

SB97

SENATE FINANCE COMMITTEE REPORT

DATE: 3/26/91

FURTHER:

DATE TURNED INTO OFFICE: 4/19/91

The Finance Committee considered SSSB 97

"An Act relating to the Alaska advance college tuition payment fund; 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):

fiscal note(s) DOR Dept/Date: 3/26/91
25.0/Other

APPROVES PREVIOUS:

fiscal note(s) 11 of 17 261.2 Dept/Date: 3/25/91

zero fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

SIGNING DO PASS:

[Signature]

OTHER RECOMMENDATIONS:

Al Adams - No Rec
[Signature] - No Rec
[Signature] - No Rec
[Signature]

1.

[Signature]

2.

[Signature]

Co-Chairs: Signatures and Recommendations

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SS SB 97

Revision Date: March 26, 1991

Department Affected: Revenue

Title: An act relating to the Alaska advance college tuition payment fund.

BRU: Operations

Component: Treasury

Sponsor: Kerttula

Component Serial No.

	1	2	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	5.0	5.0	5.0	5.0	5.0	5.0
TRAVEL						
CONTRACTUAL	20.0	20.0	20.0	20.0	20.0	20.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	25.0	25.0	25.0	25.0	25.0	25.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	25.0	25.0	25.0	25.0	25.0	25.0
TOTAL	25.0	25.0	25.0	25.0	25.0	25.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: Basic personal services and contractual costs for a trust fund managed by the Treasury division. Contractual costs would consist of external investment management, auditing and custodial services. Future costs increases are dependent on the asset growth of the trust fund from contributions and market gains.

Prepared by: Brian C. Andrews *CSA*

Phone: 465-2350

Division: Treasury *D/A*

Date: March 26, 1991

Approved by Commissioner: *[Signature]*

Agency: Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

SS SB 97

FISCAL NOTE

No. L
 Bill Version: SSSB 97
 (S) Publish Date: 3/26/91

**STATE OF ALASKA
 1991 LEGISLATIVE SESSION**

Revision Date: 3/25/91 Department Affected: University of Alaska
 Title: Advance College Tuition Program; BRU: Statewide Programs & Services
 eff. date _____ Component: _____
 Sponsor: Kerttula
 Requestor: Senate HESS Component Serial No. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES	126.9	130.7	134.8	138.7	142.8	147.1
TRAVEL	6.8	7.1	7.5	7.9	8.3	8.7
CONTRACTUAL	66.0	69.8	104.7	110.0	115.6	121.2
SUPPLIES	2.5	2.8	2.8	2.9	3.0	3.2
EQUIPMENT	30.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	261.2	240.2	249.6	259.4	269.6	280.2

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)						
GENERAL FUND						
FEDERAL FUNDS						
OTHER: Interest Income	261.2	240.2	249.6	259.4	269.6	280.2
TOTAL	261.2	240.2	249.6	259.4	269.6	280.2

POSITIONS:						
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	1.1	1.1	1.1	1.1	1.1	1.1

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 Funding for this program comes from interest earned on the advance tuition payment fund and from other University of Alaska interest income. Staffing includes two permanent PCNs (reallocated from existing vacancies) and 3 temporary telephone workers. Contractual includes funding for advertising, printing, actuarial studies, and programming. Equipment includes record-keeping software.

Prepared by: Marsha A. Hubbard Phone: 474-7593
 Division: Statewide Budget Office Date: 3/25/91
 Approved by: Brian Rogers, Vice President for Finance
 Agency: University of Alaska Date: 3/25/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 97
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS KERTTULA, Sturgulewski

Introduced: 3/25/91
Referred: HES, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska advance college tuition payment fund; and providing for
2 an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 09.38.015(a) is amended to read:

5 (a) An individual is entitled to exemption of the following property:

6 (1) a burial plot for the individual and the individual's family;

7 (2) health aids reasonably necessary to enable the individual or a dependent to
8 work or to sustain health;

9 (3) benefits paid or payable for medical, surgical, or hospital care to the extent
10 they are or will be used to pay for the care;

11 (4) an award under AS 18.67 (Violent Crimes Compensation Board) or a crime
12 victim's reparations act of another jurisdiction;

13 (5) benefits paid or payable as a longevity bonus under AS 47.45;

14 (6) compensation or benefits paid or payable and exempt under federal law;

1 (7) liquor licenses granted under AS 04;
2 (8) limited entry permits granted under AS 16.43, except as provided in that
3 chapter;

4 (9) tuition credits under an advance college tuition payment contract
5 authorized under AS 14.40.809(a).

6 * Sec. 2. AS 14.40.803 is amended to read:

7 Sec. 14.40.803. ALASKA ADVANCE COLLEGE TUITION PAYMENT
8 [EDUCATION TRUST] FUND ESTABLISHED. (a) The Alaska advance college tuition
9 payment [EDUCATION TRUST] fund is established as a nonlapsing [AN ENDOWMENT
10 TRUST] fund of the University of Alaska. The fund is established for the purpose of
11 enhancing the ability of the university to provide (1) higher education for the people of the
12 state; (2) wide and affordable access to higher education for residents and their children;
13 (3) an incentive for residents to achieve higher academic standards in grades 7 - 12; and
14 (4) an incentive for residents to continue and complete secondary and post secondary
15 education [SEPARATE FROM THE GENERAL FUND]. The fund may be divided into
16 separate accounts for accounting purposes.

17 (b) The fund consists of

18 (1) permanent fund dividend and cash contributions made under AS 14.40.807
19 under the terms of an advance tuition payment contract;

20 (2) ^{NEW; DELETE} appropriations, gifts, bequests, and contributions of cash or other assets
21 [FROM A PERSON]; and

22 (3) income and earnings of the fund.

23 (c) Assets of the fund shall be expended [IN THE FOLLOWING ORDER OF
24 PRIORITY:

25 (1) to make payments to the university, including payments for [ON BEHALF
26 OF QUALIFIED BENEFICIARIES;

27 (2) TO MAKE] refunds, redemptions, and awards under [UPON
28 TERMINATION OF] an advance tuition payment contract or a prepaid tuition scholarship, and
29 ;

30 (3) TO PAY THE] costs of administration of the fund.

31 * Sec. 3. AS 14.40.805 is amended to read:

1 Sec. 14.40.805. POWERS AND DUTIES OF THE COMMISSIONER OF REVENUE.

2 The commissioner of revenue is the custodian [TRUSTEE] of the fund and has the powers and
3 duties under this section to

4 (1) act as official custodian [TRUSTEE] of the cash and investments belonging
5 to the fund and to secure adequate and safe custodial facilities;

6 (2) receive all items of cash and investments belonging to the fund;

7 (3) collect and deposit the principal and income from investments of
8 [ACQUIRED BY THE TRUSTEE AND DEPOSIT THE AMOUNTS IN SEPARATE
9 PRINCIPAL AND INCOME ACCOUNTS FOR] the fund;

10 (4) invest and reinvest the assets of the fund as provided in this section and in
11 accordance with investment objectives, criteria, and asset allocation guidelines established
12 by the board [AS PROVIDED FOR THE INVESTMENT OF RETIREMENT FUNDS UNDER
13 AS 14.25.180];

14 (5) exercise the powers of a custodian [TRUSTEE] with respect to the assets of
15 the fund;

16 (6) do all acts, whether or not expressly authorized, that the commissioner of
17 revenue considers necessary or proper in administering, as a custodian [TRUSTEE], the assets
18 of the fund;

19 (7) maintain accounting records of the fund in accordance with investment
20 accounting principles [AND WITH DISTINCTION BETWEEN THE PRINCIPAL AND
21 INCOME ACCOUNTS OF THE FUND];

22 (8) engage an independent firm of certified public accountants to [ANNUALLY]
23 audit the financial condition of the fund's investments and investment transactions;

24 (9) enter into and enforce contracts or agreements considered necessary for the
25 investment purposes of the fund, including the use of investment managers, consultants, and
26 other custodians of the fund;

27 (10) report to the university the condition and investment performance of the
28 fund;

29 (11) make payments to the university as requested by the board, including
30 payments for [ON BEHALF OF QUALIFIED BENEFICIARIES];

31 (12) MAKE] refunds and redemptions under [UPON TERMINATION OF] an

1 advance tuition payment contract or a prepaid tuition scholarship, [;] and

2 [(13) PAY THE] costs of administration of the fund.

3 * Sec. 4. AS 14.40.807(a) is amended to read

4 (a) Contributions to the fund under the terms of an advance tuition payment contract
5 may be made by direct cash payments or by contributions from the permanent fund dividend.
6 The Department of Revenue shall

7 (1) prepare the permanent fund dividend application to allow an applicant [,] or
8 a parent, legal guardian, or other authorized representative of an applicant who is an
9 unemancipated minor to contribute 50 percent of a dividend to the fund under the terms of an
10 advance tuition payment contract; and

11 (2) include with each application for a permanent fund dividend an explanation
12 of the advanced tuition payment program [TRUST FUND], including the right [OF A
13 PURCHASER] to receive a refund, a disclosure of the potential [UPON TERMINATION OF
14 AN ADVANCE TUITION PAYMENT CONTRACT, AND A STATEMENT THAT THE] tax
15 liability of the fund, and disclosure of the possible general effect of the tax liability on the
16 advance college tuition payment program [HAS NOT YET BEEN DETERMINED; AFTER
17 THE INTERNAL REVENUE SERVICE DETERMINES THE TAX LIABILITY OF THE
18 FUND, A STATEMENT SUMMARIZING THE TAX DETERMINATION SHALL BE
19 INCLUDED WITH EACH APPLICATION FOR A PERMANENT FUND DIVIDEND].

20 * Sec. 5. AS 14.40.807 is amended by adding a new subsection to read:

21 (c) In order to assure the actuarial soundness of the fund, the legislature may appropriate
22 annually to the fund the sum, certified by the board to the governor and the legislature, that is
23 necessary to restore the fund to an amount that is actuarially sound. The board annually, before
24 January 30, shall make and deliver to the governor and to the legislature a certificate stating the
25 sum required to restore the fund to an amount that is actuarially sound, and that sum may be
26 appropriated and paid to the fund during that fiscal year. This subsection does not create a debt
27 or liability of the state.

28 * Sec. 6. AS 14.40.809 is amended to read

29 Sec. 14.40.809. POWERS AND DUTIES OF THE UNIVERSITY OF ALASKA. (a)
30 The Board of Regents of the University of Alaska may contract with a purchaser for the advance
31 payment of tuition by the purchaser for a [QUALIFIED] beneficiary of any age to attend a

1 branch of the university to which the [QUALIFIED] beneficiary is admitted [, WITHOUT
2 FURTHER TUITION COST TO THE QUALIFIED BENEFICIARY]. A purchaser and a
3 [QUALIFIED] beneficiary may be the same person.

4 (b) The board shall

5 (1) make appropriate arrangements as necessary to fulfill the board's obligations
6 under an advance tuition payment contract;

7 (2) establish and adopt a formal plan for administration of the advance
8 college tuition payment program and prepaid tuition scholarship program [STANDARD
9 PAYMENT PLANS TO BE USED UNDER ADVANCE TUITION PAYMENT CONTRACTS];

10 (3) establish investment objectives, criteria and asset allocation guidelines for
11 the fund based on prudent institutional investor guidelines and actuarial analysis of the
12 earnings requirements for the advance college tuition payment plan;

13 (4) enter into a reciprocal agreement with Sheldon Jackson College and
14 Alaska Pacific University; and

15 (5) make the obligation under an advance college tuition payment program
16 a general obligation of the university [THE CIRCUMSTANCES UNDER WHICH AN
17 ADVANCE TUITION PAYMENT CONTRACT MAY BE TERMINATED AND THE
18 AMOUNT OF THE REFUND THE PERSON ENTITLED TO TERMINATE THE CONTRACT
19 MAY RECEIVE].

20 * Sec. 7. AS 14.40.811 is amended to read:

21 Sec. 14.40.811. ADVANCE COLLEGE TUITION PAYMENT CONTRACTS. (a) An
22 advance college tuition payment contract must set out or include by reference to the plan

23 (1) if an installment purchase program is established by the board, the amount
24 of payments required from the purchaser, [ON BEHALF OF THE QUALIFIED BENEFICIARY;

25 (2)] the terms and conditions for making the payments, and [;

26 (3)] provisions for late payment charges [AND FOR DEFAULT];

27 (2) [(4)] the name and age of the primary and alternate beneficiaries
28 [QUALIFIED BENEFICIARY] under the contract [AND A STATEMENT THAT THE
29 PURCHASER, WITH THE APPROVAL OF THE BOARD, MAY SUBSTITUTE ANOTHER
30 PERSON FOR THE QUALIFIED BENEFICIARY ORIGINALLY NAMED IN THE
31 CONTRACT];

1 (3) [(5)] the number of tuition credits [CREDIT HOURS] to be provided to the
2 primary and alternate beneficiaries [QUALIFIED BENEFICIARY] under the contract;

3 (4) [(6) THE NAME OF THE PERSONS ENTITLED TO TERMINATE THE
4 CONTRACT,] the terms and conditions under which the contract may be terminated and refunds
5 made [, AND THE AMOUNT OF THE REFUND TO WHICH THE PERSON TERMINATING
6 THE CONTRACT IS ENTITLED];

7 (5) [(7)] the assumption of a contractual obligation by the board to provide tuition
8 credits for [CREDIT HOURS OF] higher education to the beneficiary [AT THE
9 UNIVERSITY];

10 (6) [(8) THE NUMBER OF CREDIT HOURS THE QUALIFIED BENEFICIARY
11 MAY RECEIVE IF THE QUALIFIED BENEFICIARY IS NOT ENTITLED TO IN-STATE
12 TUITION AT THE TIME OF ENROLLMENT AT THE UNIVERSITY;

13 (9)] the period of time during which the [QUALIFIED] beneficiary may receive
14 the benefits of the contract; and

15 (7) [(10)] other terms and conditions the board determines to be appropriate.

16 (b) An advance college tuition payment contract may be terminated

17 (1) [IF THE QUALIFIED BENEFICIARY DIES OR BECOMES SO DISABLED
18 THAT THE BENEFICIARY CANNOT COMPLETE AN EDUCATION;

19 (2) IF THE QUALIFIED BENEFICIARY IS NOT ADMITTED TO A BRANCH
20 OF THE UNIVERSITY AFTER MAKING A PROPER APPLICATION;

21 (3) IF THE QUALIFIED BENEFICIARY CERTIFIES TO THE BOARD, AFTER
22 THE CONTRACTED DATE OF ENTRANCE TO THE UNIVERSITY OR AFTER THE
23 QUALIFIED BENEFICIARY HAS RECEIVED A HIGH SCHOOL DIPLOMA OR REACHED
24 THE AGE OF MAJORITY, THAT THE QUALIFIED BENEFICIARY HAS DECIDED NOT
25 TO ATTEND THE UNIVERSITY;

26 (4)] if the board determines that the number of purchasers is insufficient to
27 maintain the fund on an actuarially sound basis; or

28 (2) [(5)] under other circumstances determined by the board and set out in the
29 advance tuition payment contract or in the plan.

30 * Sec. 8. AS 14.40.817 is amended to read:

31 Sec. 14.40.817. DEFINITIONS. In AS 14.40.803 - 14.40.817,

1 (1) "advance college tuition payment contract" means a contract entered into by
2 the board and a purchaser to provide for the higher education of a [QUALIFIED] beneficiary;

3 (2) "beneficiary" means a person who has rights under an advance college
4 tuition payment contract and who is

5 (A) a resident or who will be a resident before receiving benefits
6 under an advance college tuition payment contract; or

7 (B) a child or legal ward of a resident or of an alumnus of the
8 university;

9 (3) "board" means the Board of Regents of the university;

10 (4) [(3)] "fund" means the Alaska advance college tuition payment
11 [EDUCATION TRUST] fund established under AS 14.40.803;

12 (5) "plan" means the formal plan for administration of an advance college
13 tuition payment program and prepaid tuition scholarship program adopted by the board
14 under AS 14.40.809(b);

15 (6) [(4)] "purchaser" means a person who makes or is obligated to make advance
16 tuition payments under an advance college tuition payment contract;

17 (7) [(5)] "QUALIFIED BENEFICIARY" MEANS A RESIDENT WHO HAS
18 RIGHTS UNDER AN ADVANCE TUITION PAYMENT CONTRACT;

19 (6)] "university" means the University of Alaska, including a community college
20 affiliated with the university.

21 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).



Official Business

Alaska State Legislature

Senate

Committee on Finance

Pouch V
State Capitol
Juneau, Alaska 99811

W. J. P. [Signature]

MEMORANDUM

TO: Sen. Sturgulewski, Chair
Senate HESS Committee

SUBJ: Senate Bill 97-
Educational
Trust Fund

FROM: Senator Kerttula *[Signature]*

DATE: March 14, 1991

I would appreciate it if you would schedule Senate Bill 97, relating to the Educational Trust Fund.

The Educational Trust Fund was created by legislation which I sponsored during the last year's session. Last year's Senate Bill 136 established a guaranteed tuition plan with the University of Alaska funded through contributions by parents and students.

Senate Bill 97 clarifies the broad purposes of the fund to improve access to higher education and to act as an incentive for Alaskans to pursue higher education. Senate Bill 97 also changes existing statute to enhance the fund's tax advantages. The University of Alaska has spent a great deal of time coming up with proposed revisions to last year's Senate Bill 136. These revisions conform to my intent with the original legislation and are contained within Senate Bill 97.

I have attached a copy of the University of Alaska's draft Advance Tuition Payment Plan for your information.



Alaska State Legislature

SENATE

4/19/91

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

SPONSOR STATEMENT SENATOR JAY KERTTULA

SENATE BILL 97 -- ADVANCE COLLEGE TUITION PLAN

Senate Bill 97 makes revisions to legislation which I sponsored last year creating an Alaska Educational Trust Fund. Most of these revisions were recommended by the University of Alaska which has directed a significant amount of legal research into the tax implications of the fund. SB 97 will also allow Alaska's private four-year colleges -- Sheldon Jackson and Alaska Pacific University -- to participate in the prepaid tuition plan along with the University of Alaska.

Under last year's Senate Bill 136, an apparatus was set up whereby a contract would be made between the University of Alaska and a purchaser that would guarantee prepaid credits at the University, no matter how much the tuition rises by the time the beneficiary enrolls in college. Senate Bill 136 offered the option for 50 percent of a parents', grandparents', or child's permanent fund dividend to be invested in the Educational Trust Fund for prepaid tuition. Last year's legislation also allows cash contributions to the fund.

The Educational Trust Fund, whose name is being changed to the Advance College Tuition Payment Fund in Senate Bill 97, was modeled on similar programs which were adopted and implemented in other states. When Michigan adopted its plan in 1986, 44,000 people applied during a two-month period. In Florida, approximately 40,000 people applied for a similar program. Alaska's plan is unique in that it will utilize a check-off on the permanent fund dividend application, and will thus be publicized to every Alaskan resident.

The Advance College Tuition Payment Fund offers an innovative way to provide parents and students with alternatives for financing college tuition. I urge passage of Senate Bill 97.

Coopers
& Lybrand

certified public accountants

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in principal areas of the world

February 22, 1991

PERSONAL & CONFIDENTIAL

Mr. James Lynch
Associate Vice President/Finance
University of Alaska
910 Yukon Drive
Fairbanks, Alaska 99775

Dear Mr Lynch:

We are pleased to present this report analyzing the application of Federal income, excise and gift tax to the Alaska Education Trust Fund and the contract purchasers and beneficiaries. The University of Alaska joins a handful of other prepaid tuition programs now being subjected to rigorous scrutiny by the Treasury Department and the Internal Revenue Service. We believe that this analysis of tax law and its application to the Alaska program presents the foundation for a dialogue regarding future actions to maximize the chances of obtaining favorable tax treatment.

We appreciate the opportunity to be of service and would welcome any questions or comments. Please feel free to call Gary Postlethwait at (907) 274-3602 or Bernie Kent at (313) 446-7380.

Very truly yours,

Coopers & Lybrand

BSK

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CONCLUSIONS AND RECOMMENDATIONS

AN EXECUTIVE SUMMARY

The Alaska Educational Trust Fund (Fund) is established by state statute as an endowment fund of the University of Alaska. The statute provides that the Board of Regents of the University will administer an advance tuition payment and prepaid tuition scholarship plan in connection with the fund. The Fund and the implementing tuition plan constitute a program within the University. As an integrated part of the University, the status of the Fund for purposes of Federal income Taxation is determined under the law applicable to the University.

There are three legal theories under which income of the University may be exempt from taxation: 1) integral part of the state (Intergovernmental Immunity), 2) instrumentality of the state, (Section 115 of the Internal Revenue Code of 1986 (Code or IRC), 3) an organization operated exclusively for educational purposes (Section 501(c)(3) of the Code).

If the University is the state or an integral part of the state, it would be exempt from Federal income taxation under the Constitutionally based Doctrine of Intergovernmental Immunity. While the Internal Revenue Service does not apply that doctrine as the basis for exempting the income of states or integral parts of states, it acknowledges that income of a state may not be taxed absent specific statutory authorization. An example of such statutory authorization is that Section 511(a)(2)(B) of the Internal Revenue Code imposes a tax on unrelated trade or business income of a state college or university. Whether

the University is exempt from taxation as in integral part of the state or as in instrumentality of the state, the University would nonetheless be subject to tax on its unrelated trade or business income.

The University may also be exempt from taxation under Section 115 of the Internal Revenue Code as an instrumentality of the state. This section excludes from gross income the income derived from the exercise of essential governmental functions that accrues to a state or political subdivision of a state. The Internal Revenue Service has previously stated that the University is exempt from taxation under this section. Whether that exemption extends to income of the Fund will depend upon the Internal Revenue Service determining that the private economic benefit received by participants is incidental to the public benefit provided by the University. Private letter rulings issued by the Internal Revenue Service with respect to tuition prepayment programs in Michigan and Indiana indicate that the Internal Revenue Service may not treat the income of the Fund as exempt under Section 115 of the Code because of the element of private benefit. However the University of Alaska has better facts than the Michigan or Indiana rulings.

The third basis for tax-exemption is qualification under Section 501(c)(3) of the Code as an organization organized and operated exclusively for educational purposes. A prior application by the University for exemption under this section was denied by the Internal Revenue Service on the grounds that the University was already exempt under Section 115 of the Internal Revenue Code. If the University were granted exemption under this section, it would be subject to the provisions of Section 501(m) of the Code which taxes income from providing commercial-type insurance, including annuity contracts, under the tax

provisions applicable to insurance companies. If the University were exempt under Section 501(c)(3) of the Code, it would be subject to the tax imposed by Section 511 of the Code on unrelated trade or business income or taxed as an insurance company under Section 501(m) of the Code.

The Michigan and Indiana private letter rulings issued by the Internal Revenue Service are the best current indication of how tuition prepayment programs will be taxed. There are several requests for rulings currently pending before the Internal Revenue Service regarding such programs, including ones where the program is part of a governmental entity. The Internal Revenue Service position on these ruling requests should be clarified within the next few months. It is recommended that a request for a ruling that the University and the Fund are exempt from taxation under Section 115 of the Code be submitted, but the request be submitted after the Internal Revenue Service position is clarified since this will provide valuable guidance as to how to structure the request for a ruling and possible modifications to the Fund.

There is no benefit to the University in reapplying for exemption under Section 501(c)(3) of the Code and viability of the Doctrine of Intergovernmental Immunity is not as clear as the exemption provisions of Section 115 of the Code. The position that the University is an integral part of the state may be used as an alternative basis for the exemption of the University and the income of the Fund. If the Internal Revenue Service determines that the Fund is within the exemption of Section 115 of the Code, the tax on unrelated trade or business income would not apply since inherent in that determination would be the

conclusion that the Fund activity is not an unrelated trade or business within the meaning of the Code. Therefore, the recommendation is to present the request for a ruling without reference to the provisions of Section 511 of the Code.

If the University is successful in obtaining a private letter ruling characterizing the Fund's income as tax-exempt, the consideration of whether the Fund might be treated as a trust or corporation for tax purposes has little significance. However, if the Fund is taxable, the University can attempt to structure the Fund as either a corporation or a trust. Legal status as a trust or corporation will assist the Fund in establishing its taxable identity, but it would not control the tax status. An entity may be taxed as a trust or corporation based upon an evaluation of attributes found under Treasury Regulations supporting IRC Section 7701.

Of the Regulations Section 301.7701 attributes, only two are pertinent in distinguishing a trust from a corporation. First, any profit motive ascribable to a particular enterprise is an attribute indicative of corporation status. The ability to manipulate the mix of investments held in a trust relationship is presumed sufficient to support taxable status as a corporation under the Regulations. Therefore, the Fund is a corporation having a profit motive.

The second attribute used by the Internal Revenue Service to determine trust versus corporate status is a finding of whether or not "associates" are present in the affairs of the Fund. The position of the Internal Revenue Service in private letter rulings is at odds with Internal Revenue Service stances in recent caselaw on whether or not mere investor status is sufficient to find participation rising to the level of an associate. In the former, overt

participation by "investors" sufficient to find taxable corporation status has been found by presumption. In the latter, actual characteristics of participation have been required to convince the courts that a corporation exists rather than a trust. The Internal Revenue Service has acquiesced in the court decisions.

The Fund may be able to distinguish itself as a trust due to its purpose and the nature of the obligations to contract beneficiaries. No profit expectation is present in a program designed to provide tuition benefits. In addition, the Fund may be able to take advantage of acquiescences to caselaw by the Internal Revenue Service. Recent cases indicate that the presumption of associates is not sufficient; proof of participation is needed to find a taxable corporation. Fund beneficiaries clearly do not directly or indirectly influence the establishment and operation of the prepaid tuition program as associates. A legal declaration of trust with supporting language in the enabling legislation noting fiduciary relationships would support this position.

If the Fund is taxable as a corporation, its status parallels that of the Michigan program. As such, the question of whether or not tuition payments constitute deductible expenses arises. Without that deduction, corporate status would probably be less favorable for the Fund than trust status.

Taxation as a complex trust with separate share reporting is the alternative available to the Fund if it is not taxed as a corporation. This treatment is beneficial as it allows the lowest effective tax rate while avoiding the issue of deductible tuition payments. Reporting requirements are more onerous for the Fund as a trust, however.

The Internal Revenue Service has two options with regard to taxing contract beneficiaries and contract purchasers. The Internal Revenue Service now allows the beneficiary to defer income taxation until the onset of tuition payments. The beneficiary could expect to be taxed on the net accretion of income no matter what form of entity the Fund becomes.

The Internal Revenue Service is considering changing its ruling position regarding the tax status of purchasers and beneficiaries by applying the original issue discount rules to prepaid tuition programs. Income would accrue annually over the term of the contract in amount representing the prorated excess of tuition benefits over contract price.

Contract purchasers are unlikely to pay gift tax on the gift of contracts to beneficiaries due to the \$192,800 unified credit against gift tax which is equivalent to a \$600,000 exclusion. Nonetheless, there may be a filing requirement to report a gift that uses this credit.

The proposed contract could be modified to create a completed gift of a present interest which would not be subject to any gift tax filing if the gift is less than \$10,000 per donee in each year.

TAXATION AS AN INTEGRAL PART OF THE STATE OF ALASKA

Statement of Law

The Doctrine of Intergovernmental Immunity is implied from the Constitution and imposes restrictions on the taxing authority of the Federal and state governments. The Federal government is restricted in taxing the property and instrumentalities of a state in the same manner that a state's authority to tax operations and property of the Federal government is limited. The doctrine rests on the implied constitutional guarantee of the self-preservation of the state and Federal governments.

Section 511 of the Internal Revenue Code of 1986 (hereinafter referred to as the Code or IRC) imposes a tax on the unrelated trade or business income of any college or university which is an agency or an instrumentality of any government or political subdivision thereof.

Section 512(b) of the Code excludes interest income from the computation of the tax on unrelated trade or business income.

Section 513 of the Code provides that the term "unrelated trade or business" means any trade or business the conduct of which is not substantially related (aside from the organization's need for funds) to the exercise or performance by such organization of an exempt purpose within Section 501(c)(3) of the Code. The Section specifically excludes any trade or business that is carried on by a state college or university for the convenience of its students or employees. Section 1.512(a)-1(b) of the Treasury Regulations (hereinafter referred to as

University of Alaska
Advance College Tuition
Payment Plan

Effective July 1, 1991

Approved by the University of Alaska Board of Regents

, 1991
(version 2.4a after revisions)

P R E A M B L E

This advance college tuition payment plan (hereinafter referred to as the "Plan", and known as the "University of Alaska Advance College Tuition Payment Plan"), is adopted to be effective July 1, 1991 by the University of Alaska (hereinafter referred to as the "University").

W I T N E S S E T H;

WHEREAS, the University by resolution of the Board of Regents is establishing this Plan for the primary purpose of enhancing the University's ability to provide for the education of the the people of Alaska; and

WHEREAS, the Plan is intended to provide an incentive for younger Alaskans to achieve higher academic standards of performance in middle and high school; and

WHEREAS, the Plan is intended to provide an incentive for Alaskans of all ages to continue and complete their secondary and postsecondary education; and

WHEREAS, the Plan is intended to provide affordable access to postsecondary education at the University of Alaska; and

WHEREAS, the Plan is intended to make guaranteed tuition benefits at the University of Alaska available to all Alaskans; and

WHEREAS, the Plan is intended to provide prepaid tuition scholarships benefits for Alaskan youths; and

WHEREAS, the Plan is intended to be exempt from income tax under the Internal Revenue Code, Section 115, as an integral program of the University of Alaska, an instrumentality of the State of Alaska; and

WHEREAS, to effectuate the Plan, the Board of Regents establishes an Administrative Committee to carry out the day-to-day administration of the Plan at the direction of the President; and

WHEREAS, the Plan is established pursuant to Alaska Statutes, including AS 14.40.803 et seq. as currently adopted or as may subsequently be amended; and

NOW, THEREFORE, effective _____, the University does hereby adopt and establish the Plan.

SECTION 1 DEFINITIONS

The terms and phrases defined in this section have the following meanings throughout this plan document.

- 1.1 Advance College Tuition Payment Contract (Contract) - means a contract entered into by the Board and a Purchaser to provide for the higher education of a Beneficiary in accordance with this Plan.
- 1.2 Alternate Beneficiary - means an individual designated to receive benefits under an Advance College Tuition Payment Contract if the Primary Beneficiary is ineligible to receive benefits under the Plan or has waived his or her rights under the contract. An Alternate Beneficiary must be a Resident or an individual expected to become a Resident prior to receipt of benefits under the Contract, or the child or legal ward of a resident, or of an alumnus of the University.
- 1.3 Beneficiary - means an individual who has rights under an Advance College Tuition Payment Contract or a Prepaid Tuition Scholarship issued in accordance with this Plan. A Beneficiary must be a Resident or an individual expected to become a Resident prior to receipt of benefits under the Contract, or the child or legal ward of a Resident, or of an alumnus of the University.
- 1.4 Board - means the Board of Regents of the University of Alaska.
- 1.5 Cash Value - means the the value of a Tuition Credit, as determined annually by the Board, based on market value of investments of the fund, the Tuition Value of outstanding Tuition Credits and adjustments for any actuarially determined funding excess or deficiency.
- 1.6 Eligible Institution - means a nonprofit postsecondary institution approved by the U.S. Department of Education for receipt of Title IV funding.
- 1.7 Fund - means the Advance College Tuition Payment Fund established under AS 14.40.803.
- 1.8 Graduation Incentive Award - means a refund by the University paid to or on behalf of a specified Beneficiary upon notice of attainment of a formal degree or certificate.
- 1.9 Plan - means the University of Alaska Advance College Tuition Payment Plan.

- 1.10 Plan Administrator, Plan Administrative Committee or Committee - means the Advance College Tuition Payment Plan Administrative Committee.
- 1.11 Prepaid Tuition Scholarship - means Tuition Credits awarded to a Beneficiary in accordance with Section 7 of this Plan.
- 1.12 Primary Beneficiary - means an individual named to receive benefits under an Advance College Tuition Payment Contract prior to any other named Beneficiaries or a Beneficiary of a Prepaid Tuition Scholarship Award. A Primary Beneficiary must be a Resident or an individual expected to become a Resident prior to receipt of benefits under the Contract, or the child or legal ward of a resident, or of an alumnus of the University.
- 1.13 Principal - means the amount paid by the Purchaser for Tuition Credits under this Plan, exclusive of any transaction fees, investment earnings or forfeitures.
- 1.14 Purchaser - means a person, at least 18 years of age or an emancipated minor, or other entity obligated to make payments under an Advance College Tuition Payment Contract.
- 1.15 Redemption Period - means the period from the Redemption Period Start Date to the Redemption Period End Date.
- 1.16 Redemption Period End Date - means the later of the fifteenth (15th) anniversary of the Redemption Period Start Date or such other date as approved by the Plan Administrator.
- 1.17 Redemption Period Start Date - means July 1 of the year the Primary Beneficiary will become eligible for benefits under the Contract or a Prepaid Tuition Scholarship. The date so designated in the Contract or the Prepaid Tuition Scholarship award shall be the date Beneficiary becomes entitled to benefits. If no date is designated, July 1 of the year following the Primary Beneficiary's eighteenth birthday or such other date as approved by the Plan Administrator shall be considered the Redemption Period Start Date.
- 1.18 Resident - means an individual who is living in the State of Alaska and has declared the intent to remain in Alaska indefinitely or is an unemancipated person under the age of 18 who has a parent or legal guardian who is living in the State of Alaska and has declared the intent to remain in Alaska indefinitely.
- 1.19 Statement of Non-Participation - means a certification by a Primary Beneficiary, submitted in a form acceptable to the Plan Administrator, that he or she does not plan on attending or continuing to attend any Eligible Institution. Such certification shall not be accepted as effective prior to the earlier of the Redemption Period Start Date, the receipt of a high school diploma or the attainment of the age of majority.

- 1.20 Tuition Credit - means one semester hour of tuition purchased under an Advance College Tuition Payment Contract or awarded as a Prepaid Tuition Scholarship.
- 1.21 Tuition Value - means the value of a Tuition Credit, as determined by the board, based on a weighted average of the University of Alaska resident undergraduate tuition rates in effect at that time.
- 1.22 University - means the University of Alaska, including a community college affiliated with the University.
- 1.23 Waiver - means a written statement, submitted in a form acceptable to the Plan Administrator, that the Beneficiary has relinquished all rights to a specified Contract or to specified Tuition Credits.

SECTION 2

TUITION CREDITS

2.1 Purchase Price

- a. Tuition Credits may be purchased at the rate established effective each January 1 by the Board.
- b. Tuition Credits purchased at any time during the calendar year shall be issued at the rate in effect for that calendar year.

2.2 Minimum Initial Purchase

The minimum initial Tuition Credit purchase for opening a Contract, unless otherwise approved by the Plan Administrator, shall be six (6) Tuition Credits. Additional purchases may be made in units not smaller than one (1) Tuition Credit. The Board may set a maximum number of Tuition Credits which may be purchased for any Beneficiary.

2.3 Purchase Limitation

The purchase of Tuition Credits is subject to the terms and conditions of both the Plan and the Contract between the University and the Purchaser.

2.4 Reciprocal Agreements

Participants in prepaid tuition programs of other institutions or states which have reciprocal advance tuition payment plan agreements approved by the Board may purchase Tuition Credits under terms approved by the Board,

SECTION 3

REDEMPTION

3.1 University of Alaska Guarantee

The University of Alaska guarantees that, subject to the terms and conditions of the Contract and this Plan, the Primary Beneficiary will receive credit for one full semester charge by the University of Alaska for each Tuition Credit purchased under an Advance College Tuition Contract regardless of the amount paid for such Tuition Credit, the investment earning of the Fund or cost of tuition at the time of redemption.

3.2 Tuition Credit Redemption Equivalencies

Tuition Credits shall be redeemed by the University of Alaska within the Redemption Period for tuition charges at the following equivalencies:

- (i) One (1) Tuition Credit for each resident undergraduate semester hour charge, or
- (ii) Two (2) Tuition Credits for each resident graduate semester hour charge.

3.3 Resident Tuition Status

Beneficiaries under this plan shall be eligible for resident tuition status at the University of Alaska for all Tuition Credits redeemed.

3.4 Waiting Period

Tuition Credits may not be redeemed for at least two full calendar years after the date of purchase as determined on a first-in first-out basis.

3.5 Alternate Beneficiary Redemption

An Alternate Beneficiary may not redeem Tuition Credits, unless he or she presents proof satisfactory to the Plan Administrator that the Primary Beneficiary and all prior Alternate Beneficiaries are deceased or have waived their rights, in writing, under the Contract. The determination of the Plan Administrator under this subsection is conclusive.

3.6 Redemption Period Extension

- a. The Redemption Period End Date for Tuition Credits and subsequently earned Graduation Incentive Awards shall be automatically extended to June 30 of the sixth calendar year after appointment of a new Primary Beneficiary under a Contract.

- b. Based on circumstances which are clearly beyond the control of the Beneficiary, the Plan Administrator may approve an extension of the Redemption Period End Dates for Tuition Credits and Graduation Incentive Awards.

SECTION 4

REFUNDS

4.1 Disability

Full refund of the Cash Value shall be made to any Primary Beneficiary who, in the opinion of the Plan Administrator, becomes so disabled that he or she can no longer complete his or her education.

4.2 Death

Full refund of the Cash Value shall be made to the estate of the Primary Beneficiary on the death of the Primary Beneficiary, unless an Alternate Beneficiary had previously been designated.

4.3 Attendance At Other Eligible Institutions

A refund of the Tuition Value for up to fifteen Tuition Credits, not to exceed the Cash Value of the Tuition Credits at the effective date of the refund, may be requested for each semester (or its equivalency for tri-semester, quarters or other academic periods) by the Primary Beneficiary during periods of attendance at any Eligible Institution other than the University of Alaska. Three (3) months advance notice is required to allow timely processing of refund requests.

4.4 Tuition Credits In Excess Of Tuition Need

- a. A refund of the Tuition Value of Tuition Credits in excess of the number of Tuition Credits required for attainment of a student's planned degree or certificate, not to exceed the Cash Value of the Tuition Credits at the effective date of the refund, may be requested by the Primary Beneficiary during any semester while attending an Eligible Institution. The refund shall be limited to the amount designated by the Plan Administrator as the standard cost of on-campus room and board, fees and books for a full-time student at the University of Alaska. Three (3) months advance notice is required to allow timely processing of refund requests.
- b. A refund of the Tuition Value for any unredeemed Tuition Credits, not to exceed the Cash Value of the Tuition Credits at the effective date of the refund, may be requested by the Primary Beneficiary. The Primary Beneficiary must submit proof, to the satisfaction of the Plan Administrator, of attainment of a degree or equivalent certificate at an Eligible Institution.

4.5 Failure To Be Admitted

Full refund of the Tuition Value for any unredeemed Tuition Credits, not to exceed the Cash Value of the Tuition Credits at the effective date of the refund, may be requested by the Primary Beneficiary if not admitted to the University of Alaska after making proper application. The Primary Beneficiary must submit proof, to the satisfaction of the Plan Administrator, of failure to be admitted and that all Alternate Beneficiaries, if any, have completed a Waiver of their rights under the Contract.

4.6 Non-Participation

Full refund of the Principal for any unredeemed Tuition Credits, not to exceed the Cash Value of the Tuition Credits at the effective date of the refund, may be requested by the Primary Beneficiary if he or she decides not to attend college or participate in the program. The Primary Beneficiary must submit a Statement of Non-Participation and proof that all Alternate Beneficiaries, if any, have completed a Waiver of their rights under the Contract. Payment of refunds for non-participation, as provided in Section 5.8, shall be deferred to allow recipients an opportunity to reconsider their decision to discontinue their education.

4.7 Contract Initiation or Time of Purchase

Full refund of the Principal for purchased Tuition Credits, The Primary Beneficiary may request a refund of the Principal paid for the purchase of Tuition Credits at the time of purchase. Such refund must be requested, in a form satisfactory to the Plan Administrator, within sixty (60) days of issuance by the University of notice of purchase to the Primary Beneficiary.

4.8 Alternate Beneficiaries

An Alternate Beneficiary is not entitled to a refund under an Advance College Tuition Payment Contract, unless the Primary Beneficiary and all Alternate Beneficiaries with prior rights under the contract are deceased or have completed Waivers of their rights under the contract. The estate of a deceased Alternate Beneficiary or the guardian of a disabled Alternate Beneficiary shall have no right to a refund.

4.9 Payment

- a. Except for refunds requested for non-participation in the Plan under Section 4.6, all refunds shall be paid to the appropriate recipient as soon as practical after receipt and approval of a request for refund.
- b. Refunds requested for non-participation in the Plan under Section 4.6 shall be paid in four annual installments. Payments shall commence twelve months following approval of the refund request and include a provision for interest at 5% from the date approved for refund until the date of actual payment. Undisbursed installments may be reinstated as Tuition Credits without penalty at any time prior to payment.

SECTION 65

TRANSFER OF BENEFITS

5.1 Alternate Beneficiaries

A Purchaser, at the initiation of a Contract, may designate up to three Alternate Beneficiaries to receive benefits under the Contract in the order named.

5.2 Addition or Substitution of Beneficiaries

- a. All additions, substitutions or changes in Beneficiaries (i) shall be subject to the approval of the Plan Administrator, (ii) must be in writing, in a form approved by the Plan Administrator, and (iii) bear the acknowledged signature of the Purchaser and the Primary Beneficiary. No substitution shall be effective until it has been received by the Plan Administrator.
- b. A Purchaser may only add or substitute Beneficiaries under a Contract if such addition or substitution is approved in writing by the Primary Beneficiary or his or her legal guardian if under the age of majority.
- c. Additions or substitutions of Beneficiaries may require, at the discretion of the Plan Administrator, certification by the Purchaser and/or the Beneficiary (Beneficiaries) that no compensation or other consideration was or will be paid or received in exchange for the addition or substitution.

5.3 Replacement of a Primary Beneficiary

- a. The next named Alternate Beneficiary shall be substituted for the Primary Beneficiary under a Contract at such date and time as the previous Primary Beneficiary dies, submits a Statement of Non-Participation, is not admitted to the University after proper application, or completes a Waiver of his or her rights under the Contract.

- b. A Primary Beneficiary may be replaced by the next Alternate Beneficiary under a Contract, if there has been no activity under the contract for a period of six years subsequent to the Redemption Period Start Date and the Primary Beneficiary fails to comply with a notice, issued by the Plan Administrator, of the intent to substitute the next named Alternate Beneficiary for the Primary Beneficiary if use of the Tuition Credits is not initiated within one year. The date of substitution may be extended at the discretion of the Plan Administrator. The determination of the Plan Administrator under this subsection is conclusive.

5.4 Transfers by Beneficiaries

Beneficiaries may waive their rights under a Contract and this Plan, but shall have no right to transfer or designate Alternate Beneficiaries.

SECTION 6

Graduation Incentive Award Credit

6.1 General

Effective each January 1, the Board of Regents shall allocate a portion of any actuarial excesses of the fund, if any, to a Graduation Incentive Award account within the Advance College Tuition Payment Fund and establish the refund value (Refund Value) of each Graduation Incentive Award Credit.

6.2 Credits Earned

A Beneficiary may earn one Graduation Incentive Award Credit for each Tuition Credit redeemed for payment of tuition at an Eligible Institution.

6.3 Redemption

Upon submission of proof, to the satisfaction of the Plan Administrator, of attainment by the Beneficiary of a degree or equivalent certificate at an Eligible Institution, the Beneficiary may request redemption of Graduation Incentive Award Credits at the following equivalencies:

- (i) 2 times their Refund Value for the purchase of Tuition Credits or an Advance College Tuition Payment Contract for another Beneficiary;
- (ii) 2 times their Refund Value for the payment of graduate tuition at the University of Alaska;
- (iii) 1.5 times their Refund Value for the payment of graduate tuition at an eligible institution other than the University of Alaska; or
- (iv) 1.5 times their Refund Value for the payment of principal and/or interest on an Alaska Student Loan.

6.3 Refund

Upon submission of proof, to the satisfaction of the Plan Administrator, of attainment by the Beneficiary of a degree or equivalent certificate at an Eligible Institution, the Beneficiary may request the full Refund Value of any unredeemed Graduation Incentive Award Credits for which he or she is the Beneficiary.

SECTION 7

PREPAID TUITION SCHOLARSHIPS

7.1 General

A Prepaid Tuition Scholarship Award account shall be established within the Advance College Tuition Fund. Receipts from appropriations and donors for prepaid tuition scholarships shall be deposited to the account. In addition, effective each January 1, the Board of Regents shall allocate a portion of any actuarial excesses of the fund, if any, to the Prepaid Tuition Scholarship Award account.

7.2 Award

- a. In furtherance of the objectives of the Plan as stated in the Preamble and to the extent that funds are available in the account on an actuarially sound basis, Tuition Credits may be awarded as Prepaid Tuition Scholarships to students in grades seven through twelve who attend school in Alaska.
- b. Prepaid Tuition Scholarship awards shall be approved in accordance with procedures adopted by the Board of Regents.

7.3 Redemption

Tuition Credits issued as Prepaid Tuition Scholarships under this Plan shall be redeemable in accordance with Section 3, except that:

- (i) Tuition Credits issued as Prepaid Tuition Scholarships shall be redeemed prior to purchased Tuition Credits; and
- (ii) Tuition Credits issued as Prepaid Tuition Scholarships may only be redeemed for attendance at the University of Alaska.

7.4 Refunds

Tuition Credits issued as Prepaid Tuition Scholarships are not refundable, except upon termination of the Plan, as provided in Section 11.

7.5 Transfers

Tuition Credits issued as Prepaid Tuition Scholarships are not transferable to other Beneficiaries or individuals.

SECTION 8

Expiration of Benefits

8.1 Tuition Credits:

All Tuition Credits, except those issued as Prepaid Tuition Scholarships, shall expire if not redeemed or refunded within the Redemption Period.

8.2 Prepaid Tuition Scholarships:

- a. Tuition Credits for Prepaid Tuition Scholarships which are inactive for a full calendar year subsequent to their Redemption Period Start Date shall expire as of December 31.
- b. The Plan Administrator, upon written request by the Beneficiary prior to the scheduled expiration date, may approve an extension of the expiration date based on circumstances beyond the control of the Beneficiary

8.3 Graduation Incentive Awards:

All Graduation Incentive Award Credits shall expire if not redeemed within the Redemption Period.

SECTION 9 CONTRACTS

9.1 Contract Requirements

The Purchaser must designate:

- (i) The name, address and social security or tax ID number of the Purchaser;
- (ii) The name, address, date of birth and social security number of the Primary Beneficiary and his or her legal guardian;
- (iii) The name, address, date of birth and social security number of all Alternate Beneficiaries (not more than three) and their legal guardians;
- (iv) The Redemption Period Start Date; and
- (v) Date of issue.

9.2 Other Provisions

- a. Contracts and rights or privileges under the Contracts may not be assigned, sold, transferred, or encumbered except as otherwise required by law or provided for in this Plan.
- b. An Alternate Beneficiary may not assign, sell, transfer or encumber his or her interest in a Contract, Tuition Credits or other benefits issued under this Plan.
- c. For purposes of the Contract and this Plan, the parent or legal guardian shall be considered the Purchaser, if he or she purchases Tuition Credits for a Beneficiary with the funds of the Beneficiary.
- d. Each contract shall have, and be limited to, one named Purchaser.
- e. A Contract shall have no more than one named Primary Beneficiary at any specified time.
- f. A Purchaser and/or Beneficiary may have more than one Contract under this Plan.
- g. A Contract may be terminated if the Contract has been inactive for a period of six years and none of the named Beneficiaries can be located by the Plan Administrator.

SECTION 10

ADMINISTRATION OF THE PLAN

10.1 Advance College Tuition Payment Plan Committee

The Advance College Tuition Payment Plan Administrative Committee (Committee) is established to carry out the day to day administration of the Plan at the direction of the University President (President). The Committee, through the President, is delegated the responsibilities and duties as set out in this section. The President shall appoint three or more persons as members of the Committee to carry out the day-to-day administration of the Plan. Any member may resign by delivering written resignation to the President and to the Committee chair. The President may remove or replace any member of the Committee at any time. No member of the Committee who is an employee shall receive additional compensation with respect to such service.

10.2 Organization and Procedures

- (a) The President shall designate a committee chair from the members of the Administrative Committee. The chair of the Committee shall be the agent of the Plan for service of legal process. All reports required by law may be signed by the chair on behalf of its members.
- (b) The Committee shall appoint a secretary, who may or may not be a member of the Committee. The secretary shall have the primary responsibility for keeping a record of all meetings and acts of the Committee and shall have custody of all documents, the preservation of which shall be necessary or convenient to the efficient functioning of the Committee.
- (c) The Committee shall adopt such bylaws and procedures as it deems desirable for the conduct of its affairs.

10.3 Authority and Duties

(a) Authority

The Administrative Committee shall have all powers necessary or appropriate to carry out its duties. Any interpretation or action by the Committee with respect to the Plan and its administration shall be conclusive and binding upon any and all parties and persons affected hereby, subject to the exclusive procedures set forth in Section 10.4 of the Plan.

(L) Duties

The Administrative Committee shall administer the Plan in a nondiscriminatory manner for the benefit of the Beneficiaries, the University and the State of Alaska in accordance with the terms of the Contracts and this Plan. The Committee shall perform all such duties as are necessary to supervise the administration of the Plan and to control its operation in accordance with the terms thereof, including, but not limited to, the following:

- (i) interpret the Plan provisions and determine any question arising under the Plan, or in connection with the administration or operation thereof;
- (ii) determine the eligibility for participation in the Plan;
- (iii) determine the eligibility of any Beneficiary for benefit redemption, refund or transfer;
- (iv) approve or deny, on behalf of the Board, additions, substitutions or changes of Beneficiaries under Advance College Tuition Payment Contracts;
- (v) establish fees and transaction charges for the administration of Contracts and the Plan;
- (vi) establish each semester a standard cost of on-campus room and board, fees and books for a full-time student at the University;
- (vii) solicit nominations for and make recommendations to the Board on the award of Prepaid Tuition Scholarships;
- (viii) conduct its Committee meetings in accordance with the Alaska Open Meetings Statute (AS 44.62.310);
- (ix) review and report to the Board the finances and the actuarial soundness of the Plan on a periodic basis;
- (x) respond to inquiries from the President and the Board regarding the Plan and related activities;
- (xi) recommend to the President or the Board, Plan amendments it deems necessary; and

- (xii) in accordance with University employment and procurement policies, regulations and procedures employ and engage such persons, counsel and agents, and obtain such administrative, clerical, legal, auditing and actuarial services as it may deem necessary in carrying out the provisions of the Plan.

10.4 Dispute Procedure

- (a) Requests for Determination

Any time a request for determination of eligibility for participation, transfer or receipt of benefits or an interpretation of Plan provisions is disputed or a Purchaser or Beneficiary is adversely affected by an action of the University or the Administrative Committee, the individual (hereinafter "Claimant") may submit a claim to the Committee. The Claimant shall be notified of the Committee's decision within 90 days after receipt of the claim. Such notice will indicate the basis for the decision or interpretation and an explanation of the procedure for requesting reconsideration.

- (b) Request for Reconsideration

A claimant who has received an adverse decision from the Administrative Committee, shall have the right to request reconsideration by the Committee. Such request must be submitted in writing to the Committee within 30 days after issuance of the adverse decision. The request must fully explain the basis for the request, all pertinent facts and the proposed remedy. If a written request for reconsideration is not received within such 30-day period, the Claimant shall forfeit his or her right to reconsideration. The Claimant or a duly authorized representative of the Claimant may review all pertinent documents.

- (c) Reconsideration of Claim

The Administrative Committee shall reconsider an adverse decision upon request for reconsideration received under Section 10.4(b) of this Plan. It may hold a hearing if it deems it necessary and shall issue a written decision reaffirming, modifying or setting aside its former action within 60 days after receipt of the written request for reconsideration or 120 days if special circumstances, such as the need for a hearing, require an extension. The Claimant shall be notified in writing of any such extension within 60 days following the request for reconsideration. A copy of the decision shall be furnished to the Claimant. The decision shall set forth its reasons and pertinent Plan provisions on which it is based. The decision shall be final and binding upon the Claimant, the University, the Committee and all other persons involved to the maximum extent permitted by law.

10.5 Miscellaneous

(a) Expenses and Assistance

All reasonable expenses which are necessary to operate and administer the Plan as determined by the Administration Committee may be paid from earnings of the Fund.

(b) Limitations on Assignments

Benefits under the Plan and a Contract may not be assigned, sold, transferred or encumbered except as provided by law and this Plan, and any attempt to do so shall be void. The interest of a Primary Beneficiary or Alternate Beneficiary in benefits under the Plan or Contract shall not be subject to debts or liabilities of any kind and shall not be subject to attachment, garnishment or other legal process, except as provided by Alaska Statute or federal law

(c) Masculine and Feminine, Singular and Plural

Whenever used herein, the masculine pronouns shall include the feminine, and the singular shall include the plural whenever the context shall plainly so require.

(d) No Additional Rights

No person shall have any right in or to a Beneficiary's interest in a Contract, or any part thereof, or under the Plan, except as, and only to the extent expressly provided for in the Plan. Neither the establishment of the Plan, the granting of a tuition or scholarship benefit, nor any action of the University related to the Plan or of the Administrative Committee shall be held or construed to confer upon any person any right to be or continue to be a student at the University. Nothing in this Plan or a Contract shall be construed to expand a student's rights beyond those provided in University policies, regulations and other applicable documents.

(e) Governing Law

This Plan shall be construed in accordance with applicable federal law and the laws of the State of Alaska. Jurisdiction for any litigation arising out of this Plan shall be solely in the District or Superior Court in Anchorage or Fairbanks, Alaska.

(f) Income Tax Withholding Requirements

Benefit payments made under the Plan may be subject to income tax reporting or withholding requirements. For this purpose, the University shall provide the recordkeepers, custodians and tax officials with any information in its custody needed to satisfy such obligations.

(g) Severability

If any provision of this Plan shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of this Plan which shall be construed as if said illegal or invalid provision had never been included.

(h) Correction of Errors

In the event an incorrect amount is paid to or on behalf of a Beneficiary, any remaining balances or payments may be adjusted to correct the error. The processing of adjustments resulting from clerical errors or other causes which are *de minimus* in amount may be waived at the discretion of the Administrative Committee.

(i) Reports

Records for each Contract and Beneficiary under this Plan shall be maintained on a calendar-year basis. As of December 31 each year the University will send each Primary Beneficiary, and each Purchaser if he or she purchased Tuition Credits during the year, at the address on file with the University, a report summarizing the status of their Tuition Credits, Graduation Incentive Awards and Prepaid Tuition Scholarships. If within 90 days after issuance of such reports, the Beneficiary, or Purchaser, makes no written objection to the Administrative Committee it shall become binding on the Purchaser and any Beneficiary or Alternate Beneficiary.

(j) Plan Year

The plan year shall be the twelve consecutive month period beginning January 1 and ending December 31. There shall be a short plan year from July 1, 1991 to December 31, 1991.

(k) Notices to Purchasers and Beneficiaries

Notices and other communications to the Purchaser, the Beneficiaries or the legal guardians of Beneficiaries, required or contemplated under the Contract or this Plan shall be effective when mailed, postage prepaid, to the address of the Purchaser, the Beneficiaries or the legal guardians of Beneficiaries on file with the Plan Administrator. It shall be the responsibility of the Purchaser and the Beneficiary, or his or her legal guardian, to notify the Plan Administrator of all changes in name, address or legal guardian.

(l) Notices to the Plan Administrator

Notices and other communications to the Plan Administrator or Plan Administrative Committee required or contemplated under the Contract or this Plan shall be effective when at the Office of The Plan Administrator, Advance College Tuition Payment Plan, University of Alaska, Butrovich Building, 910 Yukon Drive, Fairbanks, AK 99775.

SECTION 11
AMENDMENT AND TERMINATION

11.1 Amendment

- (a) Subject to any advance notice or other requirements of law, the President is delegated the authority to amend this Plan at any time, except for provisions which further delegate the duties and responsibilities of the Board under law and this Plan or may result in full or partial termination of the Plan.
- (b) All proposed amendments shall be prepared at the direction of the Administrative Committee and submitted for approval to the President and the Board of Regents if applicable.

11.2 Limitation

Notwithstanding the provisions of Section 11.1 of this Plan, no amendment will deprive, take away, or alter any accrued right of any Purchaser or Beneficiary under a Contract issued prior to the effective date of the amendment.

11.3 Termination of the Plan

- (a) The Board of Regents shall have the right to fully or partially terminate this Plan or merge or consolidate this Plan with another plan at any time, subject to any requirements of law.
- (b) Upon termination of this Plan, the Administrative Committee shall continue to act for the purpose of complying with the prior paragraph and shall have all powers necessary or convenient to the winding up and dissolution of the Plan. While so acting, they shall be in the same status and position with respect to other persons as if the Plan remained in existence.

11.4 Distribution of the Fund on Discontinuance or Termination of Plan

In the event of discontinuance or suspension of the Plan, the University of Alaska or its successor shall honor all Contracts, Graduation Incentive Awards and Prepaid Tuition Scholarships previously issued. If the University of Alaska or its successor cannot meet its obligations under the Contracts or this Plan, or the Plan is terminated for any reason, the Cash Value of all Tuition Credits, Graduation Incentive Awards and Prepaid Tuition Scholarships shall be remitted to the respective Primary Beneficiaries at the addresses on file with the University. Distributions for Beneficiaries who cannot be located and unencumbered Prepaid Tuition Scholarship funds shall be forfeited to the University or its successor for the purpose of awarding scholarships to Alaska Residents.

SECTION 12

FIDUCIARIES

12.1 Limitation of Liability of the University and Others

The University, its Board of Regents, officers, employees, agents or representatives or the Administrative Committee shall not incur any liability to any person for any action taken or suffered or omitted to be taken by them under the Plan in good faith.

12.2 Indemnification of Fiduciaries

In order to facilitate the recruitment of competent fiduciaries, the University agrees to provide the indemnification as described herein. This provision shall apply to the Administrative Committee, or any other individuals who are considered Plan fiduciaries. Notwithstanding the preceding, this provision shall not apply and indemnification will not be provided for the Department of Revenue, its employees, agents or representatives or any paid consultant, independent contractor or other agent appointed in accordance with this Plan.

12.3 Scope of Indemnification

The University agrees to indemnify the fiduciaries as described above for all acts taken in carrying out their responsibilities under the terms of this Plan to the fullest extent provided by law. This indemnification is intentionally broad but shall not provide indemnification for embezzlement or diversion of Plan funds for the benefit of the fiduciary. The University agrees to indemnify the fiduciaries described herein for all expenses of defending an action, including all legal fees and other costs of such defense. The University shall also indemnify the fiduciary for any monetary recovery in any court or arbitration proceeding. In addition, if the claim is settled out of court with the concurrence of the University, the University shall indemnify the fiduciary for any monetary liability under said settlement.

This provision as to indemnification, except as it applies to the Administrative Committee, the Board, University employees and agents or representatives serving without compensation (excluding the Department of Revenue, its employees, agents and representatives) shall only be effective if embodied in an appropriate agreement with a fiduciary.

University of Alaska Advance College Tuition Payment Plan
3/4/91 11:59 AM (version 2.4a)

The University of Alaska Advance College Tuition Payment Plan is adopted and established effective July 1,1991.

IN WITNESS WHEREOF, the University has caused this Plan to be duly executed on this _____ day of _____, 1991.

For the UNIVERSITY OF ALASKA

President of the Board of Regents

Secretary of the Board of Regents



guaranteed

secure & safe

affordable

transportable

does ACT cost?

There is a one-time, nonrefundable \$25 fee. In 1991, the fixed price is \$50 a credit. Minimum initial purchase is six tuition credits. Thereafter, you can purchase in increments as small as one tuition credit. Or, you could purchase the full 120 tuition credits at one time. In 1991, the total cost would be \$6,025 ($\$50 \times 120 + \25).

Assume that the Permanent Fund dividend will always be \$952 a year and you apply the total amount—in eight years, accounting for 5% annual tuition inflation, the full 120 tuition credits could be purchased. The total cost would be \$7,003 (with an eighth-year payment of \$339).

are credits spent?

Tuition credits may be redeemed two years after they are purchased. The beneficiary notifies ACT of intended use, naming the institution. If the student will attend any branch of the University of Alaska, ACT will make the tuition credits available to the campus admissions and records office.

Each usage will adjust the remaining balance of the student's account. *No further cost for tuition will occur.* If the student will attend another institution, in or outside of Alaska, ACT will provide a refund each semester. The student would use this check during registration.

can participate?

Any person, institution or business can purchase ACT. Any resident of the state of Alaska; or, any son, daughter, or legal ward of a resident of Alaska; or, any sons, daughters, or legal wards of an alumni of the University of Alaska can be a beneficiary. You can buy ACT for yourself, your

child, grandchild, expected grandchild, spouse, parent, grandparent, friend. Tuition credits would make fine gifts for friends, rewards for good employees, or incentives for many purposes and needs. No age or blood relationship restrictions exist.

does the fund work?

Monies are invested by the staff of the Permanent Fund, with the University of Alaska as trustee, and the State of Alaska Department of Revenue as custodian. An annual audit of the fund and periodic actuarial studies will be performed to ensure the fiscal soundness of the plan.

Interest earnings pay the inflation cost difference between year of purchase and year of use. Any actuarial funding excess will be used for graduate incentive awards to beneficiaries and merit scholarships to Alaskan students.

if . . . ?

the student gets a full tuition scholarship?
ACT will reimburse the student, a semester at a time, at that year's fixed cost, helping pay for room, board, books, and other fees.

the student graduates from high school but doesn't want to go to college right away.
ACT allows ten years from the expected date of college entry to begin use. At any time during those ten years, any use immediately restarts the ten-year calendar. ACT allows special arrangements for unusual circumstances. Finally, ACT allows for a cash refund.

the student gets a full-ride scholarship?
ACT will hold the funds for graduate school or as a graduate incentive award, for delivery upon graduation.

the student decides not to pursue further education after high school?
Assuming all listed alternates waive their rights, the student receives a refund.

the beneficiary dies?
The first alternate becomes the new beneficiary. If there is no alternate, the estate of the beneficiary receives full cash.

1-800-478-0003



benefits from ACT?

You The Beneficiary

with a guaranteed opportunity for college;

You The Purchaser

with peace of mind;

The University of Alaska

with improved recruitment and retention;

The State of Alaska

with citizens prepared for needed technical and professional careers.

to write to or call?

ACT • University of Alaska • Fairbanks AK 99775-5260

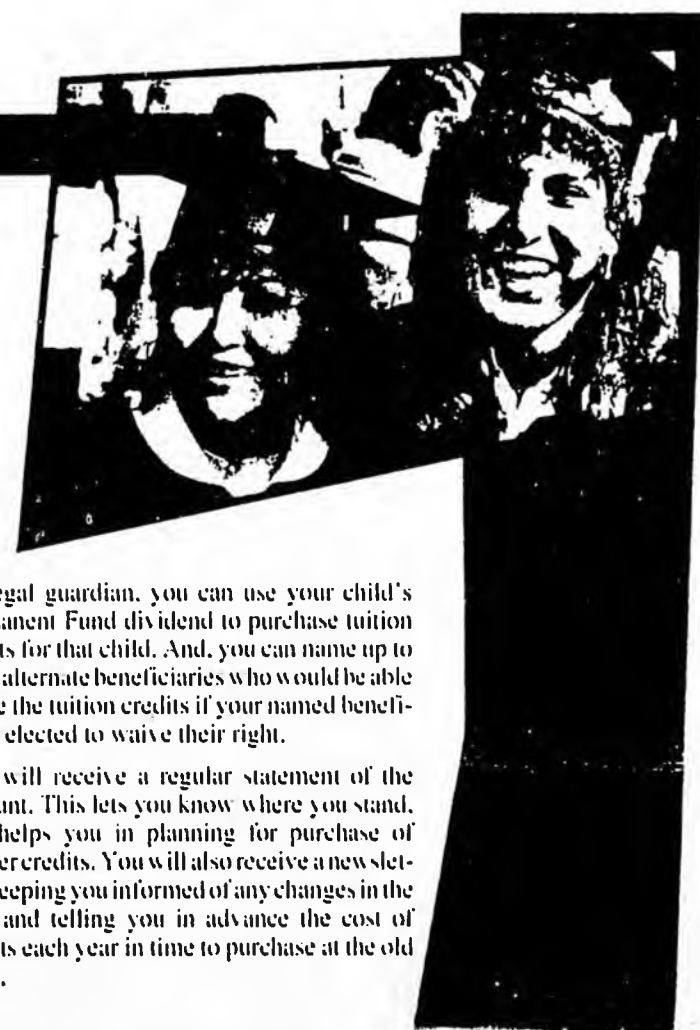
474-7469 or 1-800-478-0003



ACT

Advance
College
Tuition

Most families face three major expenses—the purchase of a house, a new car, and an education. Inflation is 65% higher on tuition than on all other expenses. Will Alaskan families be able to afford college for their children?

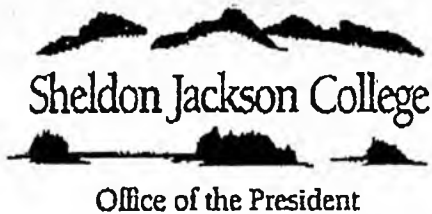


A new law offers Alaskan families an affordable, safe solution to the college cost crunch. This law created the Advance College Tuition Payment Fund and allows use of Permanent Fund dividends or cash contributions to secure tuition credits at today's cost for use in the future.

Advance College Tuition is easy, safe, and guaranteed. You use cash contributions or a checkoff of 50% on your Permanent Fund dividend application to purchase tuition credits. The credits are sold at this year's determined price. You name the beneficiary. Next year—or when you choose—more credits are purchased. You, the purchaser, determines who receives the tuition credits.

As legal guardian, you can use your child's Permanent Fund dividend to purchase tuition credits for that child. And, you can name up to three alternate beneficiaries who would be able to use the tuition credits if your named beneficiary elected to waive their right.

You will receive a regular statement of the account. This lets you know where you stand, and helps you in planning for purchase of further credits. You will also receive a newsletter, keeping you informed of any changes in the plan and telling you in advance the cost of credits each year in time to purchase at the old price.



April 16, 1991

Senator Jay Purttula and
Senator Pat Pourchot
Chairmen, Senate Finance Committee
Box V
Juneau, AK 99811

Dear Mr. Chairmen:

I am writing this to reiterate the support of Sheldon Jackson College for Senate Bill 97 which establishes the Alaska Education Trust Fund. The rationale for this bill is sound in that it allows for citizens to plan and save for a college education for themselves or for their children and to pay for some or all of that education in advance.

The rationale for this bill is sound for the state of Alaska as well since it provides assistance to the citizens of this state in acquiring a college education. It will provide for a better educated Alaskan citizenry and will assist in the economic development of our state.

I urge that the Senate Finance Committee report favorably on Senate Bill 97.

Sincerely,

Michael E. Kaelke
President

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 97

Revision Date: _____
Title: An Act relating to the Alaska
education trust fund
Sponsor: KERTTULA, Sturgulewski
Requestor: _____

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend
Division
COMPONENT SERIAL NO. 9 8 1

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
OPERATING						
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-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact: None.

ANALYSIS: This fiscal note is based on the assumption that the amendments to AS 14.40.807(a) as proposed in Section 3 will not require any additional information to be provided with the 1991 permanent fund dividend application and it will not require any additional pages in the 1992 permanent fund dividend application booklet.

Prepared By: Thomas C. Williams Phone: 465-2323
Division: Permanent Fund Dividend Division Date: April 16, 1991

Approved by Commissioner: Lee E. Fisher Date: 4-16-91
Agency: Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 97

Revision Date:
Title: AK Education Trust Fund

Department Affected: University of Alaska
BRU: Statewide Programs and Services
Component:

Sponsor: Kerttula
Requestor:

Component Serial No. All

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
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						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)	FY92	FY93	FY94	FY95	FY96	FY97
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:	FY92	FY93	FY94	FY95	FY96	FY97
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
SB 97 refines and more clearly delineates the rights and responsibilities of the University of Alaska and participants in the Advance College Tuition Program. The university feels that at this time these changes do not result in significant increases to the start-up costs for this program.

Prepared by: Marsha Hubbard, Director Phone: 474-7593
Division: Statewide Budget Date: 3-11-91

Approved by: Brian Rogers, Vice President for Finance
Agency: University of Alaska Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90 *FIN for orig. bill* Page 1 of 1
Outdated by sponsor sub.