

BILLS 1981 - 1982

CSSSJR 61 - SB 3

L. F. J. C. C.

1594

1594

# COMMITTEE REPORT

## HOUSE

FURTHER:

(11)

5/13/82

Date: 5-13-82

Mr. Speaker: (Judiciary waived 5/13)

The Committee on Finance has had CSSSJR §1(R1s)

Proposing amendments to the Constitution of the State of Alaska relating to appropriations and the retention, investment and expenditure of certain state revenues; providing for effective dates for the amendments; and superseding the amendments proposed by Legislative Resolve No. 1, First Special Session of the Twelfth Legislature (FSS FCCS SJR 4)

under consideration and reports it back as follows:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
11/13 to insert no. 1110  
\_\_\_\_\_  
John Santa Do Not Pass  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
CHAIRMAN

Original sponsors: Dankworth and Sturgulewski

Offered: 5/4/82

1 IN THE SENATE

BY THE RULES COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 61 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA.

4 TWELFTH LEGISLATURE - SECOND SESSION

5 Proposing amendments to the Constitu-  
6 tion of the State of Alaska relating  
7 to appropriations and the retention,  
8 investment and expenditure of certain  
9 state revenues; providing for effec-  
10 tive dates for the amendments; and  
11 superseding the amendments proposed  
12 by Legislative Resolve No. 1, First  
13 Special Session of the Twelfth Legis-  
14 lature (FSS FCCS SJR 4).

15 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

16 \* Section 1. Article IX, Constitution of the State of Alaska, is amended  
17 by adding new sections to read:

18 SECTION 16. APPROPRIATIONS. Except as provide, in section 17 of  
19 this article, the total amount of appropriations which take effect in a  
20 fiscal year shall not exceed the sum of the uncommitted general fund  
21 balance at the beginning of that fiscal year plus the revenues of the  
22 State for that fiscal year, other than revenues from all mineral lease  
23 rentals, royalties, royalty sale proceeds, federal mineral revenue  
24 sharing payments and bonuses. If the governor determines that the total  
25 amount of appropriations taking effect in a fiscal year will exceed the  
26 amount authorized by this section, he shall reduce state spending to  
27 assure that amount is not exceeded.

28 SECTION 17. ALASKA RESOURCE FUND. Except as provided in section  
29 15 of this article, all mineral lease rentals, royalties, royalty sale

1 proceeds, federal mineral revenue sharing payments and bonuses received  
2 by the State shall be placed in an Alaska resource fund. Up to one-  
3 fifth of the balance in the Alaska resource fund may be appropriated  
4 for any purpose if the appropriation is approved by the voters in a  
5 general election as provided by law. The balance remaining in the  
6 Alaska resource fund after deduction of appropriations approved by the  
7 voters may be invested as provided by law in capital projects which are  
8 owned by the State and in programs administered by the State. Projects  
9 that are owned by the State shall return to the Alaska resource fund the  
10 amount of the investment and, unless otherwise provided by a specific  
11 law for a particular project, shall provide a rate of return on the  
12 investment at least equal to the market rate for general obligation  
13 bonds of similar maturity of the State at the time the investment is  
14 made. Programs administered by the State must be approved by the voters  
15 at a general election as prescribed by law, must return to the Alaska  
16 resource fund the amount of the investment, and must be invested at a  
17 rate of return equal to the market rate of return for similar invest-  
18 ments but not less than the rate of return provided by obligations of  
19 similar maturity of the United States government at the time the invest-  
20 ment is made. The balance remaining in the Alaska resource fund that is  
21 not invested in capital projects owned by the State or in programs  
22 administered by the State shall be invested at a rate of return equal to  
23 the market rate of return for similar investments but not less than the  
24 rate of return provided by obligations of similar maturity of the United  
25 States government at the time the investment is made. All income from  
26 the Alaska resource fund shall be deposited in the general fund unless  
27 otherwise provided by law.

28 \* Sec. 2. Article IX, sec. 7, Constitution of the State of Alaska, is  
29 amended to read:

1 SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or  
2 license shall not be dedicated to any special purpose, except as pro-  
3 vided in sections [SECTION] 15 and 17 of this article or when required  
4 by the federal government for state participation in federal programs.  
5 This provision shall not prohibit the continuance of any dedication for  
6 special purposes existing upon the date of ratification of this section  
7 by the people of Alaska.

8 \* Sec. 3. Article IX, sec. 15, Constitution of the State of Alaska, is  
9 amended to read:

10 SECTION 15. ALASKA PERMANENT FUND. At least twenty-five percent  
11 of all mineral lease rentals, royalties, royalty sale proceeds, and fed-  
12 eral mineral revenue sharing payments received by the State from mineral  
13 leases issued on or before December 1, 1979, and at least twenty-five  
14 percent of all bonuses received by the State from mineral leases issued  
15 on or before February 15, 1980, shall be placed in a permanent fund.  
16 Fifty percent of all mineral lease rentals, royalties, royalty sale pro-  
17 ceeds, and federal mineral revenue sharing payments received by the State  
18 from mineral leases issued after December 1, 1979, and fifty percent of  
19 all bonuses received by the State from mineral leases issued after Feb-  
20 ruary 15, 1980, shall be placed in the permanent fund. The principal of  
21 the permanent fund [ , THE PRINCIPAL OF WHICH] shall be used only for  
22 [THOSE] income-producing investments specifically designated by law as  
23 eligible for permanent fund investments at competitive market rates of  
24 return for similar investments. All income from the permanent fund  
25 shall be deposited in the general fund unless otherwise provided by law.

26 \* Sec. 4. Article XV, Constitution of the State of Alaska, is amended by  
27 adding a new section to read:

28 SECTION 26. EFFECTIVE DATE OF AMENDMENTS. The 1982 amendments to  
29 article IX of this constitution adding sections 16 and 17 relating to

1 appropriations and the Alaska resource fund, amending section 7 relating  
2 to dedicated funds, and amending section 15 relating to the permanent  
3 fund, take effect July 1, 1983. However, the provision of section 17 of  
4 article IX of this constitution relating to placing mineral lease  
5 rentals, royalties, royalty sale proceeds, federal mineral revenue  
6 sharing payments and bonuses received by the State into the Alaska  
7 resource fund shall be implemented as follows:

8 (1) for the period July 1, 1983 through June 30, 1984, one-  
9 quarter of the receipts otherwise payable into the Alaska resource fund  
10 for that period under section 17 shall be placed in the Alaska resource  
11 fund and three-quarters shall be deposited in the general fund;

12 (2) for the period July 1, 1984 through June 30, 1985, one-  
13 half of the receipts otherwise payable into the Alaska resource fund for  
14 that period under section 17 shall be placed in the Alaska resource fund  
15 and one-half shall be deposited in the general fund;

16 (3) for the period July 1, 1985 through June 30, 1986, three-  
17 quarters of the receipts otherwise payable into the Alaska resource fund  
18 for that period under section 17 shall be placed in the Alaska resource  
19 fund and one-quarter shall be deposited in the general fund;

20 (4) after June 30, 1986, the provisions of section 17 shall be  
21 fully in force.

22 \* Sec. 5. The amendments proposed by this resolution shall be placed be-  
23 fore the voters of the state at the next general election in conformity with  
24 art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws  
25 of the state.

26 \* Sec. 6. The amendments proposed by this resolution supersede the amend-  
27 ments proposed by Legislative Resolve No. 1, First Special Session of the  
28 Twelfth Legislature (FSS FCCS SJR 4), and void the requirement contained in  
29 section 3 of that resolution that the amendments proposed by that resolution

1 be placed before the voters of the state.

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THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution Number: CSSSSJR 61 (Rules)  
 Title: Constitutional amendment relating to Alaska Resource Fund.  
 Requested by: \_\_\_\_\_ Date: 05/05/82

II. FISCAL DETAIL

Agency Affected:  
 Program Category Affected:  
 BRU, Program, or Subprogram(s) Affected:  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)						
	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

FUNDING (Thousands of Dollars)						
	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-	-	669,600	528,450	309,200	--
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)						
AK. Resource Fund	-	-	223,200	528,450	927,600	1,450,300
AK. Permanent Fund	-	-	297,600	352,300	412,300	483,500

POSITIONS						
	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	-	-	-	-	-	-
PART TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The projected figures (based on Department of Revenue March 1982 estimates) represent contributions of all state and federal mineral revenues to the Alaska Permanent Fund, Resource Fund, and General Fund. It should be noted that bonus and royalty sale proceeds are not included in the projections since bids are impossible to anticipate prior to sales. Furthermore, investment earnings from the Resource and Permanent Funds were not determined.

*Robert W. Elliott*

IV. DATE: 05/05/82 PREPARED BY: Robert W. Elliott  
 AGENCY: Revenue  
 PHONE: 465-2173  
 Original: Legislative Finance  
 cc: Budget and Management  
Prime Sponsor (First Legislator Named)

Original sponsors: Dankworth and Sturgulewski

Offered: 5/4/82

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BY THE RULES COMMITTEE

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28 Twelfth Legislature (FSS FCCS SJR 4), and void the requirement contained in  
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TO: All Legislators  
FROM: Senator Ed Dankworth  
RE: CSSSSJR 61  
DATE: May 11, 1982

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Attached for your review:

- (1) Sectional Analysis of SJR 61
- (2) Comparison of SJR-4 - SJR 61
- (3) Source of Funds Available for Section 16, SJR 61
- (4) Copies SJR 4 and SJR 61

ED/ial

SECTIONAL ANALYSIS FOR CSSSSJR 61 (Jud)

\* Section 1. Adds two new sections to Article IX of the Constitution of the State of Alaska.

SECTION 16. This section places a limit on the revenue available for appropriation by the legislature. Revenue received from any source other than revenues from all mineral lease rentals, royalty sale proceeds, federal mineral revenue sharing payments and bonuses are available. This includes, but is not limited to revenue received from taxes, licenses and permit fees, federal shared revenues, investment earnings, airport and ferry system charges, court system charges and other miscellaneous revenues.

The legislature determines the percentage it will appropriate for operating, capital or loans.

The governor is responsible to reduce spending if actual revenues are below that appropriated by the legislature. This will prevent deficit spending and allow the legislature to "balance the books" at the beginning of each session.

SECTION 17. This section establishes the Alaska Resource Fund. All revenue received from mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses, that are not required by law to be deposited in the permanent fund, are placed in the Alaska Resource Fund. This fund is used in the following ways:

(1) The legislature may appropriate one-fifth (20%) of the balance in the fund for any purpose if the appropriation is approved by the voters in the general election.

(2) Money remaining in the fund may be invested in projects which are owned by the State, as in programs administered by the State. Projects that are owned by the State shall return to the Alaska Resource Fund the amount of the investment and a rate of return equal to the market rate for general obligation bonds unless otherwise provided by a specific law for a particular project. Programs administered by the State must be approved by the voters and return a market rate to the fund.

(3) Money remaining in the fund shall be invested at a rate of return equal to the market rate for similar investments.

(4) Earnings on the fund are deposited in the general fund.

\* Sec. 2. Amends Article IX, Section 7, of the Constitution of the State of Alaska. This section exempts the permanent fund and the resource fund from the dedicated fund section of the constitution.

\* Sec. 3. Amends Article IX, Section 15, of the Constitution of the State of Alaska. This section places the existing law regarding permanent fund contributions in the constitution to eliminate any conflicts on the percentage of funds to be placed in the permanent fund and the resource fund.

\* Sec. 4. This section is the effective date amendments that allow Section 17 to phase in over a four year period.

\* Sec. 5. Places this resolution on the ballot in the next general election.

\* Sec. 6. Voids FSSFCCSSJR 4 if the resolution is passed by the legislature and placed on the ballot.

## A COMPARISON OF FCCSSJR 4 AND SJR 61

Both of these resolutions are proposing amendments to the Constitution of the State of Alaska relating to limiting increases in appropriations. They are two entirely different concepts.

### FCCSSJR 4

This concept utilizes a base of \$2.5 billion available for appropriations with increases based on population and inflation since July 1, 1981. One-third of this amount is reserved for capital projects and loans.

Exempt from this limitation are:

- (1) Alaska Permanent Fund Dividends.
- (2) Revenue Bond Proceeds.
- (3) Principle and Interest on General Obligation Bonds.
- (4) Money received from a non-state source in trust for a specific purpose.
- (5) Permanent Fund Contributions required by Law.
- (6) Appropriations necessary to meet a state of disaster declared by the Governor.

The Legislature may exceed this limit in bills for appropriations to the Alaska Permanent Fund or Capital Projects if approved by the voters as prescribed by law.

### SJR 61 (Sponsor Substitute)

This proposed amendment has two major sections. Section 16, which is a limitation on state spending and Section 17 which establishes the Alaska Resource Fund.

SECTION 16 - This section limits spending for the operation of state government to those funds received from taxes, license fees, permits, interest income and other miscellaneous revenue received by the state. Revenue received from the lease or disposal of state lands or interest in state lands cannot be used for this purpose except as provided in Section 17. The governor has the responsibility to reduce spending during a fiscal year if revenue projections fall below those levels anticipated by the legislature in preparing that year's budget.

SECTION 17 - All revenue received from mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses except for that portion that is required to be deposited in the Permanent Fund shall be deposited in the Alaska Resource Fund. Money in this fund may be used as follows:

- (1) Up to one-fifth of the balance may be appropriated for any purpose if approved by the voters in a general election.
- (2) The balance remaining after deduction of appropriations approved by the voters may be used for:
  - (a) Capital projects which are owned by the state and shall return to the fund the amount of the investment and a market rate of return unless otherwise provided by a specific law for a particular project,  
or:
  - (b) Programs administered by the state and approved by the voters, that will return the investment plus a return equal to market rates of federal government obligations.
- (3) Any remaining balance will be invested at market rates.
- (4) Earnings on the fund are deposited in the general fund.

FCCSSJR 4

- Couples government spending to population and inflation.
- No consideration given to available revenue. .
- Funds available for voter approved capital projects would not exist after FY 92 based on revenue projections.
- Based on revenue projections there would be a shortfall or deficit in excess of \$18 billion in FY 98.

SJR 61

- Spending cannot exceed revenue.
- Operating budget is based on revenue received from taxes, license fees, permits and other miscellaneous income.
- Voters decide how to spend a portion of the revenue received from the sale or lease of our natural resources.

CS SS SJR 61 (Rules)  
(\$ Millions)

Fiscal Year	(1) Revenue	(2) Resource Fund Interest	(3) Total Revenue	(4) Section 16 Revenue less Debt Service	(5) Resource Fund Balance	(6) Section 17 20% Voter Approval	(7) Permanent Fund Balance	(8) Permanent Fund Distributable Income	(9) Section 16 Revenue Less Debt Service FY. 83 \$
1984	3063.1	5.8	3068.9	2332.1	192.4		4171.4	73.4	2159.4
1985	3509.1	24.1	3533.2	2457.2	611.7	38.4	5017.7	88.4	2106.7
1986	4012.4	50.7	4082.1	2579.7	1410.0		6016.7	106.1	2047.8
1987	4634.7	113.7	4748.4	2709.6	2378.4	282.0	7197.2	127.0	1991.6
1988	4777.8	184.0	4961.8	2733.2	3755.4		8544.1	151.4	1860.2
1989	5258.7	250.0	5508.7	3074.2	4576.9	751.1	10020.5	178.5	1937.3
1990	4627.1	321.8	4948.9	2749.8	6151.0		11382.5	205.8	1604.5
1991	4186.3	374.3	4560.6	2609.0	6327.3	1230.2	12794.1	232.5	1409.6
1992	4119.8	421.1	4540.9	2622.2	7709.1		14336.4	260.8	1311.8
1993	3763.2	453.9	4217.1	2462.7	7419.3	1541.8	15972.7	291.4	1140.7
1994	3615.5	481.1	4096.6	2412.4	8616.1		17730.6	324.1	1034.6
1995	3475.4	499.6	3975.0	2360.2	8037.4	1723.2	19614.2	359.1	937.3
1996	3184.9	513.2	3698.1	2218.6	9070.8		21624.9	396.5	815.8
1997	3348.5	522.2	3870.7	2313.6	8336.7	1814.2	23833.5	437.1	787.7
1998	3474.5	533.6	4008.1	2395.8	9449.1		26245.2	481.5	755.3

ASSUMPTIONS:

1. Resource fund earns 6%, permanent fund 10%, of which 8% is inflation and 2% is distributable income; inflation component of permanent fund earnings added to principal per CS SS SB 684 (Fin) am;
2. Permanent fund contribution increased to 35% until \$1 billion accumulated per 2d CS SB 885 (Rules);
3. March 1982 Department of Revenue estimates at 30th percentile;
4. Resource fund contributions phased in;
5. 20% of resource fund available for voter approval at general elections;
6. 8% annual inflation assumed in revenue projections (Col. 1) and real section 16 revenues (Col. 10):

LEGISLATIVE RESOLVE 1, FSSLA 81  
(FCCS FJR 4)  
(\$ Millions)

Fiscal Year	(1) Revenue	(2) Permanent Fund Contribution	(3) Unrestricted Revenue	(4) Operating Budget Ceiling	(5) Capital Budget Ceiling	(6) Unrestricted Revenue less Debt Service	(7) Operating Budget	(8) Capital Budget	(9) Operating Budget FY 83 \$
1984	3063.1	413.3	2649.8	2053.5	1026.8	2518.6	1079.0	839.5	1554.6
1985	3509.1	492.9	3016.2	2279.4	1139.7	2890.9	1927.3	963.6	1652.3
1986	4012.4	573.6	3438.8	2530.1	1265.1	3317.3	2211.5	1105.8	1755.6
1987	4634.7	673.3	3961.4	2808.4	1404.2	3846.3	2564.2	1282.1	1884.8
1988	4777.8	741.5	4036.3	3117.4	1558.7	3926.3	2617.5	1308.8	1781.4
1989	5258.7	762.4	4496.3	3460.3	1730.1	4396.8	2931.2	1465.6	1847.2
1990	4627.1	538.8	4088.3	3840.9	1920.4	4002.1	2668.0	1334.0	1556.8
1991	4186.3	481.7	3704.6	4263.4	2131.7	3641.2	2427.5	1213.7	1311.5
1992	4119.8	498.8	3621.0	4732.4	2366.2	3582.9	2388.6	1194.3	1194.9
1993	3763.2	470.6	3292.6	5252.9	2626.5	3260.8	2173.9	1086.9	1006.9
1994	3615.5	461.6	3153.9	5830.8	2915.4	3128.1	2085.4	1042.7	894.4
1995	3475.4	447.2	3028.2	6472.1	3236.1	3005.1	2003.4	1001.7	795.6
1996	3184.9	424.6	2760.3	7184.7	3592.0	2738.8	1825.7	912.9	671.3
1997	3348.5	460.3	2888.2	7974.3	3987.2	2871.5	1914.3	957.2	651.7
1998	3474.5	485.6	2988.9	8851.5	4425.7	2974.5	1983.0	991.5	625.1

Assumptions

1. Permanent fund contribution increased to 35% until \$1 billion accumulated per CS SS SB 684 (Fin) am;
2. March 1982 Department of Revenue estimates at 30th percentile;
3. 8% annual inflation assumed in revenue projections, budget ceilings, and operating budget in FY 83\$;  
3% annual population growth assumed for budget ceilings;
4. Col. 7 = 2/3 of Col. 6; Col. 8 = 1/3 of Col. 6.
5. Permanent fund same as SJR 61.

PREPARED BY:

Milt Barker  
Legislative Finance  
5-10-82

FUNDS AVAILABLE FOR OPERATING & CAPITAL BUDGETS

SJR-61

IN THOUSAND OF CURRENT DOLLARS

	<u>FY 1983</u> <u>Estimate</u> <u>January</u>	<u>FY 1984</u> <u>Estimate</u> <u>January</u>
<u>Taxes</u>		
<u>Income</u>		
Corporate-General (1)	35,000	39,000
Corporate-Petroleum (2)	304,000	360,000
<u>Gross Receipts</u>		
Alaska Business License	5,500	5,500
Fish-Canned Salmon	6,000	6,000
Fish-Shorebased	11,000	11,000
Fish-Floating	4,000	4,000
Salmon Enhancement	2,400	2,400
Insurance Companies	11,500	11,500
Other	1,400	1,400
<u>Severance</u>		
Gravel, Timber, Etc.	2,500	2,500
Oil & Gas Production (3)(4)	1,819,000	2,213,400
Oil & Gas Conservation	700	700
<u>Property</u>		
Oil & Gas (5)	157,700	225,000
Vehicle Registration	200	200
<u>Sale/Use</u>		
Alcoholic Beverages	9,000	9,000
Fuel Taxes-Aviation	4,500	4,700
Fuel Taxes-Highway	18,500	19,000
Fuel Taxes-Marine	3,800	4,000
Tabacco Products	1,900	1,900
<u>Other</u>		
Estate	500	500
Total Taxes	<u>2,399,100</u>	<u>2,921,700</u>
<u>Licenses &amp; Permits</u>		
<u>Business</u>	11,000	12,100
<u>Non-Business</u>	13,000	13,500
Total Licenses & Permits	<u>24,000</u>	<u>25,600</u>
 <u>Intergovernmental Receipts</u>		
Federal Shared Revenues (6)(7)	<u>9,900</u>	<u>10,000</u>
Investment Earnings	<u>315,000</u>	<u>375,000</u>
 <u>Facilities Related Charges</u>		
Airports	1,200	1,200
Ferry System-Southeast	26,300	28,900
Ferry System-Southwest	3,800	4,100
Other	4,500	4,700
<u>Service Related Charges</u>		
Court System	3,300	3,500
Other	4,500	4,800
	<u>43,600</u>	<u>47,200</u>
<u>Miscellaneous Revenues</u>	<u>5,900</u>	<u>6,000</u>
Total	2,797,500	3,385,500



Introduced: 1/29/82  
Referred: State Affairs,  
Finance and Judiciary

1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 SENATE JOINT RESOLUTION NO. 65

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 Proposing amendments to the Constitution  
6 of the State of Alaska relating to the  
7 expenditure of money which exceeds the  
8 limit on appropriations.

9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. Article IX, Constitution of the State of Alaska, is amended  
11 by adding a new section to read:

12 SECTION 17. UNEXPENDED AND UNOBLIGATED MONEY. Not more than fifty  
13 per cent of the unexpended and unobligated money in the state treasury  
14 which exceeds the limit established by section 16 of this article for a  
15 fiscal year may be expended for capital projects approved by the voters.  
16 If the voters fail to approve an appropriation for a capital project,  
17 the amount of the appropriation shall be placed in the permanent fund  
18 established by section 15 of this article. The remaining unexpended and  
19 unobligated money in the state treasury for a fiscal year shall be  
20 invested as provided in section 16 of this article unless the voters  
21 approve, as prescribed by law, the placement of the money in the perma-  
22 nent fund established by section 15 of this article.

23 \* Sec. 2. Article XV, Constitution of the State of Alaska, is amended by  
24 adding new sections to read:

25 SECTION 29. EFFECTIVE DATE OF AMENDMENT. The 1982 amendment re-  
26 lating to the appropriation of unexpended and unobligated state money  
27 (art. IX, sec. 17) takes effect on the effective date of the amendment  
28 limiting appropriation increases (art. IX, sec. 16).

29 SECTION 30. REPEAL OF AMENDMENT. If the amendment limiting appro-

1     prium increases (art. IX, sec. 16) is rejected by the voters at the  
2     1986 general election, the amendment relating to the appropriation of  
3     unexpended and unobligated state revenue (art. IX, sec. 17) is repealed.

4     \* Sec. 3. The amendments proposed by this resolution shall be placed be-  
5     fore the voters of the state at the next general election in conformity with  
6     art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws  
7     of the state.



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 29, 1982

The Honorable Jalmar Kerttula  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a resolution which proposes amendments to the Alaska Constitution.

Section 1 of the resolution proposes to add sec. 17 to art. IX of the Alaska Constitution. The new section would establish a ceiling on the amount of money that can be spent for the capital projects which require voter approval under proposed art. IX, sec. 16. Proposed art. IX, sec. 16 (FSS SLA 81), limits capital and operating expenditures for a fiscal year to \$2,500,000,000 plus adjustments for population change and inflation. Appropriations above this limit, for capital projects, require final voter approval. Under proposed art. IX, sec. 17, appropriations for capital projects above the limit would be restricted to not more than 50 percent of the unexpended and unobligated money in excess of that limit. The amount of appropriations not approved by voters would be placed in the permanent fund.

Section 17 also provides that, if approved by the voters, remaining unexpended and unobligated money in the treasury would be placed in the permanent fund instead of invested as provided in proposed art. IX, sec. 16.

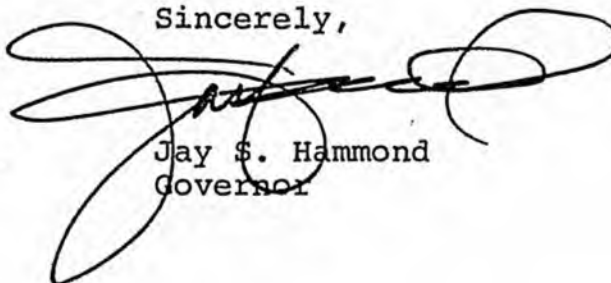
Section 2 of the resolution adds secs. 29 and 30 to art. XV of the Alaska Constitution. Section 29 would tie the effective date of art. IX, sec. 17, proposed in sec. 1 of this resolution, to the effective date of proposed art. IX, sec. 16. Section 30 would provide for repeal of proposed art. IX, sec. 17, if proposed art. IX, sec. 16 is rejected by the voters in 1986.

Section 3 of the resolution provides for placement of the constitutional amendments in this resolution before the voters at the next general election, which would be in November, 1982.

While proposed art. IX, sec. 16 sets a ceiling on the total amount of appropriations for capital and operating expenditures, that ceiling can be exceeded for capital projects under certain conditions. The proposed constitutional amendments in this resolution will give the administration and the legislature the opportunity to gauge the public's desire to cut back further on state spending by putting a real ceiling on the amount of money that may be spent on capital projects. At the same time, the amendment in sec. 1 of the resolution will add to the permanent fund "painlessly" by returning voter-rejected capital project appropriations to the permanent fund instead of the state treasury.

I feel that the voters of this state should have a chance to help determine the growth of state spending, and I strongly urge passage of this resolution.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke.

Jay S. Hammond  
Governor

ALASKA STATE LEGISLATURE

TWELFTH Legislature SECOND Session

SENATE JOINT RESOL... NO. 65.....

By THE RULES COMMITTEE BY...  
REQUEST OF THE GOVERNOR

Proposing amendments to the Constitution of the State of Alaska relating to the expenditure of money which exceeds the limit on appropriations.

Introduced in the Senate ... 1/29/, 19...82

HISTORY IN THE SENATE

19	82	Read first time and referred to Committee on											
1	29	ST. Affairs, Finance and Judiciary											
2	16	Reported back with <i>La House</i> recommendation that <i>to find</i>											
		Read second time and											
		Read third time and											
		<table border="0"> <tr><td>PASS</td><td>Effective Date</td></tr> <tr><td>Yeas</td><td>Yeas</td></tr> <tr><td>Nays</td><td>Nays</td></tr> <tr><td>Absent</td><td>Absent</td></tr> <tr><td>Excused</td><td>Excused</td></tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused	
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Reconsideration													
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Nays	Nays												
Absent	Absent												
Excused	Excused												
		Reported correctly engrossed Signed by President Sent to House											
SECRETARY OF THE SENATE													

HISTORY IN THE HOUSE

19	Read first time and referred to Committee on											
	Reported back with recommendation that											
	Read second time and											
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Absent	Absent											
Excused	Excused											
	Reported correctly engrossed Signed by Speaker Returned to Senate											
CHIEF CLERK OF THE HOUSE												

HISTORY IN THE SENATE

19	Received from House
	To enrolling
	Reported correctly enrolled
	Sent to Governor
	..... by Governor
	Filed with Lt. Governor
	Chapter No. ....

Introduced: 1/29/82  
Referred: State Affairs,  
Finance and Judiciary

1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 SENATE JOINT RESOLUTION NO. 65

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 Proposing amendments to the Constitution  
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6        art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws  
7        of the state.



THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 3  
 Title An Act Relating to Guardians and Conservators  
 Requested by Senate Finance Date 5/20/81

II. FISCAL DETAIL

Alaska Court System

Agency Affected \_\_\_\_\_  
 Program Category Affected Administration of Justice  
 BRU, Program, or Subprogram(s) Affected Alaska Court System

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		75.8	151.6	162.2	173.5	185.6
200 TRAVEL		15.0	30.0	32.1	34.3	36.7
300 CONTRACTUAL		45.0	90.0	95.4	102.0	109.1
400 COMMODITIES		1.0	2.0	2.1	2.2	2.3
500 EQUIPMENT		4.0	8.0	8.5	9.1	9.7
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		<b>140.8</b>	<b>281.6</b>	<b>300.3</b>	<b>321.1</b>	<b>343.4</b>

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND		140.8	281.6	300.3	321.1	343.4
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME		4.0	4.0	4.0	4.0	4.0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The funds will allow the guardians and conservators program to function at an efficient level with six month funding. The six month funding is necessary to allow for recruitment and placement of the program personnel. In addition, the time will be utilized to develop the program's administrative and functional capacities.

IV. DATE 5/20/81 PREPARED BY *[Signature]*  
 AGENCY Legislature  
 PHONE 465-4923  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

Original sponsors: Ziegler and Fahrenkamp

Offered: 5/22/81  
Referred: Rules

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2

CS FOR SENATE BILL NO. 3 (Finance)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to guardians and conservators; and  
7 providing for an effective date."

8

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

9

\* Section 1. AS 13.26.005(1) is repealed and reenacted to read:

10

(1) "incapacitated person" means a person whose ability to

11

receive and evaluate information or to communicate decisions is im-

12

paired for reasons other than minority to the extent that he lacks the

13

ability to provide for himself the essential requirements for his phy-

14

sical health or safety without court-ordered assistance;

15

\* Sec. 2. AS 13.26.005 is amended by adding new paragraphs to read:

16

(5) "essential requirements for physical health or safety"

17

means the health care, food, shelter, clothing, personal hygiene, and

18

protection without which serious physical injury or illness is more

19

likely than not to occur;

20

(6) "partial guardian" means a guardian who possesses fewer

21

than all of the legal duties and powers of a full guardian, and whose

22

rights, powers, and duties have been specifically enumerated by court

23

order;

24

(7) "full guardian" means a guardian who possesses the legal

25

duties and powers enumerated in AS 13.26.150(c);

26

(8) "visitor" means a person trained or experienced in law,

27

medical care, mental health care, pastoral care, education, rehabilita-

28

tion, or social work, who is an officer, employee, or special appointee

29

of the court with no personal interest in the proceedings;

1 (9) "guardian" includes full guardian and partial guardian;

2 (10) "respondent" means a person who, in a guardianship pro-  
3 ceeding under this chapter, is alleged to be incapacitated and for whom  
4 the appointment of a guardian or alternative assistance is sought;  
5 "respondent" includes a person seeking the appointment of a guardian or  
6 alternative assistance for himself.

7 \* Sec. 3. AS 13.26 is amended by adding a new section to read:

8 Sec. 13.26.013. COURT RECORDS OF PROCEEDINGS; ACCESS; SEALING.

9 (a) A notice of the filing of a petition, a summary of all formal  
10 proceedings, and a dispositional order or modification or termination  
11 of a dispositional order relating to a proceeding under this chapter  
12 shall be available for public inspection. All other information con-  
13 tained in the court records relating to a proceeding under this chapter  
14 is confidential and available only upon court order for good cause  
15 shown or to the following persons:

16 (1) the person who is the subject of the court record, his  
17 attorney, or his guardian ad litem;

18 (2) a person designated by the person who is the subject of  
19 the court record;

20 (3) the guardian of the person who is the subject of the  
21 court record or the attorney of the guardian;

22 (4) the conservator of the estate of the person who is the  
23 subject of the court record or the attorney of the conservator;

24 (5) a party to the proceeding and his attorney;

25 (6) the judge or judges hearing or reviewing the matter; and

26 (7) a member of the clerical or administrative staff of the  
27 court if access is essential for authorized internal administrative  
28 purposes.

29 (b) Upon finding that a petition under this chapter was mali-

1 cious, frivolous, or without just cause, the court may order that all  
2 information contained in the court records relating to the proceeding  
3 be sealed and that the information be disclosed only upon court order  
4 for good cause shown.

5 \* Sec. 4. AS 13.26 is amended by adding a new section to article 3 to  
6 read:

7 Sec. 13.26.090. PURPOSE AND BASIS FOR GUARDIANSHIP. Guardianship  
8 for an incapacitated person shall be used only as is necessary to pro-  
9 mote and protect the well-being of the person, shall be designed to  
10 encourage the development of maximum self-reliance and independence of  
11 the person, and shall be ordered only to the extent necessitated by the  
12 person's actual mental and physical limitations. An incapacitated  
13 person for whom a guardian has been appointed is not presumed to be  
14 incompetent and retains all legal and civil rights except those which  
15 have been expressly limited by court order or have been specifically  
16 granted to the guardian by the court.

17 \* Sec. 5. AS 13.26.095 is amended by adding a new subsection to read:

18 (e) A testamentary appointment of a guardian by the parent of an  
19 incapacitated person, or by the spouse of a married incapacitated  
20 person, may grant all guardianship powers and duties which the deceased  
21 parent or spouse held, subject to modification by the court under  
22 AS 13.26.125.

23 \* Sec. 6. AS 13.26.105 is repealed and reenacted to read:

24 Sec. 13.26.105. PETITION. (a) Any person may petition the court  
25 for a finding of incapacity and the appointment of a guardian for  
26 himself or for another person.

27 (b) The petition for appointment of a guardian shall state

28 (1) the name, age, and address of the petitioner and his  
29 relationship to the respondent;

1 (2) the name, age, and present address of the respondent;

2 (3) the name and address of the person or facility presently  
3 having care, custody, guardianship, or conservatorship of the respon-  
4 dent, if any, and the existence of any other restrictions on the legal  
5 capacity of the respondent to act in his own behalf;

6 (4) the nature and degree of the alleged incapacity;

7 (5) the particular type and duration of appointment and the  
8 protection and assistance being sought;

9 (6) the names and addresses, unless they are unknown and  
10 cannot reasonably be ascertained, of the individuals most closely re-  
11 lated to the respondent by blood or marriage;

12 (7) the facts supporting the allegations of incapacity and  
13 the need for appointment of a guardian;

14 (8) the names and addresses of persons known to the peti-  
15 tioner who have knowledge that might prove helpful in determining the  
16 capacity and needs of the respondent.

17 (c) The petition may also nominate a guardian and include a re-  
18 quest for temporary guardianship as provided in AS 13.26.140 if the  
19 petitioner believes there is an imminent danger that the physical  
20 health or safety of the respondent will be seriously impaired during  
21 the pendency of the guardianship proceeding. A request for temporary  
22 guardianship shall specify facts which cause the petitioner to believe  
23 that a temporary guardian is necessary.

24 (d) If the petition seeks the appointment of a guardian for an  
25 incapacitated person who is a veteran or a minor entitled to the  
26 payment of money from the federal Veterans' Administration, the peti-  
27 tioner shall give notice of the petition to the administrator of the  
28 federal Veterans' Administration.

29 \* Sec. 7. AS 13.26 is amended by adding new sections to read:

1           Sec. 13.26.106. INITIAL COURT PROCEDURES. (a) Upon the filing  
2 of a petition, the court shall schedule a hearing on the issue of  
3 incapacity. The hearing shall be conducted within 120 days from the  
4 filing of the petition unless the court postpones the hearing for  
5 cause.

6           (b) The respondent is entitled to be represented by an attorney  
7 in the proceedings. If the respondent is financially unable to employ  
8 an attorney to assist him, the court shall appoint an attorney to  
9 represent the respondent in the proceedings.

10           (c) The court shall appoint a visitor as defined in AS 13.26.-  
11 005(8). The visitor shall arrange for evaluations to be performed and  
12 prepare a written report to be filed with the court. The court shall  
13 also appoint an expert who has expertise in regard to the alleged or  
14 admitted incapacity to investigate the issue of incapacity.

15           (d) The visitor shall interview the respondent and the person  
16 seeking appointment as guardian, if any. The visitor shall conduct the  
17 interviews and investigations necessary to prepare his report and shall  
18 arrange for the respondent to be examined by the expert appointed under  
19 (c) of this section. The expert's written report shall be attached to  
20 the visitor's report.

21           (e) Interviews and examinations shall take place in the respon-  
22 dent's usual residence unless

23           (1) the respondent consents to being examined or interviewed  
24 in a medical or mental health facility; or

25           (2) the visitor considers it necessary to conduct interviews  
26 or examinations in a medical or mental health facility.

27           Sec. 13.26.107. NOTICE OF RIGHTS. (a) Upon appointment, the  
28 visitor shall promptly

29           (1) explain to the respondent, in a language or communica-

1 tion system he can understand, the purpose of the interview and pos-  
2 sible consequences of the proceedings;

3 (2) serve a copy of the petition on the respondent in accor-  
4 dance with the procedure described in AS 13.06.110;

5 (3) explain and provide to the respondent a written state-  
6 ment of the following rights:

7 (A) he may communicate with an attorney or an expert in  
8 the field of the alleged incapacity before proceeding with the  
9 interview;

10 (B) if he does not have an attorney, an attorney, whose  
11 name, address, and telephone number shall be included in the  
12 statement, will be designated to advise and represent him before  
13 and at any judicial hearings, and the attorney may arrange for an  
14 examination and consultation with an expert; and

15 (C) he may, instead, employ an attorney or expert of  
16 his own choice; and

17 (4) offer assistance to the respondent in contacting an  
18 attorney.

19 (b) A substantive interview of the respondent or other investi-  
20 gation may not be conducted until the provisions of (a) of this section  
21 have been satisfied.

22 Sec. 13.26.108. VISITOR'S REPORT. (a) The visitor shall file  
23 with the court his evaluation report, proof of service of the petition  
24 upon the respondent, and proof of service of his report upon the  
25 respondent, his attorney, and the petitioner, within 90 days after the  
26 date on which the petition was filed.

27 (b) The visitor shall, as part of the evaluation report, explain  
28 alternatives to guardianship and recommend any which will safeguard the  
29 respondent's essential requirements for physical health and safety.

1 The evaluation report may recommend personal guardianship only if the  
2 visitor determines that the needs of the respondent cannot be met by  
3 other alternatives.

4 (c) The evaluation report shall include

5 (1) the results and analyses of medical and other tests and  
6 examinations performed which describe the respondent's mental, emo-  
7 tional, physical, and educational condition, adaptive behavior and  
8 social skills, and which specify the data on which the description is  
9 based;

10 (2) recommendations regarding the types and extent of assis-  
11 tance, if any, necessary to meet the essential requirements for the  
12 physical health and safety of the respondent;

13 (3) an evaluation of the respondent's need for mental health  
14 treatment and whether there is a substantial probability that available  
15 treatment will significantly improve his mental condition;

16 (4) an evaluation of the respondent's need for educational  
17 or vocational assistance or personal care and whether these can be made  
18 available to the respondent;

19 (5) an evaluation of the probability that the incapacity may  
20 significantly lessen, and the type of services or treatment which will  
21 facilitate improvement in the respondent's condition or skills;

22 (6) a list of the names and addresses of all individuals who  
23 examined, interviewed, or investigated the respondent and of the names  
24 and addresses of all persons contacted in preparation of the report;

25 (7) a summary of the information which

26 (A) was supplied by the persons described in (6) of  
27 this subsection; and

28 (B) supports the conclusions of the report;

29 (8) a description of the alternatives to guardianship which

1 were considered and not recommended and an explanation of why they are  
2 not feasible to meet the respondent's needs;

3 (9) a description of the present home and living arrangement  
4 of the respondent and of any other proposed placement and a recommenda-  
5 tion for the respondent's living arrangement that provides the least  
6 restrictive setting necessary to protect the respondent from serious  
7 illness, injury, or disease; and

8 (10) a specification of the financial resources of the  
9 respondent, his entitlements to insurance benefits, and publicly oper-  
10 ated or sponsored health, mental health, and welfare assistance which  
11 might be employed in the provision of services to him.

12 (d) If personal guardianship is recommended, the evaluation  
13 report required under (c) of this section shall include a guardianship  
14 outline which identifies

15 (1) potential guardians;

16 (2) the specific services necessary and available to protect  
17 the respondent from serious injury, illness, or disease and, to the  
18 extent possible, to return the respondent to full capacity in handling  
19 his own affairs;

20 (3) the means by which the services described in (2) of this  
21 subsection may be financed;

22 (4) the specific, least restrictive authority needed by the  
23 guardian to provide the services described in (2) of this subsection.

24 (e) The petitioner and the respondent may file responses to the  
25 evaluation report within 10 days of receiving it. The court may grant  
26 additional time if requested for cause.

27 Sec. 13.26.109. EVALUATIONS: RIGHT TO REMAIN SILENT; RESPON-  
28 DENT'S ATTORNEY OR EXPERT. (a) A ward or respondent has the right to  
29 refuse to respond to questions in the course of examinations and eval-

1 uations. However, he may be required to submit to interviews for the  
2 purpose of ascertaining whether he lacks the capacity to make informed  
3 decisions about care and treatment services.

4 (b) Statements of a ward or respondent in the course of evalua-  
5 tions, examinations, and treatment under AS 13.26.090 - 13.26.155 are  
6 privileged, confidential, and not admissible without the ward's or  
7 respondent's consent in any civil or criminal proceeding other than  
8 proceedings under AS 13.26.090 - 13.26.155. A ward or respondent at  
9 all times has the right to refuse to answer questions if the answers  
10 may tend to incriminate him.

11 (c) During any interview or testing conducted under AS 13.26.-  
12 090 - 13.26.155, a ward or respondent has the right to be accompanied  
13 by an attorney or expert of his own choosing.

14 (d) The court, if requested by a ward or respondent in prepara-  
15 tion for and in connection with a hearing held under AS 13.26.090 -  
16 13.26.155, shall appoint an expert having expertise in regard to the  
17 alleged or admitted incapacity to examine the respondent and testify on  
18 his behalf. The request shall be filed in court at least five days  
19 before the hearing. An expert appointed under this subsection may be  
20 the same expert appointed under AS 13.26.106(c).

21 Sec. 13.26.111. DUTIES AND POWERS OF RESPONDENT'S ATTORNEY. (a)  
22 The principal duty of an attorney representing a ward or respondent is  
23 to represent the ward or respondent zealously. Zealous representation  
24 includes at least

25 (1) personal interviews with the ward or respondent; unless  
26 good cause exists, the first contact with the ward or respondent shall  
27 be at least two weeks before the hearing;

28 (2) explaining, if possible, to the ward or respondent in  
29 terms which the ward or respondent can understand, the nature and

1 possible consequences of the proceeding, the alternatives which are  
2 available, and the rights to which he is entitled;

3 (3) securing and presenting evidence and testimony and  
4 offering arguments which would tend to protect the ward's or respon-  
5 dent's rights and which would tend to further his interests.

6 (b) To the maximum extent possible, the ward or respondent shall  
7 remain responsible for determining his interests. However, his attor-  
8 ney may seek appointment of a guardian ad litem if the circumstances of  
9 AS 13.26.112 apply.

10 Sec. 13.26.112. APPOINTMENT OF A GUARDIAN AD LITEM. (a) Upon  
11 the request of a ward, a respondent, or the attorney of a ward or  
12 respondent, the court shall appoint a guardian ad litem to protect the  
13 rights of the ward or respondent in proceedings under AS 13.26.090 -  
14 13.26.155 if the court is satisfied that because of impaired ability  
15 effectively to receive and evaluate information regarding the proceed-  
16 ings or because of impaired ability to communicate decisions regarding  
17 the proceedings, the ward or respondent cannot determine his own inter-  
18 ests without assistance, and

- 19 (1) a guardian has not been appointed;  
20 (2) his interests and those of his guardian conflict; or  
21 (3) the appointment is otherwise in the interests of

22 justice.

23 (b) The guardian ad litem shall assist the ward or respondent in  
24 determining his interests in regard to the legal proceedings in which  
25 he is involved. If the ward or respondent is entirely incapable of  
26 determining his own interests, the guardian ad litem shall make that  
27 determination and advise the court and counsel for all parties accord-  
28 ingly. The guardian ad litem shall

- 29 (1) inquire thoroughly into all the circumstances that a

# **CORRECTION**

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1 possible consequences of the proceeding, the alternatives which are  
2 available, and the rights to which he is entitled;

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24 determining his interests in regard to the legal proceedings in which  
25 he is involved. If the ward or respondent is entirely incapable of  
26 determining his own interests, the guardian ad litem shall make that  
27 determination and advise the court and counsel for all parties accord-  
28 ingly. The guardian ad litem shall

29 (1) inquire thoroughly into all the circumstances that a

1 prudent individual in the position of the ward or respondent would  
2 consider in determining his own interests in the proceedings; and

3 (2) encourage the ward or respondent to participate, to the  
4 maximum extent of his capability, in all decisions and to act on his  
5 own behalf on all matters in which he is able.

6 (c) The attorney may also be the guardian ad litem for the ward  
7 or respondent if there is no other party readily available and able to  
8 serve as a guardian ad litem and whose interests would not conflict  
9 with those of the ward or respondent.

10 Sec. 13.26.113. HEARING. (a) At the hearing scheduled under  
11 AS 13.26.106, the respondent has the right to

- 12 (1) present evidence on his own behalf;  
13 (2) cross-examine witnesses who testify against him;  
14 (3) remain silent;  
15 (4) have the hearing open or closed to the public as he  
16 elects;  
17 (5) be present unless the court determines that his conduct  
18 in the courtroom is so disruptive that the proceedings cannot reason-  
19 ably continue with him present;

20 (6) be tried by jury on the issue of incapacity.

21 (b) The burden of proof by clear and convincing evidence is upon  
22 the petitioner, and a determination of incapacity shall be made before  
23 consideration of proper disposition.

24 (c) If the respondent is found to be incapacitated, the court  
25 shall determine the extent of the incapacity and the feasibility of  
26 alternatives to guardianship to meet the needs of the respondent.

27 (d) If it is found that alternatives to guardianship are feasible  
28 and adequate to meet the needs of the respondent, the court may dismiss  
29 the action and order an alternative form of protection.

1 (e) If it is found that the respondent is able to perform some,  
2 but not all, of the functions necessary to care for himself, and al-  
3 ternatives to guardianship are not feasible or adequate to provide for  
4 the needs of the respondent, the court may appoint a partial guardian,  
5 but may not appoint a full guardian.

6 (f) If it is found that the respondent is totally without capa-  
7 city to care for himself and that a combination of alternatives to  
8 guardianship and the appointment of a partial guardian is not feasible  
9 or adequate to meet the needs of the respondent, the court may appoint  
10 a full guardian.

11 (g) If it is necessary to appoint a guardian, the court shall  
12 consider the ward's preference.

13 (h) At the time a guardian is appointed, the court shall make a  
14 reasonable effort to acquaint the ward with his right to request, at a  
15 later time, his guardian's dismissal or a modification of the guardian-  
16 ship order. The court shall provide a written statement to the ward,  
17 explaining his rights and specifying the procedures to be followed in  
18 petitioning the court.

19 Sec. 13.26.114. PSYCHOTROPIC MEDICATION INFLUENCING WARDS OR  
20 RESPONDENTS AT JUDICIAL HEARINGS. (a) A ward or respondent has a  
21 right to participate to the maximum extent possible in all judicial  
22 proceedings concerning him and to be free from the influence of psycho-  
23 tropic medication during the proceedings.

24 (b) It is the responsibility of the attorney for the ward or  
25 respondent to determine if the ward or respondent is being treated with  
26 psychotropic medication the effects of which would continue during the  
27 judicial proceedings and, if so, to inform the court in writing a  
28 reasonable time before the hearing.

29 (c) The court, upon receipt of the information provided under (b)

1 of this section, shall require a medical examination of the ward or  
2 respondent, if the court determines that the medical examination is  
3 necessary, and shall determine the advisability of continuation or  
4 suspension of the treatment for the duration of the judicial proceed-  
5 ings. The court may make any appropriate order it considers necessary.  
6 The court in making its determination shall balance the interest of  
7 maximum participation of the ward or respondent in the hearings against  
8 the medical and rehabilitative needs of the ward or respondent.

9 (d) If the ward or respondent is under the influence of psycho-  
10 tropic medication during the judicial proceeding determining capacity,  
11 the trier of fact shall take that fact into consideration in making its  
12 determination.

13 Sec. 13.26.116. GUARDIANSHIP ORDER. (a) If the court or jury  
14 determines that a person is incapacitated and the services of a guard-  
15 ian are necessary, the court shall enter an order which

16 (1) names the guardian and establishes a guardian-ward rela-  
17 tionship;

18 (2) includes findings of fact which support each grant of  
19 authority to the guardian;

20 (3) adopts a guardianship plan.

21 (b) The guardianship plan shall specify the authority which the  
22 guardian has with regard to

23 (1) medical care for the ward's physical condition;

24 (2) mental health treatment which the guardian considers to  
25 be in the ward's best interests;

26 (3) housing for the ward with consideration of the follow-  
27 ing:

28 (A) the wishes of the ward;

29 (B) the preferability of allowing the ward to retain

1 local community ties; and

2 (C) the requirement for services to be provided in the  
3 least restrictive setting;

4 (4) personal care, educational and vocational services  
5 necessary for the physical and mental welfare of the ward and to return  
6 the ward to full capacity;

7 (5) application for health and accident insurance and any  
8 other private or governmental benefits to which the ward may be  
9 entitled to meet any part of the costs of medical, mental health, or  
10 related services provided to the ward;

11 (6) physical and mental examinations necessary to determine  
12 the ward's medical and mental health treatment needs; and

13 (7) control of the estate and income of the ward to pay for  
14 the cost of services which the guardian is authorized to obtain on  
15 behalf of the ward.

16 (c) The guardianship plan may not be more restrictive of the  
17 liberty of the ward than is reasonably necessary to protect the ward  
18 from serious physical injury, illness or disease and to provide him  
19 with medical care and mental health treatment for his physical and  
20 mental health. The guardianship plan shall be designed to encourage a  
21 ward to participate in all decisions which affect him and to act on his  
22 own behalf to the maximum extent possible. The court may not assign a  
23 duty or power to a guardian unless the need for it has been proven to  
24 the satisfaction of the court and no less restrictive alternative or  
25 combination of alternatives is sufficient to satisfy the need.

26 (d) The duration of the term of guardianship shall be determined  
27 by the court order. Upon receipt of a report or other information that  
28 requires further consideration, the court may order a review hearing if  
29 it determines that the hearing is in the best interests of the ward.

1           Sec. 13.26.117. GUARDIANSHIP IMPLEMENTATION REPORT. Within 90  
2 days after appointment as guardian, the guardian shall submit to the  
3 court a report. The report shall describe the guardian's program for  
4 implementing the guardianship plan. The primary goal of the program  
5 described in the report shall be, to the maximum extent possible, to  
6 develop or regain the ward's abilities to handle his own affairs. The  
7 report shall consider housing, medical care, and educational and voca-  
8 tional needs and resources. In developing the report, the guardian  
9 shall consult with his ward to the maximum extent possible. The office  
10 of public guardian shall contact the guardian to offer assistance in  
11 preparing the report. The report shall specify the services which are  
12 necessary to meet the essential requirements for the ward's physical  
13 health or safety and the means for obtaining the services. The report  
14 shall specify the manner in which the guardian will exercise and share  
15 decision-making authority and other items which will assist in fulfill-  
16 ing the needs of the ward, the terms of the guardianship order, and the  
17 duties of the guardian.

18           Sec. 13.26.118. REPORTING. (a) A guardian shall submit a report  
19 to the court or request that a visitor be appointed to prepare and  
20 submit a report at least annually. A court-appointed visitor shall  
21 prepare the report at least once in each three-year period. The guard-  
22 ian shall submit an additional report to the court when

- 23                   (1) the court orders it;
- 24                   (2) there is a significant change in the capacity of the  
25 ward to meet the essential requirements for his health and safety or to  
26 protect his rights;
- 27                   (3) the guardian resigns or is removed;
- 28                   (4) the guardianship is terminated; or
- 29                   (5) the ward requests it.

1 (b) The report shall contain, but is not limited to, the follow-  
2 ing information:

3 (1) the name and address of the ward and the guardian;

4 (2) the ward's present mental, physical, and social condi-  
5 tions and present living arrangements and the ward's opinion of these  
6 arrangements;

7 (3) changes in the capacity of the ward to meet essential  
8 requirements for his physical health and safety;

9 (4) the services being provided to the ward;

10 (5) the significant actions taken by the guardian during the  
11 reporting period in regard to his ward;

12 (6) a financial accounting of the estate which has been  
13 subject to the possession or control of the guardian;

14 (7) a list of the number and nature of the contacts between  
15 the guardian and ward if the ward does not reside with the guardian;

16 (8) any other information requested by the court or neces-  
17 sary or desirable in the opinion of the guardian or visitor.

18 Sec. 13.26.131. COSTS IN GUARDIANSHIP PROCEEDINGS. (a) Subject  
19 to (d) of this section, the state shall bear the costs of the visitor  
20 and expert appointed under AS 13.26.106(c).

21 (b) Subject to (c) and (d) of this section, the respondent shall  
22 bear the costs of the attorney appointed under AS 13.26.106(b), of the  
23 expert appointed under AS 13.26.109(d), of the guardian ad litem ap-  
24 pointed under AS 13.26.112, and of other court and guardianship costs  
25 incurred under this chapter.

26 (c) The state shall pay all or part of the costs described in (b)  
27 of this section if the court finds that the payment is necessary to  
28 prevent the respondent from suffering financial hardship or from becom-  
29 ing dependent upon a government agency or a private person or agency.

1 (d) The court may require the petitioner to pay all or some of  
2 the costs described in (a) and (b) of this section if the court finds  
3 that the petitioner initiated a proceeding under this chapter that was  
4 malicious, frivolous, or without just cause.

5 \* Sec. 8. AS 13.26.120 is amended to read:

6 Sec. 13.26.120. TERMINATION OF GUARDIANSHIP FOR INCAPACITATED  
7 PERSON. The authority and responsibility of a guardian for an incapa-  
8 cited person terminates upon the death of the guardian or ward, the  
9 determination of incapacity of the guardian, the [OR UPON] removal or  
10 resignation of the guardian as provided in AS 13.26.125, or upon the  
11 expiration of the period specified by court order as the duration  
12 of the guardianship. Testamentary appointment under an informally  
13 probated will terminates if the will is later denied probate in a  
14 formal proceeding. Termination does not affect a guardian's [HIS]  
15 liability for prior acts nor his obligation to account for [FUNDS AND]  
16 assets of the [HIS] ward over which he exercised control.

17 \* Sec. 9. AS 13.26.125 is amended to read:

18 Sec. 13.26.125. REMOVAL OR RESIGNATION OF GUARDIAN; CHANGE IN OR  
19 TERMINATION OF GUARDIANSHIP [INCAPACITY]. (a) On petition of the  
20 ward, the guardian, or any person interested in the ward's [HIS] wel-  
21 fare, the court may (1) review and amend a decision of a guardian;  
22 or (2) if alternatives which are less restrictive than guardianship  
23 or less restrictive than the existing guardianship plan would assist  
24 the ward in meeting his essential requirements for physical health  
25 and safety, modify the provisions of its order to (A) amend the  
26 guardianship plan or the responsibilities of the guardian; (B) remove a  
27 guardian and appoint a successor; or (C) terminate the guardianship [IF  
28 IN THE BEST INTERESTS OF THE WARD]. On petition of the guardian, the  
29 court may accept his resignation and make any other order which may be

1 appropriate.

2 (b) The [AN ORDER ADJUDICATING INCAPACITY MAY SPECIFY A MINIMUM  
3 PERIOD, NOT EXCEEDING ONE YEAR, DURING WHICH NO PETITION FOR AN ADJUDI-  
4 CATION THAT THE WARD IS NO LONGER INCAPACITATED MAY BE FILED WITHOUT  
5 SPECIAL LEAVE. SUBJECT TO THIS RESTRICTION, THE] ward, the guardian,  
6 or any person interested in the ward's [HIS] welfare may petition for  
7 an order that the ward [HE] is no longer incapacitated or no longer  
8 incapacitated to the same extent as he was when the original guardian-  
9 ship order was made or when the court last amended the guardianship  
10 order, and for removal or resignation of the guardian, termination  
11 of the guardianship, or a change in the responsibilities of the  
12 guardian. A request for this order may be made by informal letter to  
13 the court or judge and any person who knowingly interferes with trans-  
14 mission of this kind of request to the court or judge may be held in  
15 [ADJUDGED GUILTY OF] contempt of court.

16 (c) Before removing a guardian, changing his responsibilities,  
17 accepting the resignation of a guardian, or ordering that a ward's  
18 guardianship be changed or [INCAPACITY HAS] terminated, the court,  
19 following the same procedures to safeguard the rights of the ward as  
20 apply to a petition for appointment of a guardian and applying the  
21 least restrictive alternative necessary to meet the needs of the ward  
22 after consideration of alternatives to guardianship services, may send  
23 a visitor to the residence of the present guardian and to the place  
24 where the ward resides or is detained, to observe conditions and report  
25 in writing to the court.

26 (d) If at any time the ward requests or indicates to his guardian  
27 or to the agency responsible for his care or its employee that he  
28 desires a change in guardianship, the guardian or the agency providing  
29 care shall inform the court of the request or indication.

1           (e) If the guardian dies, or if on the basis of a petition filed  
2 under this section or a report or other information, there is probable  
3 cause to believe a guardian is not performing his responsibilities  
4 effectively and there is an imminent danger that the physical health  
5 or safety of the ward will be seriously impaired, the court shall  
6 take whatever action is necessary to protect the ward, including the  
7 dismissal of the guardian and appointment of a temporary guardian  
8 without a hearing.

9 \*Sec. 10. AS 13.26.135 is amended to read:

10           Sec. 13.26.135. NOTICES IN GUARDIANSHIP PROCEEDINGS. (a) In a  
11 proceeding for the appointment, change in responsibilities, [OR]  
12 removal of a guardian, or termination of guardianship, [OF AN INCAPA-  
13 CITATED PERSON] other than the appointment of a temporary guardian or  
14 temporary suspension of a guardian, notice of hearing shall be given to  
15 each of the following:

16           (1) the ward or respondent by the visitor as provided in  
17 AS 13.26.107 [THE PERSON ALLEGED TO BE INCAPACITATED AND HIS SPOUSE,  
18 PARENTS AND ADULT CHILDREN];

19           (2) any person who is serving as his guardian, conservator  
20 or who has his care and custody; [AND]

21           (3) in case no other person is notified under (4) [(1)] of  
22 this subsection, at least one of his closest adult relatives, if any  
23 can be found;

24           (4) the spouse, parents, and adult children of the ward or  
25 respondent;

26           (5) any person who performed an evaluation for the visitor's  
27 report within the previous two years;

28           (6) the ward's or respondent's attorney;

29           (7) the ward's or respondent's guardian ad litem if one

1 has been appointed; and

2 (8) the administrator of the federal Veterans' Administra-  
3 tion if the administrator was given notice under AS 13.26.105(d).

4 (b) Notice shall be served personally on the ward's or respon-  
5 dent's [ALLEGED INCAPACITATED PERSON, AND HIS] spouse and parents if  
6 they can be found within the state. Except as provided in (a)(1) of  
7 this section, notice [NOTICE] to the spouse and parents, if they cannot  
8 be found within the state, and to all other persons [EXCEPT THE ALLEGED  
9 INCAPACITATED PERSON] shall be given as provided in AS 13.06.110.  
10 [WAIVER OF NOTICE BY THE PERSON ALLEGED TO BE INCAPACITATED IS NOT  
11 EFFECTIVE UNLESS HE ATTENDS THE HEARING OR HIS WAIVER OF NOTICE IS  
12 CONFIRMED IN AN INTERVIEW WITH THE VISITOR. REPRESENTATION OF THE  
13 ALLEGED INCAPACITATED PERSON BY A GUARDIAN AD LITEM IS NOT NECESSARY.]

14 (c) The notice shall set out the date, time, place, purpose and  
15 possible consequences of the hearing and the rights of the ward or  
16 respondent and any other parties to the proceedings.

17 \* Sec. 11. AS 13.26.140 is repealed and reenacted to read:

18 Sec. 13.26.140. TEMPORARY GUARDIANS. (a) If during the pendency  
19 of an initial petition for guardianship it appears that the respondent  
20 is in need of immediate services to protect him against serious injury,  
21 illness, or disease and the respondent is not capable of procuring the  
22 necessary services, the petitioner may request the appointment of a  
23 temporary guardian to authorize the services. The request shall state  
24 the reasons and factual basis for the request. The petitioner shall  
25 immediately file the request with the court and serve copies on the  
26 respondent and his attorney. The court shall conduct a hearing within  
27 72 hours after the filing.

28 (b) At the temporary guardianship hearing, the respondent shall  
29 have the rights set out in AS 13.26.113(a).

1 (c) The burden of proof at the hearing shall be by clear and con-  
2 vincing evidence and shall be upon the petitioner.

3 (d) If the court determines that a temporary guardian should be  
4 appointed, it shall make the appointment and grant to the guardian only  
5 the authority that is least restrictive upon the liberty of the respon-  
6 dent and which enables the temporary guardian to provide the emergency  
7 services necessary to protect the respondent from serious injury, ill-  
8 ness, or disease.

9 (e) The temporary guardianship shall expire at the time of the  
10 appointment of a full or partial guardian or upon the dismissal of the  
11 petition for guardianship.

12 (f) If no guardianship petition is pending but the court is in-  
13 formed of a person who is apparently incapacitated and in need of emer-  
14 gency life-saving services, the court may authorize the services upon  
15 determining that delay until a guardianship hearing can be held would  
16 entail a life-threatening risk to the person.

17 \* Sec. 12. AS 13.26 is amended by adding a new section to read:

18 Sec. 13.26.141. EMERGENCY POWERS. Notwithstanding the limits of  
19 a temporary guardianship or guardianship order, a temporary guardian  
20 and guardian at all times have the right to authorize the provision of  
21 emergency life-saving services. This right includes the power to  
22 authorize hospitalization without advance court approval.

23 \* Sec. 13. AS 13.26.145 is repealed and reenacted to read:

24 Sec. 13.26.145. WHO MAY BE GUARDIAN; PRIORITIES. (a) The court  
25 may appoint a competent person, the public guardian, or a private asso-  
26 ciation or nonprofit corporation with a guardianship program for inca-  
27 pacitated persons, as guardian of an incapacitated person.

28 (b) The court may not appoint a person to be a guardian of an  
29 incapacitated person if the person

1 (1) provides, or is likely to provide during the guardian-  
2 ship period, substantial services to the incapacitated person in a  
3 professional or business capacity, other than in his capacity as  
4 guardian;

5 (2) is, or is likely to become during the guardianship  
6 period, a creditor of the incapacitated person, other than in his  
7 capacity as guardian;

8 (3) has, or is likely to have during the guardianship  
9 period, interests which may conflict with those of the incapacitated  
10 person; or

11 (4) is employed by a person who would be disqualified under  
12 (1) - (3) of this subsection.

13 (c) A person may be appointed as the guardian of an incapacitated  
14 person notwithstanding the provisions of (b) of this section if he is  
15 the spouse, adult child, parent, or sibling of the incapacitated person  
16 and the court determines that the potential conflict of interest is  
17 insubstantial and that the appointment would clearly be in the best  
18 interests of the incapacitated person.

19 (d) Subject to (e) of this section, qualified persons have prior-  
20 ity for appointment as guardian in the following order:

21 (1) a person, association, or private nonprofit corporation  
22 nominated by the incapacitated person, if at the time of the nomination  
23 the incapacitated person had the capacity to make a reasonably intel-  
24 ligent choice;

25 (2) the spouse of the incapacitated person;

26 (3) an adult child or parent of the incapacitated person;

27 (4) a relative of the incapacitated person with whom the  
28 incapacitated person has resided for more than six months during the  
29 year before the filing of the petition;

1 (5) a relative or friend who has demonstrated a sincere,  
2 longstanding interest in the welfare of the incapacitated person;

3 (6) a private association or nonprofit corporation with a  
4 guardianship program for incapacitated persons;

5 (7) the public guardian.

6 (e) The priorities established in (d) of this section are not  
7 binding, and the court shall select the person, association, or non-  
8 profit corporation that is best qualified and willing to serve. The  
9 court shall also give consideration to a nomination by a person  
10 described in (d) of this section and to a nomination in the will of a  
11 deceased parent or spouse of the incapacitated person.

12 \* Sec. 14. AS 13.26.150 is repealed and reenacted to read:

13 Sec. 13.26.150. GENERAL POWERS AND DUTIES OF GUARDIAN. (a) A  
14 guardian shall diligently and in good faith carry out the specific  
15 duties and powers assigned by the court. In carrying out his duties  
16 and powers, the guardian shall encourage the ward to participate to the  
17 maximum extent of his capacity in all decisions which affect him, to  
18 act on his own behalf in all matters in which he is able, and to  
19 develop or regain, to the maximum extent possible, his capacity to meet  
20 the essential requirements for his physical health or safety, to  
21 protect his rights, and to manage his financial resources.

22 (b) A partial guardian of an incapacitated person has only the  
23 powers and duties respecting his ward enumerated in the court order.

24 (c) A full guardian of an incapacitated person has the same  
25 powers and duties respecting his ward that a parent has respecting his  
26 unemancipated minor child except that the guardian is not liable for  
27 the care and maintenance of the ward and is not liable, solely by  
28 reason of the guardianship, to a person who is harmed by acts of the  
29 ward. Except as modified by order of the court, a full guardian's

1 powers and duties include, but are not limited to, the following:

2 (1) he is entitled to custody of the person of his ward and  
3 shall assure that the ward has a place of abode in the least restric-  
4 tive setting consistent with the essential requirements for the ward's  
5 physical health and safety;

6 (2) he shall assure the care, comfort, and maintenance of  
7 the ward;

8 (3) he shall assure that the ward receives the services  
9 necessary to meet the essential requirements for the ward's physical  
10 health and safety and to develop or regain, to the maximum extent pos-  
11 sible, the capacity to meet his needs for physical health and safety;

12 (4) he shall assure through the initiation of court action  
13 and other means that the ward enjoys all personal, civil, and human  
14 rights to which the ward is entitled;

15 (5) he may give consents or approvals necessary to enable  
16 the ward to receive medical or other professional care, counsel, treat-  
17 ment, or services except as otherwise limited by (e) of this section;

18 (6) if a conservator for the estate of the ward has not been  
19 appointed, the guardian may receive money and property deliverable to  
20 the ward and apply the money and property for support, care, and educa-  
21 tion of the ward; however, the guardian may not apply the ward's money  
22 or property for his services as guardian or for room and board which  
23 he, his spouse, parent, or child have furnished the ward unless, before  
24 payment, the court finds that the ward is financially able to pay and  
25 that the charge is reasonable; notice of a request for payment approval  
26 shall be provided to at least one relative of the ward if possible; the  
27 guardian shall exercise care to conserve any excess money or property  
28 for the ward's needs;

29 (7) if a conservator of the estate of the ward has been

1 appointed, the guardian shall pay all of the ward's estate received by  
2 the guardian in excess of the money expended to meet current expenses  
3 for support, care, and education of the ward, to the conservator for  
4 management as provided in AS 13.26.165 - 13.26.315, and the guardian  
5 shall account to the conservator for money expended.

6 (d) A guardian of a ward, for whom a conservator has also been  
7 appointed, shall have the custody and care of the ward and is entitled  
8 to receive reasonable sums for his services and for room and board  
9 furnished to the ward as agreed upon between the guardian and the con-  
10 servator. The guardian may request the conservator to expend the  
11 ward's estate for the ward's care and maintenance.

12 (e) A guardian may not

13 (1) place the ward in a facility or institution for the  
14 mentally ill other than through a formal commitment proceeding under  
15 AS 47.30.070 in which the ward has a separate guardian ad litem;

16 (2) consent on behalf of the ward to an abortion, steriliza-  
17 tion, psychosurgery, or removal of bodily organs except when necessary  
18 to preserve the life or prevent serious impairment of the physical  
19 health of the ward;

20 (3) consent on behalf of the ward to the withholding of  
21 life-saving medical procedures;

22 (4) consent on behalf of the ward to the performance of an  
23 experimental medical procedure or to participation in a medical experi-  
24 ment not intended to preserve the life or prevent serious impairment of  
25 the physical health of the ward;

26 (5) consent on behalf of the ward to termination of the  
27 ward's parental rights;

28 (6) prohibit the ward from registering to vote or from  
29 casting a ballot at public election;

1 (7) prohibit the ward from applying for and obtaining a  
2 driver's license;

3 (8) prohibit the marriage or divorce of the ward.

4 \* Sec. 15. AS 13.26.195 is amended by adding a new subsection to read:

5 (d) The court shall investigate alternatives to a conservator and  
6 the use of a special conservator as provided in AS 13.26.205(c). A  
7 conservator may be appointed only if a less restrictive protective  
8 order or the services of a special conservator are not adequate to  
9 protect the estate of the protected person. The court shall, to the  
10 extent possible, consult with the protected person in determining what  
11 action should be taken.

12 \* Sec. 16. AS 13.26.205(c) is amended to read:

13 (c) Before approving a protective arrangement or other trans-  
14 action under this section, the court shall consider the interests of  
15 creditors and dependents of the protected person and, in view of his  
16 disability, whether the protected person needs the continuing protec-  
17 tion of a conservator. If only certain powers need be given to the  
18 conservator or the services of a conservator are needed only for a  
19 limited number of transactions, a special conservator may be appointed.  
20 The court may appoint a special conservator to assist in the accomp-  
21 lishment of any protective arrangement or other transaction authorized  
22 under this section who shall have the authority conferred by the order  
23 and serve until discharged by order after report to the court of all  
24 matters carried out under [DONE PURSUANT TO] the order of appointment.

25 \* Sec. 17. AS 13.26 is amended by adding a new section to read:

26 Sec. 13.26.218. PUBLIC BOND. (a) If the public guardian is  
27 appointed as a conservator, the court may not require a bond under  
28 AS 13.26.215.

29 (b) If the court requires a conservator to provide a bond under

1 AS 13.26.215 and the conservator is financially unable to provide the  
2 bond, the court may order the cost of the bond to be paid from court  
3 funds.

4 \* Sec. 18. AS 13.26 is amended by adding new sections to read:

5 ARTICLE 6. PUBLIC GUARDIANS.

6 Sec. 13.26.360. PURPOSE. The legislature recognizes that many  
7 Alaskans, for reasons of incapacity or minority, are in need of a  
8 guardian or conservator. Often these persons cannot find a person able  
9 and willing to serve as guardian or conservator. The legislature in-  
10 tends through AS 13.26.360 - 13.26.410 to establish the office of  
11 public guardian for the purpose of furnishing guardianship and conser-  
12 vatorship services. It further intends by establishing this office to  
13 provide assistance to guardians throughout the state in securing neces-  
14 sary services for their wards and to assist the courts, attorneys,  
15 visitors, respondents, and proposed guardians in the orderly and  
16 expeditious handling of guardianship proceedings.

17 Sec. 13.26.370. PUBLIC GUARDIAN. (a) The public administrator  
18 (AS 22.15.310) shall also act as the public guardian for the judicial  
19 district for which he is appointed.

20 (b) A court may order the public guardian to act as full  
21 guardian, partial guardian, conservator, or special conservator for a  
22 person who is determined under this chapter to be in need of guardian-  
23 ship or conservatorship service if no person or private guardianship  
24 association is willing and qualified to perform the function.

25 Sec. 13.26.380. POWERS AND DUTIES OF PUBLIC GUARDIAN. (a) The  
26 public guardian has the same powers and duties with respect to his  
27 wards and protected persons as a private guardian or conservator.

28 (b) The public guardian, when appointed as guardian or conserva-  
29 tor, shall endeavor, for as long as practical, to find a suitable pri-

1 vate guardian or conservator for his ward or protected person. For  
2 each ward and protected person, the public guardian shall report to the  
3 court having jurisdiction of the ward or protected person, at least  
4 once every six months, his efforts to find a private guardian or con-  
5 servator.

6 (c) The public guardian shall

7 (1) establish and maintain relationships with governmental,  
8 public, and private agencies, institutions, and organizations to assure  
9 the most effective guardianship or conservatorship program for each  
10 ward and protected person;

11 (2) visit each of his wards and protected persons at least  
12 once every quarter to monitor their welfare;

13 (3) keep and maintain financial and statistical records of  
14 all cases in which the public guardian provides guardianship or conser-  
15 vatorship services;

16 (4) provide information and referrals to the public regard-  
17 ing guardianship and conservatorship proceedings, but not information  
18 which would identify a particular case;

19 (5) assist guardians and court-appointed visitors of wards  
20 and respondents in the preparation and revision of guardianship plans  
21 and reports;

22 (6) assist guardians to understand the disabilities of wards  
23 and to foster the increased independence of wards;

24 (7) assist guardians in securing the rights, benefits, and  
25 services to which their wards are entitled;

26 (8) develop and maintain a current listing of public and  
27 private medical, mental health, social advocacy, educational, rehabili-  
28 tative, counseling, therapeutic, homemaking, recreational, and finan-  
29 cial services and programs available to assist wards and protected

1 persons and their families.

2 (d) The public guardian may

3 (1) contract for services necessary to carry out the duties  
4 of his office;

5 (2) accept the services of volunteer workers or consultants  
6 and reimburse them for their necessary expenses.

7 Sec. 13.26.390. INTERVENTION. The public guardian may, on his  
8 own motion or at the request of the court, intervene in a guardianship  
9 or conservatorship proceeding if he or the court considers the inter-  
10 vention to be justified because

11 (1) an appointed guardian or conservator is not fulfilling  
12 his duties;

13 (2) the estate is subject to waste as a result of the costs  
14 of the guardianship or conservatorship;

15 (3) a willing and qualified guardian or conservator is not  
16 available; or

17 (4) the best interests of the ward, respondent, protected  
18 person, or person who is the subject of a conservatorship proceeding  
19 require the intervention.

20 Sec. 13.26.400. DELEGATION OF POWERS AND DUTIES. The public  
21 guardian may employ staff and delegate to members of his staff or to  
22 volunteers his powers and duties as guardian or conservator and other  
23 powers and duties under this chapter. However, the public guardian  
24 retains responsibility for the proper performance of the delegated  
25 powers and duties. All delegations shall be to persons who meet the  
26 eligibility requirements of AS 13.26.145.

27 Sec. 13.26.410. ALLOCATION OF COSTS. (a) If a public guardian  
28 is appointed guardian or conservator, the administrative costs of his  
29 services and the costs incurred in the appointment procedure may not be

1 charged against the income or the estate of the ward or protected  
2 person unless the court determines that the ward or protected person is  
3 financially able to pay all or part of the costs.

4 (b) The court shall determine the ability of the ward or pro-  
5 tected person to pay for administrative costs of a public guardian or  
6 costs incurred in the appointment procedure by determining the finan-  
7 cial ability of the ward or protected person to pay a private guardian  
8 or conservator, considering the nature, extent, and liquidity of assets  
9 of the ward or protected person, the disposable net income of the ward  
10 or protected person, the nature of the guardianship or conservatorship,  
11 the type, duration and complexity of the services required, and any  
12 other foreseeable expenses.

13 (c) The public guardian shall investigate the financial status of  
14 (1) a person who requests the appointment of the public guardian as his  
15 guardian or conservator; and (2) a ward for whom a court has appointed  
16 the public guardian.

17 (d) The public guardian may require a person described in (c) of  
18 this section to execute and deliver written requests or authorizations  
19 necessary under law to provide the public guardian with access to  
20 records of public or private sources, otherwise confidential, needed to  
21 evaluate the person's financial eligibility. The public guardian may,  
22 upon request and without payment of fees otherwise required by law,  
23 obtain information from any office of the state or of a political sub-  
24 division or agency of the state which possesses public records.

25 (e) The reasonable value of the services rendered without cost to  
26 the ward or protected person shall be allowed as a claim against the  
27 estate upon the death of the ward or protected person.

28 \* Sec. 19. AS 22.15.310 is amended to read:

29 Sec. 22.15.310. APPOINTMENT. When authorized by the supreme

1 court, the presiding judge in each judicial district shall appoint a  
2 person to act as public administrator of the estates of deceased per-  
3 sons, [AND] as coroner, and as public guardian.

4 \* Sec. 20. AS 22.15.350 is amended to read:

5 Sec. 22.15.350. DUTIES [AS CORONER]. In addition to his other  
6 duties, a public administrator shall perform the duties set out in  
7 AS 22.15.110 and shall perform the duties of public guardian as set out  
8 in AS 13.26.360 - 13.26.410.

9 \* Sec. 21. AS 13.26.110 and 13.26.130 are repealed.

10 \* Sec. 22. TRANSITION. No later than July 1, 1984, all guardianships  
11 for incapacitated persons established before January 1, 1982, and in effect  
12 on January 1, 1982, shall be reviewed by the court. Until the review, a  
13 guardian appointed before January 1, 1982, whose guardianship is still in  
14 effect on January 1, 1982, shall retain the powers assigned to him, unless a  
15 petition for modification under AS 13.26.125 amended by sec. 9 of this Act  
16 is granted. Before the review, the guardian shall submit one report in the  
17 form prescribed in AS 13.26.118 amended by sec. 7 of this Act.

18 \* Sec. 23. This Act takes effect January 1, 1982.

REC'D 6/5/81

Bill already passed from S.F.C.

"An Act relating to guardians and conservators; and providing for an effective date."

This bill provides a comprehensive revision of Guardianship statutes. It provides for the special needs of veterans as well as handicapped persons. It provides for partial guardianship orders when the ward does not need a total guardianship. Finally, it creates an office of Public Guardian which will enable more Alaskans who truly need guardians to get them.

The new features of this committee substitute are all appropriate. This bill is greatly needed by handicapped persons, veterans and their families.

POSITION: The Department of Health & Social Services supports this bill.

Recommended By: David Bruce  
David Bruce,  
Deputy Director  
Division of Public Health

Recommended By: Vern Stagner  
Vern Stagner  
Director  
Div. of Mental Health

Date: 6/1/81

Approved By: Helen Beirne  
Helen Beirne  
Commissioner

Date: 6/4/81

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS For Senate Bill No. 3 (Finance)

Title "An Act relating to guardians and conservators..."

Requested by Helen D. Beirne

Date June 1, 1981

II. FISCAL DETAIL

Agency Affected Health and Social Services

Program Category Affected Public Health

BRU, Program, or Subprogram(s) Affected Family Health

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
	0	0	0	0	0	0

TOTAL

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0
	0	0	0	0	0	0
	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

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE June 1, 1981

PREPARED BY David A. Spence, M.D.

AGENCY Family Health

PHONE 465-3100

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named) M&B Approval McKubbin

Date 6/1

COMMITTEE REPORT  
SENATE

4/6/81

FURTHER: None

Date: May 22, 1981

Mr. President:

The Committee on FINANCE has had SB 3

guardians and conservators

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for SB 3 (Finance)  same title  
 new title
- and recommends DO PASS
- AND attaches a ~~Letter of Intent~~  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

*William Sturgis*  
*Joseph P. ...*  
*...*  
*John ...*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*...*  
 CHAIRMAN

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SE 3

Title An Act Relating to Guardians and Conservators

Requested by Senate Finance

Date 5/20/81

II. FISCAL DETAIL

Agency Affected Alaska Court System

Program Category Affected Administration of Justice

BRU, Program, or Subprogram(s) Affected Alaska Court System

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		75.8	151.6	162.2	173.5	185.6
200 TRAVEL		15.0	30.0	32.1	34.3	36.7
300 CONTRACTUAL		45.0	90.0	95.4	102.0	109.1
400 COMMODITIES		1.0	2.0	2.1	2.2	2.3
500 EQUIPMENT		4.0	8.0	8.5	9.1	9.7
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		140.8	281.6	300.3	321.1	343.4

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND		140.8	281.6	300.3	321.1	343.4
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME		4.0	4.0	4.0	4.0	4.0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The funds will allow the guardians and conservators program to function at an efficient level with six month funding. The six month funding is necessary to allow for recruitment and placement of the program personnel. In addition, the time will be utilized to develop the program's administrative and functional capacities.

IV. DATE 5/20/81

PREPARED BY *[Signature]*

AGENCY Legislature

PHONE 465-4923

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

Bradley  
5/20/81Delivered  
9:35 am 5/22

Original sponsors: Ziegler and Fahrenkamp

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 3 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to guardians and conservators; and  
7 providing for an effective date."

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

9 \* Section 1. AS 13.26.005(1) is repealed and reenacted to read:

10 (1) "incapacitated person" means a person whose ability to  
11 receive and evaluate information or to communicate decisions is im-  
12 paired for reasons other than minority to the extent that he lacks the  
13 ability to provide for himself the essential requirements for his phy-  
14 sical health or safety without court-ordered assistance;

15 \* Sec. 2. AS 13.26.005 is amended by adding new paragraphs to read:

16 (5) "essential requirements for physical health or safety"  
17 means the health care, food, shelter, clothing, personal hygiene, and  
18 protection without which serious physical injury or illness is more  
19 likely than not to occur;

20 (6) "partial guardian" means a guardian who possesses fewer  
21 than all of the legal duties and powers of a full guardian, and whose  
22 rights, powers, and duties have been specifically enumerated by court  
23 order;

24 (7) "full guardian" means a guardian who possesses the legal  
25 duties and powers enumerated in AS 13.26.150(c);

26 (8) "visitor" means a person trained or experienced in law,  
27 medical care, mental health care, pastoral care, education, rehabilita-  
28 tion, or social work, who is an officer, employee, or special appointee  
29 of the court with no personal interest in the proceedings;

1 (9) "guardian" includes full guardian and partial guardian;

2 (10) "respondent" means a person who, in a guardianship pro-  
3 ceeding under this chapter, is alleged to be incapacitated and for whom  
4 the appointment of a guardian or alternative assistance is sought;  
5 "respondent" includes a person seeking the appointment of a guardian or  
6 alternative assistance for himself.

7 \* Sec. 3. AS 13.26 is amended by adding a new section to read:

8 Sec. 13.26.013. COURT RECORDS OF PROCEEDINGS; ACCESS; SEALING.

9 (a) A notice of the filing of a petition, a summary of all formal  
10 proceedings, and a dispositional order or modification or termination  
11 of a dispositional order relating to a proceeding under this chapter  
12 shall be available for public inspection. All other information con-  
13 tained in the court records relating to a proceeding under this chapter  
14 is confidential and available only upon court order for good cause  
15 shown or to the following persons:

16 (1) the person who is the subject of the court record, his  
17 attorney, or his guardian ad litem;

18 (2) a person designated by the person who is the subject of  
19 the court record;

20 (3) the guardian of the person who is the subject of the  
21 court record or the attorney of the guardian;

22 (4) the conservator of the estate of the person who is the  
23 subject of the court record or the attorney of the conservator;

24 (5) a party to the proceeding and his attorney;

25 (6) the judge or judges hearing or reviewing the matter; and

26 (7) a member of the clerical or administrative staff of the  
27 court if access is essential for authorized internal administrative  
28 purposes.

29 (b) Upon finding that a petition under this chapter was mali-

1 cious, frivolous, or without just cause, the court may order that all  
2 information contained in the court records relating to the proceeding  
3 be sealed and that the information be disclosed only upon court order  
4 for good cause shown.

5 \* Sec. 4. AS 13.26 is amended by adding a new section to article 3 to  
6 read:

7 Sec. 13.26.090. PURPOSE AND BASIS FOR GUARDIANSHIP. Guardianship  
8 for an incapacitated person shall be used only as is necessary to pro-  
9 mote and protect the well-being of the person, shall be designed to  
10 encourage the development of maximum self-reliance and independence of  
11 the person, and shall be ordered only to the extent necessitated by the  
12 person's actual mental and physical limitations. An incapacitated  
13 person for whom a guardian has been appointed is not presumed to be  
14 incompetent and retains all legal and civil rights except those which  
15 have been expressly limited by court order or have been specifically  
16 granted to the guardian by the court.

17 \* Sec. 5. AS 13.26.095 is amended by adding a new subsection to read:

18 (e) A testamentary appointment of a guardian by the parent of an  
19 incapacitated person, or by the spouse of a married incapacitated  
20 person, may grant all guardianship powers and duties which the deceased  
21 parent or spouse held, subject to modification by the court under  
22 AS 13.26.125.

23 \* Sec. 6. AS 13.26.105 is repealed and reenacted to read:

24 Sec. 13.26.105. PETITION. (a) Any person may petition the court  
25 for a finding of incapacity and the appointment of a guardian for  
26 himself or for another person.

27 (b) The petition for appointment of a guardian shall state

28 (1) the name, age, and address of the petitioner and his  
29 relationship to the respondent;

1 (2) the name, age, and present address of the respondent;

2 (3) the name and address of the person or facility presently  
3 having care, custody, guardianship, or conservatorship of the respon-  
4 dent, if any, and the existence of any other restrictions on the legal  
5 capacity of the respondent to act in his own behalf;

6 (4) the nature and degree of the alleged incapacity;

7 (5) the particular type and duration of appointment and the  
8 protection and assistance being sought;

9 (6) the names and addresses, unless they are unknown and  
10 cannot reasonably be ascertained, of the individuals most closely re-  
11 lated to the respondent by blood or marriage;

12 (7) the facts supporting the allegations of incapacity and  
13 the need for appointment of a guardian;

14 (8) the names and addresses of persons known to the peti-  
15 tioner who have knowledge that might prove helpful in determining the  
16 capacity and needs of the respondent.

17 (c) The petition may also nominate a guardian and include a re-  
18 quest for temporary guardianship as provided in AS 13.26.140 if the  
19 petitioner believes there is an imminent danger that the physical  
20 health or safety of the respondent will be seriously impaired during  
21 the pendency of the guardianship proceeding. A request for temporary  
22 guardianship shall specify facts which cause the petitioner to believe  
23 that a temporary guardian is necessary.

24 (d) If the petition seeks the appointment of a guardian for an  
25 incapacitated person who is a veteran or a minor entitled to the  
26 payment of money from the federal Veterans' Administration, the peti-  
27 tioner shall give notice of the petition to the administrator of the  
28 federal Veterans' Administration.

29 \* Sec. 7. AS 13.26 is amended by adding new sections to read:

1           Sec. 13.26.106. INITIAL COURT PROCEDURES. (a) Upon the filing  
2 of a petition, the court shall schedule a hearing on the issue of  
3 incapacity. The hearing shall be conducted within 120 days from the  
4 filing of the petition unless the court postpones the hearing for  
5 cause.

6           (b) The respondent is entitled to be represented by an attorney  
7 in the proceedings. If the respondent is financially unable to employ  
8 an attorney to assist him, the court shall appoint an attorney to  
9 represent the respondent in the proceedings.

10          (c) The court shall appoint a visitor as defined in AS 13.26.-  
11 005(8). The visitor shall arrange for evaluations to be performed and  
12 prepare a written report to be filed with the court. The court shall  
13 also appoint an expert who has expertise in regard to the alleged or  
14 admitted incapacity to investigate the issue of incapacity.

15          (d) The visitor shall interview the respondent and the person  
16 seeking appointment as guardian, if any. The visitor shall conduct the  
17 interviews and investigations necessary to prepare his report and shall  
18 arrange for the respondent to be examined by the expert appointed under  
19 (c) of this section. The expert's written report shall be attached to  
20 the visitor's report.

21          (e) Interviews and examinations shall take place in the respon-  
22 dent's usual residence unless

23           (1) the respondent consents to being examined or interviewed  
24 in a medical or mental health facility; or

25           (2) the visitor considers it necessary to conduct interviews  
26 or examinations in a medical or mental health facility.

27          Sec. 13.26.107. NOTICE OF RIGHTS. (a) Upon appointment, the  
28 visitor shall promptly

29           (1) explain to the respondent, in a language or communica-

1 tion system he can understand, the purpose of the interview and pos-  
2 sible consequences of the proceedings;

3 (2) serve a copy of the petition on the respondent in accor-  
4 dance with the procedure described in AS 13.06.110;

5 (3) explain and provide to the respondent a written state-  
6 ment of the following rights:

7 (A) he may communicate with an attorney or an expert in  
8 the field of the alleged incapacity before proceeding with the  
9 interview;

10 (B) if he does not have an attorney, an attorney, whose  
11 name, address, and telephone number shall be included in the  
12 statement, will be designated to advise and represent him before  
13 and at any judicial hearings, and the attorney may arrange for an  
14 examination and consultation with an expert; and

15 (C) he may, instead, employ an attorney or expert of  
16 his own choice; and

17 (4) offer assistance to the respondent in contacting an  
18 attorney.

19 (b) A substantive interview of the respondent or other investi-  
20 gation may not be conducted until the provisions of (a) of this section  
21 have been satisfied.

22 Sec. 13.26.108. VISITOR'S REPORT. (a) The visitor shall file  
23 with the court his evaluation report, proof of service of the petition  
24 upon the respondent, and proof of service of his report upon the  
25 respondent, his attorney, and the petitioner, within 90 days after the  
26 date on which the petition was filed.

27 (b) The visitor shall, as part of the evaluation report, explain  
28 alternatives to guardianship and recommend any which will safeguard the  
29 respondent's essential requirements for physical health and safety.

1 The evaluation report may recommend personal guardianship only if the  
2 visitor determines that the needs of the respondent cannot be met by  
3 other alternatives.

4 (c) The evaluation report shall include

5 (1) the results and analyses of medical and other tests and  
6 examinations performed which describe the respondent's mental, emo-  
7 tional, physical, and educational condition, adaptive behavior and  
8 social skills, and which specify the data on which the description is  
9 based;

10 (2) recommendations regarding the types and extent of assis-  
11 tance, if any, necessary to meet the essential requirements for the  
12 physical health and safety of the respondent;

13 (3) an evaluation of the respondent's need for mental health  
14 treatment and whether there is a substantial probability that available  
15 treatment will significantly improve his mental condition;

16 (4) an evaluation of the respondent's need for educational  
17 or vocational assistance or personal care and whether these can be made  
18 available to the respondent;

19 (5) an evaluation of the probability that the incapacity may  
20 significantly lessen, and the type of services or treatment which will  
21 facilitate improvement in the respondent's condition or skills;

22 (6) a list of the names and addresses of all individuals who  
23 examined, interviewed, or investigated the respondent and of the names  
24 and addresses of all persons contacted in preparation of the report;

25 (7) a summary of the information which

26 (A) was supplied by the persons described in (6) of  
27 this subsection; and

28 (B) supports the conclusions of the report;

29 (8) a description of the alternatives to guardianship which

1 were considered and not recommended and an explanation of why they are  
2 not feasible to meet the respondent's needs;

3 (9) a description of the present home and living arrangement  
4 of the respondent and of any other proposed placement and a recommenda-  
5 tion for the respondent's living arrangement that provides the least  
6 restrictive setting necessary to protect the respondent from serious  
7 illness, injury, or disease; and

8 (10) a specification of the financial resources of the  
9 respondent, his entitlements to insurance benefits, and publicly oper-  
10 ated or sponsored health, mental health, and welfare assistance which  
11 might be employed in the provision of services to him.

12 (d) If personal guardianship is recommended, the evaluation  
13 report required under (c) of this section shall include a guardianship  
14 outline which identifies

15 (1) potential guardians;

16 (2) the specific services necessary and available to protect  
17 the respondent from serious injury, illness, or disease and, to the  
18 extent possible, to return the respondent to full capacity in handling  
19 his own affairs;

20 (3) the means by which the services described in (2) of this  
21 subsection may be financed;

22 (4) the specific, least restrictive authority needed by the  
23 guardian to provide the services described in (2) of this subsection.

24 (e) The petitioner and the respondent may file responses to the  
25 evaluation report within 10 days of receiving it. The court may grant  
26 additional time if requested for cause.

27 Sec. 13.26.109. EVALUATIONS: RIGHT TO REMAIN SILENT; RESPON-  
28 DENT'S ATTORNEY OR EXPERT. (a) A ward or respondent has the right to  
29 refuse to respond to questions in the course of examinations and eval-

1 uations. However, he may be required to submit to interviews for the  
 2 purpose of ascertaining whether he lacks the capacity to make informed  
 3 decisions about care and treatment services.

4 (b) Statements of a ward or respondent in the course of evalua-  
 5 tions, examinations, and treatment under AS 13.26.090 - 13.26.155 are  
 6 privileged, confidential, and not admissible without the ward's or  
 7 respondent's consent in any civil or criminal proceeding other than  
 8 proceedings under AS 13.26.090 - 13.26.155. A ward or respondent at  
 9 all times has the right to refuse to answer questions if the answers  
 10 may tend to incriminate him.

11 (c) During any interview or testing conducted under AS 13.26.-  
 12 090 - 13.26.155, a ward or respondent has the right to be accompanied  
 13 by an attorney or expert of his own choosing.

14 (d) The court, if requested by a ward or respondent in prepara-  
 15 tion for and in connection with a hearing held under AS 13.26.090 -  
 16 13.26.155, shall appoint an expert having expertise in regard to the  
 17 alleged or admitted incapacity to examine the respondent and testify on  
 18 his behalf. The request shall be filed in court at least five days  
 19 before the hearing. An expert appointed under this subsection may be  
 20 the same expert appointed under AS 13.26.106(c).

21 Sec. 13.26.111. DUTIES AND POWERS OF RESPONDENT'S ATTORNEY. (a)  
 22 The principal duty of an attorney representing a ward or respondent is  
 23 to represent the ward or respondent zealously. Zealous representation  
 24 includes at least

25 (1) personal interviews with the ward or respondent; unless  
 26 good cause exists, the first contact with the ward or respondent shall  
 27 be at least two weeks before the hearing;

28 (2) explaining, if possible, to the ward or respondent in  
 29 terms which the ward or respondent can understand, the nature and

1 possible consequences of the proceeding, the alternatives which are  
2 available, and the rights to which he is entitled;

3 (3) securing and presenting evidence and testimony and  
4 offering arguments which would tend to protect the ward's or respon-  
5 dent's rights and which would tend to further his interests.

6 (b) To the maximum extent possible, the ward or respondent shall  
7 remain responsible for determining his interests. However, his attor-  
8 ney may seek appointment of a guardian ad litem if the circumstances of  
9 AS 13.26.112 apply.

10 Sec. 13.26.112. APPOINTMENT OF A GUARDIAN AD LITEM. (a) Upon  
11 the request of a ward, a respondent, or the attorney of a ward or  
12 respondent, the court shall appoint a guardian ad litem to protect the  
13 rights of the ward or respondent in proceedings under AS 13.26.090 -  
14 13.26.155 if the court is satisfied that because of impaired ability  
15 effectively to receive and evaluate information regarding the proceed-  
16 ings or because of impaired ability to communicate decisions regarding  
17 the proceedings, the ward or respondent cannot determine his own inter-  
18 ests without assistance, and

19 (1) a guardian has not been appointed;  
20 (2) his interests and those of his guardian conflict; or  
21 (3) the appointment is otherwise in the interests of  
22 justice.

23 (b) The guardian ad litem shall assist the ward or respondent in  
24 determining his interests in regard to the legal proceedings in which  
25 he is involved. If the ward or respondent is entirely incapable of  
26 determining his own interests, the guardian ad litem shall make that  
27 determination and advise the court and counsel for all parties accord-  
28 ingly. The guardian ad litem shall

29 (1) inquire thoroughly into all the circumstances that a

1 prudent individual in the position of the ward or respondent would  
2 consider in determining his own interests in the proceedings; and

3 (2) encourage the ward or respondent to participate, to the  
4 maximum extent of his capability, in all decisions and to act on his  
5 own behalf on all matters in which he is able.

6 (c) The attorney may also be the guardian ad litem for the ward  
7 or respondent if there is no other party readily available and able to  
8 serve as a guardian ad litem and whose interests would not conflict  
9 with those of the ward or respondent.

10 Sec. 13.26.113. HEARING. (a) At the hearing scheduled under  
11 AS 13.26.106, the respondent has the right to

12 (1) present evidence on his own behalf;

13 (2) cross-examine witnesses who testify against him;

14 (3) remain silent;

15 (4) have the hearing open or closed to the public as he  
16 elects;

17 (5) be present unless the court determines that his conduct  
18 in the courtroom is so disruptive that the proceedings cannot reason-  
19 ably continue with him present;

20 (6) be tried by jury on the issue of incapacity.

21 (b) The burden of proof by clear and convincing evidence is upon  
22 the petitioner, and a determination of incapacity shall be made before  
23 consideration of proper disposition.

24 (c) If the respondent is found to be incapacitated, the court  
25 shall determine the extent of the incapacity and the feasibility of  
26 alternatives to guardianship to meet the needs of the respondent.

27 (d) If it is found that alternatives to guardianship are feasible  
28 and adequate to meet the needs of the respondent, the court may dismiss  
29 the action and order an alternative form of protection.

1 (e) If it is found that the respondent is able to perform some,  
2 but not all, of the functions necessary to care for himself, and al-  
3 ternatives to guardianship are not feasible or adequate to provide for  
4 the needs of the respondent, the court may appoint a partial guardian,  
5 but may not appoint a full guardian.

6 (f) If it is found that the respondent is totally without capa-  
7 city to care for himself and that a combination of alternatives to  
8 guardianship and the appointment of a partial guardian is not feasible  
9 or adequate to meet the needs of the respondent, the court may appoint  
10 a full guardian.

11 (g) If it is necessary to appoint a guardian, the court shall  
12 consider the ward's preference.

13 (h) At the time a guardian is appointed, the court shall make a  
14 reasonable effort to acquaint the ward with his right to request, at a  
15 later time, his guardian's dismissal or a modification of the guardian-  
16 ship order. The court shall provide a written statement to the ward,  
17 explaining his rights and specifying the procedures to be followed in  
18 petitioning the court.

19 Sec. 13.26.114. PSYCHOTROPIC MEDICATION INFLUENCING WARDS OR  
20 RESPONDENTS AT JUDICIAL HEARINGS. (a) A ward or respondent has a  
21 right to participate to the maximum extent possible in all judicial  
22 proceedings concerning him and to be free from the influence of psycho-  
23 tropic medication during the proceedings.

24 (b) It is the responsibility of the attorney for the ward or  
25 respondent to determine if the ward or respondent is being treated with  
26 psychotropic medication the effects of which would continue during the  
27 judicial proceedings and, if so, to inform the court in writing a  
28 reasonable time before the hearing.

29 (c) The court, upon receipt of the information provided under (b)

1 of this section, shall require a medical examination of the ward or  
2 respondent, if the court determines that the medical examination is  
3 necessary, and shall determine the advisability of continuation or  
4 suspension of the treatment for the duration of the judicial proceed-  
5 ings. The court may make any appropriate order it considers necessary.  
6 The court in making its determination shall balance the interest of  
7 maximum participation of the ward or respondent in the hearings against  
8 the medical and rehabilitative needs of the ward or respondent.

9 (d) If the ward or respondent is under the influence of psycho-  
10 tropic medication during the judicial proceeding determining capacity,  
11 the trier of fact shall take that fact into consideration in making its  
12 determination.

13 Sec. 13.26.116. GUARDIANSHIP ORDER. (a) If the court or jury  
14 determines that a person is incapacitated and the services of a guard-  
15 ian are necessary, the court shall enter an order which

16 (1) names the guardian and establishes a guardian-ward rela-  
17 tionship;

18 (2) includes findings of fact which support each grant of  
19 authority to the guardian;

20 (3) adopts a guardianship plan.

21 (b) The guardianship plan shall specify the authority which the  
22 guardian has with regard to

23 (1) medical care for the ward's physical condition;

24 (2) mental health treatment which the guardian considers to  
25 be in the ward's best interests;

26 (3) housing for the ward with consideration of the follow-  
27 ing:

28 (A) the wishes of the ward;

29 (B) the preferability of allowing the ward to retain

1 local community ties; and

2 (C) the requirement for services to be provided in the  
3 least restrictive setting;

4 (4) personal care, educational and vocational services  
5 necessary for the physical and mental welfare of the ward and to return  
6 the ward to full capacity;

7 (5) application for health and accident insurance and any  
8 other private or governmental benefits to which the ward may be  
9 entitled to meet any part of the costs of medical, mental health, or  
10 related services provided to the ward;

11 (6) physical and mental examinations necessary to determine  
12 the ward's medical and mental health treatment needs; and

13 (7) control of the estate and income of the ward to pay for  
14 the cost of services which the guardian is authorized to obtain on  
15 behalf of the ward.

16 (c) The guardianship plan may not be more restrictive of the  
17 liberty of the ward than is reasonably necessary to protect the ward  
18 from serious physical injury, illness or disease and to provide him  
19 with medical care and mental health treatment for his physical and  
20 mental health. The guardianship plan shall be designed to encourage a  
21 ward to participate in all decisions which affect him and to act on his  
22 own behalf to the maximum extent possible. The court may not assign a  
23 duty or power to a guardian unless the need for it has been proven to  
24 the satisfaction of the court and no less restrictive alternative or  
25 combination of alternatives is sufficient to satisfy the need.

26 (d) The duration of the term of guardianship shall be determined  
27 by the court order. Upon receipt of a report or other information that  
28 requires further consideration, the court may order a review hearing if  
29 it determines that the hearing is in the best interests of the ward.

1           Sec. 13.26.117. GUARDIANSHIP IMPLEMENTATION REPORT. Within 90  
2 days after appointment as guardian, the guardian shall submit to the  
3 court a report. The report shall describe the guardian's program for  
4 implementing the guardianship plan. The primary goal of the program  
5 described in the report shall be, to the maximum extent possible, to  
6 develop or regain the ward's abilities to handle his own affairs. The  
7 report shall consider housing, medical care, and educational and voca-  
8 tional needs and resources. In developing the report, the guardian  
9 shall consult with his ward to the maximum extent possible. The office  
10 of public guardian shall contact the guardian to offer assistance in  
11 preparing the report. The report shall specify the services which are  
12 necessary to meet the essential requirements for the ward's physical  
13 health or safety and the means for obtaining the services. The report  
14 shall specify the manner in which the guardian will exercise and share  
15 decision-making authority and other items which will assist in fulfill-  
16 ing the needs of the ward, the terms of the guardianship order, and the  
17 duties of the guardian.

18           Sec. 13.26.118. REPORTING. (a) A guardian shall submit a report  
19 to the court or request that a visitor be appointed to prepare and  
20 submit a report at least annually. A court-appointed visitor shall  
21 prepare the report at least once in each three-year period. The guard-  
22 ian shall submit an additional report to the court when

23                   (1) the court orders it;

24                   (2) there is a significant change in the capacity of the  
25 ward to meet the essential requirements for his health and safety or to  
26 protect his rights;

27                   (3) the guardian resigns or is removed;

28                   (4) the guardianship is terminated; or

29                   (5) the ward requests it.