintiffs to average income from the
4 award for tax purposes over the period January 1, 1994, through the end of the year in which
5 the award is made;

6 **BE IT RESOLVED** that the Alaska State Legislature urges the United States
7 Congress to enact S. 552 as introduced by Senator Murkowski and Senator Stevens and H.R.
8 1334 as introduced by Representative Young and Representative Reichert to provide relief to
9 those individuals who suffered economic damages as a result of the Exxon Valdez oil spill.

10 **COPIES** of this resolution shall be sent by electronic transmission and by mail to the
11 Honorable Ted Stevens and the Honorable Lisa Murkowski, U.S. Senators, and the Honorable
12 Don Young, U.S. Representative, members of the Alaska delegation in Congress; the
13 Honorable Dave Reichert, U.S. Representative for the 8th District of Washington; and to all
14 members of the 110th United States Congress by electronic transmission.

As Passed by the Fisheries Committee on this 19th day of March 2007.

Representative Paul Seaton

Representative Kyle Johansen

Representative Peggy Wilson

Representative Gabrielle LeDoux

Representative Craig Johnson

Representative Bryce Edgmon

Representative Lindsey Holmes

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHJR 14(FSH)
(H) Publish Date: 3/19/2007

Revision Date/Time (Note if correction):
Title: FED S 552/HR 1334; EXXON PLAINTIFFS
Sponsor: House Fisheries
Requester:

Dept. Affected:
RDU
Component
Component No.

Expenditures/Reve..ues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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 (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate pr je if necessary)*

Prepared by: House Fisheries Committee Staff — Phone 465-3923
Division — Date/Time
Approved by: Rep. Seaton, Chairman — Date 3/19/2007
Agency: Legislature

(Revised 9/18/2006 OMB)

Alaska State Legislature

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REPRESENTATIVE Paul Seaton

District 35

Sponsor Statement: HJR 14

"A resolution urging the United States Congress to enact Senate bill 552 and House bill 1334 so that individuals receiving a damage award from the Exxon Valdez oil spill can benefit from the income averaging and retirement contribution provision of the bill."

HJR 14 supports S552, sponsored by Senators Murkowski and Stevens and its companion bill HR 1334 sponsored by Representatives Don Young and Dave Reichert. This federal legislation would allow taxpayers who are plaintiffs in the civil action in the Exxon Valdez Oil spill, or their heirs or dependents to:

1. Average the income received in settlement of the civil action for the period beginning on January 1, 1994, and the ending date of December 31st of the year in which the settlement income is received and/or

2. Make contributions of any amount of such settlement income to certain tax-exempt retirement plans in the year the income is received.

The Exxon Valdez Oil spill has adversely impacted the coastal regions of Alaska and affected the economic status of these communities for many years. Many commercial fishermen in Alaska, who comprise 80 percent of the plaintiffs, have suffered a loss of opportunity to establish retirement plans due to diminished fish catches or decreased prices resulting from the Exxon Valdez oil spill. Senators Murkowski's, Stevens' and Representatives Young's and Reichert's bills would provide relief to those affected once the settlement is awarded.

S552 and HR1334 would increase the cap on deductions and income for traditional IRAs, Roth IRAs or any qualified retirement plan to the extent of the income the individual receives from the settlement or judgment. The recipient of this settlement may choose to place the money into one of these retirement funds and/or choose to income average to better reflect how income would have been earned if the Exxon Valdez oil spill had not occurred.

MURKOWSKI AND STEVENS INTRODUCE TAX LEGISLATION TO ASSIST EXXON VALDEZ OIL SPILL PLAINTIFFS

WASHINGTON, D.C. – Senators Lisa Murkowski and Ted Stevens today introduced tax legislation to give the plaintiffs in the Exxon Valdez oil spill settlement the ability to increase retirement contributions and to provide tax relief through income averaging.

The bill would provide tax relief to all of the individual plaintiffs in the oil spill settlement, 80% of whom are commercial fisherman. It was drafted to cover any possible settlement while the case is in litigation and any amounts received under the judgment if it is upheld. The current level of court-approved punitive damages is $2.5 billion, plus interest.

"This bill provides financial relief to those impacted by the spill when it comes to contributions to retirement plans and averaging of income for tax purposes," said Senator Murkowski. "It is imperative that we address this important issue to help our fishermen plan for their retirement needs."

"The Exxon Valdez oil spill occurred nearly 18 years ago, but many Alaskans are still dealing with losses incurred by the disaster," said Senator Stevens. "Commercial fishermen and others whose livelihoods were adversely impacted by the spill have not been able to plan adequately for retirement. I am pleased to work with Senator Murkowski in introducing legislation to address this important issue."

The bill includes the following provisions:

Contributions to Retirement Plans

- Increases the caps on deductions and income for traditional IRAs to the extent of the income the individual receives from the settlement or judgment.
- Allows contributions to Roth IRAs to the extent of the income from the settlement or judgment.
- Allows contributions to any other type of qualified retirement plan [e.g., SEPs, 401 (k)/Profit Sharing Plans, etc] to the extent of the income received from the settlement or judgment.

The bill gives the plaintiffs until the end of the taxable year in which they receive the settlement to transfer funds to one of the aforementioned retirement plans. In practice, plaintiffs would be able to use settlement funds to contribute to retirement plans until the day before the tax filing deadline for the taxable year when they received the funds.

Income Averaging

This bill draft allows a plaintiff to average his or her income between December 31 of the year he or she receives the settlement or judgment payment and January 1, 1994 – the year of the original court decision in Anchorage.

Lump Sum Payments vs. Periodic Payments

There is a possibility that the plaintiffs will receive settlement/judgment funds as periodic

payments, instead of a lump sum payment. If the former is the case, this bill is drafted so that the plaintiffs can still take advantage of the provisions in the bill.

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Congressional Legislation

'A bill to provide for the tax treatment of income received in connection with the litigation concerning the Exxon Valdez oil spill and for other purposes. '
Bill # S.552

Take Action Now
Enter Your ZIP Code
Go!

Original Sponsor:
Lisa Murkowski (R-AK)

Cosponsor Total: 2
(last sponsor added 02/12/2007)
2 Republicans

About This Legislation:

2/12/2007--Introduced.
Exxon Valdez Oil Spill Tax Treatment Act - Allows taxpayers who are plaintiffs in the civil action In re Exxon Valdez, No. 89-095-CV (HRH) (Consolidated) (D. Alaska), or their heirs or dependents, to: (1) elect to average, for income tax purposes, income received in settlement of such civil action for the period beginning on January 1, 1994, and ending on December 31 of the year in which any settlement income is received; and (2) make contributions of any amount of such settlement income to certain tax-exempt retirement plans in the year such income is received.

Detailed, up-to-date bill status information on S 552

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110th CONGRESS
1st Session

S. 552

To provide for the tax treatment of income received in connection with the litigation concerning the Exxon Valdez oil spill and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 12, 2007

Ms. MURKOWSKI (for herself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for the tax treatment of income received in connection with the litigation concerning the Exxon Valdez oil spill and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Exxon Valdez Oil Spill Tax Treatment Act'.

SEC. 2. TAX TREATMENT OF INCOME RECEIVED IN CONNECTION WITH THE EXXON VALDEZ LITIGATION.

(a) Income Averaging of Amounts Received From the Exxon Valdez Litigation-

(1) IN GENERAL- At the election of a qualified taxpayer who receives qualified

settlement income during a taxable year, the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for such taxable year shall be equal to the sum of--

(A) the tax which would be imposed under such chapter if--

(i) no amount of elected qualified settlement income were included in gross income for such year, and

(ii) no deduction were allowed for such year for expenses (otherwise allowable as a deduction to the taxpayer for such year) attributable to such elected qualified settlement income, plus

(B) the increase in tax under such chapter which would result if taxable income for each of the years in the applicable period were increased by an amount equal to the applicable fraction of the elected qualified settlement income reduced by any expenses (otherwise allowable as a deduction to the taxpayer) attributable to such elected qualified settlement income.

Any adjustment under this section for any taxable year shall be taken into account in applying this section for any subsequent taxable year.

(2) COORDINATION WITH FARM INCOME AVERAGING- If a qualified taxpayer makes an election with respect to any qualified settlement income under paragraph (1) for any taxable year, such taxpayer may not elect to treat such amount as elected farm income under section 1301 of the Internal Revenue Code of 1986.

(3) DEFINITIONS- For purposes of this subsection--

(A) APPLICABLE PERIOD- The term `applicable period' means the period beginning on January 1, 1994, and ending on December 31 of the year in which the elected qualified settlement income is received.

(B) APPLICABLE FRACTION- The term `applicable fraction' means the fraction the numerator of which is one and the denominator of which is the number of years in the applicable period.

(C) ELECTED QUALIFIED SETTLEMENT INCOME- The term `elected qualified settlement income' means so much of the taxable income for the taxable year which is--

(i) qualified settlement income, and

(ii) specified under the election under paragraph (1).

(b) Contributions of Amounts Received to Retirement Accounts-

(1) IN GENERAL- Any qualified taxpayer who receives qualified settlement income during the taxable year may, at any time before the end of the taxable year in which such income was received, make one or more contributions to an eligible retirement

plan of which such qualified taxpayer is a beneficiary in an aggregate amount not to exceed the amount of qualified settlement income received during such year.

(2) TIME WHEN CONTRIBUTIONS DEEMED MADE- For purposes of paragraph (1), a qualified taxpayer shall be deemed to have made a contribution to an eligible retirement plan on the last day of the taxable year in which such income is received if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

(3) TREATMENT OF CONTRIBUTIONS TO ELIGIBLE RETIREMENT PLANS- For purposes of the Internal Revenue Code of 1986, if a contribution is made pursuant to paragraph (1) with respect to qualified settlement income, then--

(A) except as provided in paragraph (4)--

(i) to the extent of such contribution, the qualified settlement income shall not be included in taxable income, and

(ii) for purposes of section 72 of such Code, such contribution shall not be considered to be investment in the contract, and

(B) the qualified taxpayer shall, to the extent of the amount of the contribution, be treated--

(i) as having received the qualified settlement income--

(I) in the case of a contribution to an individual retirement plan (as defined under section 7701(a)(37) of such Code), in a distribution described in section 408(d)(3) of such Code, and

(II) in the case of any other eligible retirement plan, in an eligible rollover distribution (as defined under section 402(f)(2) of such Code), and

(ii) as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(4) SPECIAL RULE FOR ROTH IRAS AND ROTH 401(k)S- For purposes of the Internal Revenue Code of 1986, if a contribution is made pursuant to paragraph (1) with respect to qualified settlement income to a Roth IRA (as defined under section 408A(b) of such Code) or as a designated Roth contribution to an applicable retirement plan (within the meaning of section 402A of such Code), then--

(A) the qualified settlement income shall be includible in taxable income, and

(B) for purposes of section 72 of such Code, such contribution shall be considered to be investment in the contract.

(5) ELIGIBLE RETIREMENT PLAN- For purpose of this subsection, the term `eligible retirement plan' has the meaning given such term under section 402(c)(8)(B) of the Internal Revenue Code of 1986.

(c) Qualified Settlement Income Not Included in SECA- For purposes of chapter 2 of the Internal Revenue Code of 1986 and section 211 of the Social Security Act, no portion of qualified settlement income received by a qualified taxpayer shall be treated as self-employment income.

(d) Qualified Taxpayer- For purposes of this section, the term `qualified taxpayer' means--

(1) any plaintiff in the civil action In re Exxon Valdez, No. 89-095-CV (HRH) (Consolidated) (D. Alaska); or

(2) any beneficiary of the estate of such a plaintiff who--

(A) acquired the right to receive qualified settlement income from that plaintiff; and

(B) was the spouse or an immediate relative of that plaintiff.

(e) Qualified Settlement Income- For purposes of this section, the term `qualified settlement income' means income received (whether as lump sums or periodic payments) in connection with the civil action In re Exxon Valdez, No. 89-095-CV (HRH) (Consolidated) (D. Alaska), including interest (whether pre- or post judgment and whether related to a settlement or judgment).

END

Bill would ease rules for Exxon Valdez payments

By Margaret Bauman
Alaska Journal of Commerce
Publication Date: 02/18/07

Federal legislation introduced Feb. 12 would allow the plaintiffs in the Exxon Valdez oil spill litigation to increase retirement contributions and would provide them tax relief through income averaging.

The measure, introduced by Alaska Sens. Lisa Murkowski and Ted Stevens, would provide tax relief to all of the individual plaintiffs in the oil spill settlement, 80 percent of whom are commercial fisherman.

"The Exxon Valdez oil spill occurred nearly 18 years ago, but many Alaskans are still dealing with losses incurred by the disaster," Stevens said in a written statement. "Commercial fishermen and others whose livelihoods were adversely impacted by the spill have not been able to plan adequately for retirement."

The senators said the bill was drafted to cover any possible settlement while the case is in litigation, and any amounts received under the judgment if it is upheld. The current level of court-approved punitive damages is $2.5 billion, plus interest.

"This bill provides financial relief to those impacted by the spill when it comes to contributions to retirement plans and averaging of income for tax purposes," Murkowski said in a written statement. "It is imperative that we address this important issue to help our fishermen plan for their retirement needs."

The bill also addresses the issue of lump-sum and periodic payments.

The bill would increase caps on deductions and income for traditional individual retirement accounts to the extent of the income the individual receives from the settlement or judgment. It would allow contributions to Roth IRAs any other type of qualified retirement plan to the extent of the income from the settlement or judgment.

The bill gives the plaintiffs until the end of the taxable year in which they receive the settlement to transfer funds to one of the retirement plans. In practice, plaintiffs would be able to use settlement funds to contribute to retirement plans until the day before the tax-filing deadline for the taxable year when they received the funds.

The bill would also allow plaintiffs in the case to average his or her income between Dec. 31 of the year he or she receives the settlement or judgment payment and Jan. 1, 1994 — the year of the original court decision in Anchorage.

Murkowski and Stevens said there is also is a possibility that the plaintiffs will receive settlement/judgment funds as periodic payments, instead of a lump-sum. If the former is the case, the bill is drafted so that the plaintiffs can still take advantage of its provisions, they said.

Margaret Bauman can be reached at margie.bauman@alaskajournal.com.
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http://www.alaskajournal.com/stories/021807/fis_20070218007.shtml

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UNITED FISHERMEN OF ALASKA

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www.ufa-fish.org

March 21, 2007

Representative Craig Johnson, Co-Chair
Representative Carl Gatto, Co-Chair
House Resources Committee
State Capitol, Room 102
Juneau, AK 99801

RE: Support for CS HJR 14 (Fisheries).

Dear Representatives Johnson and Gatto, and Committee members,

United Fishermen of Alaska (UFA) supports CS HJR 14 as amended by the House Fisheries Committee, urging the U.S. Congress to enact Senate Bill 552 and House Resolution 1334, so that individuals receiving a damage award from the Exxon Valdez oil spill can benefit from income averaging and retirement contribution provisions of the bill.

It is reprehensible that Alaska fishermen and others affected by the spill have not received damages established by the original Jury in 1994. Affected fishermen have faced many challenges since this time that have interfered with their ability to make a living at all, much less provide adequately for retirement. Passage of these measures in congress will allow claimants to receive more of their award, rather than provide a unique tax windfall to the federal government.

We appreciate any support from the Alaska legislature to help our efforts in Washington DC to gain this fair treatment, and hope that you will pass this supportive resolution.

Sincerely,

Mark Vinsel
Executive Director

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Draggers Association • Alaska Independent Tendermen's Association • Alaska Longline Fishermen's Association
Alaska Shellfish Association • Alaska Trollers Association • Armstrong Keta • At-sea Processors Association • Bristol Bay Reserve
Concerned Area "M" Fishermen • Cook Inlet Aquaculture Association • Cordova District Fishermen United • Crab Group of Independent Harvesters
Douglas Island Pink and Chum • Fishing Vessel Owners Association • Groundfish Forum • Kenai Peninsula Fishermen's Association
Kodiak Regional Aquaculture Association • North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation
Purse Seine Vessel Owner Association • Seafood Producers Cooperative • Sitka Herring Association • Southeast Alaska Fisherman's Alliance
Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Catcher Boats • United Cook Inlet Drift Association • United Salmon Association • United Southeast Alaska Gillnetters
Valdez Fisheries Development Association • Western Gulf of Alaska Fishermen

Since 1935

Cordova District Fishermen United
P.O. Box 939 | Cordova AK 99574
Ph: (907) 424 3447 Fax: (907) 424 3430
Email: cdfu@ak.net

March 16, 2007

Representative Paul Seaton
Chairman House Special Committee on Fisheries
Alaska State Legislature
State Capitol (Mail stop 3100)
Juneau AK 99801

RE: HJR 14 A Resolution urging the United States Congress to enact Senate Bill 552.

Dear Representative Seaton, and Members of the House Special Committee on Fisheries:

The Cordova District Fishermen United (CDFU) have represented the interests of Copper River / Prince William Sound commercial fishermen and there families for the past seventy-two years. CDFU supports HJR 14.

The Exxon Valdez oil spill in Prince William Sound18 years ago, devastated the livelihoods of tens of thousands of men and women associated with both commercial and subsistence fisheries, and damaged coastal community economies around the Sound. Eighteen years later Alaskans are still dealing with those losses.

Eighty percent of the plaintiffs who would benefit from The Exxon Valdez Oil Spill Tax Treatment Act (S 552) introduced by Senators Murkowski and Stevens, are fishermen.

In Cordova, we lost the herring fishery because of the spill. Families sustained losses they could not recover from. Permits and equipment became worthless. Boats and business debts had to be paid, but the resources to do so had been

destroyed due to the spill. Some families faced bankruptcy; all lost their investment in the future.

The Alaska Legislature must support Senate bill 552, which provides some tax relief for the injured fishermen to ease their retirement.

The damages settlement will give those fisherman a one time opportunity to make retirement account payments, and averaging income will go a long way in assuring that herring fishermen and others, damaged from lingering impacts from the spill, are not injured further with an unjust tax burden.

Thank you for your consideration,

Catherine Crawford

Catherine Crawford
Executive Director

Cc. Senator Albert Kookesh
Representative Bill Thomas

United Southeast Alaska Gillnetters
P.O. Box 23378, Ketchikan, AK 99901 Phone & Fax (907) 247-2471 Email: usag@kpunet.net

March 16, 2007

Representative Paul Seaton, Chair
House Special Committee on Fisheries
Alaska State Legislature
Juneau, AK 99801 Send Via Fax to: 907-465-3472

Dear Chairman Seaton,

The United Southeast Alaska Gillnetters (USAG) supports HJR 14 which calls for the passage of federal legislation to provide income averaging and increased limits on deposits to IRA's for fishermen receiving compensation for the Exxon Valdez oil spill. This is not some special break for fishermen but a long overdue adjustment that would help impacted fishermen to better deal with the economic situation that is not of their making. In our view the delay in compensating the fishermen of Prince William Sound who were the most severely impacted and others in Alaska who suffered reduced markets is close to criminal. The small measures that are supported by this Resolution will assist these fishermen by reducing the impact of taxes on this oil spill compensation, if Exxon ever exhausts its legal gyrations and lives up to its moral obligations. Many fishing businesses have been ruined by the action of Exxon in this situation and any compensation that fishermen receive will represent a special situation that our regular tax code did not envision when it was legislated. We hope the House Fisheries Committee will forward this resolution and that it will pass the Legislature. Thank you for considering our position on HJR 14.

Yours Truly,

Kenneth Duckett
Executive Director

S.552
Title: A bill to provide for the tax treatment of income received in connection with the litigation concerning the Exxon Valdez oil spill and for other purposes.
Sponsor: Sen Murkowski, Lisa [AK] (introduced 2/12/2007) Cosponsors (1)
Related Bills: H.R.1334
Latest Major Action: 2/12/2007 Referred to Senate committee. Status: Read twice and referred to the Committee on Finance.

All Information (except text)	Text of Legislation	CRS Summary	Major Congressional Actions
Titles	Cosponsors (1)	Committees	All Congressional Actions
Related Bills	Amendments	Related Committee Documents	All Congressional Actions with Amendments With links to *Congressional Record* pages, votes,reports
CBO Cost Estimates	Subjects		

Exxon Valdez Oil Spill Tax Treatment Act (Introduced in Senate)

S 552 IS

110th CONGRESS

1st Session

S. 552

To provide for the tax treatment of income received in connection with the litigation concerning the Exxon Valdez oil spill and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 12, 2007

Ms. MURKOWSKI (for herself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To provide for the tax treatment of income received in connection with the litigation concerning the Exxon Valdez oil spill and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Exxon Valdez Oil Spill Tax Treatment Act'.

SEC. 2. TAX TREATMENT OF INCOME RECEIVED IN CONNECTION WITH THE EXXON VALDEZ LITIGATION.

(a) Income Averaging of Amounts Received From the Exxon Valdez Litigation-

(1) IN GENERAL- At the election of a qualified taxpayer who receives qualified settlement income during a taxable year, the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for such taxable year shall be equal to the sum of--

(A) the tax which would be imposed under such chapter if--

(i) no amount of elected qualified settlement income were included in gross income for such year, and

(ii) no deduction were allowed for such year for expenses (otherwise allowable as a deduction to the taxpayer for such year) attributable to such elected qualified settlement income, plus

(B) the increase in tax under such chapter which would result if taxable income for each of the years in the applicable period were increased by an amount equal to the applicable fraction of the elected qualified settlement income reduced by any expenses (otherwise allowable as a deduction to the taxpayer) attributable to such elected qualified settlement income.

Any adjustment under this section for any taxable year shall be taken into account in applying this section for any subsequent taxable year.

(2) COORDINATION WITH FARM INCOME AVERAGING- If a qualified taxpayer makes an election with respect to any qualified settlement income under paragraph (1) for any taxable year, such taxpayer may not elect to treat such amount as elected farm income under section 1301 of the Internal Revenue Code of 1986.

(3) DEFINITIONS- For purposes of this subsection--

(A) APPLICABLE PERIOD- The term `applicable period' means the period beginning on January 1, 1994, and ending on December 31 of the year in which the elected qualified settlement income is received.

(B) APPLICABLE FRACTION- The term `applicable fraction' means the fraction the numerator of which is one and the denominator of which is the number of years in the applicable period.

(C) ELECTED QUALIFIED SETTLEMENT INCOME- The term `elected qualified settlement income' means so much of the taxable income for the taxable year which is--

(i) qualified settlement income, and

(ii) specified under the election under paragraph (1).

(b) Contributions of Amounts Received to Retirement Accounts-

(1) IN GENERAL- Any qualified taxpayer who receives qualified settlement income during the taxable year may, at any time before the end of the taxable year in which such income was received, make one or more contributions to an eligible retirement plan of which such qualified taxpayer is a beneficiary in an aggregate amount not to exceed the amount of qualified settlement income received during such year.

(2) TIME WHEN CONTRIBUTIONS DEEMED MADE- For purposes of paragraph (1), a qualified taxpayer shall be deemed to have made a contribution to an eligible retirement plan on the last day of the taxable year in which such income is received if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

(3) TREATMENT OF CONTRIBUTIONS TO ELIGIBLE RETIREMENT PLANS- For purposes of the Internal Revenue Code of 1986, if a contribution is made pursuant to paragraph (1) with respect to qualified settlement income, then--

(A) except as provided in paragraph (4)--

(i) to the extent of such contribution, the qualified settlement income shall not be included in taxable income, and

(ii) for purposes of section 72 of such Code, such contribution shall not be considered to be investment in the contract, and

(B) the qualified taxpayer shall, to the extent of the amount of the contribution, be treated--

(i) as having received the qualified settlement income--

(I) in the case of a contribution to an individual retirement plan (as defined under section 7701(a)(37) of such Code), in a distribution described in section 408(d)(3) of such Code, and

(II) in the case of any other eligible retirement plan, in an eligible rollover distribution (as defined under section 402(f)(2) of such Code), and

(ii) as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(4) SPECIAL RULE FOR ROTH IRAS AND ROTH 401(k)S- For purposes of the Internal Revenue Code of 1986, if a contribution is made pursuant to paragraph (1) with respect to qualified settlement income to a Roth IRA (as defined under section 408A(b) of such Code) or as a designated Roth contribution to an applicable retirement plan (within the meaning of section 402A of such Code), then--

(A) the qualified settlement income shall be includible in taxable income, and

(B) for purposes of section 72 of such Code, such contribution shall be considered to be investment in the contract.

(5) ELIGIBLE RETIREMENT PLAN- For purpose of this subsection, the term `eligible retirement plan' has the meaning given such term under section 402(c)(8)(B) of the Internal Revenue Code of 1986.

(c) Qualified Settlement Income Not Included in SECA- For purposes of chapter 2 of the Internal Revenue Code of 1986 and section 211 of the Social Security Act, no portion of qualified settlement income received by a qualified taxpayer shall be treated as self-employment income.

(d) Qualified Taxpayer- For purposes of this section, the term `qualified taxpayer' means--

(1) any plaintiff in the civil action In re Exxon Valdez, No. 89-095-CV (HRH) (Consolidated) (D. Alaska); or

(2) any beneficiary of the estate of such a plaintiff who--

(A) acquired the right to receive qualified settlement income from that plaintiff; and

(B) was the spouse or an immediate relative of that plaintiff.

(e) Qualified Settlement Income- For purposes of this section, the term `qualified settlement income' means income received (whether as lump sums or periodic payments) in connection with the civil action In re Exxon Valdez, No. 89-095-CV (HRH) (Consolidated) (D. Alaska), including interest (whether pre- or post judgment and whether related to a settlement or judgment).

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H.R.1334
Title: To provide for the tax treatment of income received in connection with the litigation concerning the Exxon Valdez oil spill, and for other purposes.
Sponsor: Rep Young, Don [AK] (introduced 3/6/2007) Cosponsors (1)
Related Bills: S.552
Latest Major Action: 3/6/2007 Referred to House committee. Status: Referred to the House Committee on Ways and Means

All Information (except text)	Text of Legislation	CRS Summary	Major Congressional Actions
Titles	Cosponsors (1)	Committees	All Congressional Actions
Related Bills	Amendments	Related Committee Documents	All Congressional Actions with Amendments
CBO Cost Estimates	Subjects		With links to *Congressional Record* pages, votes,reports

Exxon Valdez Oil Spill Tax Treatment Act (Introduced in House)

HR 1334 IH

110th CONGRESS

1st Session

H. R. 1334

To provide for the tax treatment of income received in connection with the litigation concerning the Exxon Valdez oil spill, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 6, 2007

Mr. YOUNG of Alaska (for himself and Mr. REICHERT) introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To provide for the tax treatment of income received in connection with the litigation concerning the Exxon Valdez oil spill, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Exxon Valdez Oil Spill Tax Treatment Act'.

SEC. 2. TAX TREATMENT OF INCOME RECEIVED IN CONNECTION

WITH THE EXXON VALDEZ LITIGATION.

(a) Income Averaging of Amounts Received From the Exxon Valdez Litigation-

(1) IN GENERAL- At the election of a qualified taxpayer who receives qualified settlement income during a taxable year, the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for such taxable year shall be equal to the sum of--

(A) the tax which would be imposed under such chapter if--

(i) no amount of elected qualified settlement income were included in gross income for such year, and

(ii) no deduction were allowed for such year for expenses (otherwise allowable as a deduction to the taxpayer for such year) attributable to such elected qualified settlement income, plus

(B) the increase in tax under such chapter which would result if taxable income for each of the years in the applicable period were increased by an amount equal to the applicable fraction of the elected qualified settlement income reduced by any expenses (otherwise allowable as a deduction to the taxpayer) attributable to such elected qualified settlement income.

Any adjustment under this section for any taxable year shall be taken into account in applying this section for any subsequent taxable year.

(2) COORDINATION WITH FARM INCOME AVERAGING- If a qualified taxpayer makes an election with respect to any qualified settlement income under paragraph (1) for any taxable year, such taxpayer may not elect to treat such amount as elected farm income under section 1301 of the Internal Revenue Code of 1986.

(3) DEFINITIONS- For purposes of this subsection--

(A) APPLICABLE PERIOD- The term `applicable period' means the period beginning on January 1, 1994, and ending on December 31 of the year in which the elected qualified settlement income is received.

(B) APPLICABLE FRACTION- The term `applicable fraction' means the fraction the numerator of which is one and the denominator of which is the number of years in the applicable period.

(C) ELECTED QUALIFIED SETTLEMENT INCOME- The term `elected qualified settlement income' means so much of the taxable income for the taxable year which is--

(i) qualified settlement income, and

(ii) specified under the election under paragraph (1).

(b) Contributions of Amounts Received to Retirement Accounts-

(1) IN GENERAL- Any qualified taxpayer who receives qualified settlement income during the taxable year may, at any time before the end of the taxable year in which such income was received, make one or more contributions to an eligible retirement plan of which such qualified taxpayer is a beneficiary in an aggregate amount not to exceed the amount of qualified settlement income received during such year.

(2) TIME WHEN CONTRIBUTIONS DEEMED MADE- For purposes of paragraph (1), a qualified taxpayer shall be deemed to have made a contribution to an eligible retirement plan on the last day of the taxable year in which such income is received if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

(3) TREATMENT OF CONTRIBUTIONS TO ELIGIBLE RETIREMENT PLANS- For purposes of the Internal Revenue Code of 1986, if a contribution is made pursuant to paragraph (1) with respect to qualified settlement income, then--

(A) except as provided in paragraph (4)--

(i) to the extent of such contribution, the qualified settlement income shall not be included in taxable income, and

(ii) for purposes of section 72 of such Code, such contribution shall not be considered to be investment in the contract, and

(B) the qualified taxpayer shall, to the extent of the amount of the contribution, be treated--

(i) as having received the qualified settlement income--

(I) in the case of a contribution to an individual retirement plan (as defined under section 7701(a)(37) of such Code), in a distribution described in section 408(d)(3) of such Code, and

(II) in the case of any other eligible retirement plan, in an eligible rollover distribution (as defined under section 402(f)(2) of such Code), and

(ii) as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(4) SPECIAL RULE FOR ROTH IRAS AND ROTH 401(k)S- For purposes of the Internal Revenue Code of 1986, if a contribution is made pursuant to paragraph (1) with respect to qualified settlement income to a Roth IRA (as

defined under section 408A(b) of such Code) or as a designated Roth contribution to an applicable retirement plan (within the meaning of section 402A of such Code), then--

(A) the qualified settlement income shall be includible in taxable income, and

(B) for purposes of section 72 of such Code, such contribution shall be considered to be investment in the contract.

(5) ELIGIBLE RETIREMENT PLAN- For purpose of this subsection, the term `eligible retirement plan' has the meaning given such term under section 402(c)(8)(B) of the Internal Revenue Code of 1986.

(c) Qualified Settlement Income Not Included in SECA- For purposes of chapter 2 of the Internal Revenue Code of 1986 and section 211 of the Social Security Act, no portion of qualified settlement income received by a qualified taxpayer shall be treated as self-employment income.

(d) Qualified Taxpayer- For purposes of this section, the term `qualified taxpayer' means--

(1) any plaintiff in the civil action In re Exxon Valdez, No. 89-095-CV (HRH) (Consolidated) (D. Alaska); or

(2) any beneficiary of the estate of such a plaintiff who--

(A) acquired the right to receive qualified settlement income from that plaintiff; and

(B) was the spouse or an immediate relative of that plaintiff.

(e) Qualified Settlement Income- For purposes of this section, the term `qualified settlement income' means income received (whether as lump sums or periodic payments) in connection with the civil action In re Exxon Valdez, No. 89-095-CV (HRH) (Consolidated) (D. Alaska), including interest (whether pre- or post judgment and whether related to a settlement or judgment).

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History

S. 552, The Exxon Valdez Oil Spill Tax Treatment Act (3 comments ↓)

S. 552 would provide for the tax treatment of income received in connection with the litigation concerning the Exxon Valdez oil spill.

(read more ↓)

What People Think

52% For, 48% Against

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Valerie Gardner

After the Exxon Valdez spill the small fishermen and native americans had their fishing business decimated.And, after 17yrs of waiting for the megacorporate giant refusing to pay up- it would help if the payment could go into an IRA
Plz note,23%of he fishermeen.native american have

already died.
Is this justice?

Dan

The ever ongoing litigation has finally come to a point where the United States Supreme Court can end it. Hopefully they will decide not to hear the case as Exxon has already succeeded in extremely reducing the original judgement. I had the entire course of my life changed by the negligence of Exxon. I still remember and miss what could have been.
The relief from excessive taxation provided by S.552 and H. R. 1334 would be an affirmation of justice and very welcome.

Irene Bogue

As an Alaskan I saw first hand the decimation of Alaskans' subsistence lifestyle in 1989. Oil is still under the surface of the sand on beaches on Kodiak Island. Few clams are left. Fish are fewer and smaller. Fisherman are turning in their devalued persmits. There are very few crab or prawns left in local bays. Sea otters thrive on clams, Sea Lions and brown bears thrive on fish. These animals have migrated to villages and the City of Kodiak in search of food. Former feeding grounds on the less populated West side of Kodiak Island were hit worse with oil. Awarding punitive damages will be just compensation to the local citizens whose centuries old subsistence lifestyle was destroyed. I support the Stevens Murkowski bill that assists local Alaskans plan for future payments from Exxon.

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Fish Factor

Alaska fishermen hope to end more appeals by Exxon

By Laine Welch

May 22, 2007
Tuesday

Alaska fishermen are taking their message to the streets of San Francisco in hopes of putting an end to more appeals cases by Exxon. It is up to the 9th Circuit Court of Appeals in San Francisco to decide if Exxon merits another day in court to contest a $2.5 billion punitive damages award ruled in December. The money is compensation for fishermen's losses stemming from the 1989 oil spill, when a drunken skipper ran the *Exxon Valdez* tanker aground on a well marked reef, spilling 11 million gallons of oil into Prince William Sound.

A small group called Oiled Fishermen Frustrated by Exxon is paying the expenses for one 'oiled' colleague - Arnie King of Cordova - who will carry a picket sign and hand out information about the unresolved case outside the courthouse starting on Monday. The OFF Exxon group includes about 20 fishermen who have chipped in to cover costs for King's room and board in San Francisco for about two weeks.

"This is the only thing we can think of - to take our message to the street. We're respectfully asking them to pay attention to this case and move it along," said Frank Mullen, an OFF Exxon spokesman from Homer.

"Our hope is that we can get a message especially to Chief Justice Mary Schroeder that says please understand there are 35,000 fishermen out there who are waiting for resolution on this litigation. And if the judges could work for a couple extra hours on a Saturday to clear out this latest appeal that would be great."

Exxon's strategy of endless appeals has bounced the case back and forth between federal and State courts for more than 10 years. The oil giant has stated it will appeal the $2.5 settlement all the way to the Supreme Court.

"They are simply so big, they do not care," said Matt Jamin, an attorney for hundreds of Kodiak fishermen.

"Some of their lawyers have told us they are a bit embarrassed by it, but they say they are being well paid to implement a strategy which is to crush litigation from any place at any time. Any size, big, small whatever - they will take whatever resources they need to fight it to the end, and we are seeing that in this case," Jamin said.

Meanwhile, nearly 20 percent of the original claimants have passed away while waiting for resolution from Exxon.

"It's been 18 years and we don't want even more fishermen to die before they see an end to this litigation. Justice delayed is justice denied and oiled fishermen simply want the court to get on with the case," Mullen said.

Jamin and other attorneys speculate that the 9th Circuit and/or the Supreme Court are unlikely to hear Exxon's appeals. Depending on further motions in court, a final decision on the settlement is possible by the end of this year or by mid-2008.

Get tax protection!

Another measure that needs to get moving is a bill that will protect Alaska fishermen from huge tax hits when Exxon is ordered to settle the punitive damages lawsuit. Protections will come from the Exxon Valdez Oil Spill Tax Treatment Act *if* it is passed by U.S. senators.

"We need to get the bill (S.552) heard and moved along so it can pass this year. If it isn't passed, fishermen will lose up to 35 percent or more of their Exxon settlement," said Mark Vinsel, director of United Fishermen of Alaska.

The Act provides for one time retirement contributions and income averaging of Exxon settlements. It is not a tax break for Alaska, Vinsel stressed.

"It is more of a tax treatment to defer these taxes. Ultimately, they will still be paid fairly when they're taken out of retirement accounts," he explained.

It is also important that people living in other states tell their senators they are Alaska fishermen.

"We've got fishermen from every state of the country. Washington, Oregon, Montana and Colorado are among the top ten states where Alaska fishermen come from. Key seats on the U.S. Senate Finance Committee are held by representatives from those states, and it is up to them to act on the bill. If they are not hearing from their own constituents, they have no reason to want to move it," Vinsel said.

UFA is urging fishermen to fax letters or make phone calls to reps on the

U.S. Senate Finance Committee asking them to support S. 552, the Exxon Valdez Oil Spill Tax Treatment Act. Contact UFA in Juneau for more information.

Salmon up close at Seward

Follow salmon from egg hatch to their return home at a gigantic new exhibit opening next week at the Alaska Sea Life Center in Seward. It's unlike anything done before anywhere in the world, said Steve Carrick, manager of visitor operations.

"We've created an 'ant farm' type approach to looking at a salmon nest, so you actually see a cross section of a stream bed and the eggs under the gravel. They'll hatch and the young fish will then populate our fresh water streams, move to another giant tank mimicking an estuary habitat, then on to an even larger tank simulating the abyssal void of the ocean. It's all designed so you're at eye level, standing above and below the water. We call it total immersion," Carrick said.

The half million dollar project was funded by the Southeast Sustainable Salmon Fund specifically to create an educational exhibit at the Sea Life Center.

"We realized there was a glaring omission at the Center on where salmon come from, how they breed, and why and how they find their way back to their natal streams. This really connects visitors with the heart of Alaska's fishing industry," he added.

The salmon exhibit will eventually provide a unique peek into the natural world of more than 300 of all five species of Alaska salmon.

"It's like the widest of wide screen television looking into the life of salmon. It really is spectacular," Carrick said.

The salmon exhibit opens May 25th at the Alaska Sea Life Center in Seward. Find out more at www.alaskasealife.org

Laine Welch has been covering news of Alaska's seafood industry since 1988. 2007 marks the 16th year that she has been writing this weekly fisheries column. It now appears in nearly 20 newspapers and web outlets. Contact Laine at msfish[AT]alaska.com

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November 13, 2007

- *Senate:* In Session
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S.552 - Exxon Valdez Oil Spill Tax Treatment Act

A bill to provide for the tax treatment of income received in connection with the litigation concerning the Exxon Valdez oil spill and for other purposes.

2/12/2007--Introduced.
Exxon Valdez Oil Spill Tax Treatment Act - Allows taxpayers who are plaintiffs in the civil action In re Exxon Valdez, No. 89-095-CV (HRH) (Consolidated) (D. Alaska), or their heirs or dependents, to: (1) elect to average, for income tax purposes, income received more...

All Bill Titles >> See Full Bill Text >> Show All Actions >>

All Bill Actions

- Feb 12, 2007: Read twice and referred to the Committee on Finance.
- Feb 12, 2007: Sponsor introductory remarks on measure. (CR S1854-1855)
- Introduced on Feb 12, 2007.
- Feb 12, 2007: Introductory remarks on measure. (CR S1854-1855)

Bill Status

Sponsor

- Sen. Lisa Murkowski [R, AK]

Co-Sponsors

- Sen. Ted Stevens [R, AK]

Bill Status

Introduced: **February 12, 2007** in the **110th Session of Congress**

Voted on by Senate
Voted on by House
Considered By President
Bill Becomes Law

Committees: ***Senate Finance***

Amendments: ***This bill has no amendments.***

Related Bills: ***H.R.1334***

Related Issue Areas:

- Taxation
- Actions and defenses
- Agriculture
- 13 more

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Blog Coverage

October 25, 2007 Supreme Court Decision on Exxon Valdez expected soon

The Oiled Fishermen are backing a bill (S.552) by Sen. Lisa Murkowski that would allow tax payments to be deferred over time. â□□As it stands now, most fishermen would be paying 35 percent of their award in year one,â□□ Mullen said. ...

source: An Alaskan Abroad

September 23, 2007 Blackwater Contractors

A recent bill provision S. 552, Clarification of Application of Uniform Code of Military Justice During a Time of War,intended to broaden their legal accountability does not apply to private contractors employed by the State Department. ...

source: Looking for a voice

March 08, 2007 soccer action figures

... action figures S. 552 Four Bottles soccer aciton figures 220- 260 1844 Six Bottles 900-1050 1603 Another Twelve socvcer action figures Bottles 880-1000 2003 CHATEAU GRAND soccer action figure MAYNE St. Emilion "94 out of 100 Bras. ...

source: Carol's Diary

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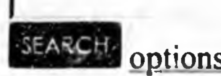
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HJR

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Alaska State Legislature

House of Representatives

Representative Max F. Gruenberg, Jr.
House District 20
Anchorage (Mountain View, Russian Jack, East Anchorage)
House Minority Assistant Floor Leader

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rep.max.gruenberg@legis.state.ak.us

SPONSOR STATEMENT FOR HJR41

BY: REPRESENTATIVE MAX F. GRUENBERG, JR.

This resolution urges Congress to repeal sec. 511 of P.L. 109-222, the Tax Increase Prevention and Reconciliation Act of 2005.

This provision was added by a congressional conference committee without benefit of any public hearings in either the House or Senate.

If this provision remains law, starting in 2011 it will require states and local governments that spend more than $100 million each year on goods and services to withhold three percent of the price of those goods and services and transmit those funds to the IRS to apply to any taxes that may be owed by vendors.

Section 511 was enacted to save approximately $7 million in federal taxes between 2011 and 2015. However, the effect of that law would increase the burden and costs to state and local governments by making them uncompensated and involuntary federal tax collectors, because no federal funding is provided.

Government officials have stated that this provision will be extremely difficult and expensive to implement, requiring major programming changes to their financial and accounting systems and the hiring of additional staff. The state's accounting system is 23 years old, and the state has had difficulty avoiding mandatory backup withholding, which would be costly and time-consuming. This provision would make mandatory withholding even more difficult to avoid.

Local businesses would be discouraged from bidding on state and local governmental contracts, because of the three percent withholding. This would dampen competitive bidding and probably raise prices to the state and local government.

25-LS1643\M
Bullock
4/8/08

CS FOR HOUSE JOINT RESOLUTION NO. 41(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE

A RESOLUTION

1 **Urging the United States Congress to repeal sec. 511 of P.L. 109-222 (Tax Increase**
2 **Prevention and Reconciliation Act of 2005).**

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

4 **WHEREAS** sec. 511 of P.L. 109-222 (Tax Increase Prevention and Reconciliation
5 Act of 2005) will require states, cities, counties, and boroughs that spend more than
6 $100,000,000 each year on goods and services after December 31, 2010, to withhold three
7 percent of their payments to nearly all vendors and contractors for federal income purposes
8 and to report nonwage payments; and
9 **WHEREAS** sec. 511 of P.L. 109-222 (Tax Increase Prevention and Reconciliation
10 Act of 2005) was added by a congressional conference committee without benefit of any
11 public hearings in either the United States House of Representatives or the United States
12 Senate; and
13 **WHEREAS**, although sec. 511 of P.L. 109-222 (Tax Increase Prevention and
14 Reconciliation Act of 2005) was inserted into the legislation to save approximately
15 $7,000,000,000 in federal taxes between 2011 and 2015, the effect of the provision is to
16 increase the burden and costs to state and local governments by making these governments

uncompensated and involuntary federal tax collectors because no federal funding is provided to cover the costs of implementing sec. 511 of P.L. 109-222 (Tax Increase Prevention and Reconciliation Act of 2005); and

WHEREAS sec. 511 of P.L. 109-222 (Tax Increase Prevention and Reconciliation Act of 2005) creates another unfunded federal mandate that will add a cost to state and local governments that exceeds the threshold of P.L. 104-04 (Unfunded Mandates Reform Act of 1995), and sec. 511 of P.L. 109-222 (Tax Increase Prevention and Reconciliation Act of 2005) will therefore short circuit the public process required by P.L. 104-04 (Unfunded Mandates Reform Act of 1995) and thus violate that Act; and

WHEREAS the Department of Administration, the University of Alaska, the Municipality of Anchorage, the Fairbanks North Star Borough, and the Anchorage School District, all governmental entities in Alaska that are affected by sec. 511 of P.L. 109-222 (Tax Increase Prevention and Reconciliation Act of 2005), have expressed serious concerns about it and have urged its repeal; and

WHEREAS local governmental officials have stated that sec. 511 of P.L. 109-222 (Tax Increase Prevention and Reconciliation Act of 2005) will be extremely difficult and expensive to implement, requiring major programming changes to financial and accounting systems and the hiring of additional staff; and

WHEREAS, because of the three percent withholding requirement, local businesses will be discouraged from bidding on state and local governmental contracts for products and services, thereby dampening competitive bidding and driving up the prices to offset the three percent withholding and that this, in turn, is likely to increase the cost of procurement by state and local governments; and

WHEREAS sec. 511 of P.L. 109-222 (Tax Increase Prevention and Reconciliation Act of 2005) will pose significant difficulties for the State of Alaska in its efforts to procure goods and services for the state, because

(1) the state accounting system is 23 years old and cannot accommodate mandatory backup withholding;

(2) it would take about a year to make the necessary systemic changes and require substantial additional record keeping to reconcile the amounts paid to vendors and those amounts reported and remitted to the Internal Revenue Service;

1 (3) obtaining exemptions to sec. 511 of P.L. 109-222 (Tax Increase Prevention
2 and Reconciliation Act of 2005) would be difficult and costly; and
3 (4) vendors might inflate their bids to compensate for the tax withheld,
4 resulting in higher prices to the state; and
5 **WHEREAS** the state government accounting system does not currently have the
6 capability to withhold vendor payments, and the state need only report payments for services
7 over $600 a year to each unincorporated vendor; sec. 511 of P.L. 109-222 (Tax Increase
8 Prevention and Reconciliation Act of 2005) will increase the accounting burden on the state
9 by
10 (1) requiring most but not all payments, no matter how small, to be reported
11 (an extremely expensive and burdensome mandate);
12 (2) requiring payments to all corporations to be reported, significantly
13 increasing the number of vendors for which information reports would have to be submitted
14 to the Internal Revenue Service;
15 (3) requiring withholding on credit card purchases, a process of unknown
16 complexity; and
17 (4) exempting certain types of payment that will likely require manual
18 intervention, which would drive up the cost of compliance with sec. 511 of P.L. 109-222 (Tax
19 Increase Prevention and Reconciliation Act of 2005) even further; and
20 **WHEREAS** government agencies will have to obtain employee identification
21 numbers or social security numbers for numerous individual vendors to allow reporting to the
22 Internal Revenue Service, thereby invading those citizens' rights of privacy and exposing
23 them to the dangers of identity theft; and
24 **WHEREAS** complying with sec. 511 of P.L. 109-222 (Tax Increase Prevention and
25 Reconciliation Act of 2005) will have serious adverse effects on the procurement practices of
26 larger local governments in Alaska; for example, the Municipality of Anchorage, the state's
27 largest city, with a population of about 261,446, which is 42 percent of the state's total
28 population, will incur costs of approximately $250,000 a year to reprogram municipal
29 computers and financial systems, plus an estimated $100,000 to $200,000 a year of additional
30 costs for ongoing operating expenses; the Municipality of Anchorage's financial computer
31 system is not set up for this procedure and will require extensive modifications at a significant

1 cost, including the hiring of at least one full-time municipal employee; the use of
2 procurement-cards by the Municipality of Anchorage may have to be discontinued and the use
3 of checks, which are slower and more costly, may be reinstituted; the Municipality of
4 Anchorage's online purchasing system will have to be modified and likely will no longer be
5 cost-effective; and

6 **WHEREAS** the additional costs of complying with sec. 511 of P.L. 109-222 (Tax
7 Increase Prevention and Reconciliation Act of 2005) will place the State of Alaska and Alaska
8 local governments at a competitive disadvantage in the procurement of goods and services;
9 and

10 **WHEREAS**, as a result of these burdens and difficulties, the state and affected local
11 governments believe that sec. 511 of P.L. 109-222 (Tax Increase Prevention and
12 Reconciliation Act of 2005) will not accomplish its stated goal of closing the budget gap; and

13 **WHEREAS** these concerns were previously expressed by the state to the United
14 States Congress through the National Association of State Auditors, Comptrollers and
15 Treasurers; and

16 **WHEREAS** S. 777 and H.R. 1023 have been introduced in the 110th United States
17 Congress to repeal sec. 511 of P.L. 109-222 (Tax Increase Prevention and Reconciliation Act
18 of 2005);

19 **BE IT RESOLVED** that the Alaska State Legislature urges the United States
20 Congress to repeal sec. 511 of P.L. 109-222 (Tax Increase Prevention and Reconciliation Act
21 of 2005).

22 **COPIES** of this resolution shall be sent to the Honorable Ted Stevens and the
23 Honorable Lisa Murkowski, U.S. Senators, and the Honorable Don Young, U.S.
24 Representative, members of the Alaska delegation in Congress; and all other members of the
25 110th United States Congress.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HJR 41
() Publish Date: 4/8/2008

Identifier (file name):
Title: Urging the United States Congress to repeal sec. 511 of P.L. 109-
Sponsor: Hou e Rules
Requester:

Dept. Affected: ADM
RDU
Component
Component Number

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2009**	**FY 2009**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**
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	0.0

CAPITAL EXPENDITURES							

CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
100 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

Prepared by: Ra-helle Fenderson, House Rules Committee Aide — Phone 465-3719
Division: House Ru'es Committee — Date/Time 4/8/08 4:30 PM
Approved by: Representative John Coghill, Chairman, House Rules Committee — Date 4/8/2008

(Revised 11/19/2007 OMB)

Bill History/Action for 25th Legislature

BILL: HJR 41 **SHORT TITLE:** REPEAL OF SEC. 511 OF P.L. 109-222

BILL VERSION:

CURRENT STATUS: (H) RLS **STATUS DATE:** 04/07/08

SPONSOR(s): RULES

HEARING: (H) RLS Apr 08 4:00 PM CAPITOL 120 Moved CSHJR 41(RLS) Out of Committee

TITLE: Urging the United States Congress to repeal sec. 511 of P.L. 109-222 (Tax Increase Prevention and Reconciliation Act of 2005)

Bill Number: Display Bill Next Bill

Full Text

Display Committee Action with Bill History

Jrn-Date	Jrn-Page	Action
04/07/08	2699	(H) READ THE FIRST TIME - REFERRALS
04/07/08	2699	(H) RLS
04/07/08	2699	(H) REFERRED TO RULES

Similar Subject Match or Exact Subject Match
INTERGOVERNMENTAL RELATIONS
MUNICIPALITIES
PUBLIC FINANCE
TAXATION

Bill Number: Display Bill

Next Bill

Return to Basis Main Menu (25th Legislature)

HOUSE COMMITTEE REPO

(7)
Date Referred to Committee: April 7, 2008

FURTHER REFERRALS:

Date of Committee Action: 4/8/2008

The RULES Committee considered:

HJR 41

HOUSE JOINT RESOLUTION NO. 41

REPEAL OF SEC. 511 OF P.L. 109-222

Urging the United States Congress to repeal sec. 511 of P.L. 109-222 (Tax Increase Prevention and Reconciliation Act of 2005).

Recommends it be replaced with [ ] HCS or [ ] CS for HJR 41 (RLS)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR________ [ ] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to ___________Committee
[ ] Letter of Intent__________Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Beth Kerttula	Kerttula	X			
Craig [illegible]	Johnson	✓			
Anna Fairclough	FAIRCLOUGH	✓			
[illegible]	SAMUELS	X			
Chair: John Coghill	Coghill	✓			
Chair:					

STATE OF ALASKA

SARAH PALIN, GOVERNOR

DEPARTMENT OF ADMINISTRATION

ANNETTE KREITZER, COMMISSIONER

P.O. BOX 110200
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200
FAX: (907) 465-2135

April XX, 2008

The Honorable
United States Senate
Washington, DC 20510

Dear Senator XXXX,

As Commissioner of the Department of Administration for the State of Alaska, I am writing to express the State of Alaska's strong support for repealing Section 511 of the Tax Increase Prevention and Reconciliation Act (TIPRA) of 2006, which requires governments to withhold 3% on payments made for most goods and services.

If enacted, Section 511 of TIPRA will impose an enormous burden on state and local governments, most of which do not have the systems or capacity to implement this onerous and costly withholding provision. Additionally, it will place governments at a competitive disadvantage as private sector businesses do not have to comply with this requirement.

As a state finance official, I have grave concerns regarding the impact of this poorly vetted provision on the current accounting and procurement systems in my state. Preliminary research indicates that not only will implementation costs be significant and include both administrative and financial commitments, but also that governments will face an increase in the costs of goods and services as vendors will simply pass along the 3% cost when bidding for government business.

I oppose Sec. 511 as an unfunded mandate and disagree with this new policy of shifting the burden of federal tax collection to state and local governments. I strongly urge you to support repealing this provision.

Sincerely,

Annette Kreitzer

Fact Sheet

NACo Legislative Department – Edwin S. Rosado, Director March 2007 • www.naco.org

Repeal Three Percent Withholding Tax on County Purchases

Issue: Section 511 of the Tax Increase Prevention and Reconciliation Act (P.L. 109-222) requires counties that spend more than $100 million annually on purchases to withhold and remit to the IRS three percent of most payments for products and services.

NACo policy: NACo supports repeal of Section 511 of P.L. 109-222. This is among NACo's key federal legislative priorities for 2007.

Action needed: County officials should urge their members of Congress to cosponsor H.R. 1023 (Rep. Kendrick Meek, D-Fla., and Rep. Wally Herger, R-Calif.). This bill would repeal Section 511 of P.L. 109-222.

Background: H.R. 4297, the "Tax Increase Prevention and Reconciliation Act of 2006", was signed into law as P.L. 109-222 on May 17, 2006. Section 511 will require many counties beginning in 2011 to withhold federal taxes on nearly every payment for a service or product – from plumbing services to paper clips - with no minimum transaction and regardless of whether the payment is made by check or credit card. The requirement does not apply to the private sector. It is estimated to raise $6 billion for the federal treasury through a first-year accounting gimmick and slightly more than $200 million per year thereafter.

According to the Congressional Budget Office, this is an intergovernmental mandate with costs above the threshold of the Unfunded Mandates Reform Act. It will be very expensive for counties to implement and will require programming changes to financial and accounting systems and the hiring of additional staff. It will also likely discourage contractors from bidding on government contracts and increase the costs of procurement. Many of its requirements are unworkable as written and will require the Treasury Department to issue 'administrability rules'. This mandate is particularly egregious because it was inserted into the final version of an omnibus tax bill that had already passed both the House and Senate and was never subject to a formal vote, hearings or consultation with any state and local government officials or their national organizations.

On February 13, 2007, Representatives Kendrick Meek (D-Fla.) and Wally Herger (R-Calif.) introduced H.R.1023 to repeal this unfunded mandate on county government. NACo is asking members of Congress to cosponsor this legislation. It is important to demonstrate broad support for this legislation because it faces an uphill climb due to its $7 billion price tag.

For further information, contact: Alysoun McLaughlin 202/942-4254 or amclaughlin@naco.org.

Advocacy: the voice of small business in government

August 31, 2006

VIA FACSIMILE and EMAIL

The Honorable Larry E. Craig
United States Senate
520 Hart Senate Office Building
Washington, DC 20510

RE: S. 2821 *Withholding Tax Relief Act of 2006*

Dear Senator Craig:

I am writing to express support for your legislation, S. 2821, the *Withholding Tax Relief Act of 2006* (S. 2821). This legislation will repeal section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222) (TIPRA). The withholding provision in TIPRA is a broad new requirement mandating that federal, state and local governments withhold 3 percent from payments made for goods and services. Small business groups have expressed a high level of interest in S. 2821 to the Office of Advocacy (Advocacy). Advocacy takes its direction from small business groups which is why we are writing this letter of support.

Congress established Advocacy under Pub. L. 94-305 to represent the views of small businesses before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed in this letter do not necessarily reflect the views of the SBA or the Administration.

Section 511 of TIPRA presents significant challenges for small entities and state and local governments. American small businesses operate in an environment which challenges them to be competitive and remain profitable. The withholding provision will impede the cash-flow of small entities, presenting another obstacle to their success. Section 511 of TIPRA amounts to a tax penalty on government contractors without a clear path for reimbursement. The amount of the penalty is variable; for instance if a contract generates a small profit or no profit the additional withholding presents serious cash management challenges. Additionally, the

withholding provision inhibits the efficient use of capital because it will limit funds that can be used to reinvest in the business.

In fiscal year 2005, the Federal government spent over $300 billion purchasing goods and services from businesses. Purchases from small businesses represented almost $80 billion. Two-thirds of the Federal government procurement falls under the Department of Defense (DOD). The Government Accountability Office (GAO) issued a report entitled "DOD Payments to Small Businesses" (GAO-006-358, May 2006). GAO concluded that disruptions in cash flow caused by contracting with DOD can significantly affect the day-to-day operations of small businesses. Adding a 3 percent tax withholding requirement will only exacerbate the cash flow issues already experienced by small entities seeking to do business with the government.

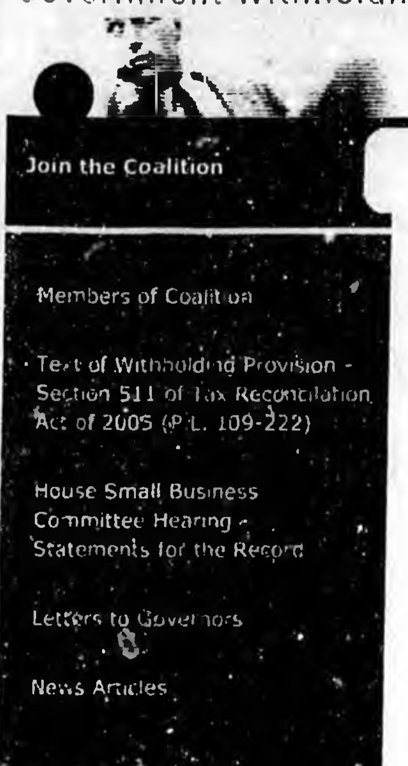
In addition to the burdens that may be imposed on small businesses by the withholding provision, section 511 of TIPRA may have unintended administrative costs on all levels of government required to collect the tax. The withholding requirement at a minimum will require changes to be made to the accounting methods and software used by governmental jurisdictions. That may be why the Congressional Budget Office described the withholding provision as an unfunded intergovernmental mandate.

Repealing section 511 of TIPRA will help small businesses maintain their ability to provide goods and services to governments at all levels. Thank you for your efforts on behalf of small businesses. Advocacy looks forward to working with you and Congress to repeal this provision.

Sincerely,

/s/ ____________________
Thomas M. Sullivan
Chief Counsel for Advocacy

Government Withholding Relief Coalition



Join the Coalition

Members of Coalition

Text of Withholding Provision - Section 511 of Tax Reconciliation Act of 2005 (P.L. 109-222)

House Small Business Committee Hearing - Statements for the Record

Letters to Governors

News Articles

Home

Government Withholding Relief Coalition (GWRC)

The Government Withholding Relief Coalition (GWRC) was formed to repeal a sweeping new requirement mandating that federal, state, and local governments withhold 3 percent from payments for goods and services. This unprecedented withholding mandate will affect all government contracts as well as other payments, such as Medicare and grants, starting in 2011. Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222) enacted this requirement into law.

Coalition Letters

- July 17, 2007 - Letter to House Ways and Means Committee
- March 22, 2007 - Statement for the Record to House Small Business Committee
- March 12, 2007 - Letter to Senator Craig in support of S. 777
- March 8, 2007 - Letter to Treasury Department
- February 15, 2007 - Letter to Rep. Meek and Herger in support of H.R. 1023
- January 17, 2007 - Letter in opposition to use of 3% withholding as an offset
- October 16, 2006 - Letter to Representative Herger in support of H.R. 6242
- July 11, 2006 - Letter to Senator Craig in support of S. 2821

Department of Treasury Solicitation for Comments on Implementation: Due April 28

- Treasury's Notice 2008-38

Resources

- One-page summary of provision
- Talking Points
- Draft Letter to Congress for Businesses to Utilize

Material

- June 12, 2007 - Senators Collins and Coleman Letter
- March 13, 2007 - Dear Colleague letter in support of S. 777 - Senator Craig
- February 22, 2007 - Dear Colleague letter in support of H.R. 1023 - Rep. Meek and Herger
- September 19, 2006 - Letter from Senator Craig to Senate colleagues in support of S. 2821
- August 31, 2006 - Letter to Senator Craig from SBA Office of Advocacy in support of S. 2821
- May 9, 2006 - CBO Letter w... Annual Budgetary Effects

Bills to Repeal Provision

- Senate - S. 2394 (110th Congress)
- Senate - S. 777 (110th Congress)

- House - H.R. 1023 (110th Congress)
- Senate - S. 2821 (109th Congress)
- House - H.R. 6242 (109th Congress)

Municipality of Anchorage

P.O. Box 196650 • Anchorage, Alaska 99519-6650 • Telephone: (907) 343-4431 • Fax: (907) 343-4499 http://www.muni.org

Mayor Mark Begich

Office of the Mayor

April 3, 2008

The Honorable Max Gruenberg
Alaska House of Representatives
State Capitol, Room 110
Juneau, AK 99811

Dear Representative Gruenberg:

I write to commend you for your sponsorship of a resolution urging repeal of a federal tax provision in the Tax Increase Prevention and Reconciliation Act of 2005, which is certain to have a detrimental effect on the Municipality of Anchorage and other government entities across our state. I also thank you for bringing this misdirected provision to our attention.

This provision would require cities and other government entities across the nation to withhold a 3 percent payment from nearly all vendors and contractors for federal income tax purposes, if it becomes effective in 2010 as currently intended. As your measure correctly points out, this could cause chaos to Anchorage's finance and computing systems, costing taxpayers thousands of dollars a year.

We support your call for repeal of this provision and again thank you for pursuing this important resolution in the current legislative session.

Sincerely,

Mark Begich
Mayor

Issue Brief: New Government Withholding Provision Could Involve Costs to States

National Association of State Budget Officers

October 3, 2006

444 N. Capitol Street, Suite 642 • Washington, DC 20001 • (202) 624-5382 (phone) • (202) 624-7745 (fax) • www.nasbo.org

The government withholding provision, under the *Tax Increase Prevention and Reconciliation Act of 2005* is set to go into effect on January 1, 2011, and will require state and local governments to withhold three percent of nearly all payments to contractors or vendors. The three percent is then remitted to the federal government for federal income tax purposes. The federal government projects that the withholding provision will generate [illegible] between 2011 and 2015. The goal of the provision is to reduce the amount of underpayment of federal taxes by government vendors not currently subject to withholding. Numerous concerns regarding withholding have been raised by various state and local groups. These concerns include added costs involving administrative changes, that the withholding provision is an unfunded mandate, and a lack of clear regulations and guidelines.

BACKGROUND

On May 17, 2006, the *Tax Increase Prevention and Reconciliation Act of 2005* was signed into law. Major elements of this law include extending the fifteen percent tax rate on capital gains and dividends, and preventing an increase in the number of taxpayers subject to the Alternative Minimum Tax. Another important component of the law that received far less publicity, but could impact state and local governments, requires governments to withhold three percent on certain payments to persons providing property or services. The provision will not go into effect until 2011.

Specifics of Withholding Provision

The withholding provision extends the act of withholding to new areas. Under the withholding provision, all levels of government are required to withhold three percent on most payments for products and services. According to the summary provided by the Senate Finance Committee, the provision "requires withholding on certain payments to any person providing property or services made by the Government of the United States, every State, every political subdivision thereof, and every instrumentality of the state." Governments would then be required to remit three percent of most payments to the federal government for federal income tax purposes. The withholding provision will go into effect on January 1, 2011.

Prior law states that employers are required to withhold income tax on wages paid to employees, including wages paid to employees of federal, state, and local government. This law has not previously included withholding payments to workers who are not classified as employees, such as independent contractors. Instead, independent contractors and other taxpayers who receive income that is not subject to withholding are required to make estimated tax payments.

There are some exemptions to the withholding provision. First, localities and other political subdivisions of states with less than $100 million of annual expenditures for goods or services are exempt from the withholding requirement. Second, the provision exempts payments made through a federal, state, or local government public assistance or public welfare program for which eligibility is determined by a needs or income test. Finally, the provision exempts payments of interest, payments for real property, payments to tax-exempt entities or foreign governments, intergovernmental payments, payments based on a classified or confidential contract, and payments made to a government employee not otherwise excludable with respect to their service as an employee.

Reasons for Withholding Provision
The main stated justification for the withholding provision is to attempt to undermine the misreporting of taxes by certain government vendors not currently subject to withholding. It is one of a series of steps designed to help minimize the tax gap. According to the IRS, in 2001 taxpayers paid $345 billion less than what they should have paid. This caused the Joint Committee on Taxation (JCT) to produce a report in 2005 entitled *Options to Improve Tax Compliance and Reform Tax Expenditures.* The first recommendation of the report was to impose withholding on certain payments made by government entities. The JCT contended that a lack of a withholding requirement on non-wage payments leads to substantial underpayment of taxes each year. Additionally, the JCT argued that requiring withholding on government entities for non-wage payments would improve taxpayer compliance, promote fairness, and reduce the tax gap. According to government estimates, the withholding provision will raise $7 billion for the federal government between 2011 and 2015.

ISSUES RAISED REGARDING WITHHOLDING PROVISION

State and local groups have begun to raise numerous concerns about the withholding provision. The law is vague in many areas, and specific regulations have yet to be established. Further details regarding the implementation of the withholding provision will be determined by the Department of Treasury. Currently, many state and local government associations are monitoring developments regarding the withholding provision. In addition to NASBO, these associations include the National Governors Association (NGA), the National Association of Counties (NACo), the National Association of State Auditors, Comptrollers, and Treasurers (NASACT), the National Conference of State Legislatures (NCSL), the National League of Cities (NLC), the United States Conference of Mayors, the Federation of Tax Administrators (FTA), the National Association of State Retirement Administrators (NASRA), and the Government Finance Officers Association (GFOA). Some of the primary issues that have been raised concern:

- Unfunded mandate – As reported by the Congressional Budget Office (CBO), the Joint Committee on Taxation (JCT) has determined that the cost of the withholding provision exceeds the threshold specified in the *Unfunded Mandates Reform Act.*
- Costs to states – state and local governments will receive no funding from the federal government in exchange for providing this service. Additionally, states will likely have to make programming changes to financial and accounting systems, purchase new software, register vendors, possibly hire additional staff, and keep massive new data files and paper reports.

- Applies only to public sector – state and local governments would be required to withhold three percent on payments, but private companies would not. This could place state and local governments at a disadvantage.
- Lack of consultation – neither the original House nor Senate version of the *Tax Increase and Prevention Act of 2005* contained the withholding requirement. Instead, the provision was added in the conference committee. This prevented state and local governments from expressing their views on the measure.
- Perceived need for withholding arose regarding federal contracts – one of the main justifications for the withholding provision is that the Government Accountability Office (GAO) issued a report showing that 3,800 General Services Administration (GSA) federal contractors had tax debts. Instead of creating a withholding provision that applies to all levels of government, Congress could have passed a law that only applies to federal contractors.
- Inflating bids – vendors and contractors could increase their bids by three percent in order to compensate for withholding. This would cause state and local governments to spend additional funds.
- Purchasing cards – the provision also requires withholding on purchases made by purchasing cards. Many questions have been raised regarding how withholding can be accomplished using purchasing cards.
- Many unanswered questions – in addition to the other issues, many additional unanswered questions remain regarding withholding, including how to report withheld amounts to the IRS or payees, how payments must be sent, and who is exempt and who is not.

CURRENT STATUS OF WITHHOLDING PROVISION

Shortly after the *Tax Increase Prevention and Reconciliation Act of 2005* was signed into law this past May, Senator Larry Craig (R-Idaho) introduced legislation calling for the repeal of the withholding provision. Sen. Craig stated that, "Proponents of the withholding provision describe it as closing a loophole. That is nonsense. Reporting requirements are already in place for government contractors. All this does is buck the IRS's collection responsibilities to the taxpayers." In addition to Sen. Craig's legislation, Congressman Wally Herger (R-California) has also introduced legislation calling for repeal.

Furthermore, the National Association of Counties (NACo) has called for the repeal of the withholding requirement on the grounds that it is an unfunded mandate. Other state and local associations are continuing to monitor the issue and are hopeful that if the provision is not fully repealed, the Department of Treasury will take their concerns into consideration when establishing rules and guidelines.

If you would like additional information regarding the government withholding provision, please contact Brian Sigritz at (202) 624-8439 (bsigritz@nasbo.org) or Scott Pattison at (202) 624-8804 (spattison@nasbo.org) in NASBO's Washington D.C. office.

United States Senate

WASHINGTON, DC 20510

June 12, 2007

The Honorable Max Baucus, Chairman
The Honorable Charles E. Grassley, Ranking Member
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Baucus and Ranking Member Grassley:

We write to you regarding the new 3% withholding tax on federal, state, and local government contracts for goods and services enacted as Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222). This 3% withholding tax is scheduled to go into effect in 2011.

While we understand and support your commitment to closing the tax gap, we do not believe that Section 511 is the appropriate means to achieve that goal. We are concerned that the 3% withholding provision is overbroad, and will unfairly penalize contractors that pay their taxes. Many of these contractors operate on very narrow profit margins – often 3% or less – and will be unable to comply with Section 511's withholding requirement without sacrificing the lion's share of their cash flow.

We are particularly concerned about the impact of the 3% withholding provision on small businesses in the construction industry. Contractors rely on their cash flow to finance investment and expansion, and as security for bonds they are required to hold in order to do business with the federal government. The 3% withholding requirement may so severely restrict cash flow that contractors will find it difficult or impossible to secure bond coverage, and as a result, many contractors will be driven out of the market. This, in turn, will lead to higher prices for the goods and services they supply to the federal government.

We are seeking a workable alternative to Section 511 that helps to address the problem of the tax gap without placing an undue burden on honest contractors. We would welcome the opportunity to work with you towards that end.

Sincerely,

Susan M. Collins
SUSAN M. COLLINS
United States Senator

Norm Coleman
NORM COLEMAN
United States Senator