

LEGISLATIVE FINANCE - HOUSE / SENATE FINANCE COMM. FILES 8879

HB 195 cont., HB 203 487 78

ALASKA COURT SYSTEM
FISCAL ANALYSIS

HB 195 - Divorce and Dissolution

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
<u>Personal Services</u>			
Custody Investigator, Range 18A, Anchorage, PFT - 12 months	\$37,548	\$12,900	<u>\$50,448</u>
<u>Travel</u>			
Custody investigator travel-			
Monthly service to Fairbanks, Kenai and Kodiak. Quarterly service to Ketchikan, Sitka, Wrangell, & Petersburg			10,000
Forms Committee meeting- (one time cost)			
Cost of Dissolution Forms Committee meeting in Anchorage for two days with one and one-half days of in-transit time.			<u>2,900</u>
Total Travel			<u>12,900</u>
<u>Equipment: (one time cost)</u>			
Desk, chair, filing cabinet, and typewriter for new employee			<u>2,574</u>
Total First Year Cost			<u>\$65,922</u>

ALASKA COURT SYSTEM
FISCAL ANALYSIS

Summary of FY 89 Filings - Dissolution of Marriage

<u>Court</u>	<u>Number of Filings</u>	<u>Estimated # of Cases Involving Children (1)</u>	<u>Estimated # of Cases Requiring Custody Investigation (2)</u>
Anchorage	1,445	968	97
Fairbanks	475	318	32
Palmer	187	125	13
Kenai	150	101	10
Kodiak	61	41	4
Juneau	173	116	12
Ketchikan	125	84	8
Sitka	51	34	3
Wrangell/ Petersburg	21	14	1
Others	<u>68</u>	<u>46</u>	<u>5</u>
Total	<u><u>2,756</u></u>	<u><u>1,847</u></u>	<u><u>185</u></u>

(1) Two-thirds of dissolution cases are estimated to involve children.

(2) Ten percent of dissolution cases involving children are estimated to require custody investigations.

Although the estimated increase in dissolutions that will require custody investigations is principally centered in Anchorage and Fairbanks, each of the other superior courts is expected to be impacted as well. To meet these needs on a statewide basis, one new custody investigator will be hired in Anchorage to provide services to Anchorage, Fairbanks and other communities on an as needed basis.

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SENATE FINANCE COMMITTEE REPORT

DATE: 3/30/90

FURTHER:

DATE TURNED INTO OFFICE: 4/20/90

The Finance Committee considered

CSHB 195 (Fin) am

Divorce, dissolution and annulment, amending Rule 84(a), AK Rules of Civil Procedure.

and recommended:

- replace with § CS HB 195 (Fin)
- or adopt _____ CS _____
- attached amendment(s)
- _____ letter of intent adopted

- same title
- new title
- technical title change (HB only)

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

ATTACHES NEW FISCAL NOTE(S):

fiscal note(s) Court 1/31/90
65.9

zero fiscal note(s) _____

appropriation-no fiscal note

APPROVES PREVIOUS:

fiscal note(s) _____ Dept/Date: _____

zero fiscal note(s) _____

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

[Handwritten signatures]

[Handwritten signature: No Rec]

1.

2.

Co-Chairs: Signatures and Recommendations

FISCAL NOTE

REQUEST:

Revision Date	1/31/90	Agency Affected:	Alaska Court System
Title:	An act related to divorce and dissolution	BRU:	Trial Courts
Sponsor:	Rules/Governor	Components:	
Requestor:	Senate Judiciary		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services		50.4	60.4	50.4	50.4	60.4
Travel		12.9	10.0	10.0	10.0	10.0
Contractual						
Supplies						
Equipment		2.6				
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	65.9	60.4	60.4	60.4	60.4

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

General Funds	0.0	65.9	60.4	60.4	60.4	60.4
Federal Funds						
Other						
TOTAL	0.0	65.9	60.4	60.4	60.4	60.4

POSITIONS:

Full-time		1.0	1.0	1.0	1.0	1.0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 284-8228
 Date: 01/31/90
 Date: 01/31/90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)

Changes in SCS CSHB 195 (Fin)
 have no fiscal impact.
 This fiscal note is
 appropriate. 4/30/90 vvw

Adopted

ALASKA COURT SYSTEM
FISCAL ANALYSIS

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Lauterbach
4/20/90

4/21/90
SF
Adopted

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 195 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to divorce, dissolution, and annul-
7 ment; and amending Rule 84(a), Alaska Rules of Civil
8 Procedure."

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

10 * Section 1. INTENT. By amending AS 25.24.160(a)(2) and (4) in this
11 Act and by referring to those paragraphs in other sections of AS 25.24 in
12 this Act, it is the legislature's intent to codify the principal factors to
13 be weighed by a court in making an equitable division of property or an
14 award of maintenance in a divorce or dissolution proceeding. Except for
15 AS 25.24.160(a)(4)(F), the factors codified are intended to restate the
16 principal factors found in case law, not to change them, affect the inter-
17 pretation given to them, or preclude changes or additions to them by other
18 court rulings.

19 * Sec. 2. AS 25.20.090 is amended to read:

*shared
custody*

20 Sec. 25.20.090. ~~AS~~ FACTORS FOR CONSIDERATION IN AWARDING SHARED
21 CHILD CUSTODY. In determining whether to award shared custody of a
22 child the court shall consider

- 23 (1) the child's preference if the child is of sufficient
- 24 age and capacity to form a preference;
- 25 (2) the needs of the child;
- 26 (3) the stability of the home environment likely to be
- 27 offered by each parent;
- 28 (4) the education of the child;
- 29 (5) the advantages of keeping the child in the community

1 where the child presently resides;

2 (6) the optimal time for the child to spend with each
3 parent considering

4 (A) the actual time spent with each parent;

5 (B) the proximity of each parent to the other and to
6 the school in which the child is enrolled;

7 (C) the feasibility of travel between the parents;

8 (D) special needs unique to the child that may be
9 better met by one parent than the other;

10 (E) which parent is more likely to encourage frequent
11 and continuing contact with the other parent;

12 (7) any findings and recommendations of a neutral mediator;

13 (8) any evidence of domestic violence, child abuse, or
14 child neglect in the proposed custodial household or a history of
15 violence between the parents;

16 (9) evidence that substance abuse by either parent or other
17 members of the household directly affects the emotional or physical
18 well-being of the child;

19 (10) the past history of the parents with respect to their
20 compliance with the child support payment provisions of temporary or
21 permanent support orders or agreements;

22 (11) other factors the court considers pertinent.

23 * Sec. 3. AS 25.20.110 is amended by adding a new subsection to read:

Modifications

24 (b) When making a determination under (a) of this section, the
25 court shall consider the past history of the parents with respect to
26 their compliance with the child support payment provisions of tempo-
27 rary or permanent support orders or agreements.

28 * Sec. 4. AS 25.20 is amended by adding a new section to read:

29 Sec. 25.20.115. ATTORNEY FEE AWARDS IN CUSTODY AND VISITATION

1 MATTERS. In an action to modify, vacate, or enforce that part of an
2 order providing for custody of a child or visitation with a child, the
3 court may, upon request of a party, award attorney fees and costs of
4 the action. In awarding attorney fees and costs under this section,
5 the court shall consider the relative financial resources of the
6 parties and whether the parties have acted in good faith.

7 * Sec. 5. AS 25.24.100 is amended to read:

8 Sec. 25.24.100. RESIDENCY OF MILITARY PERSONNEL. A person
9 serving in a military branch of the United States government who has
10 been continuously stationed at [IN] a military base or installation in
11 the state for at least 30 days is considered [A PERIOD OF ONE YEAR
12 SHALL BE DREMED] a resident [IN GOOD FAITH] of the state for the
13 purposes of this chapter [AS 25.24.010 - 25.24.180].

14 * Sec. 6. AS 25.24.140 is repealed and reenacted to read:

15 Sec. 25.24.140. ORDERS DURING ACTION. (a) During the pendency
16 of the action, a spouse may, upon application and in appropriate
17 circumstances, be awarded expenses, including

18 (1) attorney fees and costs that reasonably approximate the
19 actual fees and costs required to prosecute or defend the action; in
20 applying this paragraph, the court shall take appropriate steps to
21 ensure that the award of attorney fees does not contribute to an
22 unnecessary escalation in the litigation;

23 (2) reasonable spousal maintenance, including medical
24 expenses; and

25 (3) reasonable support for minor children in the care of
26 the spouse, if there is a legal obligation of the other spouse to
27 provide support.

28 (b) During the pendency of the action, upon application, a
29 spouse is entitled to necessary protective orders, including orders

1 (1) providing for the freedom of each spouse from the
2 control of the other spouse;

3 (2) restraining each spouse from subjecting the other
4 spouse or another person living in the household to domestic violence,
5 as defined in AS 25.35.060;

6 (3) directing one spouse to vacate the marital residence or
7 the home of the other spouse;

8 (4) restraining a spouse from communicating directly or
9 indirectly with the other spouse;

10 (5) restraining a spouse from entering a propelled vehicle
11 in the possession of or occupied by the other spouse; and

12 (6) prohibiting a spouse from disposing of the property of
13 either spouse or marital property without the permission of the other
14 spouse or a court order.

15 (c) After a hearing, if both parties agree, the court may also
16 order that the parties engage in personal or family counseling or
17 mediation. In the order, the court shall provide for the payment of
18 the costs of the counseling or mediation.

19 * Sec. 7. AS 25.24.150(c) is amended to read:

*Sole
custody*

20 (c) The court shall determine custody in accordance with the
21 best interests of the child under AS 25.20.060 - 25.20.130. In de-
22 termining the best interests of the child the court shall consider

23 (1) the physical, emotional, mental, religious, and social
24 needs of the child;

25 (2) the capability and desire of each parent to meet these
26 needs;

27 (3) the child's preference if the child is of sufficient
28 age and capacity to form a preference;

29 (4) the love and affection existing between the child and

1 each parent;

2 (5) the length of time the child has lived in a stable,
3 satisfactory environment and the desirability of maintaining continu-
4 ity;

5 (6) the desire and ability of each parent to allow an open
6 and loving frequent relationship between the child and the other
7 parent;

8 (7) any evidence of domestic violence, child abuse, or
9 child neglect in the proposed custodial household or a history of
10 violence between the parents;

11 (8) evidence that substance abuse by either parent or other
12 members of the household directly affects the emotional or physical
13 well-being of the child;

14 (9) the past history of the parents with respect to their
15 compliance with the child support payment provisions of temporary or
16 permanent support orders or agreements;

17 (10) other factors that the court considers pertinent.

18 * Sec. 8. AS 25.24.160(a) is amended to read:

19 (a) In a judgment in an action for divorce or action declaring a
20 marriage void or at any time after judgment, the court may provide

21 (1) for the payment by either or both parties of an amount
22 of money or goods, in gross or installments that may include cost-
23 of-living adjustments, as may be just and proper for the parties to
24 contribute toward the nurture and education of their children, and the
25 court may order the parties to arrange with their employers for an
26 automatic payroll deduction each month or each pay period, if the
27 period is other than monthly, of the amount of the installment; if the
28 employer agrees, the installment shall be forwarded by the employer to
29 the clerk of the superior court that [WHICH] entered the judgment or

1 to the court trustee, and the amount of the installment is exempt from
2 execution;

3 (2) for the recovery by one party from the other of an
4 amount of money for maintenance, for a limited or indefinite period of
5 time, in gross or in installments, as may be just and necessary with-
6 out regard to which of the parties is in fault; an award of mainte-
7 nance must fairly allocate the economic effect of divorce by being
8 based on a consideration of the following factors:

9 (A) the length of the marriage and station in life of
10 the parties during the marriage;

11 (B) the age and health of the parties;

12 (C) the earning capacity of the parties, including
13 their educational backgrounds, training, employment skills, work
14 experiences, length of absence from the job market, and custodial
15 responsibilities for children during the marriage;

16 (D) the financial condition of the parties, including
17 the availability and cost of health insurance;

18 (E) the conduct of the parties, including whether
19 there has been unreasonable depletion of marital assets;

20 (F) the division of property under (4) of this sub-
21 section; and

22 (G) other factors the court determines to be relevant
23 in each individual case;

24 (3) for the delivery to either party of that party's per-
25 sonal property in the possession or control of the other party at the
26 time of giving the judgment;

27 (4) for the division between the parties of their property,
28 including retirement benefits, whether joint or separate, acquired
29 only during marriage [COVERTURE], in a just [THE] manner [AS MAY BE

1 JUST,] and without regard to which of the parties is in fault; howev-
2 er, the court, in making the division, may invade the property, in-
3 cluding retirement benefits, of either spouse acquired before marriage
4 when the balancing of the equities between the parties requires it;
5 and to accomplish this end the judgment may require that one or both
6 of the parties assign, deliver, or convey any of their real or person-
7 al property, including retirement benefits, to the other party; the
8 division of property must fairly allocate the economic effect of
9 divorce by being based on consideration of the following factors:

10 (A) the length of the marriage and station in life of
11 the parties during the marriage;

12 (B) the age and health of the parties;

13 (C) the earning capacity of the parties, including
14 their educational backgrounds, training, employment skills, work
15 experiences, length of absence from the job market, and custodial
16 responsibilities for children during the marriage;

17 (D) the financial condition of the parties, including
18 the availability and cost of health insurance;

19 (E) the conduct of the parties, including whether
20 there has been unreasonable depletion of marital assets;

21 (F) the desirability of awarding the family home, or
22 the right to live in it for a reasonable period of time, to the
23 party who has primar physical custody of children;

24 (G) the circumstances and necessities of each party;

25 (H) the time and manner of acquisition of the property
26 in question; and

27 (I) the income-producing capacity of the property and
28 the value of the property at the time of division

29 [(5) TO CHANGE THE NAME OF ONE OF THE PARTIES].

1 * Sec. 9. AS 25.24 is amended by adding a new section to read:

2 Sec. 25.24.165. CHANGE OF NAME IN DIVORCE OR ANNULMENT. (a) In
3 a judgment in an action for divorce or action declaring a marriage
4 void, the court may change the name of either of the parties.

5 (b) If a party seeks a change of name to a name other than a
6 prior name, the court shall set a date for hearing not less than 40
7 days after filing of the action. Notice of the application for a
8 change of name to a name other than a prior name and the date of the
9 hearing shall be published once each week for four consecutive calen-
10 dar weeks before the hearing in a newspaper of general circulation in
11 the judicial district. The court may also require posting of the
12 notice at locations it considers appropriate. The court shall by
13 judgment authorize the party to assume the new name not less than 30
14 days after issuance of the judgment, if the court is satisfied that no
15 reasonable objection exists to assumption of the new name. Within 10
16 days after issuance of the judgment the party shall publish notice of
17 the approval of the name change in a newspaper of general circulation
18 in the judicial district. The court may also require the posting of a
19 copy of the judgment.

20 * Sec. 10. AS 25.24.200 is amended to read:

21 Sec. 25.24.200. DISSOLUTION OF MARRIAGE. (a) A husband and
22 wife together may petition the superior court for the dissolution of
23 their marriage under AS 25.24.200 - 25.24.260 if the following con-
24 ditions exist at the time of filing the petition:

25 (1) incompatibility of temperament has caused the irremedi-
26 able breakdown of the marriage;

27 (2) if there are minor children of the marriage or the wife
28 is pregnant, and the spouses have agreed on which spouse or third
29 party is to [SHALL] be awarded custody of each minor child of the

1 marriage and the extent of visitation, including visitation by grand-
2 parents and other persons if in the child's best interests, and sup-
3 port to be provided on the children's behalf, whether the payments are
4 to be made through the child support enforcement agency and the tax
5 consequences of that agreement;

6 (3) the spouses have agreed as to the distribution of all
7 jointly owned real and personal property, including retirement bene-
8 fits, and the payment of spousal maintenance [SUPPORT], if any, and
9 the tax consequences resulting from these payments; the agreement must
10 be fair and just and take into consideration the factors listed in
11 AS 25.24.160(a)(2) and (4) so that the economic effect of dissolution
12 is fairly allocated; and

13 (4) the spouses have agreed as to the payment of all unpaid
14 obligations incurred by either or both of them, and as to payment of
15 obligations incurred jointly in the future.

16 (b) A husband or wife may separately petition for dissolution of
17 their marriage under AS 25.24.200 - 25.24.260 if the following con-
18 ditions exist at the time of filing the petition:

19 (1) incompatibility of temperament, as evidenced by extend-
20 ed absence or otherwise, has caused the irremediable breakdown of the
21 marriage;

22 (2) the petitioning spouse has been unable to ascertain the
23 other spouse's position in regard to the dissolution of their marriage
24 and in regard to the fair and just division of property, including
25 retirement benefits, spousal maintenance, payment of debts, and cus-
26 tody, support and visitation because the whereabouts of the other
27 spouse is unknown to the petitioning spouse after reasonable efforts
28 have been made to locate the absent spouse; and

29 (3) the other spouse cannot be personally served with

1 process inside or outside the state.

2 (c) Except as provided in AS 25.24.220(i). [NOTHING IN THIS
3 SECTION PROHIBITS] a spouse who has been personally served with a copy
4 of a petition filed [MADE] under (a) of this section may execute [FROM
5 EXECUTING] an appearance, waiver of time to answer, and waiver of
6 notice of hearing. The appearance and waivers must [SHALL] include an
7 acknowledgment signed before an officer authorized to administer an
8 oath or affirmation that the spouse being served has read the peti-
9 tion; assents to the terms relating to custody of the children, child
10 support, visitation, spousal maintenance taking into consideration the
11 factors listed in AS 25.24.160(a)(2). [SUPPORT] and [RESULTANT] tax
12 consequences, division of property, including retirement benefits and
13 taking into consideration the factors listed in AS 25.24.160(a)(4),
14 and allocation of debts; agrees that the conditions otherwise required
15 by (a) of this section exist; agrees that the petition constitutes the
16 entire agreement between the parties; understands fully the nature and
17 consequences of the action; and is not signing the appearance and
18 waivers under duress or coercion.

19 (d) The action created under this section is separate from the
20 action created by AS 25.24.010. The procedures prescribed by AS 25.-
21 24.200 - 25.24.260 do not apply to an action brought under AS 25.24.-
22 010, nor do procedures prescribed under AS 25.24.010 - 25.24.180 apply
23 to an action filed [BROUGHT] under this section, except as specifical-
24 ly provided.

25 * Sec. 11. AS 25.24.200 is amended by adding a new subsection to read:

26 (e) Spousal maintenance and a division of property must fairly
27 allocate the economic effect of dissolution and take into consid-
28 eration the factors listed in AS 25.24.160(a)(2) and (4).

29 * Sec. 12. AS 25.24.210(d) is amended to read:

1 (d) The petition shall request that the marriage be dissolved
2 and that the [PRIOR] name of a spouse be changed [RESTORED], if de-
3 sired by that spouse.

4 * Sec. 13. AS 25.24.210(e) is repealed and reenacted to read:

5 (e) If the petition is filed by both spouses under AS 25.24.-
6 200(a), the petition must state in detail the terms of the agreement
7 between the spouses concerning the custody of children, child support,
8 visitation, spousal maintenance and tax consequences, if any, and fair
9 and just division of property, including retirement benefits. Agree-
10 ments on spousal maintenance and property division must fairly allo-
11 cate the economic effect of dissolution and take into consideration
12 the factors listed in AS 25.24.160(a)(2) and (4). In addition, the
13 petition must state

- 14 (1) the respective occupations of the petitioners;
- 15 (2) the income, assets, and liabilities of the respective
16 petitioners at the time of filing the petition;
- 17 (3) the date and place of the marriage;
- 18 (4) the name, date of birth, and current custodial status
19 of each minor child born of the marriage or adopted by the petition-
20 ers;
- 21 (5) whether the wife is pregnant;
- 22 (6) whether either petitioner requires medical care or
23 treatment;
- 24 (7) whether a domestic violence complaint has been filed
25 during the marriage by a member of the household;
- 26 (8) whether either petitioner has received the advice of
27 legal counsel regarding a divorce or dissolution;
- 28 (9) other facts and circumstances that the petitioners
29 believe should be considered;

1 (10) that the petition constitutes the entire agreement
2 between the petitioners; and

3 (11) any other relief sought by the petitioners.

4 * Sec. 14. AS 25.24.220(b) is repealed and reenacted to read:

5 (b) Except as provided in (i) of this section, if the petition
6 is filed by both spouses under AS 25.24.200(a), both spouses shall
7 attend the hearing personally and not through counsel. However, if
8 the petition is not subject to (i) of this section, a spouse who
9 complies with AS 25.24.200(c) is not required to attend the hearing.
10 Either spouse may have counsel at the hearing.

11 * Sec. 15. AS 25.24.220(c) is amended to read:

12 (c) If the petition is filed [BROUGHT] by one spouse under
13 AS 25.24.200(b), that spouse shall submit proof of diligent inquiry as
14 to the whereabouts of the absent spouse and provide notice by publica-
15 tion, posting, or other means as ordered by the court under [IN ACCOR-
16 DANCE WITH] the Alaska Rules of Civil Procedure.

17 * Sec. 16. AS 25.24.220(d) is amended to read:

18 (d) If the petition is filed [BROUGHT] by both spouses under
19 AS 25.24.200(a), the court shall examine the petitioners or petitioner
20 present and consider whether

21 (1) the spouses fully understand the nature and conse-
22 quences of their action;

23 (2) the written agreements between the spouses concerning
24 child custody, child support, and visitation are [FAIR,] just [, AND
25 EQUITABLE] as between the spouses and in the best interests of the
26 children of the marriage;

27 (3) the written agreements between the spouses relating to
28 the division of property, including retirement benefits, spousal
29 maintenance [SPOUSAL SUPPORT], and the allocation of obligations are

1 [FAIR,] just; the spousal maintenance and division of property must
2 fairly allocate the economic effect of dissolution and take into
3 consideration the factors listed in AS 25.24.160(a)(2) and (4); [, AND
4 EQUITABLE; AND]

5 (4) the written agreements constitute the entire agreement
6 between the parties; and

7 (5) the conditions in AS 25.24.200(a) have been met.

8 * Sec. 17. AS 25.24.220(e) is amended to read:

9 (e) If the petition is filed [BROUGHT] by one spouse under
10 AS 25.24.200(b), the court shall examine the petitioner and consider
11 whether the petitioner fully understands the nature and consequences
12 of the action and whether the conditions in AS 25.24.200(b) have been
13 met.

14 * Sec. 18. AS 25.24.220(g) is amended to read:

15 (g) The court may amend the written agreements between the
16 spouses relating to child custody, child support, visitation, [SPOUSAL
17 SUPPORT,] division of the property, including retirement benefits,
18 spousal maintenance, and allocation of obligations, but only if both
19 petitioners concur in the amendment in writing or on the record.

20 * Sec. 19. AS 25.24.220 is amended by adding new subsections to read:

21 (h) In its examination of a petitioner under (d) of this sec-
22 tion, the court shall use a heightened level of scrutiny of agreements
23 if

24 (1) one party is represented by counsel and the other is
25 not;

26 (2) a domestic violence complaint has been filed during the
27 marriage by a member of the family or there is evidence of domestic
28 violence during the marriage;

29 (3) there is a minor child of the marriage; or

1 (4) there is a patently inequitable division of the marital
2 estate.

3 (i) If the court finds that a higher level of scrutiny is re-
4 quired by (h) of this section, the court shall examine the written
5 agreements between the spouses to determine that they are just, that
6 they constitute the entire agreement between the parties, and that the
7 agreements concerning child custody, child support, and visitation are
8 in the best interest of the children of the marriage, if any. The
9 court shall require the presence of both spouses at a hearing for this
10 purpose unless the court finds on the record that it would constitute
11 a significant hardship on one of the spouses to appear and that a just
12 agreement has been reached. If one of the spouses cannot attend the
13 hearing because it would constitute a significant hardship, the court
14 may require that spouse to be available by telephone to answer ques-
15 tions, at that spouse's expense.

16 * Sec. 20. AS 25.24.230 is repealed and reenacted to read:

17 Sec. 25.24.230. JUDGMENT. (a) If the petition is filed under
18 AS 25.24.200(a), and is not subject to AS 25.24.220(h), the court may
19 grant the spouses a final decree of dissolution and shall order other
20 relief as provided in this section if the court, upon consideration of
21 the information contained in the petition and the testimony of the
22 spouse or spouses at the hearing, finds that

23 (1) the spouses understand fully the nature and conse-
24 quences of their action;

25 (2) the written agreements between the spouses concerning
26 spousal maintenance and tax consequences, if any, division of proper-
27 ty, including retirement benefits, and allocation of obligations are
28 fair and just and constitute the entire agreement between the parties;

29 (3) the spousal maintenance and division of property fairly

1 allocate the economic effect of dissolution and take into considera-
2 tion the factors listed in AS 25.24.160(a)(2) and (4);

3 (4) each spouse entered into the agreement voluntarily and
4 free from the coercion of another person; and

5 (5) the conditions in AS 25.24.200(a) have been met.

6 (b) If the petition is filed under AS 25.24.200(a) and is sub-
7 ject to AS 25.24.220(h), the court may grant the spouses a final
8 decree of dissolution and shall order other relief as provided in this
9 section if the court, upon consideration of the information contained
10 in the petition and the testimony of the spouse or spouses at the
11 hearing, finds that

12 (1) the spouses understand fully the nature and conse-
13 quences of their action;

14 (2) the written agreements between the spouses concerning
15 child custody, child support, and visitation are in the best interest
16 of the children of the marriage, constitute the entire agreement of
17 the parties on child custody, child support, and visitation, and, as
18 between the spouses, are just;

19 (3) the written agreements between the spouses concerning
20 spousal maintenance and tax consequences, if any, division of proper-
21 ty, including retirement benefits, and allocation of obligations are
22 just and constitute the entire agreement between the parties;

23 (4) the spousal maintenance and division of property fairly
24 allocate the economic effect of dissolution and take into considera-
25 tion the factors listed in AS 25.24.160(a)(2) and (4);

26 (5) each spouse entered the agreement voluntarily and free
27 from the coercion of another person; and

28 (6) the conditions in AS 25.24.200(a) have been met.

29 (c) If the petition is filed by one spouse under

1 AS 25.24.200(b), the court may grant the spouse a final decree of
2 dissolution and change the petitioner's name, if so requested, if the
3 court, upon consideration of affidavits supplied by the spouse and the
4 testimony of the spouse at the hearing, finds that

5 (1) the spouse present at the hearing understands fully the
6 nature and consequences of the action;

7 (2) the conditions in AS 25.24.200(b) have been met; and

8 (3) the requirements of AS 25.24.165(b) have been sat-
9 isfied, if a change of name is requested.

10 (d) The court shall dismiss a petition or continue action on a
11 petition filed under AS 25.24.200 - 25.24.260 before findings are made
12 if

13 (1) a representative of the minor children objects to a
14 term of an agreement between the spouses;

15 (2) either of the spouses withdraws from an agreement
16 required under AS 25.24.200(a); or

17 (3) the petition alleges that the conditions in AS 25.24.-
18 200(b) exist, but the whereabouts of the absent spouse becomes known
19 to the other spouse or the court before findings are made.

20 (e) The court shall deny the relief sought in a petition filed
21 under AS 25.24.200 - 25.24.260 if the court does not make the findings
22 required under (a) - (c) of this section.

23 (f) If the petition is filed by both spouses under AS 25.24.-
24 200(a), the court shall change either spouse's name, if the spouse
25 seeking a change of name to a name other than a prior name complies
26 with AS 25.24.165(b), and shall fully and specifically set out in the
27 decree the written agreements of the spouses and shall order the
28 performance of those written agreements. The court shall also state,
29 in the decree, whether child support payments are to be made through

1 the child support enforcement agency. If the petition is filed by one
2 spouse under AS 25.24.200(b), the decree must state that it does not
3 bar future action on the issues not resolved in the decree.

4 (g) Notwithstanding other provisions of AS 25.24.200 - 25.24.-
5 260, the court may not award to one spouse real or personal property
6 acquired by the other spouse before the date of the marriage, unless
7 the spouses expressly agree otherwise or the court determines that the
8 property should be made available, by sale or other conveyance, to
9 ensure that the best interests of the children are provided for. If
10 the court determines that the best interests of the children require
11 an award of premarital property, but the spouses do not agree, the
12 court shall dismiss or continue the action.

13 (h) If a judgment under this section distributes benefits to an
14 alternate payee under AS 14.25, AS 22.25, AS 26.05.222 - 26.05.226, or
15 AS 35.35, the judgment must meet the requirements of a qualified
16 domestic relations order under the definition of that phrase that is
17 applicable to those provisions.

18 * Sec. 21. AS 25.24.250 is amended by adding a new subsection to read:

19 (c) Forms or instructions prepared under (a) of this section
20 must specify that the dissolution petition constitutes the entire
21 agreement between the parties and must provide examples of kinds of
22 property and obligations that are subject to distribution.

23 * Sec. 22. AS 25.24.165, as added by sec. 9 of this Act, AS 25.24.-
24 210(d) as amended by sec. 12 of this Act, and AS 25.24.230(c) and 25.24.-
25 230(f) as amended by sec. 20 of this Act, have the effect of amending Rule
26 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name
27 other than a prior name to be commenced in a complaint for divorce or
28 annulment or a petition for dissolution of marriage.

AMENDMENT

BY FRANK

TO SCS HB 195 (FIN)

25.20

Page 1 line 19:

Add a new ^{sub-}section 2 (b)

"When making a determination under this section in a case involving shared custody the court shall consider the history of child support payments under temporary or permanent support orders or agreements."

Renumber following sections accordingly.

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 195 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to divorce, dissolution, and annul-
7 ment, and amending Rule 84(a), Alaska Rules of Civil
8 Procedure."

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

10 * Section 1. INTENT. By amending AS 25.24.160(a)(2) and (4) in this
11 Act and by referring to those paragraphs in other sections of AS 25.24 in
12 this Act, it is the legislature's intent to codify the principal factors to
13 be weighed by a court in making an equitable division of property or an
14 award of maintenance in a divorce or dissolution proceeding. Except for
15 AS 25.24.160(a)(4)(F), the factors codified are intended to restate the
16 principal factors found in case law, not to change them, affect the inter-
17 pretation given to them, or preclude changes or additions to them by other
18 court rulings.

19 * Sec. 2. AS 25.20.110 is amended by adding a new subsection to read:

20 (b) When making a determination under (a) of this section in a
21 case involving shared custody, the court shall consider the history of
22 child support payments made under temporary or permanent support
23 orders or agreements.

24 * Sec. 3. AS 25.20 is amended by adding a new section to read:

25 Sec. 25.20.115. ATTORNEY FEE AWARDS IN CUSTODY AND VISITATION
26 MATTERS. In an action to modify, vacate, or enforce that part of an
27 order providing for custody of a child or visitation with a child, the
28 court may, upon request of a party, award attorney fees and costs of
29 the action. In awarding attorney fees and costs under this section,

1 the court shall consider the relative financial resources of the
2 parties and whether the parties have acted in good faith.

3 * Sec. 4. AS 25.24.100 is amended to read:

4 Sec. 25.24.100. RESIDENCY OF MILITARY PERSONNEL. A person
5 4serving in a military branch of the United States government who has
6 been continuously stationed at [IN] a military base or installation in
7 the state for at least 30 days is considered [A PERIOD OF ONE YEAR
8 SHALL BE DEEMED] a resident [IN GOOD FAITH] of the state for the
9 purposes of this chapter [AS 25.24.010 - 25.24.180].

10 * Sec. 5. AS 25.24.140 is repealed and reenacted to read:

11 Sec. 25.24.140. ORDERS DURING ACTION. (a) During the pendency
12 of the action, a spouse may, upon application and in appropriate
13 circumstances, be awarded expenses, including

14 (1) attorney fees and costs that reasonably approximate the
15 actual fees and costs required to prosecute or defend the action; in
16 applying this paragraph, the court shall take appropriate steps to
17 ensure that the award of attorney fees does not contribute to an
18 unnecessary escalation in the litigation;

19 (2) reasonable spousal maintenance, including medical
20 expenses; and

21 (3) reasonable support for minor children in the care of
22 the spouse, if there is a legal obligation of the other spouse to
23 provide support.

24 (b) During the pendency of the action, upon application, a
25 spouse is entitled to necessary protective orders, including orders

26 (1) providing for the freedom of each spouse from the
27 control of the other spouse;

28 (2) restraining each spouse from subjecting the other
29 spouse or another person living in the household to domestic violence,

1 as defined in AS 25.35.060;

2 (3) directing one spouse to vacate the marital residence or
3 the home of the other spouse;

4 (4) restraining a spouse from communicating directly or
5 indirectly with the other spouse;

6 (5) restraining a spouse from entering a propelled vehicle
7 in the possession of or occupied by the other spouse; and

8 (6) prohibiting a spouse from disposing of the property of
9 either spouse or marital property without the permission of the other
10 spouse or a court order.

11 (c) After a hearing, if both parties agree, the court may also
12 order that the parties engage in personal or family counseling or
13 mediation. In the order, the court shall provide for the payment of
14 the costs of the counseling or mediation.

15 * Sec. 6. AS 25.24.160(a) is amended to read:

16 (a) In a judgment in an action for divorce or action declaring a
17 marriage void or at any time after judgment, the court may provide

18 (1) for the payment by either or both parties of an amount
19 of money or goods, in gross or installments that may include cost-
20 of-living adjustments, as may be just and proper for the parties to
21 contribute toward the nurture and education of their children, and the
22 court may order the parties to arrange with their employers for an
23 automatic payroll deduction each month or each pay period, if the
24 period is other than monthly, of the amount of the installment; if the
25 employer agrees, the installment shall be forwarded by the employer to
26 the clerk of the superior court that [WHICH] entered the judgment or
27 to the court trustee, and the amount of the installment is exempt from
28 execution;

29 (2) for the recovery by one party from the other of an

1 amount of money for maintenance, for a limited or indefinite period of
2 time, in gross or in installments, as may be just and necessary with-
3 out regard to which of the parties is in fault; an award of mainte-
4 nance must fairly allocate the economic effect of divorce by being
5 based on a consideration of the following factors:

6 (A) the length of the marriage and station in life of
7 the parties during the marriage;

8 (B) the age and health of the parties;

9 (C) the earning capacity of the parties, including
10 their educational backgrounds, training, employment skills, work
11 experiences, length of absence from the job market, and custodial
12 responsibilities for children during the marriage;

13 (D) the financial condition of the parties, including
14 the availability and cost of health insurance;

15 (E) the conduct of the parties, including whether
16 there has been unreasonable depletion of marital assets;

17 (F) the division of property under (4) of this sub-
18 section; and

19 (G) other factors the court determines to be relevant
20 in each individual case;

21 (3) for the delivery to either party of that party's per-
22 sonal property in the possession or control of the other party at the
23 time of giving the judgment;

24 (4) for the division between the parties of their property,
25 including retirement benefits, whether joint or separate, acquired
26 only during marriage [COVERTURE], in a just [THE] manner [AS MAY BE
27 JUST,] and without regard to which of the parties is in fault; howev-
28 er, the court, in making the division, may invade the property, in-
29 cluding retirement benefits, of either spouse acquired before marriage

1 when the balancing of the equities between the parties requires it;
2 and to accomplish this end the judgment may require that one or both
3 of the parties assign, deliver, or convey any of their real or person-
4 al property, including retirement benefits, to the other party; the
5 division of property must fairly allocate the economic effect of
6 divorce by being based on consideration of the following factors:

7 (A) the length of the marriage and station in life of
8 the parties during the marriage;

9 (B) the age and health of the parties;

10 (C) the earning capacity of the parties, including
11 their educational backgrounds, training, employment skills, work
12 experiences, length of absence from the job market, and custodial
13 responsibilities for children during the marriage;

14 (D) the financial condition of the parties, including
15 the availability and cost of health insurance;

16 (E) the conduct of the parties, including whether
17 there has been unreasonable depletion of marital assets;

18 (F) the desirability of awarding the family home, or
19 the right to live in it for a reasonable period of time, to the
20 party who has primary physical custody of children;

21 (G) the circumstances and necessities of each party;

22 (H) the time and manner of acquisition of the property
23 in question; and

24 (I) the income-producing capacity of the property and
25 the value of the property at the time of division

26 [(5) TO CHANGE THE NAME OF ONE OF THE PARTIES].

27 * Sec. 7. AS 25.24 is amended by adding a new section to read:

28 Sec. 25.24.165. CHANGE OF NAME IN DIVORCE OR ANNULMENT. (a) In
29 a judgment in an action for divorce or action declaring a marriage

1 void, the court may change the name of either of the parties.

2 (b) If a party seeks a change of name to a name other than a
3 prior name, the court shall set a date for hearing not less than 40
4 days after filing of the action. Notice of the application for a
5 change of name to a name other than a prior name and the date of the
6 hearing shall be published once each week for four consecutive calen-
7 dar weeks before the hearing in a newspaper of general circulation in
8 the judicial district. The court may also require posting of the
9 notice at locations it considers appropriate. The court shall by
10 judgment authorize the party to assume the new name not less than 30
11 days after issuance of the judgment, if the court is satisfied that no
12 reasonable objection exists to assumption of the new name. Within 10
13 days after issuance of the judgment the party shall publish notice of
14 the approval of the name change in a newspaper of general circulation
15 in the judicial district. The court may also require the posting of a
16 copy of the judgment.

17 * Sec. 8. AS 25.24.200 is amended to read:

18 Sec. 25.24.200. DISSOLUTION OF MARRIAGE. (a) A husband and
19 wife together may petition the superior court for the dissolution of
20 their marriage under AS 25.24.200 - 25.24.260 if the following con-
21 ditions exist at the time of filing the petition:

22 (1) incompatibility of temperament has caused the irremedi-
23 able breakdown of the marriage;

24 (2) if there are minor children of the marriage or the wife
25 is pregnant, and the spouses have agreed on which spouse or third
26 party is to [SHALL] be awarded custody of each minor child of the
27 marriage and the extent of visitation, including visitation by grand-
28 parents and other persons if in the child's best interests, and sup-
29 port to be provided on the children's behalf, whether the payments are

1 to be made through the child support enforcement agency and the tax
2 consequences of that agreement;

3 (3) the spouses have agreed as to the distribution of all
4 jointly owned real and personal property, including retirement bene-
5 fits, and the payment of spousal maintenance [SUPPORT], if any, and
6 the tax consequences resulting from these payments; the agreement must
7 be fair and just and take into consideration the factors listed in
8 AS 25.24.160(a)(2) and (4) so that the economic effect of dissolution
9 is fairly allocated; and

10 (4) the spouses have agreed as to the payment of all unpaid
11 obligations incurred by either or both of them, and as to payment of
12 obligations incurred jointly in the future.

13 (b) A husband or wife may separately petition for dissolution of
14 their marriage under AS 25.24.200 - 25.24.260 if the following con-
15 ditions exist at the time of filing the petition:

16 (1) incompatibility of temperament, as evidenced by extend-
17 ed absence or otherwise, has caused the irremediable breakdown of the
18 marriage;

19 (2) the petitioning spouse has been unable to ascertain the
20 other spouse's position in regard to the dissolution of their marriage
21 and in regard to the fair and just division of property, including
22 retirement benefits, spousal maintenance, payment of debts, and cus-
23 tody, support and visitation because the whereabouts of the other
24 spouse is unknown to the petitioning spouse after reasonable efforts
25 have been made to locate the absent spouse; and

26 (3) the other spouse cannot be personally served with
27 process inside or outside the state.

28 (c) Except as provided in AS 25.24.220(i), [NOTHING IN THIS
29 SECTION PROHIBITS] a spouse who has been personally served with a copy
30

1 of a petition filed [MADE] under (a) of this section may execute [FROM
2 EXECUTING] an appearance, waiver of time to answer, and waiver of
3 notice of hearing. The appearance and waivers must [SHALL] include an
4 acknowledgment signed before an officer authorized to administer an
5 oath or affirmation that the spouse being served has read the peti-
6 tion; assents to the terms relating to custody of the children, child
7 support, visitation, spousal maintenance taking into consideration the
8 factors listed in AS 25.24.160(a)(2), [SUPPORT] and [RESULTANT] tax
9 consequences, division of property, including retirement benefits and
10 taking into consideration the factors listed in AS 25.24.160(a)(4),
11 and allocation of debts; agrees that the conditions otherwise required
12 by (a) of this section exist; agrees that the petition constitutes the
13 entire agreement between the parties; understands fully the nature and
14 consequences of the action; and is not signing the appearance and
15 waivers under duress or coercion.

16 (d) The action created under this section is separate from the
17 action created by AS 25.24.010. The procedures prescribed by AS 25.-
18 24.200 - 25.24.260 do not apply to an action brought under AS 25.24.-
19 010, nor do procedures prescribed under AS 25.24.010 - 25.24.180 apply
20 to an action filed [BROUGHT] under this section, except as specifical-
21 ly provided.

22 * Sec. 9. AS 25.24.200 is amended by adding a new subsection to read:

23 (e) Spousal maintenance and a division of property must fairly
24 allocate the economic effect of dissolution and take into consid-
25 eration the factors listed in AS 25.24.160(a)(2) and (4).

26 * Sec. 10. AS 25.24.210(d) is amended to read:

27 (d) The petition shall request that the marriage be dissolved
28 and that the [PRIOR] name of a spouse be changed [RESTORED], if de-
29 sired by that spouse.

1 * Sec. 11. AS 25.24.210(e) is repealed and reenacted to read:

2 (e) If the petition is filed by both spouses under AS 25.24.-
3 200(a), the petition must state in detail the terms of the agreement
4 between the spouses concerning the custody of children, child support,
5 visitation, spousal maintenance and tax consequences, if any, and fair
6 and just division of property, including retirement benefits. Agree-
7 ments on spousal maintenance and property division must fairly allo-
8 cate the economic effect of dissolution and take into consideration
9 the factors listed in AS 25.24.160(a)(2) and (4). In addition, the
10 petition must state

11 (1) the respective occupations of the petitioners;

12 (2) the income, assets, and liabilities of the respective
13 petitioners at the time of filing the petition;

14 (3) the date and place of the marriage;

15 (4) the name, date of birth, and current custodial status
16 of each minor child born of the marriage or adopted by the petition-
17 ers;

18 (5) whether the wife is pregnant;

19 (6) whether either petitioner requires medical care or
20 treatment;

21 (7) whether a domestic violence complaint has been filed
22 during the marriage by a member of the household;

23 (8) whether either petitioner has received the advice of
24 legal counsel regarding a divorce or dissolution;

25 (9) other facts and circumstances that the petitioners
26 believe should be considered;

27 (10) that the petition constitutes the entire agreement
28 between the petitioners; and

29 (11) any other relief sought by the petitioners.

1 * Sec. 12. AS 25.24.220(b) is repealed and reenacted to read:

2 (b) Except as provided in (i) of this section, if the petition
3 is filed by both spouses under AS 25.24.200(a), both spouses shall
4 attend the hearing personally and not through counsel. However, if
5 the petition is not subject to (i) of this section, a spouse who
6 complies with AS 25.24.200(c) is not required to attend the hearing.
7 Either spouse may have counsel at the hearing.

8 * Sec. 13. AS 25.24.220(c) is amended to read:

9 (c) If the petition is filed [BROUGHT] by one spouse under
10 AS 25.24.200(b), that spouse shall submit proof of diligent inquiry as
11 to the whereabouts of the absent spouse and provide notice by publica-
12 tion, posting, or other means as ordered by the court under [IN ACCOR-
13 DANCE WITH] the Alaska Rules of Civil Procedure.

14 * Sec. 14. AS 25.24.220(d) is amended to read:

15 (d) If the petition is filed [BROUGHT] by both spouses under
16 AS 25.24.200(a), the court shall examine the petitioners or petitioner
17 present and consider whether

18 (1) the spouses fully understand the nature and conse-
19 quences of their action;

20 (2) the written agreements between the spouses concerning
21 child custody, child support, and visitation are [FAIR,] just [, AND
22 EQUITABLE] as between the spouses and in the best interests of the
23 children of the marriage;

24 (3) the written agreements between the spouses relating to
25 the division of property, including retirement benefits, spousal
26 maintenance [SPOUSAL SUPPORT], and the allocation of obligations are
27 [FAIR,] just; the spousal maintenance and division of property must
28 fairly allocate the economic effect of dissolution and take into
29 consideration the factors listed in AS 25.24.160(a)(2) and (4); [, AND

1 EQUITABLE; AND]

2 (4) the written agreements constitute the entire agreement
3 between the parties; and

4 (5) the conditions in AS 25.24.200(a) have been met.

5 * Sec. 15. AS 25.24.220(e) is amended to read:

6 (e) If the petition is filed [BROUGHT] by one spouse under
7 AS 25.24.200(b), the court shall examine the petitioner and consider
8 whether the petitioner fully understands the nature and consequences
9 of the action and whether the conditions in AS 25.24.200(b) have been
10 met.

11 * Sec. 16. AS 25.24.220(g) is amended to read:

12 (g) The court may amend the written agreements between the
13 spouses relating to child custody, child support, visitation, [SPOUSAL
14 SUPPORT,] division of the property, including retirement benefits,
15 spousal maintenance, and allocation of obligations, but only if both
16 petitioners concur in the amendment in writing or on the record.

17 * Sec. 17. AS 25.24.220 is amended by adding new subsections to read:

18 (h) In its examination of a petitioner under (d) of this sec-
19 tion, the court shall use a heightened level of scrutiny of agreements
20 if

21 (1) one party is represented by counsel and the other is
22 not;

23 (2) a domestic violence complaint has been filed during the
24 marriage by a member of the family or there is evidence of domestic
25 violence during the marriage;

26 (3) there is a minor child of the marriage; or

27 (4) there is a patently inequitable division of the marital
28 estate.

29 (i) If the court finds that a higher level of scrutiny is

1 required by (h) of this section, the court shall examine the written
2 agreements between the spouses to determine that they are just, that
3 they constitute the entire agreement between the parties, and that the
4 agreements concerning child custody, child support, and visitation are
5 in the best interest of the children of the marriage, if any. The
6 court shall require the presence of both spouses at a hearing for this
7 purpose unless the court finds on the record that it would constitute
8 a significant hardship on one of the spouses to appear and that a just
9 agreement has been reached. If one of the spouses cannot attend the
10 hearing because it would constitute a significant hardship, the court
11 may require that spouse to be available by telephone to answer ques-
12 tions, at that spouse's expense.

13 * Sec. 18. AS 25.24.230 is repealed and reenacted to read:

14 Sec. 25.24.230. JUDGMENT. (a) If the petition is filed under
15 AS 25.24.200(a), and is not subject to AS 25.24.220(h), the court may
16 grant the spouses a final decree of dissolution and shall order other
17 relief as provided in this section if the court, upon consideration of
18 the information contained in the petition and the testimony of the
19 spouse or spouses at the hearing, finds that

20 (1) the spouses understand fully the nature and conse-
21 quences of their action;

22 (2) the written agreements between the spouses concerning
23 spousal maintenance and tax consequences, if any, division of proper-
24 ty, including retirement benefits, and allocation of obligations are
25 fair and just and constitute the entire agreement between the parties;

26 (3) the spousal maintenance and division of property fairly
27 allocate the economic effect of dissolution and take into considera-
28 tion the factors listed in AS 25.24.160(a)(2) and (4);

29 (4) each spouse entered into the agreement voluntarily and

1 free from the coercion of another person; and

2 (5) the conditions in AS 25.24.200(a) have been met.

3 (b) If the petition is filed under AS 25.24.200(a) and is sub-
4 ject to AS 25.24.220(h), the court may grant the spouses a final
5 decree of dissolution and shall order other relief as provided in this
6 section if the court, upon consideration of the information contained
7 in the petition and the testimony of the spouse or spouses at the
8 hearing, finds that

9 (1) the spouses understand fully the nature and conse-
10 quences of their action;

11 (2) the written agreements between the spouses concerning
12 child custody, child support, and visitation are in the best interest
13 of the children of the marriage, constitute the entire agreement of
14 the parties on child custody, child support, and visitation, and, as
15 between the spouses, are just;

16 (3) the written agreements between the spouses concerning
17 spousal maintenance and tax consequences, if any, division of proper-
18 ty, including retirement benefits, and allocation of obligations are
19 just and constitute the entire agreement between the parties;

20 (4) the spousal maintenance and division of property fairly
21 allocate the economic effect of dissolution and take into considera-
22 tion the factors listed in AS 25.24.160(a)(2) and (4);

23 (5) each spouse entered the agreement voluntarily and free
24 from the coercion of another person; and

25 (6) the conditions in AS 25.24.200(a) have been met.

26 (c) If the petition is filed by one spouse under AS 25.24.-
27 200(b), the court may grant the spouse a final decree of dissolution
28 and change the petitioner's name, if so requested, if the court, upon
29 consideration of affidavits supplied by the spouse and the testimony

1 of the spouse at the hearing, finds that

2 (1) the spouse present at the hearing understands fully the
3 nature and consequences of the action;

4 (2) the conditions in AS 25.24.200(b) have been met; and

5 (3) the requirements of AS 25.24.165(b) have been sat-
6 isfied, if a change of name is requested.

7 (d) The court shall dismiss a petition or continue action on a
8 petition filed under AS 25.24.200 - 25.24.260 before findings are made
9 if

10 (1) a representative of the minor children objects to a
11 term of an agreement between the spouses;

12 (2) either of the spouses withdraws from an agreement
13 required under AS 25.24.200(a); or

14 (3) the petition alleges that the conditions in AS 25.24.-
15 200(b) exist, but the whereabouts of the absent spouse becomes known
16 to the other spouse or the court before findings are made.

17 (e) The court shall deny the relief sought in a petition filed
18 under AS 25.24.200 - 25.24.260 if the court does not make the findings
19 required under (a) - (c) of this section.

20 (f) If the petition is filed by both spouses under AS 25.24.-
21 200(a), the court shall change either spouse's name, if the spouse
22 seeking a change of name to a name other than a prior name complies
23 with AS 25.24.165(b), and shall fully and specifically set out in the
24 decree the written agreements of the spouses and shall order the
25 performance of those written agreements. The court shall also state,
26 in the decree, whether child support payments are to be made through
27 the child support enforcement agency. If the petition is filed by one
28 spouse under AS 25.24.200(b), the decree must state that it does not
29 bar future action on the issues not resolved in the decree.

1 (g) Notwithstanding other provisions of AS 25.24.200 - 25.24.-
2 260, the court may not award to one spouse real or personal property
3 acquired by the other spouse before the date of the marriage, unless
4 the spouses expressly agree otherwise or the court determines that the
5 property should be made available, by sale or other conveyance, to
6 ensure that the best interests of the children are provided for. If
7 the court determines that the best interests of the children require
8 an award of premarital property, but the spouses do not agree, the
9 court shall dismiss or continue the action.

10 (h) If a judgment under this section distributes benefits to an
11 alternate payee under AS 14.25, AS 22.25, AS 26.05.222 - 26.05.226, or
12 AS 39.35, the judgment must meet the requirements of a qualified
13 domestic relations order under the definition of that phrase that is
14 applicable to those provisions.

15 * Sec. 19. AS 25.24.250 is amended by adding a new subsection to read:

16 (c) Forms or instructions prepared under (a) of this section
17 must specify that the dissolution petition constitutes the entire
18 agreement between the parties and must provide examples of kinds of
19 property and obligations that are subject to distribution.

20 * Sec. 20. AS 25.24.165, as added by sec. 7 of this Act, AS 25.24.-
21 210(d) as amended by sec. 10 of this Act, and AS 25.24.230(c) and 25.24.-
22 230(f) as amended by sec. 18 of this Act, have the effect of amending Rule
23 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name
24 other than a prior name to be commenced in a complaint for divorce or
25 annulment or a petition for dissolution of marriage.

(Binkley)

go0949hP
Lauterbach
4/19/90



Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 195 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to divorce, dissolution, and annul-
7 ment; and amending Rule 84(a), Alaska Rules of Civil
8 Procedure."

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

10 * Section 1. INTENT. By amending AS 25.24.160(a)(2) and (4) in this
11 Act and by referring to those paragraphs in other sections of AS 25.24 in
12 this Act, it is the legislature's intent to codify the principal factors to
13 be weighed by a court in making an equitable division of property or an
14 award of maintenance in a divorce or dissolution proceeding. Except for
15 AS 25.24.160(a)(4)(F), the factors codified are intended to restate the
16 principal factors found in case law, not to change them, affect the
17 interpretation given to them, or preclude changes or additions to them by
18 other court rulings.

19 * Sec. 2. AS 25.20 is amended by adding a new section to read:

20 Sec. 25.20.115. ATTORNEY FEE AWARDS IN CUSTODY AND VISITATION
21 MATTERS. In an action to modify, vacate, or enforce that part of an
22 order providing for custody of a child or visitation with a child, the
23 court may, upon request of a party, award attorney fees and costs of
24 the action. In awarding attorney fees and costs under this section,
25 the court shall consider the relative financial resources of the
26 parties and whether the parties have acted in good faith.

27 * Sec. 3. AS 25.24.100 is amended to read:

28 Sec. 25.24.100. RESIDENCY OF MILITARY PERSONNEL. A person
29 4serving in a military branch of the United States government who has

1 been continuously stationed at [IN] a military base or installation in
2 the state for at least 30 days is considered [A PERIOD OF ONE YEAR
3 SHALL BE DEEMED] a resident [IN GOOD FAITH] of the state for the
4 purposes of this chapter [AS 25.24.010 - 25.24.180].

5 * Sec. 4. AS 25.24.140 is repealed and reenacted to read:

6 Sec. 25.24.140. ORDERS DURING ACTION. (a) During the pendency
7 of the action, a spouse may, upon application and in appropriate
8 circumstances, be awarded expenses, including

9 (1) attorney fees and costs that reasonably approximate the
10 actual fees and costs required to prosecute or defend the action; in
11 applying this paragraph, the court shall take appropriate steps to
12 ensure that the award of attorney fees does not contribute to an
13 unnecessary escalation in the litigation;

14 (2) reasonable spousal maintenance, including medical
15 expenses; and

16 (3) reasonable support for minor children in the care of
17 the spouse, if there is a legal obligation of the other spouse to
18 provide support.

19 (b) During the pendency of the action, upon application, a
20 spouse is entitled to necessary protective orders, including orders

21 (1) providing for the freedom of each spouse from the
22 control of the other spouse;

23 (2) restraining each spouse from subjecting the other
24 spouse or another person living in the household to domestic violence,
25 as defined in AS 25.35.060;

26 (3) directing one spouse to vacate the marital residence or
27 the home of the other spouse;

28 (4) restraining a spouse from communicating directly or
29 indirectly with the other spouse;

1 (5) restraining a spouse from entering a propelled vehicle
2 in the possession of or occupied by the other spouse; and

3 (6) prohibiting a spouse from disposing of the property of
4 either spouse or marital property without the permission of the other
5 spouse or a court order.

6 (c) After a hearing, if both parties agree, the court may also
7 order that the parties engage in personal or family counseling or
8 mediation. In the order, the court shall provide for the payment of
9 the costs of the counseling or mediation.

10 * Sec. 5. AS 25.24.160(a) is amended to read:

11 (a) In a judgment in an action for divorce or action declaring a
12 marriage void or at any time after judgment, the court may provide

13 (1) for the payment by either or both parties of an amount
14 of money or goods, in gross or installments that may include cost-
15 of-living adjustments, as may be just and proper for the parties to
16 contribute toward the nurture and education of their children, and the
17 court may order the parties to arrange with their employers for an
18 automatic payroll deduction each month or each pay period, if the
19 period is other than monthly, of the amount of the installment; if the
20 employer agrees, the installment shall be forwarded by the employer to
21 the clerk of the superior court that [WHICH] entered the judgment or
22 to the court trustee, and the amount of the installment is exempt from
23 execution;

24 (2) for the recovery by one party from the other of an
25 amount of money for maintenance, for a limited or indefinite period of
26 time, in gross or in installments, as may be just and necessary with-
27 out regard to which of the parties is in fault; an award of mainte-
28 nance must fairly allocate the economic effect of divorce by being
29 based on a consideration of the following factors:

1 (A) the length of the marriage and station in life of
2 the parties during the marriage;

3 (B) the age and health of the parties;

4 (C) the earning capacity of the parties, including
5 their educational backgrounds, training, employment skills, work
6 experiences, length of absence from the job market, and custodial
7 responsibilities for children during the marriage;

8 (D) the financial condition of the parties, including
9 the availability and cost of health insurance;

10 (E) the conduct of the parties, including whether
11 there has been unreasonable depletion of marital assets;

12 (F) the division of property under (4) of this sub-
13 section; and

14 (G) other factors the court determines to be relevant
15 in each individual case;

16 (3) for the delivery to either party of that party's per-
17 sonal property in the possession or control of the other party at the
18 time of giving the judgment;

19 (4) for the division between the parties of their property,
20 including retirement benefits, whether joint or separate, acquired
21 only during marriage [COVERTURE], in a just [THE] manner [AS MAY BE
22 JUST,] and without regard to which of the parties is in fault; howev-
23 er, the court, in making the division, may invade the property, in-
24 cluding retirement benefits, of either spouse acquired before marriage
25 when the balancing of the equities between the parties requires it;
26 and to accomplish this end the judgment may require that one or both
27 of the parties assign, deliver, or convey any of their real or person-
28 al property, including retirement benefits, to the other party; the
29 division of property must fairly allocate the economic effect of

1 divorce by being based on consideration of the following factors:

2 (A) the length of the marriage and station in life of
3 the parties during the marriage;

4 (B) the age and health of the parties;

5 (C) the earning capacity of the parties, including
6 their educational backgrounds, training, employment skills, work
7 experiences, length of absence from the job market, and custodial
8 responsibilities for children during the marriage;

9 (D) the financial condition of the parties, including
10 the availability and cost of health insurance;

11 (E) the conduct of the parties, including whether
12 there has been unreasonable depletion of marital assets;

13 (F) the desirability of awarding the family home, or
14 the right to live in it for a reasonable period of time, to the
15 party who has primary physical custody of children;

16 (G) the circumstances and necessities of each party;

17 (H) the time and manner of acquisition of the property
18 in question; and

19 (I) the income-producing capacity of the property and
20 the value of the property at the time of division

21 [(5) TO CHANGE THE NAME OF ONE OF THE PARTIES].

22 * Sec. 6. AS 25.24 is amended by adding a new section to read:

23 Sec. 25.24.165. CHANGE OF NAME IN DIVORCE OR ANNULMENT. (a) In
24 a judgment in an action for divorce or action declaring a marriage
25 void, the court may change the name of either of the parties.

26 (b) If a party seeks a change of name to a name other than a
27 prior name, the court shall set a date for hearing not less than 40
28 days after filing of the action. Notice of the application for a
29 change of name to a name other than a prior name and the date of the

1 hearing shall be published once each week for four consecutive calen-
2 dar weeks before the hearing in a newspaper of general circulation in
3 the judicial district. The court may also require posting of the
4 notice at locations it considers appropriate. The court shall by
5 judgment authorize the party to assume the new name not less than 30
6 days after issuance of the judgment, if the court is satisfied that no
7 reasonable objection exists to assumption of the new name. Within 10
8 days after issuance of the judgment the party shall publish notice of
9 the approval of the name change in a newspaper of general circulation
10 in the judicial district. The court may also require the posting of a
11 copy of the judgment.

12 * Sec. 7. AS 25.24.200 is amended to read:

13 Sec. 25.24.200. DISSOLUTION OF MARRIAGE. (a) A husband and
14 wife together may petition the superior court for the dissolution of
15 their marriage under AS 25.24.200 - 25.24.260 if the following con-
16 ditions exist at the time of filing the petition:

17 (1) incompatibility of temperament has caused the irremedi-
18 able breakdown of the marriage;

19 (2) if there are minor children of the marriage or the wife
20 is pregnant, and the spouses have agreed on which spouse or third
21 party is to [SHALL] be awarded custody of each minor child of the
22 marriage and the extent of visitation, including visitation by grand-
23 parents and other persons if in the child's best interests, and
24 support to be provided on the children's behalf, whether the payments
25 are to be made through the child support enforcement agency and the
26 tax consequences of that agreement;

27 (3) the spouses have agreed as to the distribution of all
28 jointly owned real and personal property, including retirement
29 benefits, and the payment of spousal maintenance [SUPPORT], if any;

1 and the tax consequences resulting from these payments; the agreement
2 must be fair and just and take into consideration the factors listed
3 in AS 25.24.160(a)(2) and (4) so that the economic effect of disso-
4 lution is fairly allocated; and

5 (4) the spouses have agreed as to the payment of all unpaid
6 obligations incurred by either or both of them, and as to payment of
7 obligations incurred jointly in the future.

8 (b) A husband or wife may separately petition for dissolution of
9 their marriage under AS 25.24.200 - 25.24.260 if the following con-
10 ditions exist at the time of filing the petition:

11 (1) incompatibility of temperament, as evidenced by extend-
12 ed absence or otherwise, has caused the irremediable breakdown of the
13 marriage;

14 (2) the petitioning spouse has been unable to ascertain the
15 other spouse's position in regard to the dissolution of their marriage
16 and in regard to the fair and just division of property, including
17 retirement benefits, spousal maintenance, payment of debts, and cus-
18 tody, support and visitation because the whereabouts of the other
19 spouse is unknown to the petitioning spouse after reasonable efforts
20 have been made to locate the absent spouse; and

21 (3) the other spouse cannot be personally served with
22 process inside or outside the state.

23 (c) Except as provided in AS 25.24.220(i). [NOTHING IN THIS
24 SECTION PROHIBITS] a spouse who has been personally served with a copy
25 of a petition filed [MADE] under (a) of this section may execute [FROM
26 EXECUTING] an appearance, waiver of time to answer, and waiver of
27 notice of hearing. The appearance and waivers must [SHALL] include an
28 acknowledgment signed before an officer authorized to administer an
29 oath or affirmation that the spouse being served has read the peti-

1 tion; assents to the terms relating to custody of the children, child
2 support, visitation, spousal maintenance taking into consideration the
3 factors listed in AS 25.24.160(a)(2), [SUPPORT] and [RESULTANT] tax
4 consequences, division of property, including retirement benefits and
5 taking into consideration the factors listed in AS 25.24.160(a)(4),
6 and allocation of debts; agrees that the conditions otherwise required
7 by (a) of this section exist; agrees that the petition constitutes the
8 entire agreement between the parties; understands fully the nature and
9 consequences of the action; and is not signing the appearance and
10 waivers under duress or coercion.

11 (d) The action created under this section is separate from the
12 action created by AS 25.24.010. The procedures prescribed by AS 25.-
13 24.200 - 25.24.260 do not apply to an action brought under AS 25.24.-
14 010, nor do procedures prescribed under AS 25.24.010 - 25.24.180 apply
15 to an action filed [BROUGHT] under this section, except as specificall-
16 ly provided.

17 * Sec. 8. AS 25.24.200 is amended by adding a new subsection to read:

18 (e) Spousal maintenance and a division of property must fairly
19 allocate the economic effect of dissolution and take into consid-
20 eration the factors listed in AS 25.24.160(a)(2) and (4).

21 * Sec. 9. AS 25.24.210(d) is amended to read:

22 (d) The petition shall request that the marriage be dissolved
23 and that the [PRIOR] name of a spouse be changed [RESTORED], if de-
24 sired by that spouse.

25 * Sec. 10. AS 25.24.210(e) is repealed and reenacted to read:

26 (e) If the petition is filed by both spouses under AS 25.24.-
27 200(a), the petition must state in detail the terms of the agreement
28 between the spouses concerning the custody of children, child support,
29 visitation, spousal maintenance and tax consequences, if any, and fair

1 and just division of property, including retirement benefits. Agree-
2 ments on spousal maintenance and property division must fairly allc-
3 cate the economic effect of dissolution and take into consideration
4 the factors listed in AS 25.24.160(a)(2) and (4). In addition, the
5 petition must state

6 (1) the respective occupations of the petitioners;

7 (2) the income, assets, and liabilities of the respective
8 petitioners at the time of filing the petition;

9 (3) the date and place of the marriage;

10 (4) the name, date of birth, and current custodial status
11 of each minor child born of the marriage or adopted by the petition-
12 ers;

13 (5) whether the wife is pregnant;

14 (6) whether either petitioner requires medical care or
15 treatment;

16 (7) whether a domestic violence complaint has been filed
17 during the marriage by a member of the household;

18 (8) whether either petitioner has received the advice of
19 legal counsel regarding a divorce or dissolution;

20 (9) other facts and circumstances that the petitioners
21 believe should be considered;

22 (10) that the petition constitutes the entire agreement
23 between the petitioners; and

24 (11) any other relief sought by the petitioners.

25 * Sec. 11. AS 25.24.220(b) is repealed and reenacted to read:

26 (b) Except as provided in (i) of this section, if the petition
27 is filed by both spouses under AS 25.24.200(a), both spouses shall
28 attend the hearing personally and not through counsel. However, if
29 the petition is not subject to (i) of this section, a spouse who

1 complies with AS 25.24.200(c) is not required to attend the hearing.
2 Either spouse may have counsel at the hearing.

3 * Sec. 12. AS 25.24.220(c) is amended to read:

4 (c) If the petition is filed [BROUGHT] by one spouse under
5 AS 25.24.200(b), that spouse shall submit proof of diligent inquiry as
6 to the whereabouts of the absent spouse and provide notice by publica-
7 tion, posting, or other means as ordered by the court under [IN ACCOR-
8 DANCE WITH] the Alaska Rules of Civil Procedure.

9 * Sec. 13. AS 25.24.220(d) is amended to read:

10 (d) If the petition is filed [BROUGHT] by both spouses under
11 AS 25.24.200(a), the court shall examine the petitioners or petitioner
12 present and consider whether

13 (1) the spouses fully understand the nature and conse-
14 quences of their action;

15 (2) the written agreements between the spouses concerning
16 child custody, child support, and visitation are [FAIR,] just [, AND
17 EQUITABLE] as between the spouses and in the best interests of the
18 children of the marriage;

19 (3) the written agreements between the spouses relating to
20 the division of property, including retirement benefits, spousal
21 maintenance [SPOUSAL SUPPORT], and the allocation of obligations are
22 [FAIR,] just; the spousal maintenance and division of property must
23 fairly allocate the economic effect of dissolution and take into
24 consideration the factors listed in AS 25.24.160(a)(2) and (4); [, AND
25 EQUITABLE; AND]

26 (4) the written agreements constitute the entire agreement
27 between the parties; and

28 (5) the conditions in AS 25.24.200(a) have been met.

29 * Sec. 14. AS 25.24.220(e) is amended to read:

1 (e) If the petition is filed [BROUGHT] by one spouse under
2 AS 25.24.200(b), the court shall examine the petitioner and consider
3 whether the petitioner fully understands the nature and consequences
4 of the action and whether the conditions in AS 25.24.200(b) have been
5 met.

6 * Sec. 15. AS 25.24.220(g) is amended to read:

7 (g) The court may amend the written agreements between the
8 spouses relating to child custody, child support, visitation, [SPOUSAL
9 SUPPORT,] division of the property, including retirement benefits,
10 spousal maintenance, and allocation of obligations, but only if both
11 petitioners concur in the amendment in writing or on the record.

12 * Sec. 16. AS 25.24.220 is amended by adding new subsections to read:

13 (h) In its examination of a petitioner under (d) of this sec-
14 tion, the court shall use a heightened level of scrutiny of agreements
15 if

16 (1) one party is represented by counsel and the other is
17 not;

18 (2) a domestic violence complaint has been filed during the
19 marriage by a member of the family or there is evidence of domestic
20 violence during the marriage;

21 (3) there is a minor child of the marriage; or

22 (4) there is a patently inequitable division of the marital
23 estate.

24 (i) If the court finds that a higher level of scrutiny is re-
25 quired by (h) of this section, the court shall examine the written
26 agreements between the spouses to determine that they are just, that
27 they constitute the entire agreement between the parties, and that the
28 agreements concerning child custody, child support, and visitation are
29 in the best interest of the children of the marriage, if any. The

1 court shall require the presence of both spouses at a hearing for this
2 purpose unless the court finds on the record that it would constitute
3 a significant hardship on one of the spouses to appear and that a just
4 agreement has been reached. If one of the spouses cannot attend the
5 hearing because it would constitute a significant hardship, the court
6 may require that spouse to be available by telephone to answer ques-
7 tions, at that spouse's expense.

8 * Sec. 17. AS 25.24.230 is repealed and reenacted to read:

9 Sec. 25.24.230. JUDGMENT. (a) If the petition is filed under
10 AS 25.24.200(a), and is not subject to AS 25.24.220(h), the court may
11 grant the spouses a final decree of dissolution and shall order other
12 relief as provided in this section if the court, upon consideration of
13 the information contained in the petition and the testimony of the
14 spouse or spouses at the hearing, finds that

15 (1) the spouses understand fully the nature and conse-
16 quences of their action;

17 (2) the written agreements between the spouses concerning
18 spousal maintenance and tax consequences, if any, division of proper-
19 ty, including retirement benefits, and allocation of obligations are
20 fair and just and constitute the entire agreement between the parties;

21 (3) the spousal maintenance and division of property fairly
22 allocate the economic effect of dissolution and take into considera-
23 tion the factors listed in AS 25.24.160(a)(2) and (4);

24 (4) each spouse entered into the agreement voluntarily and
25 free from the coercion of another person; and

26 (5) the conditions in AS 25.24.200(a) have been met.

27 (b) If the petition is filed under AS 25.24.200(a) and is sub-
28 ject to AS 25.24.220(h), the court may grant the spouses a final
29 decree of dissolution and shall order other relief as provided in this

1 section if the court, upon consideration of the information contained
2 in the petition and the testimony of the spouse or spouses at the
3 hearing, finds that

4 (1) the spouses understand fully the nature and conse-
5 quences of their action;

6 (2) the written agreements between the spouses concerning
7 child custody, child support, and visitation are in the best interest
8 of the children of the marriage, constitute the entire agreement of
9 the parties on child custody, child support, and visitation, and, as
10 between the spouses, are just;

11 (3) the written agreements between the spouses concerning
12 spousal maintenance and tax consequences, if any, division of proper-
13 ty, including retirement benefits, and allocation of obligations are
14 just and constitute the entire agreement between the parties;

15 (4) the spousal maintenance and division of property fairly
16 allocate the economic effect of dissolution and take into considera-
17 tion the factors listed in AS 25.24.160(a)(2) and (4);

18 (5) each spouse entered the agreement voluntarily and free
19 from the coercion of another person; and

20 (6) the conditions in AS 25.24.200(a) have been met.

21 (c) If the petition is filed by one spouse under AS 25.24.-
22 200(b), the court may grant the spouse a final decree of dissolution
23 and change the petitioner's name, if so requested, if the court, upon
24 consideration of affidavits supplied by the spouse and the testimony
25 of the spouse at the hearing, finds that

26 (1) the spouse present at the hearing understands fully the
27 nature and consequences of the action;

28 (2) the conditions in AS 25.24.200(b) have been met; and

29 (3) the requirements of AS 25.24.165(b) have been sat-

1 isfied, if a change of name is requested.

2 (d) The court shall dismiss a petition or continue action on a
3 petition filed under AS 25.24.200 - 25.24.260 before findings are made
4 if

5 (1) a representative of the minor children objects to a
6 term of an agreement between the spouses;

7 (2) either of the spouses withdraws from an agreement
8 required under AS 25.24.200(a); or

9 (3) the petition alleges that the conditions in AS 25.24.-
10 200(b) exist, but the whereabouts of the absent spouse becomes known
11 to the other spouse or the court before findings are made.

12 (e) The court shall deny the relief sought in a petition filed
13 under AS 25.24.200 - 25.24.260 if the court does not make the findings
14 required under (a) - (c) of this section.

15 (f) If the petition is filed by both spouses under AS 25.24.-
16 200(a), the court shall change either spouse's name, if the spouse
17 seeking a change of name to a name other than a prior name complies
18 with AS 25.24.165(b), and shall fully and specifically set out in the
19 decree the written agreements of the spouses and shall order the
20 performance of those written agreements. The court shall also state,
21 in the decree, whether child support payments are to be made through
22 the child support enforcement agency. If the petition is filed by one
23 spouse under AS 25.24.200(b), the decree must state that it does not
24 bar future action on the issues not resolved in the decree.

25 (g) Notwithstanding other provisions of AS 25.24.200 - 25.24.-
26 260, the court may not award to one spouse real or personal property
27 acquired by the other spouse before the date of the marriage, unless
28 the spouses expressly agree otherwise or the court determines that the
29 property should be made available, by sale or other conveyance, to

1 ensure that the best interests of the children are provided for. If
2 the court determines that the best interests of the children require
3 an award of premarital property, but the spouses do not agree, the
4 court shall dismiss or continue the action.

5 (h) If a judgment under this section distributes benefits to an
6 alternate payee under AS 14.25, AS 22.25, AS 26.05.222 - 26.05.226, or
7 AS 39.35, the judgment must meet the requirements of a qualified
8 domestic relations order under the definition of that phrase that is
9 applicable to those provisions.

10 * Sec. 18. AS 25.24.250 is amended by adding a new subsection to read:

11 (c) Forms or instructions prepared under (a) of this section
12 must specify that the dissolution petition constitutes the entire
13 agreement between the parties and must provide examples of kinds of
14 property and obligations that are subject to distribution.

15 * Sec. 19. AS 25.24.165, as added by sec. 6 of this Act, AS 25.24.-
16 210(d) as amended by sec. 9 of this Act, and AS 25.24.230(c) and 25.24.-
17 230(f) as amended by sec. 17 of this Act, have the effect of amending Rule
18 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name
19 other than a prior name to be commenced in a complaint for divorce or
20 annulment or a petition for dissolution of marriage.



HB 195

Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG
Staff Counsel

April 16, 1990

303 K Street
Anchorage, AK 99501
(907) 264-8228

Senator John Binkley
Senator Rick Uehling
Co-Chairs Senate Finance Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Re: HB 195 - Divorce and Dissolution

Dear Senators Binkley and Uehling:

I would like to clarify the court system's fiscal note on the increased need for custody investigators under section 16 of HB 195. This section requires the court to use a heightened level of scrutiny of the parties' agreements in dissolution cases in certain circumstances. One of these circumstances is that there are minor children of the marriage. Family court judges and masters have estimated that in at least ten percent of the dissolutions involving children, the cases would be referred to custody investigators for recommendations as to custody or visitation. This would result in approximately 180 new cases per year for the custody investigators.

The investigators presently have a significant backlog of cases that cannot be processed in a timely manner. Because an investigator's workload should not exceed 80-90 cases, the court system most likely will need two, rather than one, additional investigators. However, we will review the actual caseloads and, if necessary, will request another investigator next year to properly implement this provision.

Please let me know if you have any questions about the fiscal note.

Sincerely,

Janalee R. Strandberg
Janalee R. Strandberg
Staff Counsel

JRS:bh



ALASKA DADS and MOMS

5974 North Street
Juneau, Alaska 99801

Phone: (907) 780-4684

" A Child's Right - 2 Parents After Divorce "

April 14, 1990

Senate Finance Committee
Pouch V
Juneau, Alaska 99811

Re: HB 195 Divorce, Dissolution

Dear Senator:

HB 195 is scheduled to be heard in the Finance Committee on Tuesday. This bill has a flaw that needs correcting. The dissolution statutes are ammended by this bill to require a heightened judicial scrutiny of agreements involving a minor child of the marriage. The court interprets that language to require a custody investigation in some dissolution cases and review of all dissolution agreements on custody and visitation.

The net effect of "Heightened Scrutiny" of agreements regarding children will be:

- 1) Adding two permanent court employees at a minimum. The fiscal note only indicated one position, however this is an oversight. I spoke with Jan Strandberg of the Court System Friday the 13th and she indicated that 2 new custody investigators would be required.
- 2) Putting goverment in between a family's agreement. If a man and wife can reach an agreement on their own concerning the future of their family, what business does government have interfering with their wishes. The legislative history of the disolution process was meant to make a simpler, less streesful way of divorcing, intended for people who can agree on their own destiny. Will we have the court decide what is best for our family?

SOLUTION

Ammend the bill by Deleting line 22 on page 11 of the bill:

" 3) there is a minor child of the marriage; or "

The court already has the power to aid children in need, refer to DFYS allegations of child abuse and furthermore the court

Alaska Chapter • National Council for Children's Rights

-2-

Senate Finance

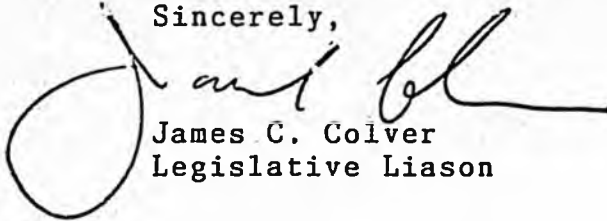
April 14, 1990

is required by statute to act in the best interests of the children. A judge may currently deny a dissolution if the court feels the agreement is not in the child's best interest.

Why should government interfere with a peacefully separating family and impose their will upon them.

We urge you to cut red tape and amend HB 195.

Sincerely,

A handwritten signature in cursive script, appearing to read "James C. Colver". The signature is written in dark ink and is positioned to the left of the typed name and title.

James C. Colver
Legislative Liason

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 24, 1989

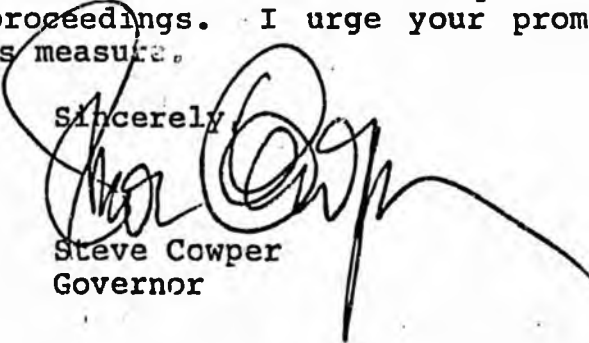
The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to amend the Alaska Statutes regarding divorce proceedings and marriage dissolution proceedings. The bill deals expressly with award of spousal maintenance and attorney fees during the pendency of a proceeding, judicial scrutiny of marriage dissolution agreements, and name changes in connection with divorces and dissolutions. The bill includes some clean-up and technical amendments, and, in so doing, seeks to simplify the dissolution statutes by removing the present inconsistency in references to the dissolution petition being "filed" or being "brought." (Normally, "actions" are "brought" and "petitions" are "filed.")

I believe that the changes proposed in this bill will result in significantly greater justice in divorce and dissolution proceedings, as well as providing some basic clean-up in the statutes governing those proceedings. I urge your prompt and favorable action on this measure.

Sincerely,


Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Alaska Court System
 Title: An act related to divorce and
disolution BRU: Trial Courts
 Sponsor: _____ Components: _____
 Requestor: House Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

[Empty box for analysis content]

Prepared by: House Finance Committee Phone: 465-3727
 Division: Co-Chairman Ron Larson *Ron Larson* Date: 4/24/89
Co-Chairman Lyman Hoffman *Lyman Hoffman* 24
 Approved by Commissioner: _____ Date: _____
 Agency: _____

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

H

B

R

O

B

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 28, 1989

FURTHER REFERRALS:

Date of Committee Action: 4/30/89

The FINANCE Committee considered:

HB 203

HOUSE BILL NO. 203 [TEACHER CERTIFICATION]

"An Act relating to requirements for teacher certificates and accounting for teacher certificate fees; and defining teacher."

RECOMMENDATIONS:

- [] be replaced with CSHB203(HESS) [] the same title
- [] have attached amendment(s) [X] a new title
- [] do pass
- [] do not pass
- [] no recommendation
- [X] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): _____ APPROVES PREVIOUS: _____ (Date/Dept)
(Dept)

- [] fiscal impact _____ [] fiscal note(s) _____
- [] zero fiscal note _____ [X] zero fiscal note(s) DOE
- [] zero with analysis _____ [] zero fn/analysis _____

SIGNING DO PASS:

 _____ Hoffman

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
_____ Larson		X	
_____ Brown		X	
_____ Koponen	X		
_____ Ulmer			
_____ Barnes		X	

 Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Education
 Title: Requirements for Teacher Certificate BRU: Education Finance and Support
 Fees: Defining Teacher Services
 Sponsor: MacLean Components: District Support
 Requestor: MacLean

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Mary Hakala Phone: 465-2800
 Division: Commissioner's Office Date: 3/28/89
 Approved by Commissioner: William G. Demmert Date: 3/28/89
 Agency: Education

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

C Adopted

Original sponsors: MacLean, Jacko,
and Furnace

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 203 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to requirements for limited teacher
7 certificates; defining 'teacher'; and providing for
8 an effective date."

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

10 * Section 1. PURPOSE. The purpose of this Act is to provide for the
11 certification of teachers in certain limited fields where baccalaureate
12 degree training is not sufficiently available, so long as the person demon-
13 strates both subject matter expertise and teaching competency.

14 * Sec. 2. AS 14.20 is amended by adding a new section to read:

15 Sec. 14.20.025. OTHER TEACHER CERTIFICATES. Notwithstanding
16 AS 14.20.020(b), a person may be issued a limited certificate, valid
17 only in the area of expertise for which it is issued, to teach Alaska
18 Native language or culture, military science, or a vocational or
19 technical course for which the board determines by regulation that
20 baccalaureate degree training is not sufficiently available. A person
21 who applies for a limited certificate must demonstrate, as required by
22 regulations adopted by the board, instructional skills and subject
23 matter expertise sufficient to ensure the public that the person is
24 competent as a teacher. The board may require a person issued a
25 limited certificate to undertake academic training as may be required
26 by the board by regulation and make satisfactory progress in the
27 academic training.

28 * Sec. 3. AS 14.20.215(6) is repealed and reenacted to read:

29 (6) "teacher" means a person who, for compensation,

1 instructs or teaches elementary or secondary school students, and who
2 is not supervised by another person in the same room or classroom, and
3 also includes

4 (A) an individual serving in an administrative capac-
5 ity who supervises teachers;

6 (B) a provider of special education and related ser-
7 vices;

8 (C) a school counselor;

9 (D) a school nurse; and

10 (E) a school psychologist.

11 * Sec. 4. AS 14.20.025 is repealed June 30, 1995.


12 * Sec. 5. The Board of Education shall report to the legislature on or
13 before January 15, 1994, concerning the implementation of AS 14.20.025,
14 enacted by sec. 2 of this Act. The report shall include the number of
15 certificates issued under that section and other relevant information.

16 * Sec. 6. This Act takes effect July 1, 1989.



Tanana Chiefs Conference, Inc.

201 First Avenue
Fairbanks, Alaska 99701-4897
(907) 452-9251



The Tanana Chiefs Conference Education Department strongly supports HB 203.

We have been fortunate in this state to have a diverse cultural and unique socio-economic environment which allows for a rich experience in the development of our children. The skills, languages and cultural philosophies of Alaska's people have an intrinsic value, many of us would like to impart to our children. We do so in our homes and in our communities. Yet in the one environment in which our children spend nine months each year - the schools only limited opportunities prevail in which such skills, languages and lessons can be adequately taught.

HB 203 allows for an avenue in which many expert yet non conventional instructors could be formally added to the Bank of Resources of each school district. Some school districts in the past have utilized such natural teachers but in most cases only to a limited degree while voluntarism has always been an important part of the Alaska experience and will remain so. This bill affords local school boards to give the proper credence to support to these invaluable human resources and allows them to fully utilize the skills available in their communities.

HB 203 encourages increased utilization of these natural and traditional teachers and assures an avenue for the propagation of our unique Alaskan way of life. In village after village, community to community, all around Alaska, we have many teachers. HB 203 respectfully and formally invites all of those teachers to a rich community forum, the classrooms of our schools. It further assures the most relevant and culturally appropriate classroom environment for our children and affords them access to learning and skills they in turn will be able to pass on to future generations of our people here in Alaska.



Alaska State Legislature

Please enter into the record my testimony to the House Health Education and Social Services
committee name

committee on HB251, HCR18, HB231, HB203 , dated March 31, 1989
bill/subject

Kawerak Incorporated is supportive of HB 136 with some minor technical amendments. We agree that the Governor should appoint the members of the Rural Alaska Television Network Council. We would like to see language included in the bill which directs that the membership of the Council includes at least one member from each of the twelve regions established pursuant to ANCSA. This will ensure the Council maintains a statewide as opposed to a special interest perspective. We urge continued funding of the RATNET system.

In reference to HB 231. We support requiring additional educational programming on RATNET as long as the programming is selected by the RATNET Council. Key to this whole issue is what constitutes educational programming. In example, we consider statewide news and weather to be educational programming. If the effect of the amendment is to mandate that 50% of air time be turned over to the Department of Education to use as they see fit, we oppose this bill. We understand that the RATNET council does not receive many requests for additional educational programming. Currently the hours of 2 - 6 am are reserved for educational materials on the RATNET system. If individuals are interested in a particular subject or class, the session can be videotaped by the students or teachers for later viewing. This committee may wish to consider increasing the number of strictly instructional hours as opposing to increasing the number of educational hours.

We would also like to state that we are wholly supportive of HCR 18, HB 203 and HB 231. These three bills will help ensure the residents and children of Alaska receive a quality education.

Thank you for this opportunity to provide input.

Signed: *L. Bullard* Loretta Bullard
Testifier

Kawerak Incorporated, PO Box 948, Nome, AK 99762
Representing (Optional)

Address

443-5231

Phone No.

cc: Richard Foster, Eileen MacLean

March 31, 1989
School of Education
University of Alaska SE
11120 Glacier Highway
Juneau, Alaska 99801

Eileen Panigeo MacLean
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Ms. MacLean:

I am an instructor at the University of Alaska Southeast who specializes in multicultural education. Bob Arnold contacted me several times in 1988 to provide information about training teachers for rural Alaska schools. Some of the information is included in the School Performance Report.

I was pleased to learn that you are taking an advocacy role in educational improvement. I would like to share several opinions about HB 203 and HB 231.

HB 203: The removal of the right of a cultural group to educate its young is one of the most effective actions a dominant society can take to "disempower" a minority and place that minority group in a powerless and dependent status. In the past, this has been accomplished through the teacher certification requirements which have effectively removed local knowledge and local people from a dominant role in the educational process in rural Alaska.

HB 203 would allow the State School Board the latitude to recognize people with special skills as legitimate teachers. I believe that the benefits of this bill are far-reaching. It is an important step in the process of empowering local people who have important skills and knowledge to share with young people. HB 203 is long overdue.

HB 231: I certainly agree with the stated intention of HB 231 to strengthen program assessment by the school districts. I am concerned, however, with the wording of Sec. 14.03.120(d) which specifies a report on performance. This section as currently written implies a heavy reliance on the use of standardized achievement tests. These test scores have become, in the minds of the public and many educators, as the sole reliable measure of school achievement. However, overreliance on standardized achievement test scores in a multicultural environment can be misleading. I am concerned that this bill, as written, may unwittingly encourage test abuse among Alaska Native children.

This letter is not the place to discuss all the issues related to the use of standardized testing in a cross cultural situation, however, I will mention several concerns:

1. The format of the test (ie. multiple choice) is not designed for any pedagogical reason but for ease of grading by machines. The multiple choice format is actually an extremely limited type of assessment tool. There are many aspects of learning that cannot be adequately measured by a timed, multiple choice test.
2. There is evidence that the content and format of standardized achievement tests are biased towards the culture and values of urban, middle and upper middle class Americans.
3. Eighty years ago, missionaries and educators in the Kuskokwim Delta regions were requiring the Native people to change their dress to the standardized Western expectations of the time. We now recognize that policy as ignorant and ridiculous, but we are blind to the prejudices of our own time. Instead of standardizing dress among cultures, we now subtly give primitive tests which encourage and require standardization of the cognitive structures of the mind. This is particularly disturbing to me in the light of recent brain research which supports suggests that culture and environment shape the formation of mental structures.

X I am not suggesting that Alaska schools not use standardized tests. They are a valuable tool when used in conjunction with other criteria. The problem is that tests frequently become the only criteria for measuring school achievement. I would advise you to strengthen this section with a strong statement to the effect that the report will be based on a **MULTIPLE CRITERIA ASSESSMENT** to include such variables as attendance, retention, graduation rates, awards, honors, longitudinal study of graduates, writing assessment, student, parent and community comments, norm referenced test results and standardized test results.

I In reference to Sec. 14.03.125. of HB 231 pertaining to educational planning grants, I was disappointed to find that the current version of the bill does not include University of Alaska teacher education programs. I feel that the University should be included as a partner in improving school performance.

Until recently, most teacher graduates of the University of Alaska system were trained for the urban school environment. They received no specific training in multicultural or multigrade teaching which would prepare them for rural Alaska. However, the majority of graduates are hired in the rural areas.

In Juneau, we now include a rural education practicum, multigrade teaching and multicultural classroom teaching techniques as part of the teacher training. But this could be only the beginning. The University can serve as a resource and partner for communities that are experiencing chronic educational problems. In the past, this

partnership has not developed. The roles of the University and the schools have been too divergent. However, I would like to establish multi-year partnerships with several communities and work with them using University staff, undergraduate and graduate students to help deal with some of the chronic educational problems facing specific communities. We would also publish the results of community education problem solving efforts to build an awareness of problem solving efforts that have worked.

One of the side benefits of this approach is the involvement of undergraduates in field work and educational problem solving. Many of these people are in the villages immediately after graduation from a four year program. Their training should include participation in education problem solving.

Thank you for the opportunity to let me share these perceptions with you. Please contact me if I can provide you with any additional information.

Sincerely,

Paul K. Berg

Paul K. Berg
Assistant Prof. of Education
University of Alaska Southeast



Lower
Kuskokwim
School
District

Sue C. Hare.

Superintendent

P.O. Box 305 • Bethel, Alaska 99559

907 543-4800 Ext. 812, 813

To: Nels Anderson

From: Sue Hare

Subject: HB203

Date: 3/29/89

The Lower Kuskokwim School District Board has supported HB203 which places responsibility for the issuing teacher certificates with the Department of Education. Bob Herron may be calling you to let you know that House Hess will be holding a hearing on Friday at 8:30 a.m.

UNIVERSITY OF ALASKA, FAIRBANKS**Fairbanks, Alaska 99775****Cross-Cultural Education Development Program****(907) 474-6963****April 3, 1989**

To: Rep. John Eills, Chair
House Health, Education and Social Services Committee

From: Ray Barnhardt *RB*

Subject: House Bill No. 203

I wish to offer testimony regarding House Bill No. 203, pertaining to requirements for teacher certification in Alaska. I commend Rep. Maclean and the committee for taking on a lingering issue and proposing action that has been long overdue. I strongly support the provision of the bill delegating to the State Board of Education the responsibility to develop alternative approaches to teacher certification appropriate to the needs and conditions of schools and communities throughout Alaska. After eighteen years with the University of Alaska Fairbanks teacher education program, it is my assessment that the statutory requirement of a baccalaureate degree to obtain a Type A teaching certificate is inhibiting rather than enhancing the quality of education in Alaska. Some of the observations on which I base this assessment are as follows:

1. While a baccalaureate program may provide one avenue by which a person can acquire the expertise necessary to be a teacher, it is by no

means the only way, nor is it necessarily the most effective and efficient way. Furthermore, there is no evidence to indicate that there is a significant correlation between holding a baccalaureate degree in education and being a good teacher, and therefore, a degree alone does not serve the function of providing quality control for entry into the teaching profession. As someone who has responsibility for recommending students who complete our teacher education program to the State Department of Education for issuance of a teaching certificate, I am much more comfortable when I can base that recommendation on demonstrated performance in a real teaching situation over an extended period of time, than on a GPA earned taking courses in a detached campus environment. In some instances, the pursuit of a baccalaureate degree can even be a hinderance rather than a help, by interfering with experientially acquired teaching skills that may be unconventional in nature, but nevertheless effective.

2. Given the continuing high turnover rate of education personnel in Alaska's rural schools and the constraints this places on the stability, continuity and long term development of those schools, the single most cost-effective step the State can take to improve the quality of rural schools and academic performance of Native students is to increase the presence of local people in the professional roles in those schools. To do so will require recognition of the unique qualities and qualifications Native teachers can bring to the teaching situation, which often go beyond what a formalized university teacher education program is able to adequately deal with. We need to provide opportunities for people with such specialized knowledge, skills and expertise as a teacher to pursue alternative routes, such as

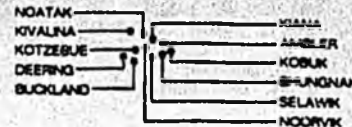
apprenticeships and internships, as a way to demonstrate their expertise and receive full recognition as a teacher, including receiving a Type A certificate.

3. We at the university have been frustrated for years in our efforts to build a workable internship year onto our teacher education programs as a way to assist graduates in their transition from the role of student to that of real-life teacher/practitioner. It would be a big step forward if it were possible that all Alaskan teaching candidates, whether they were coming from the university programs, from apprenticeships, or from outside the state, could be granted a provisional certificate for an internship year with full teaching responsibilities, but during which they would receive instructional support and professional development assistance leading to a formal evaluation of their qualifications to teach at the end of the year. Their professional competence could then be assessed and recognized on the basis of demonstrated performance in a real teaching situation for an extended period of time, regardless of whether they acquired that competence from experience or via a baccalaureate degree. H.B 203 would remove the current statutory constraints to alternative routes and permit the State Board of Education to create a more flexible and appropriate certification procedure.
4. Given the diversity of social, cultural and educational needs that exist in Alaska; given the continuing performance problems faced by many of the schools in the state; given the projection of a severe shortage of teachers for all schools in the near future; and given the insufficiency of evidence that the baccalaureate requirement correlates with higher quality in the

teaching profession, I think it is entirely proper that the legislature enact H.B. 203 and grant the State Board of Education greater authority, flexibility and responsibility to find better and more innovative ways to staff our schools for the future.

In closing, I would like to mention that I spent a year in New Zealand looking at their educational system. Teachers in New Zealand receive their teaching credential after three years of training at "Teacher's Colleges" operated by the equivalent of our State Department of Education. The baccalaureate degree is reserved for those who want to go to a university and pursue further study of educational theory rather than practice. New Zealand teachers, without the benefits of a baccalaureate degree for the most part, have produced one of the highest literacy rates in the world, notwithstanding a minority population comparable in proportion to that of Alaska. It is time that we recognized that teaching is a means, not an end in itself, and that learning is the end to which all decisions regarding teaching should be directed. H.B. 203 is an overdue step in that direction.

Northwest Arctic Borough School District
BOX 51
KOTZEBUE, ALASKA 99752
(907) 442-3472



March 14, 1989

(See attached)

Representative Eileen P. MacLean
Alaska State House
P.O. Box V
Juneau, AK 99811

Dear Representative MacLean:

I have received the copy of House Bill 203 which you sent and our district is opposed to this legislation for the following reasons:

1. We believe certification of teachers should be controlled by statute not regulation.
2. Changes in the process will result in additional staff members becoming part of the teachers bargaining unit and will adversely impact the finances of our school district.

If you wish to discuss the district's position on this bill in further detail please contact me at your convenience.

Sincerely yours,

Jerry Covey
Superintendent

ALASKA STATE LEGISLATURE

Representative Eileen Panlgeo MacLean
P.O. Box 290
Barrow, Alaska 99723



Chairman
Community & Regional Affairs
Committee

Vice-Chairman
State Affairs Committee
Bush Caucus

Member Finance Subcommittee
Community & Regional Affairs
Education
Corrections

WHILE IN JUNEAU
Box V
Juneau, Alaska 99811
465-4525
465-4833

HOUSE OF REPRESENTATIVES

March 28, 1989

District 22
Ambler
Anaktuvik Pass
Atkasuk
Barrow
Buckland
Deering
Kaktovik
Kiana
Kivalina
Kobuk
Kotzebue
Noatak
Noorvik
North Slope
Borough
Northwest Arctic
Borough
Nulqsut
Point Hope
Point Lay
Selawik
Shungnak
Wainwright

Jerry Covey, Superintendent
Northwest Arctic School District
P.O. Box 51
Kotzebue, AK 99752

Dear Jerry:

I appreciate your letter of March 14th relating to HB 203.

It is unfortunate the Northwest Arctic Borough School District opposes this bill when the concept of issuing teaching certificates would benefit instructors who are presently teaching language and culture in the outlying village schools including Kotzebue.

You have identified two reasons why the district opposes this bill. I would like to explain how this bill address your concerns:

First, HB 203 would give the State Board of Education authority to create classes or classes of certificates, other than emergency certificates not based on the baccalaureate degree requirements. However, to maintain the integrity of the four year degree program for teachers, the State Board of Education would continue to use a separate and distinct classification for those baccalaureate degree program. These traditional four year programs for teachers seeking Class A certificates would not be changed.

Secondly, HB 203 would establish categories of teaching certificates for the instructors of language and culture, Voc Ed, ROTC including the School counselors, nurses and psychologists. The number of certificates will depend on the qualifications of these individuals and the school districts' recommendations. These individuals who qualify would participate in the teacher retirement and benefit system.

Jerry Covey
March 29, 1989
Page 2

It is important to understand that this bill would not take away local control from school districts. Salaries would continue to be determined by school districts and even deciding whether to have these kinds of teachers would be the option of the school. Teacher tenure is not addressed in this bill. The school districts can address this issue in their current fashion.

Jerry, I hope my explanations are helpful. Please let me know if you have further questions. It is important that we continue working together on this bill and other issues. Quyanaq!

Sincerely,



Eileen P. MacLean
Alaska House of
Representatives

cc: Chuck Greene, Mayor, Northwest Arctic Borough
Sophie Ferguson, President, NWAB School Board
Willie Hensley, President, NANA Regional Corp., Inc.



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE

1411 W 33RD AVENUE
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

April 22, 1989

TO: Representative Johnny Ellis, Chairperson
and Members of the House HESS Committee

RE: C.S.H.B. 203; "An Act relating to requirements for
teacher certificates and accounting for teacher
certificate fees; defining 'teacher'; and
providing for an effective date."

This bill would deal with three categories of non-baccalaureate candidates who would be specially certified to serve in Alaska's classrooms as a teacher.

This issue has been the subject of extensive debate on the Certification Advisory Council and has arisen from the actual circumstance of existing programs in several districts around the state.

There is considerable controversy surrounding the issue that arises from the dichotomy of a desire to maintain high standards for the profession and, a recognition of the value of these existent programs for which there has been no B.A. program available.

NEA-Alaska believes that the issuance of certificates to persons not holding a B.A. should be strictly limited, that the certificate should be of a special type different from the standard teaching certificate, and that there needs to be proof of teaching competency in the areas specified in this legislation.

We also believe that there is an inherent value in promoting education as a career for minorities including Alaska natives. The knowledge of the indigenous language, the cultural understanding, and the ability to serve as positive cultural role models all combine to provide a real benefit to Alaskan students.

But, this benefit is best realized through the maintenance of high standards.

The native language and culture instructors, the ROTC instructors, and the Type D Vocational Instructors who would be certified under this legislation are currently holding Emergency Certificates issued by the Commissioner of Education. This is not an ideal situation as the Emergency Certificate may legalize practice but does not provide limit, control, or incentive for the candidates to pursue a Bachelor's program.

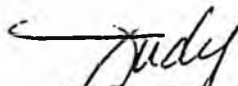
The language of the bill before the committee probably represents the best attempt to deal with the issue of properly licensing these instructors. The sponsor's willingness to tackle the issue and her acceptance of input is commendable.

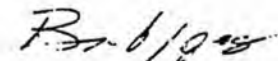
NEA-Alaska supports the amendments presented yesterday in committee. With the sunset provision it serves notice to school districts and to employees that the Bachelor's Degree will be required as of a date certain. It would potentially take the existent practice and move it forward toward this goal. If, on the other hand, a review in 1994 proved that the public interest was being served by the certification in these limited areas the provision could be extended with more supportive data.

We sincerely appreciate the time that committee members and staff have taken to understand and deal with this certification issue.

Thank you for consideration of our position.

Respectfully submitted,


Judy Salo,
President


Bob Mannors
Executive Secretary



NEA-ALASKA

AS FILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

Judy Salo, President

Mary Lou Brent
Vice-President
Box 80074
Fairbanks, Alaska 99708

Susan Siltham
NEA Director
Box 80913, College Station
Fairbanks, Alaska 99708

Deedie Sorensen
Region I Director
5903 Sunny Dr.
Juneau, Alaska 99801

Phil Myerchin
Region I Director
717 Canyon Road
Ketchikan, Alaska 99901

Beverly Goad
Region II Director
Box 343
Copper Center, Alaska 99573

Don Oberg
Region III Director
Box 1084
Kenai, Alaska 99611

Myra Poaga
Region IV Director
Box 973
Nome, Alaska 99782

Marilyn Rosane
Region IV Director
Box 1170
Dillingham, Alaska 99576

Joann Walker
Region IV Director
Box 570
Kotzebue, Alaska 99752

Claudia Douglas
Region V Director
P.O. Box 74837
Fairbanks, Alaska 99707

Gayle Harbo
Region V Director
Box 80522
College, Alaska 99708

Loretta B. Christia
Region VI Director
2220 Yorkshire Lane
Anchorage, Alaska 99504

Richard Kronberg
Region VI Director
3511 Chinik Bay Dr.
Anchorage, Alaska 99515

Leona Mounds
Region VI Director
5816 Winding Way
Anchorage, Alaska 99504

Pamela Reynolds
Region VI Director
1510 Elcadore Dr., #135
Anchorage, Alaska 99507

Peg Stout
Region VI Director
6208 E. 34th Avenue
Anchorage, Alaska 99504

Carclyn Tolson
Region VII Director
Box 873833
Wasilla, Alaska 99687

Roxy McDonagh
Region R Director
402 E. 23rd Avenue
Anchorage, Alaska 99503

ANCHORAGE REGIONAL OFFICE

1411 W. 33RD AVENUE
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

March 21, 1989

To: Representative Eileen MacLean
From: Judy Salo, NEA-Alaska President
Re: HCR 18 and HB 203
Preliminary Reaction Paper for Sponsor Only

*Rec'd 3/30
(See attached response HCR 18)*

HCR 18 - Establishing the Joint Committee on School Performance

The idea and motivation for establishment of a special committee on school performance is commendable. NEA-Alaska supports and encourages any proper and positive focus on education and the improvement of educational services in Alaska.

The scope of activity and responsibility for a legislative task force on school performance is best focused on obtaining constituent input and statutory review of education law. If the purpose is broader than that, then perhaps the task force should be expanded to include expertise from various interest groups, and certainly from the profession.

If the intent and purpose of the Joint Committee on School Performance is primarily to examine education in rural Alaska then perhaps that should be clearly stated in the title or the body of the resolution.

We will certainly not oppose this resolution. We do, however, have a few reservations about the effect that another committee or task force will actually have on education. It is very difficult to legislate education reform because the best efforts to change educational practice are made at the school level. There were some suggestions on how to facilitate local change in the Hensley Report and an effort to implement those suggestions might come as a result of this follow-up committee.

HB 203 - An Act relating to requirements for teacher certificates and accounting for teacher certificate fees; and defining teacher.

There is little doubt that you have tackled a serious problem with the draft of HB 203. Working it out is difficult at best and we have particular problems with the issue for the following reasons:

1. In this age of education reform we are hearing a cry for higher standards for teachers in regards to initial certification.
2. At the same time we believe in the value of the Native language and culture programs, and for that matter the services that are being rendered by ROTC instructors in Anchorage and the Type D Vocational instructors.

It does make us very nervous to read the sectional analysis for this bill that states that 203 removes the requirement, now in place that teachers hold at least a baccalaureate degree, from an accredited institution of higher education.

Both this provision and the provision allowing for emergency certificate issuance empower the state board and the commissioner's office to make more exceptions to the currently held standard.

The definition of teacher is done very well. If the bill can be amended to provide legislative restriction on the certification of more non-baccalaureate instructors in Alaska, and clearly define the perimeters of such certification, we may be able to support it.

During our legislative Fly-In we will have all five people here from NEA-Alaska who are experts regarding certification issues. We will try to meet next week to give you more specific suggestions regarding the legislation. I think it would also be an excellent topic of discussion for the Certification Advisory Council which has spent a considerable amount of time with various solutions to the problem that HB 203 seeks to address.

I regret that we are unable to be more supportive or more specific about suggestions at this time. I am confident after our discussion last week that you, too, are not interested in expansion of non-baccalaureate teachers and want the legislation to solve a problem rather than create one.

JS01/Hb203+/dl

ALASKA STATE LEGISLATURE

Representative Eileen Pcnigeo MacLean
P.O. Box 290
Barrow, Alaska 99723



Chairman
Community & Regional Affairs
Committee

Vice-Chairman
State Affairs Committee
Bush Caucus

Member Finance Subcommittee
Community & Regional Affairs
Education
Corrections

WHILE IN JUNEAU

Box V
Juneau, Alaska 99811
465-4525
465-4833

HOUSE OF REPRESENTATIVES

March 23, 1989

District 22

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Anaktuvik Pass
Atkasuk
Barrow
Buckland
Deering
Kaktovik
Kiana
Kivalina
Kobuk
Kolzebue
Noatak
Noorvik
North Slope
Borough
Northwest Arctic
Borough
Nulqsut
Point Hope
Point Lay
Salawic
Shungnak
Wainwright

Judy Salo, President
NEA-Alaska
105 Municipal Way
Suite 302
Juneau, AK 99801

Dear Judy:

I appreciate your comments on HB 203 relating to requirements for teacher certification and the definition of "teacher". It is my hope, that we continue to work together on this bill to resolve further concerns that your organization may have.

In your letter, you identified two problem areas on the issue of teacher certification relating to: 1). the "cry" for higher standards of teachers in regards to initial certification, 2). allowing emergency certificate issuance empowers the state board and the commissioner's office to make more exceptions to the currently held standard (instructors of Language and Culture, Voc Ed, ROTC and School counselors, psychologists).

First, HB 203 gives authority to the State Board of Education to create a class or classes of certificates, other than emergency certificates, not based on baccalaureate degree requirement. These regulations would not change the baccalaureate degree requirements or lower the standards.

Secondly, the provision in HB 203 to include instructors of language and culture, Voc Ed., ROTC and special service providers such as school counselors, nurses and psychologists allows these individuals be eligible for a teaching certificate as long as they meet the requirements. These requirements will be based on the regulations established by the State Board of Education. In the process of developing regulations for new classes of certificates, career ladders or instruction strategies and courses that would be helpful to instructors and can be added to the requirements. The number of certificates


Judy Salo
March 29, 1989
Page 2

issued depends on who qualifies for each category. Again, the issuance of teaching certificates will be restrictive and controlled by the State Board of Education. The duration and renewal of certificates will be determined by the Department of Education.

HB 203 would improve the current system of issuance of teaching certifications and it defines what "teacher" really means.

Judy, I hope this letter explains the areas of concerns that you identified. I am willing to discuss this bill with you to resolve further concerns. Please contact my office at your convenience. Thank you.

Sincerely,



Eileen P. MacLean
Alaska House of
Representatives

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

465-3603

March 14, 1989

The Honorable Eileen MacLean
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811-3100

Re: House Bill-203

Dear Representative MacLean:

Helen Pootoogooluk of your staff has asked our office to review HB 203 and comment on the definition of "teacher" contained in sec. 2 of the bill. In addition to defining "teacher," the bill would remove the baccalaureate degree requirement for teacher certification from statute, and leave it to the State Board of Education to determine the requirements for each class of teacher certificate.

AS 14.20.010 requires that each person employed as a "teacher" in the public schools of the state possess a valid teacher certificate. The definition of teacher is important because it defines the class of people subject to the certification requirement. It also has implications for determining who may be a member and what service constitutes "membership service" in the Teachers' Retirement System under AS 14.25. It does not necessarily define who is eligible to earn tenure under AS 14.20.150, because that statute restricts the persons eligible for tenure to those holding "standard" teaching certificates. A "standard certificate" is currently defined by Department of Education regulations to be "any regular certificate based on a baccalaureate or higher degree." 4 AAC 12.900(6).

The existing statutory of "teacher" is as follows:

"teacher" means a person serving in a teaching, counseling, or administrative capacity and required to be certificated in order to hold the position.

14.
AS 14.20.215(6). That definition presents problems because it is circular. Under AS 14.20.010, a "teacher" is required to hold a

certificate, and under AS 14.20.215(6), the person is a "teacher" if he or she is required to hold a certificate. There is no way to tell whether a person employed to teach children, but called an "aide" or "instructor" rather than a "teacher," is required to hold a certificate.

The definition of "teacher" proposed in sec. 2 of the bill is an improvement because it defines the conditions under which a person must be considered a teacher, and therefore subject to the certification requirement: when the person instructs or teaches K-12 children unsupervised by another person in the same room. We offer these possibilities for further improving the definition:

1. The words "counsels, tests, or evaluates" at page 2, line 4 of the bill could be eliminated. Those words were apparently intended to cover providers of special education and related services, but those providers are already covered by the language at page 2, lines 9--10. A counselor, nurse, or psychologist who occasionally sees and works with school children, but who is not employed as a school counselor, a school nurse, or a school psychologist, would not be covered. If this suggestion is accepted, the comma should be removed between the words "instructs" and "teaches" and the word "or" inserted in its place.
2. The word "teachers" at page 2, line 8 might be replaced with "educational programs or personnel." That would make it clear that administrators who supervise aides, but not teachers, are covered, as are administrators who supervise educational programs but do not directly supervise teachers.
3. The words "public school" at page 2, line 4 could be eliminated. In AS 14.20.010, the requirement that teachers be certified is limited to public school teachers, but there are places in other statutes and regulations, such as AS 14.25.220(23) and (25), AS 14.30.010(b)(1)(A), and 4 AAC 42.100, where teachers in nonpublic schools are discussed. The definition of "teacher" should be the same in public and nonpublic schools.
4. You may wish to consider whether to delete "instructs" from the definition (page 2, line 4). According to Charlie Mae Moore, in charge of teacher certification for the Department of Education, the department does not perceive any difference in meaning between "teaches" and "instructs." The use of both terms is simply to prevent

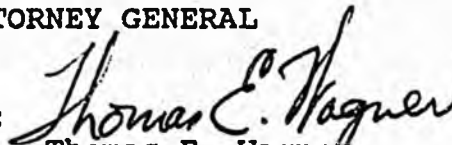
circumvention of the statutes by claiming that someone is "instructing" students, or is an "instructor," rather than "teaching" them as a teacher.

Please let me know if I may be of further assistance regarding this matter.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:



Thomas E. Wagner
Assistant Attorney General

/TEW/bap

cc: Art Peterson

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF RETIREMENT & BENEFITS

PLEASE REPLY TO:

- P.O. BOX CR
JUNEAU, ALASKA 99811-0203
PHONE: (907)465-4460
- 701 EAST TUDOR ROAD, SUITE 240
ANCHORAGE, ALASKA 99503-7445
PHONE: (907) 563-5885

The Honorable Eileen MacLean
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Dear Representative MacLean:

Your legislative assistant has requested a letter explaining the requirements of membership in the TRS as they relate to certification and HB 203. The following statutory references provide the requirements of participation.

AS 14.25.220(40) "teacher" or "member" means a person eligible to participate in the system and who is covered by the system, limited to

(A) a certificated full-time or part-time elementary or secondary teacher, a certificated school nurse, or a certificated person in a position requiring a teaching certificate as a condition of employment in a public school of the state;

(B) the commissioner of education and all supervisory positions in the Department of Education;

(C) a full-time or part-time teacher of the University of Alaska or a person occupying a full-time administrative position at the University of Alaska which requires academic standing; the approval of the administrator must be obtained before an administrative position qualifies for membership in the system;

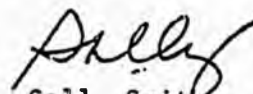
(D) a state legislator who elects membership under AS 14.25.040(b);

Membership service is also defined under AS 14.25.220(21) and includes "full-time or part-time service as an Alaska Native language or culture expert, subject to the requirements of AS 14.25.048;"

The Teachers' Retirement System has no control over the qualification requirements for certification by the Department of Education. Since HB 203 deals only with that, we have no position on its passage.

I hope that this letter satisfies your request. If we can be of additional assistance, please contact us.

Sincerely,


Sally Smith
Director

SS/RFS/cam/1

R&B 89-008

Note: Please include Your Social Security Number in All Correspondence & Requests Concerning Your Benefits.

Public Employees' Retirement System
Teachers' Retirement System
Judicial Retirement System
Elected Public Officers Retirement System
National Guard Retirement System
Territorial Retirement System
Retirees' Voluntary Dental-Vision-Audio Plan
Supplemental Benefits System
Group Health/Life Insurance Benefits
Deferred Compensation Plan
Public Employers Social Security Contributions

STEVE COWPER, GOVERNOR

March 20, 1989