

**S B**

**458**

STATE OF ALASKA  
THE LEGISLATURE

FEB 27 1990

FOUCH V. STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3610

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 27, 1990

SUBJECT: Distribution of Income from National  
Forest Land (SB 458)

TO: Senator Lloyd Jones

FROM: Tamara Brandt Cook *TBC*  
Director  
Division of Legal Services

Here is the sectional summary you requested of SB 458.

Section 1. The formula for distribution of income from national forest land pursuant to the federal National Forest Management Act is modified with respect to income from forest land in the unorganized borough. Under existing law the income is to be used for public schools and roads. This bill adds the requirement that the money be used for schools and roads in the unorganized borough. That portion to be used for schools is to be divided among regional educational attendance areas and city school districts in proportion to the area of the forest located in the district boundaries.

Section 2. The Act takes effect at the beginning of the next fiscal year.

TBC:gc  
G13/107

# ALASKA STATE LEGISLATURE

While in Ketchikan  
352 Front Street  
Ketchikan, AK 99901  
907-225-9675

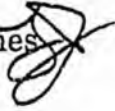


While in Juneau  
P.O. Box V  
Juneau, AK 99811  
907-465-3743

Senator Lloyd Jones

## MEMORANDUM

TO: Senator Paul Fischer, Chairman  
Senate Health, Education, and Social Services Committee

FROM: Senator Lloyd Jones 

DATE: March 21, 1990

SUBJECT: Senate Bill 458

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Senate Bill 458 remedies a conflict between current federal and State law concerning allocation of National Forest Receipts that are returned to the State. Currently, approximately 31% of the stumpage fees returned to the State of Alaska are paid out to the organized boroughs located within the national forest. This percentage is based on the area of the forest contained within the boundaries of the organized boroughs. The remainder of these funds go directly to the general fund. All areas outside of organized boroughs, but within national forest boundaries receive no direct funding. It is the intent of federal law that these monies go directly to areas within the National Forest.

SB 458 will correct the existing conflict between State and federal law by focusing this national forest income receipt money back to the areas actually within the national forest. I urge the passage of this legislation.

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MAR 21 1990

POUCH - STATE CAPITOL  
JUNEAU ALASKA 99811  
907-465-3800

M E M O R A N D U M

March 21, 1990

SUBJECT: Distribution of income from national forest  
land (SB 458)

TO: Senator Lloyd Jones

FROM: Tamara Brandt Cook *ABC*  
Director  
Division of Legal Services

You have asked for an explanation of SB 458 and for a comparison between existing law and the changes made in the bill in light of the federal act under which a portion of income from national forest land is distributed to counties.

The federal law states in pertinent part:

On and after May 23, 1908, twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State or Territory in which such national forest is situated, to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: Provided, That when any national forest is in more than one State or Territory or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. . . (16 U.S.C. 500)

Discussion of the most recent amendments to National Forest Management Act contains the following explanation for the purpose behind the distribution of federal receipts back to local governments:

The formula for paying a 25 percent share of National Forest revenues to counties in which National Forest System lands are located is adjusted to minimize adverse impacts on the counties. The adjustment will

result in the Forest Service rebating to the counties 25 percent of the total income from timber sales. Presently, deduction is made for collections for reforestation and allowances in timber contracts for permanent roads to be built by timber purchasers. (U.S. Code Congressional and Administrative News, Vol. 5, 1976, Page 6667)

The state statute that implements this federal law is AS 41.15.180 which now provides in full:

Sec. 41.15.180. NATIONAL FOREST INCOME.

(a) When the commissioner of administration receives national forest income under 16 U.S.C. 500, the commissioner shall immediately pay to every organized borough in which national forest land is located a share of the income from that forest. A borough's share of income from a national forest shall be proportional to the area of the national forest located within its boundaries. The payments shall be made under an appropriation made for that purpose.

(b) The national forest income paid to an organized borough under this section shall be expended for public schools or roads.

(c) The commissioner shall deposit income from national forest land outside of organized boroughs in the general fund of the state, 25 percent to be used for public schools and 75 percent for roads.

Note that the current statute treats boroughs as though they were counties and treats the unorganized borough as though it were a county for purposes of accounting for federal receipts from forest land located in the unorganized borough. However, under existing subsection (c) the portion of income from forest land in the unorganized borough is placed in the general fund to be used for schools and roads. There is no requirement that this use be for schools and roads in the unorganized borough, although such a requirement seems necessary to satisfy the purpose behind the federal law -- that the money be used in the impacted area.

SB 458 adds the requirement that money generated from forests in the unorganized borough be used in the unorganized borough. In this respect, the bill more closely tracks with

Senator Lloyd Jones

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March 21, 1990

the federal law by treating the unorganized borough as though it were a county for purposes of applying the federal distribution requirement. In addition, SB 458 apportions the money to be used for schools among the schools in the unorganized borough based on the area of the national forest located within the school districts' boundaries. Once a distribution is set aside for a county, the federal law specifically permits the legislature to prescribe how the money will be expended to benefit public schools in that county, so this distribution system would appear to be acceptable under the federal law.

Note that the only way the state can qualify for a distribution based upon income received from national forest land in the unorganized borough is by treating the unorganized borough as a county for purposes of applying 16 U.S.C. 500. Current law does this to the extent of separately accounting for receipts due from forests within the unorganized borough. SB 458 goes further in preserving the money generated from forests located in the unorganized borough for use in the unorganized borough, more closely conforming to the federal law.

TBC:pl  
WKP3/065

16 § 500  
Note 3

authorize inclusion in the base the deposits made pursuant to section 576b of this title requiring purchaser of timber from national forest to make deposits for reforestation. State of Ala. v. U.S., 1972, 461 F.2d 1324, 198 Ct.Cl. 683, certiorari denied 93 S.Ct. 464, 409 U.S. 1023, 34 L.Ed.2d 315.

4. Purpose

This section for distribution to states of portion of federal forest reserve revenues to be spent for public roads and schools as prescribed by state law, and West's Ann. Education Code, § 20251, directing distribution of such revenues among counties, were not designed to provide money in lieu of local taxes. Anderson Union High School Dist. v. Schreder, 1976, 128 Cal.Rptr. 529, 56 C.A.3d 453.

Receipt by county of 25 percent of all monies received by National Forest Service for stumpage payments made in accordance with contract between log purchaser and the Service was not in lieu of taxes but was in nature of an assistance grant. Tree Farmers, Inc. v. Goeckner, 1963, 385 P.2d 649, 86 Idaho 290.

Payments made by United States under this section are not in lieu of taxes. Bartlett v. Collector of Revenue, La.App.1973, 285 So.2d 346.

This section does not evidence intention of Congress to make payments in lieu of taxes, but rather friendly purpose to create trusts for benefit of counties in which national forests are located in recognition of national interest in education and road building. Trinity Independent School Dist. v. Walker County, Tex.Civ.App.1956, 287 S.W.2d 717, ref. n.r.e.

5. Questions for Congress

Assuming that this section creates a trust fund to be expended annually, one-half for schools and one-half for roads, Congress alone can inquire into the manner in which the state executes the trust. King County, Wash. v. Seattle School Dist. No. 1, Wash. 1923, 44 S.Ct. 127, 263 U.S. 361, 68 L.Ed. 339.

Question of beneficial use of funds received from national forest by federal government and granted for purpose of providing and maintaining schools and roads is left to discretion of state legislature. Goodin v. Board of Ed. of Independent School Dist. No. 14 of McCurtain County, Okl.1979, 601 P.2d 88

6. Moneys received

Only when deposits made pursuant to section 576b of this title for estimated cost of

only \$ in excess of Reforestation costs gets counted.

CONSERVATION Ch. 2

reforestation of national forest land are in excess of actual costs can they be considered moneys received during any fiscal year from national forest within this section, requiring that such moneys be shared with states. State of Ala. v. U.S., 1972, 461 F.2d 1324, 198 Ct.Cl. 683, certiorari denied 93 S.Ct. 464, 409 U.S. 1023, 34 L.Ed.2d 315.

7. Apportionment of funds

This section does not require an equal apportionment between schools and roads, neither does this section prescribe how the moneys shall be divided as between the two purposes named, but leaves this to the state. King County, Wash. v. Seattle School Dist. No. 1, Wash.1923, 44 S.Ct. 127, 263 U.S. 361, 68 L.Ed. 339.

Under this section creating a trust fund from the income derived from forest reserves to be expended under direction of the state legislature for the benefit of the public schools and public roads of the county in which the reserve is situated, and Laws Wash.1907, p. 406, directing payment of the fund to the county treasurer, and directing the county commissioners to expend the same "for the benefit of the public schools and public roads," the schools and roads of the county are entitled to share equally in the fund. Everett School Dist. No. 24, Snohomish County, Wash. v. Pearson, D.C.Wash.1918, 261 F. 631.

Trial court erred in substituting its own eligibility determination for that of county school authorities without inquiry into abuse of administrative discretion as to whether or not school districts qualified for certain federal forest reserve revenues. Anderson Union High School Dist. v. Schreder, 1976, 128 Cal.Rptr. 529, 56 C.A.3d 453.

School district having properties of forest reserve, forest reserve employees and school children of those employees in its district was entitled to share forest reserve money with school district having forest reserve within its boundary although school district having no federal employees residing there or facilities and 19 miles from nearest part of forest reserve was not entitled to any forest reserve funds. Oro Madre Unified School Dist. v. Amador County Bd. of Ed., 1970, 87 Cal. Rptr. 250, 8 C.A.3d 408.

In treating 85 percent of forest funds paid over to affected school districts by federal government as part of state general scheme of equalization, Superintendent of Public Instruction complied with law. Carroll v. Bruno, 1972, 499 P.2d 876, 81 Wash.2d 82.

Findings & Intent of Congress.

SENATE COMMITTEE REPORT

DATE: 3/12/90

FURTHER: Finance

DATE TURNED INTO OFFICE: \_\_\_\_\_

H E S S

Committee considered

SB 458

"An Act relating to distribution of income from national forest land in the unorganized borough; and providing for an effective date."

and recommended:

[ ] replace with \_\_\_\_\_ CS \_\_\_\_\_  
[ ] or adopt \_\_\_\_\_ CS \_\_\_\_\_

[ ] same title  
[ ] new title  
[ ] technical title change (HB only)

[ ] attached amendment(s)  
[ ] \_\_\_\_\_ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

[ ] fiscal note(s) \_\_\_\_\_ Dept/Date: \_\_\_\_\_  
\_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_ Dept/Date: \_\_\_\_\_  
\_\_\_\_\_

[ ] zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_

[ ] zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_

[ ] appropriation-no fiscal note

[ ] Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

*[Handwritten signatures]*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Twin Kelly - No Rec*  
*Al Adams - NEEDS Amendment*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Paul Fish (Do Pass)*  
Chair: Signature and Recommendation

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Department of Revenue  
 Title: Distribution of Income from  
National Forest Land BRU: Treasury  
 Sponsor: Jones Components: \_\_\_\_\_  
 Requestor: Senate C & RA

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
CTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** Fiscal year 1990 effect is zero. That portion of federal revenue sharing received by the General Fund, and subsequently available for appropriation for public schools (25%) and roads (75%) in the unorganized borough currently amounts to \$4 million. A breakdown of eligible regional educational attendance areas may be obtained from the Department of Community and Regional Affairs.

Prepared By: Bob Elliott *Milt Barber for*  
 Division: Treasury

Phone: 465-2350  
 Date: March 6, 1990

Approved by Commissioner: *Milt Barber for*  
 Agency: Department of Revenue

Date: \_\_\_\_\_

Distribution (by preparer):

Legislative Finance  
 Legislative Sponsor  
 Requestor

Office of Management and Budget  
 Impacted Agency(ies)

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL  
March 5, 1990

MAR 05 1990

REPLY TO:

1031 W 4th AVENUE SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550  
FAX: (907) 276-3697

1st NATIONAL CENTER  
100 CUSHMAN ST. SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 452-1568  
FAX: (907) 456-1317

PO BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

465-3603

The Honorable Lloyd Jones  
Alaska State Senator  
P.O. Box V  
Juneau, Alaska 99811

Re: Impact on school funding of 1990  
SB 458 (distribution of income  
from national forest lands)

Dear Senator Jones:

I. Introduction

Ray Matiashowski of your staff has asked whether receipt of income from national forest lands under the above bill by a Regional Educational Attendance Area ("REAA") or city school district would have an impact on the state's ability to meet equalization criteria under the federal impact aid program. We conclude that federal regulations require the inclusion of that income when conducting the disparity test. The department of education should therefore be asked to analyze the results of that inclusion.

Mr. Matiashowski also asked whether the receipt of income from national forest lands under the bill would affect the state aid for which a school district is eligible. We conclude that it would not.

II. Discussion

A. Federal Forest Reserve funds must be included in the disparity test.

The federal impact aid program, at Sec. 5(d)(2) of P.L. 81-874 as amended (20 U.S.C. 240(d)(2)), requires that a state may not consider the federal payments received by school districts under that program as local resources when distributing state aid to districts, unless the state has in place a school funding program that meets certain equalization criteria outlined in federal regulations. Alaska has structured its school funding program to meet those criteria.

Honorable Lloyd Jones  
Re: SB 458

March 5, 1990  
Page 2

In particular, the state attempts to meet the "disparity test," found at 34 C.F.R. 222.63, which measures the disparity in revenues or expenditures between local educational agencies within a state. That test requires the inclusion for each local educational agency, among other things, of

"(4) Any other Federal funds received by the agency for which the agency is not accountable to the Federal Government for their use such as Federal Forest Reserve funds (16 U.S.C. 500)."

34 C.F.R. 222.63(d)(4). Your staff has indicated to us that most or all of the money to be paid to REAA's and city school districts under proposed SB 458 would fall within that language.

Accordingly, we conclude those payments would need to be included when measuring the disparity in revenues. We understand that your office has consulted with the department of education to determine the probable impact of such payments on the disparity test.

B. Receipt of forest lands income would not affect a school district's state aid entitlement under AS 14.17.021.

Under section (a) of AS 14.17.021, a school district's entitlement to state foundation aid is computed by subtracting from the district's "basic need," as defined in (b) of that section, in addition to the required local contributions under AS 14.17.025, 90 percent of the district's "eligible federal impact aid" for that fiscal year. "Eligible federal impact aid" is defined in AS 14.17.250(5) to include only certain payments received by the district under sections 2,3, and 4 of P.L. 81-874 (20 U.S.C. 237 - 239), as amended, the federal impact aid program. Federal Forest Reserve funds and other income from national forest lands would not come within the meaning of that definition, and would therefore not be a basis for reduction of state aid under AS 14.17.021.

III. Conclusion

For the above reasons, we conclude that federal regulations require that a school district's income from national forest lands, at least insofar as it constitutes Federal Forest Reserve funds under 16 U.S.C. 500, would need to be included in the disparity test to determine whether Alaska's school finance program meets federal equalization standards. However, receipt of such income would not be the basis for a reduction in the district's entitlement to state aid under current AS 14.17.021.

Honorable Lloyd Jones  
Re: SB 458

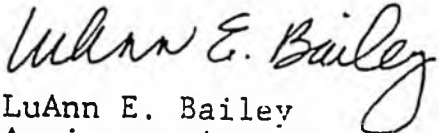
March 5, 1990  
Page 3

Please contact me if you have further questions regarding  
this matter.

Sincerely,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:

  
LuAnn E. Bailey  
Assistant Attorney General

TEW:LEB:ade

cc: Arthur Peterson

# STATE OF ALASKA

## DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

GOLDBELT PLACE  
801 WEST 10TH STREET  
P.O. BOX F  
JUNEAU, ALASKA 99811-0500

MAR 02 1990

March 2, 1990

The Honorable Lloyd Jones  
Alaska State Senator  
P.O. Box V  
Juneau, Alaska 99811

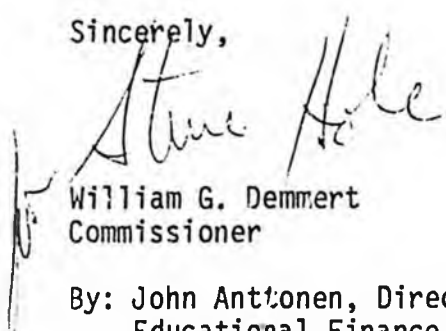
Dear Senator Jones:

The following is the maximum additional funds for FY91 the Chatham and Southeast Island school districts could receive and still maintain the federal disparity standards:

Chatham	779,838
Southeast Island	1,354,884

If you have any questions or need further information, please call John Anttonen, Director of Educational Finance and Support Services (465-2865).

Sincerely,

  
William G. Demmert  
Commissioner

By: John Anttonen, Director  
Educational Finance and  
Support Services



United States  
Department of  
Agriculture

Forest  
Service

Region 10

Tongass National Forest  
Ketchikan Area  
Federal Building  
Ketchikan, AK 99901

Reply To: 1390

Date: February 27, 1990

Mr. Bob Weinstein  
Southeast Island School District  
P.O. Box 8340  
Ketchikan, Ak. 99901

Dear Bob:

The National Forest acreage figures which you requested from our Geographic Information System (GIS) show that the Southeast Island School District has 8,368,010 acres (13,075 Sq Mi) of National Forest land. The Chatham School District contains 2,832,618 acres (4,426 Sq Mi) of National Forest land.

Our calculations are based on using our Geozone line on the mainland to separate the two districts rather than the straight line indicated on your map. This approximation places a couple thousand acres of Chatham District land in the Southeast Island district, but amounts to less than a one percent deviation.

We are also enclosing our computation sheets and maps as agreed, so that should the need arise, you will be able to make adjustments for areas like Duke Island.

Sincerely,

WALTER A. DORTCH  
Planning Officer, Ketchikan Area

022790 1330 pl 1390 dke



# MEMORANDUM

## State of Alaska Community and Regional Affairs

TO: Marty Rutherford  
Director, MRAD

DATE: March 1, 1990

FILE NO: 0175C/P.6

THRU: Jim Plasman  
Deputy Director  
MRAD

TELEPHONE NO: 465-4814

SUBJECT: SB 458

FROM: Peter K. Freese  
SERO Supervisor  
Southeast Regional Office

SB 458, introduced by Senators Jones, Eliason and Coghill, would make REAA's and city school districts within national forests in the unorganized borough eligible to receive National Forest Receipts funds. The bill amends AS 41.15.180 by adding language to section (c), specifying that national forest receipts funds deposited in the general fund are for use in the unorganized borough, 25% for schools and 75% for roads. Each qualifying city school district and REAA would receive funding in proportion to the area of national forest located within their boundaries. The Southeast Islands School District (REAA 19) would qualify for the largest share of funds, since approximately 50% of the Tongass is within REAA 19. This year, with the formula in the statute, REAA 19 would have received, roughly speaking, about \$625,000 in national forest receipt funds.

AS 41.15.180 currently authorizes the payment of national forest receipts funds to organized boroughs, based on the 1908 federal law that authorizes these payments to counties. Evidently, the term "county" can be interpreted broadly to include the unorganized borough as well as the organized borough, according to legislative attorney Tam Cook. Tam also says the amended bill may actually be closer to the intent of the federal enabling legislation than existing law. This is because the legislation directs funds back to local schools on a proportional basis rather than allowing funds outside organized boroughs simply to go into the general fund. REAA superintendent Bob Weinstein claims that passage of the bill

Marty Rutherford  
March 1, 1990  
Page 2

would upset neither the school funding formula nor the federal disparity rule. Weinstein says if the bill is not signed into law, REAA 19 will sue the state for what he regards as the REAA's share of national forest receipt funds over the last ten years.

We will probably have to take a position on the bill, since we are administrators of the funds and have been regarded as knowledgeable about the program. The major issues which will require some examination are:

1. Effects on the school funding formula;
2. Conflict with the federal disparity rule, which places limits on the differences between costs per student between school districts;
3. The effect this might have as a dis-incentive for borough formation (In the Chatham Borough Feasibility Study, for example, the ability to capture these funds was regarded as an incentive for borough formation), and;
4. Whether the term "county", as it is used in federal law, can indeed be interpreted broadly enough to include state-sponsored service areas such as REAA's.

Three of these issues are legal in nature and will require some determination from the Attorney General's office. The fourth, possible effects on borough formation, is a policy issue which needs to be addressed by the Local Boundary Commission staff. If they have no objection, and if the legal concerns cited above are not problematic, then it would be politic for us to consider supporting the legislation. It implements a longstanding desire to capture national forest receipts funds at the local level, though it will probably not fully satisfy communities such as Thorne Bay and the Ketchikan Borough, both of which have expressed strong feelings about channeling these funds to affected local communities.

The bill has three committee referrals, C and RA, HESS and Finance, and will be heard in C and RA March 6th.

4. Income Tax Law Impact: The League supports the tax exemption of municipal bonds for public purposes and federal legislation to remove restrictions placed on municipal bonds by tax reform legislation. The League opposes changes to federal tax laws that place additional burdens on local governments.

5. National Forest Receipts Shared Revenue: The League supports the full funding and distribution of National Forest Receipts to communities affected by timber harvest and urges amendment to federal and state laws to require distribution of these funds to harvest-impacted incorporated cities located in the unorganized boroughs.

Currently federal law (U.S. Code, Title 16, Section 200) restricts state distribution of these funds to counties, boroughs, and unified municipalities. Several communities throughout Alaska, although greatly impacted by timber harvest, are part of the state's unorganized borough and are not receiving their proportionate share of these funds. This situation is inequitable and federal and state law should be amended to require the State to distribute National Forest Receipts Shared Revenue to timber-harvest-impacted, incorporated cities located in the unorganized borough.

#### H. LOCAL DEBT

1. Debt Limits: The League opposes the imposition of limits on municipal debt other than those imposed by the Alaska Constitution and by the bond market because there are great differences between municipalities in Alaska with respect to revenue sources, number and levels of functions performed, and needs for infrastructure development.

The local government structure in Alaska is quite different from that in other states. First, all local government power resides in cities and boroughs; there are no independent special districts with independent debt issuing and taxing authority as there are in other states. For this reason, there are relatively few municipal issuers in the State of Alaska. Those issuers are financially stable and have a good bond-repayment track record. The growth pattern in Alaska is erratic and various areas have experienced extremely rapid growth, which places very heavy demands on the ability of the municipality to respond with the heavy capital investment required to meet infrastructure expansion needs. The tried and traditional assessed value-based methods of limiting local debt do not take into account such unpredictable demands and would make such limits unworkable in Alaska. The constitution prohibits general obligation debt except for capital improvements that have been approved by the voters. In most situations the voters will probably say "no" to new debt before debt limits are reached. Additionally, the bond market is sensitive to the amount of debt assumed by an issuer and its ability to repay such debt. These two mechanisms together should serve to establish a practical limit on local debt. Artificial limits that cannot take into account the varying needs of municipalities should be avoided.



SOUTHEAST  
ISLAND  
SCHOOL  
DISTRICT

1621 TONGASS AVENUE SUITE 301  
POST OFFICE BOX 8340  
KETCHIKAN, ALASKA 99901  
(907) 225-3659 OF 225-3659

Robert Weinstein  
SUPERINTENDENT

March 20, 1990

Senator Paul Fischer, Chairman  
Health, Education, & Social Services Committee  
Alaska State Senate  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Fischer:

This letter is to ask for your support of SB 458, proposed legislation addressing distribution of National Forest receipts.

At the beginning of this century, the United States Congress passed legislation which provided that 25 per cent of timber receipts from national forests would be paid to the state in which the forest was located, to be distributed by the state to benefit schools and roads of the area in which the national forest is situated. Federal law provided that each state could determine the proportion of funds between schools and roads, and also provided that the funds would be prorated on a geographical area basis if a national forest crossed state or local boundaries. Under existing state statute, AS 41.15.180, income from national forest land within borough boundaries is distributed to boroughs. However, income from national forest land outside of organized boroughs is deposited into the general fund, with 25 per cent earmarked for public schools and 75 per cent earmarked for roads.

It should be noted that the state statute was passed by the 1949 Legislature, with amendments in 1965 and 1969. In our review of the implementation of the legislation, apparently the Department of Community and Regional Affairs receives the funds, distributes the boroughs' share, and simply retains the remaining funds until the end of a fiscal year whereupon it lapses into the general fund. It is not

March 20, 1990

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only not spent in the manner intended by Congress; it is also not spent in the manner already prescribed by state statute.

The above dates are important in that, prior to 1975, the state was directly responsible for the operation of schools in the unorganized borough. In 1975, with the passage of SB 35, the Legislature delegated its responsibilities for the operation of schools to R.E.A.A. school boards in the unorganized borough. However, the current statute for distribution of funds was not amended to take this change into account.

We believe that SB 458 will bring the state distribution method into compliance with federal statutes. It is our position that current state statute does not meet federal intent, in that income generated by national forest located within unorganized areas of the state is not expended on schools and roads of the area in which the national forest is situated. We also believe that the current practice of the Department of Community and Regional Affairs to withhold funds until they "lapse" at the end of the fiscal year is not appropriate as well.

For your information, over 50 per cent of the Tongass National Forest is located within Southeast Island School District boundaries. Eleven of the nineteen communities in which we have schools are logging related, with significant direct impacts by the logging industry on our schools and school district. We have a very high turnover of children, with various adverse impacts upon educational programs, creating special needs and at-risk situations for a significant number of students. For a number of reasons, the Southeast Island School District is not eligible for most of the federal financial assistance programs which provide supplemental monies to many other school districts in Alaska to address special educational needs of children. In addition, we have communities which move, which means that we have some extreme impacts by the logging industry in that we have to move school buildings and teacher housing for which we receive no special state support.

March 20, 1990

Page three

It should be noted that, under the proposed legislation, 25 per cent of the income would go to R.E.A.A.s for which the state receives national forest income, while 75 per cent would be retained by the state for roads in the appropriate area. We believe that these funds are necessary to offset the direct impacts which the logging industry has upon our schools, and we believe that such funds were intended by Congress for exactly this type of situation. I therefore urge your support of SB 458.

Sincerely,

A handwritten signature in cursive script that reads "Bob Weinstein".

Robert Weinstein  
Superintendent

NATIONAL FOREST INCOME

**MOST RECENT PAYMENT**

SITKA	\$546,628
JUNEAU	\$498,750
HAINES	\$275,508
KETCHIKAN	\$225,387
UNORGANIZED BOROUGH	\$3,498,510

**MOST RECENT PAYMENT**

ANCHORAGE	\$2,906
KENAI PENNINSULA	\$12,080
KODIAK	\$2,276
MAT-SU	\$470
UNORGANIZED	\$42,505

**ACREAGE**

**ACRES**

HAINES	918,072
JUNEAU	1,656,042
KETCHIKAN	748,662
SITKA	1,815,925
UNORGANIZED BOROUGH	11,622,771
THE UNORGANIZED BOROUGH CONSISTS OF	
THE SOUTHEAST ISLAND AND CHATHAM	
SCHOOL DISTRICTS REAA #'s 19 & 20	

**ACREAGE**

**ACRES**

ANCHORAGE	274,290
KENAI PEN.	1,160,653
KODIAK	215,217
MATSU	44,411
UNORGANIZED	4,027,708
THE UNORGANIZED BOROUGH CONSISTS	
OF THE CHUGACH SCHOOL DISTRICT	
REAA #21	

NATIONAL FOREST INCOME

UNDER SB458 FY 1989

SOUTHEAST ISLAND SCHOOL DISTRICT	\$579,003
CHATHAM	\$295,623
CHUGACH	\$10,606

PAYMENTS TO STATE OF ALASKA FROM NATIONAL FOREST RECEIPTS

Fiscal Year 1959 to 1988 (1)

<u>FEDERAL FISCAL YEAR</u>	<u>CHUGACH NF</u>	<u>TONGASS NF</u>	<u>TOTAL R-10</u>
1959	\$ 8,225.	\$ 150,038.	\$ 158,263.
1960	8,466.	189,665.	198,131.
1961	10,425.	202,006.	212,431.
1962	10,455.	161,137.	171,592.
1963	4,842.	208,332.	213,174.
1964	5,476.	231,512.	236,988.
1965	4,656.	212,576.	217,232.
1966	7,323.	276,162.	283,485.
1967	5,044.	399,923.	404,967.
1968	7,435.	510,123.	517,558.
1969	17,678.	557,097.	574,775.
1970	23,283.	1,057,638.	1,080,921.
1971	20,993.	1,031,200.	1,052,193.
1972	30,806.	851,337.	882,143.
1973	47,692.	926,223.	973,915.
1974	44,811.	643,322.	688,133.
1975	31,630.	1,014,448.	1,046,078.
1976	29,081.	279,570.	308,651.
1976	2,768.	158,119.	160,887.
1977	90,066.	2,465,222.	2,555,288.
1978	139,820.	2,970,500.	3,110,320.
1979	112,596.	3,461,103.	3,573,699.
1980	21,957.	6,506,123.	6,528,080.
1981	23,208.	3,751,986.	3,775,194.
1982	24,681.	5,405,691.	5,430,372.
1983	33,589.	1,341,479.	1,375,068.
1984	36,299.	1,015,797.	1,052,096.
1985	37,154.	52,308.	89,462.
1986	53,719.	491,810.	545,529.
1987	0.	0.	0.
1988	101,989.	308,167.	410,156.

1) This table of payments to the State of Alaska from National Forest receipts indicates the final payment derived from the National Forests in Alaska for the period requested (16 U.S.C. 500 as amended by P.L. 94-588).

relating to the subject matter of AS 41.15.010 — 41.15.170, the escape of a fire is presumptive evidence of negligence by the person responsible for starting the fire and unless rebutted is sufficient to sustain the recovery. (§ 12 ch 138 SLA 1961)

**Sec. 41.15.170. Definitions.** In AS 41.15.010 — 41.15.170

(1) [*Repealed, § 43 ch 85 SLA 1988.*]

(2) "damages" includes costs incurred in suppressing, controlling or extinguishing a fire;

(3) "forested land" includes all land on which grass, brush, timber and other natural vegetative material grows;

(4) "forest fire" includes the uncontrolled burning of grass, brush, timber and other natural vegetative material. (§ 1 ch 138 SLA 1961; am § 3 ch 179 SLA 1970; am § 43 ch 85 SLA 1988)

**Revisor's notes.** — In 1983 this section was reorganized to place the terms defined in alphabetical order.

**Effect of amendments.** — The 1988 amendment repealed former paragraph (1), which defined "commissioner."

## Article 2. Forest Reserve Fund.

### Section

#### 180. National forest income

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**Collateral references.** — 52 Am. Jur. 2d, Logs and Timber, § 65.

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**Sec. 41.15.180. National forest income.** (a) When the commissioner of administration receives national forest income under 16 U.S.C. 500, the commissioner shall immediately pay to every organized borough in which national forest land is located a share of the income from that forest. A borough's share of income from a national forest shall be proportional to the area of the national forest located within its boundaries. The payments shall be made under an appropriation made for that purpose.

(b) The national forest income paid to an organized borough under this section shall be expended for public schools or roads.

(c) The commissioner shall deposit income from national forest land outside of organized boroughs in the general fund of the state, 25 percent to be used for public schools and 75 percent for roads. (§ 47-5-1 ACLA 1949; am § 1 ch 106 SLA 1965; am § 1 ch 32 SLA 1969)

ered into the Treasury and shall appropriated and made available until e may direct, for the payment of the on, or improvements by the Forest tributors of amounts heretofore or of their share of the cost of said ents.

9, 1928, c. 901, § 1(99), 45 Stat. 993.)

Note

ports be made to Congress of moneys received as contributions for cooperative work.

ferences

bursement of funds appearing on books of "Service", see section 1321 of Title 31, Money

administration or protection of lands within tute special fund which may be appropriat- section 572 of this title.

Regulations

tation system, see 36 CFR 212.1 et seq.

ed by or on account of Forest and moneys erroneously collect-

of the Forest Service for timber, or revenue, including moneys received e of lands in national forests created moneys received on account of permits lands acquired under authority of , shall be covered into the Treasury receipt, and except as provided in is appropriated and made available, ct, out of any funds in the Treasury may be necessary to make refunds reafter deposited by them to secure oducts or for the use of any land or ess of amounts found actually due so so much as may be necessary to ants such sums as may be found by en erroneously collected for the use resources sold from lands located rests, or for alleged illegal acts done quently found to have been proper

4, 1911, c. 238, 36 Stat. 1253; Mar. 4, 348, § 9, 43 Stat. 655; May 29, 1928, c.

Historical Note

References in Text. Section 471(b) of this title, referred to in text, was repealed by section 704(a) of Pub.L. 94-579, Title VII, Oct. 21, 1976, 90 Stat. 2792. For further details, see Codification note below.

Codification. Section is a combination provision the basis for which is Act Mar. 4, 1907, which superseded previous provisions relating to the disposal of money received from sale of products or use of any land or resources of the forest reserves, contained in Act Feb. 1, 1905, c. 288, § 5, 33 Stat. 628.

Act Mar. 4, 1911 is the source of the last portion of the section beginning with the words, "and also so much as may be necessary," etc. That Act provides that so much of the former Act "which provides for refunds by the Secretary of Agriculture to depositors of moneys to secure the purchase price of timber or the use of lands or resources of the national forests such sums as may be found to be in excess of the amounts found actually due the United States, be, and is hereby, amended hereafter to appropriate and to include so much;".

The words of this section reading, "including moneys received from sale of products from or use of lands in national forests created under section 471(b) of this title" were derived from the fourth sentence of section 9 of Act of June 7, 1924, which reads as follows: "All receipts from the sale of products from or for the use of lands in such national

forests shall be covered into the Treasury as miscellaneous receipts, forest reserve fund, and shall be disposed of in like manner as the receipts from other national forests as provided by existing law." Section 471(b) of this title, referred to in text, was based on the first and fifth sentences of section 9 of the 1924 Act, and was repealed by section 704(a) of Pub.L. 94-579. Section 505 of this title is based on the second and third sentences of section 9 of the 1924 Act.

The words "and moneys received on account of permits for hunting, fishing, or camping on lands acquired under authority of sections 513 to 517 and 521 of this title," are from a provision of Act Mar. 4, 1917, which reads, "Hereafter, all moneys received on account of permits for hunting, fishing, or camping, on lands acquired under authority of said Act [Act Mar. 1, 1911, c. 186, 36 Stat. 961] or any Amendment or extension thereof, shall be disposed of as is provided by existing law for the disposition of receipts from national forests."

The words of this section reading, "except as provided in sections 500 and 501 of this title" are intended to relate this section to the apparent exceptions contained in later law.

1928 Amendment. Act May 29, 1928 deleted provision which required the Secretary of Agriculture to make an annual report to Congress of the amounts refunded under this section.

Cross References

- Conservation programs on military reservations, inapplicability to forest lands administered pursuant to this section, see section 670e of this title.
- Deposit in "Oregon and California land-grant fund" of proceeds of sale of timber added to Siskiyou National Forest, see section 487 of this title.
- Payments from account for refund of moneys erroneously received and covered and authorization of appropriation of sums necessary, see section 1322 of Title 31, Money and Finance.

Notes of Decisions

1. Scope of review  
The discretion of the Secretary of Agriculture in making refunds under this section is absolute only on questions of fact; his rulings on questions of law are reviewable in the court of claims [now Claims Court] *Utah Power & Light Co. v. U. S.*, 1929, 67 Ct.Cl. 602.

§ 500. Payment and evaluation of receipts to State or Territory for schools and roads; moneys received; projections of revenues and estimated payments

On and after May 23, 1908, twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of

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such year, by the Secretary of the Treasury to the State or Territory in which such national forest is situated, to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: *Provided*, That when any national forest is in more than one State or Territory or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber. Beginning October 1, 1976, the term "moneys received" shall include all collections under the Act of June 9, 1930, and all amounts earned or allowed any purchaser of national forest timber and other forest products within such State as purchaser credits, for the construction of roads on the National Forest Transportation System within such national forests or parts thereof in connection with any Forest Service timber sales contract. The Secretary of Agriculture shall, from time to time as he goes through his process of developing the budget revenue estimates, make available to the States his current projections of revenues and payments estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes.

May 23, 1908, c. 192, 35 Stat. 260; Mar. 1, 1911, c. 186, § 13, 36 Stat. 963; June 30, 1914, c. 131, 38 Stat. 441; Sept. 21, 1944, c. 412, Title II, § 212, 58 Stat. 737; Apr. 24, 1950, c. 97, § 17(b), 64 Stat. 87; Oct. 22, 1976, Pub.L. 94-588, § 16, 90 Stat. 2961.)

#### Historical Note

**References in Text.** The Act of June 9, 1930, referred to in text, is Act June 9, 1930, c. 416, 46 Stat. 527, as amended, popularly known as the Knutson-Vandenberg Act, which is classified generally to sections 576, 576a, and 576b of this title. For complete classification of this Act to the Code, see Short Title note set out under section 576 of this title and Tables volume.

The Act of May 23, 1908, referred to in text, is Act May 23, 1908, c. 192, 35 Stat. 251, as amended. A portion of that Act appearing at 35 Stat. 260 is classified to this section. For complete classification of this Act to the Code, see Tables volume.

**Codification.** "National forest" was substituted for "forest reserve" the first, third and fourth time appearing, and for "reserve" the second time appearing, and "forest" was substituted for "reserve", on authority of Act Mar. 4, 1907, c. 2907, 34 Stat. 1269, which provided that forest reserves shall hereafter be known as national forests.

Section is a combination of Acts May 23, 1908, as amended, and Mar. 1, 1911, as amended.

**1976 Amendment.** Pub.L. 94-588 added provision that beginning Oct. 1, 1976, the term "moneys received" would include all collections under the Act of June 9, 1930, and all amounts earned or allowed any purchaser of national forest timber and other forest products within such State as purchaser credits, for the construction of roads on the National Forest Transportation System within such national forests or parts thereof in connection with any Forest Service timber sales contract, and that the Secretary of Agriculture shall, from time to time as he goes through his process of developing the budget revenue estimates, make available to the States his current projections of revenues and payments estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes.

**1950 Amendment.** Act Apr. 24, 1950 deleted second proviso relating to limitation paid county.

**1944 Amendment.** Act Sept. 21, 1944 added sentence relating to stumpage value of the timber.

Collateral references. — 68 Am. Jur. 2d School, §§ 14-36.  
78 C.J.S. Schools and School Districts, §§ 23-81.

Grounds for ousting educational corporation of its franchise. 46 ALR 1478.

Incorporated educational body as an institution belonging to the state. 65 ALR 1394.

Discretion of administrative officers as to changing boundaries of school district. 65 ALR 1523; 135 ALR 1096.

Constitutionality and construction of statute which leaves to determination of

private individuals the boundaries of territory to be erected into a school district or other political subdivision, or to be added to or detached from an existing district or subdivision. 70 ALR 1062.

Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of the individual districts. 121 ALR 826.

Propriety, under First Amendment, of school board's censorship of public school libraries or course books. 64 ALR Fed. 771.

**Sec. 14.12.010. Districts of state public school system.** The districts of the state public school system are as follows:

(1) each first class city in the unorganized borough is a city school district;

(2) each organized borough is a borough school district;

(3) the area outside organized boroughs and outside first class cities is divided into regional educational attendance areas. (§ 1 ch 98 SLA 1966; am § 3 ch 124 SLA 1975; am § 7 ch 208 SLA 1975)

**NOTES TO DECISIONS**

**Regional educational attendance areas are school districts.** — Although this title does not specifically provide that regional educational attendance areas are to be considered "school districts," implicit in the statute is the notion that they are in fact school districts. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71. Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

Quoted in Begich v. Jefferson, Sup. Ct. Op. No. 481 (File No. 894), 441 P.2d 27 (1968).

Stated in Hootch v. Alaska State-Operated School Sys., Sup. Ct. Op. No. 1154 (File No. 2157), 536 P.2d 793 (1975).

Cited in Alaska State-Operated School Sys. v. Mueller, Sup. Ct. Op. No. 1157 (File No. 2138), 536 P.2d 99 (1975).

**Sec. 14.12.020. Support, management, and control.** (a) Each regional educational attendance area shall be operated on an area-wide basis under the management and control of a regional school board. The regional school board manages and controls schools on military reservations within its regional educational attendance area until the military mission is terminated or so long as management and control by the regional educational attendance area is approved by the department. However, operation of the military reservation schools by a city or borough school district may be required by the department under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by the regional educational attendance area is disapproved by the depart-

*Sec. 14.08.010. [Repealed, § 1 ch 124 SLA 1975.]*

**Sec. 14.08.011. Purpose.** (a) It is the purpose of this chapter to provide for public education in the unorganized borough and the military reservations in the state.

(b) Nothing in this chapter prohibits an organized borough, city, village, community or settlement in an unorganized area of the state from becoming part of or being formed into an organized political subdivision authorized under AS 29. (§ 2 ch 124 SLA 1975)

#### NOTES TO DECISIONS

History of public education in Alaska. — See *Hootch v. Alaska State-Operated School Sys.*, Sup. Ct. Op. No. 1154 (File No. 2157), 536 P.2d 793 (1975) decided under former Chapter 08.

*Sec. 14.08.020. [Repealed, § 1 ch 124 SLA 1975.]*

**Sec. 14.08.021. Authority.** The legislature delegates to school boards for each regional educational attendance area the authority to operate the public schools in those areas in accordance with the provisions of this chapter, subject to the provisions of this title and the regulations adopted under it that apply to all school districts in the state. (§ 2 ch 124 SLA 1975)

#### NOTES TO DECISIONS

As to absence of duty on regional educational attendance areas to bargain collectively with noncertificated employees, see note following chapter analysis. *Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71*, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).  
Applied in *Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71*, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

*Sec. 14.08.030. [Repealed, § 1 ch 124 SLA 1975.]*

**Sec. 14.08.031. Regional educational attendance areas.** (a) The Department of Community and Regional Affairs in consultation with the Department of Education and local communities shall divide the unorganized borough into educational service areas using the boundaries or sub-boundaries of the regional corporations established under the Alaska Native Claims Settlement Act, unless by referendum a community votes to merge with another community contiguous to it but within the boundaries or sub-boundaries of another regional corporation.

(b) An educational service area established in the unorganized borough under (a) of this section constitutes a regional educational atten-

PAYMENTS TO STATES FROM THE NATIONAL FOREST RECEIPTS

Fiscal Year 1988  
October 1, 1987 to September 30, 1988  
--National Forest Summary--

<u>NATIONAL FOREST</u>	<u>BOROUGH</u> S	<u>FY 88 ACRES</u>	<u>TOTAL PAYMENTS</u>
<u>CHUGACH</u>	ANCHORAGE	274,290	\$ 4,888.74
	KENAI PEN.	1,160,653	20,686.63
	KODIAK	215,217	3,835.87
	MAT-SU	44,411	791.55
	UNORGANIZED	4,027,708	71,786.92
NF TOTAL:		5,722,279	\$101,989.71
TONGASS	HAINES	918,072	\$ 16,879.21
	JUNEAU	1,656,042	30,447.15
	KETCHIKAN	748,662	13,764.52
	SITKA	1,815,925	33,386.68
	UNORGANIZED	11,622,771	213,690.37
NF TOTAL:		16,761,472	\$308,167.93
REGIONAL TOTAL:		22,483,751	\$410,157.64