

LEGISLATIVE FINANCE - HOUSE / SENATE FINANCE COMM. FILES 8879

HB 578 cont. - HB 580 549 140

# METRO

FRIDAY  
SECTION B March 9, 1990

## Lawmakers want spill watchdog committee

### House Democrats say citizens' group should oversee government agencies, oil industry

By DAVID POSTMAN  
Daily News reporter

JUNEAU — A group of House Democrats wants to create a powerful citizens' commission with broad authority to oversee oil industry and government efforts to prevent and clean up oil spills.

In its efforts to make sure state laws covering spills are

being followed, the five-member citizens' council would be given the power to subpoena witnesses, take testimony under oath and force government agencies and oil companies to produce records.

The council could also file lawsuits to make sure state spill laws are being followed. The five members of

the council would be appointed by the governor and be given the authority to hire an executive director and other staff.

"This fills the gap of apathy that sets in when you have 10 or 12 years with no problems and in the meantime budgets and contingency plans are being cut, cut, and then everybody is

caught with their pants down when there is a disaster," said Rep. Curt Menard, D-Wasilla, co-chairman of the House Resources Committee.

The Citizens' Oversight Council on Oil and Gas and other Hazardous Substances was a top priority of the Alaska Oil Spill Commission, a panel appointed by

Gov. Steve Cowper to investigate the wreck of the Exxon Valdez. The commission said that no single state agency had authority over transportation of oil and other hazardous substances, including by pipeline and tanker.

"Regulatory authority over such transportation is spread among several agen-

cies that do not always coordinate information or resources," according to the spill commission's report.

Cowper, though, did not include the recommendation in his package of spill bills introduced last month. Instead, the administration is considering establishing a

Please see Page B-3, SPILL

## SPILL: House bill would form citizen's group

Continued from Page B-1

state environmental advisory board and increasing public participation in planning for spill prevention and cleanup, according to its written response to the spill commission report.

Cowper spokesman David Ramseur said he could not find out Thursday why the administration did not follow the commission's recommendation.

At a hearing Thursday,

spill commission member John Sund encouraged the House Resources Committee to push for citizen councils.

"Bureaucrats come and go, legislators come and go, the companies are usually there for the long haul," he said. "I think the informed citizenry is a very critical component of the state (oil) transportation system."

Sund also said the committee should look at other spill commission recommendations not followed by

Cowper. "I'd rather see some action in the House side on these bills than see an \$800,000 report become a nice bookshelf item."

"I call this our vigilance bill," said Rep. Cliff Davidson, D-Kodiak, co-chairman of the House Resources Committee.

"This is not meant to be petro-punitive," said Davidson, who stressed the council would look at government's role as well as that of the oil industry. "We need to watch the watchers, regulate the

regulators and maybe then we have a chance to overcome malaise."

Sen. Drue Pearce, R-Anchorage, chairwoman of the Senate Special Committee on Oil and Gas, said she wants to talk to the spill commission members before deciding whether the citizen's group is a good idea. Pearce's committee and the House Resources Committee are holding hearings on Cowper's package of spill bills.

department's small staff was overwhelmed by technical licensing and permitting activities, leaving no opportunity for the agency to perform its role as overall environmental policy watchdog. Though the state retained certain powers over water quality, the overall effect of preemption through the federal courts was to reduce or eliminate the state presence in the oversight of oil industry affairs and demoralize state personnel engaged in such activity.

In the absence of the state presence, the already weak federal regulatory presence declined further. In 1990 Congress is likely to adopt legislation that would eliminate any presumption of federal preemption in actions taken by the state with respect to safety and response. Thus the way is open for the state to reassert its historic role in resource protection.

*A citizens' advisory council should be established in the office of the governor and given responsibility for overseeing the safe transportation of oil, gas and other hazardous substances.*

No state agency has as its primary mission oversight of environmentally safe transportation of Alaska's resources. Regulatory authority over such transportation is spread among several agencies that do not always coordinate information or resources. The only overall view of the system is exercised by the governor, but he has no single designated officer or council to provide information or maintain consistent oversight.

The state should establish a citizens' advisory council, supported by a full-time executive director and small staff, to provide focus to state oversight. Members should be chosen from among the general public, selected for their concern for environmental safety. The council should have power to subpoena information and witnesses, to inspect facilities, to conduct investigations, and to collect information and statistics on safety.

The council's duties should be to:

- Advise the governor and legislature on the environmental safety of the transportation of Alaska oil, gas and other substances posing environmental risks;
- Advise on potential initiatives in state and federal regulations and at the governor's request, represent the state's interests in the development of multistate compacts and national and international policy;

**Recommendation 12  
Oversight council**

*"What we have is a system driven by the fact the pipeline is pumping 2 million barrels of oil into the sound, and they have to get it out of here. They choose not to restrict it, turn it off, or anything else. The decision to sail or not to sail is not a dispassionate decision based on weather or traffic."*

*Rep. George Miller, California  
House Committee on Interior and  
Insular Affairs hearing, May 1989*

*"What tends to happen is DEC will get dragged into a septic tank argument and it will drain away as many resources as fighting, for instance, the Alyeska ballast water treatment plant. There's a real problem with priorities within DEC."*

*Sue Liberson, Executive Director  
Alaska Center for the Environment  
Alaska Oil Spill Commission  
hearing, 9/21/89*

**Recommendation 13**  
**Enhanced regulatory strength**

*The state should expand and exercise its regulatory authority over environmental safety. Measures voluntarily adopted by industry should be backed up by state regulation. Federal technical standards and safety requirements should not preclude more stringent state standards.*

The State of Alaska currently does not exercise its full power under the U.S. Constitution to regulate environmental safety. Recent congressional enactments and judicial decisions make it clear that Congress does not intend that states should hesitate to protect local environments with greater stringency than the minimums established under federal law. The state should have the power, for example, to prohibit vessels from entering or departing Alaska ports and waters under unsafe circumstances.

Regulatory effectiveness also should be improved through assessment of administrative and civil penalties to encourage prevention, no preven-

- Identify unmet needs and recommend priorities, strategies and obstacles to achieving them;
- Encourage coordination of spill prevention and response programs currently spread among several agencies that cumulatively deserve high priority;
- Make budget and resource allocation recommendations;
- Evaluate programs and recommend elimination of marginal activities;
- Recommend changes based on new technologies and scientific impacts;
- Designate advisory panels, if deemed necessary, including appropriate representation, ex-officio, of appropriate departments of the state and municipalities, regional oil spill authorities, representatives of fishing and environmental groups, and shippers, owners and residential groups on the pipeline route; and
- Issue an annual report and safety assessment. Reports to the governor should include regular statistical and special reports on accidents and near-misses, the status of major risks, the performance of state and federal agencies, and long-term options for improving safety.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Affected Agency: Legislative Affairs Agency  
 Title: "An Act creating a citizen's oversight council on oil & other hazardous...  
 BRU: Legislative Council  
 Sponsor: H. Resources Components: Council & Subcommittees  
 Requestor: H. Resources

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
Personal Services	17.8	117.8	117.8	117.8	117.8	117.8
Travel	18.9	18.9	18.9	18.9	18.9	18.9
Contractual	300.0	300.0	300.0	300.0	300.0	300.0
Supplies	0	0	0	0	0	0
Equipment	0	0	0	0	0	0
Land & Structures						
Grants, Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>436.7</b>	<b>436.7</b>	<b>436.7</b>	<b>436.7</b>	<b>436.7</b>	<b>436.7</b>

CAPITAL						
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REVENUE						
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other	436.7	436.7	436.7	436.7	436.7	436.7
<b>TOTAL</b>						

POSITIONS:

Full-Time	2	2	2	2	2	2
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

CSHB 578(Res) establishes a Citizen's Oversight Council on Oil and Other Hazardous Substances. Funding will be from the Oil & Hazardous Release Response Fund. The following is requested to adequately support the Council:

Prepared By: Pamela Stoops, Director *Pamela Stoops* Phone: 465-3850  
 Division: Administrative Services Date: 3/20/90

Approved By: Warren Endicott, Executive Director *Warren Endicott*  
 Agency: Legislative Affairs Agency Date: 3/20/90

DISTRIBUTION (BY PREPARER)  
LEGISLATIVE FINANCE  
LEGISLATIVE SPONSOR

REQUESTOR  
OFFICE OF MANAGEMENT & BUDGET  
AGENCY (IES)

CONTINUATION OF FISCAL NOTE: CSHB 578

PERSONAL SERVICES

Staff is requested as follows to assist the Citizens Oversight Council on Oil and Other Hazardous Substances

Executive Director - Range 24A		
\$4,687 x 12 months =	\$56,244	
\$56,244 x 36% benefits =	<u>\$20,247</u>	
	\$76,491	76.5
Secretary - Range 15A		
\$2,531 x 12 months =	\$30,372	
\$30,372 x 36% benefits =	<u>\$10,933</u>	
	\$41,305	41.3
		<u>117.8</u>

TRAVEL

It is anticipated there will be 6 meetings of the Council.

6 meetings x 5 members at 3 days each		
airfare - 6 meetings x 5 members = 30 airfares		
30 airfares x \$390 =	\$11,700	
per diem - 6 meetings x 5 members = 30		
30 x 3 days per diem = 90		
90 x \$80 =	<u>\$7,200</u>	
	\$18,900	18.9

CONTRACTUAL

Professional services for contracts to investigate compliance with environmental laws and regulations relating to production, transport and storage of oil and other hazardous substances.	\$300,000	300.0
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FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
 Title: "An Act creating a citizen's oversight council on oil & other hazardous..."  
 Sponsor: H. Resources  
 Requestor: H. Finance

Affected Agency: Legislative Affairs Agency  
 BRU: Legislative Council  
 Components: Council & Subcommittees

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
Personal Services	96.5	96.5	96.5	96.5	96.5	96.5
Travel	18.9	18.9	18.9	18.9	18.9	18.9
Contractual	108.6	108.6	108.6	108.6	108.6	108.6
Supplies	2.0	2.0	2.0	2.0	2.0	2.0
Equipment	10.7	0	0	0	0	0
Land & Structures						
Grants, Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>236.7</b>	<b>226.0</b>	<b>226.0</b>	<b>226.0</b>	<b>226.0</b>	<b>226.0</b>

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other	236.7	226.0	226.0	226.0	226.0	226.0
<b>TOTAL</b>	<b>236.7</b>	<b>226.0</b>	<b>226.0</b>	<b>226.0</b>	<b>226.0</b>	<b>226.0</b>

POSITIONS:

Full-Time	2	2	2	2	2	2
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

CSHB 578(Res) establishes a Citizen's Oversight Council on Oil and Other Hazardous Substances. Funding will be from the Oil & Hazardous Release Response Fund. The following is requested to adequately support the Council:

Prepared By: Pamela A. Stoops, Director  
 Division: Administrative Services

*Pamela A. Stoops*

Phone: 465-3850  
 Date: 4/20/90

Approved By: Warren Endicott, Executive Director  
 Agency: Legislative Affairs Agency

*Warren Endicott*

Date: 4/20/90

DISTRIBUTION ( )  
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Changes in SCS CSHB 578 (Fin) have no fiscal impact. This fiscal note is appropriate. 5/8/90 ML

REQUESTOR  
 OFFICE OF MANAGEMENT & BUDGET  
 AGENCY (IES)

CONTINUATION OF FISCAL NOTE: <sup>SCS</sup> CSHB 578' (Res)

**PERSONAL SERVICES**

Staff is requested as follows to assist the Citizens Oversight Council on Oil & Other Hazardous Substances:

Administrative Officer - Range 21A			
\$3,831 x 12 months =	\$45,972		
\$45,972 x 36% benefits =	\$16,550		
	\$62,522		62.5
Secretary - Range 12A			
\$2,082 x 12 months =	\$24,984		
\$24,984 x 36% benefits =	\$8,994		
	\$33,978		34.0
			96.5

**TRAVEL**

It is anticipated there will be 6 meetings of the Council.

6 meetings x 5 members at 3 days each			
airfare - 6 meetings x 5 members = 30 airfares			
30 airfares x \$390 =	\$11,700		
per diem - 6 meetings x 5 members = 30			
30 x 3 days per diem = 90			
90 x \$80 =	\$7,200		
	\$18,900		18.9

**CONTRACTUAL**

Professional services for contracts to investigate compliance with environmental laws and regulations relating to production, transport and storage of oil and other hazardous substances - \$75,000 75.0

Lease office space - 1,000 sq. ft x \$2.00 sq. ft. = \$2,000; \$2,000 x 12 months = \$24,000 24.0

Phones & postage - \$800 a month x 12 months = \$9,600 9.6

**SUPPLIES**

Office supplies - paper, stationery, etc. - \$2,000 2.0

**EQUIPMENT**

Initial office setup - 2 desks, 2 chairs, 1 computer, 1 printer, phones, filing cabinets, bookcases - \$10,700 10.7

Original sponsor(s): Resources Committee

1 IN THE HOUSE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 578 ( *Fin* )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating a citizens' oversight council on oil  
7 and other hazardous substances; and authorizing  
8 funding of the council through the oil and hazardous  
9 substance release response fund."

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

11 \* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

12 (1) a pervasive contributing factor to the Exxon Valdez disaster  
13 was the complacency of the oil industry and the federal and state agencies  
14 responsible for monitoring the operation of the Valdez oil terminal and oil  
15 tanker traffic in Valdez Arm and Prince William Sound;

16 (2) it is essential to involve local citizens to help ensure  
17 compliance with environmental laws and regulations relating to the produc-  
18 tion, transport, and storage of oil and other hazardous substances in order  
19 to overcome this complacency;

20 (3) a state oversight council will provide a valuable mechanism  
21 for citizen participation and an opportunity for citizens to express their  
22 concerns to the legislature and the governor about environmental safety in  
23 production, transport, and storage of oil and other hazardous substances.

24 \* Sec. 2. AS 24.20 is amended by adding new sections to read:

25 ARTICLE 4. CITIZENS' OVERSIGHT COUNCIL ON  
26 OIL AND OTHER HAZARDOUS SUBSTANCES.

27 Sec. 24.20.600. CITIZENS' OVERSIGHT COUNCIL ON OIL AND OTHER  
28 HAZARDOUS SUBSTANCES. (a) There is created in the legislature the  
29 Citizens' Oversight Council on Oil and Other Hazardous Substances.

1 The oversight council consists of five members appointed by the Alaska  
2 Legislative Council. The Alaska Legislative Council shall notify  
3 members of the public throughout the state that nominations for mem-  
4 bership are being sought. Members of the oversight council serve  
5 without compensation but are entitled to per diem and travel expenses  
6 authorized for boards and commissions under AS 39.20.180.

7 (b) The oversight council shall elect a chair and other officers  
8 that the oversight council finds necessary to carry out its respon-  
9 sibilities.

10 (c) Members of the oversight council serve staggered terms of  
11 four years and, upon expiration of their terms, continue to serve  
12 until their successors qualify and are appointed. A member may serve  
13 no more than two consecutive terms.

14 (d) A member of the oversight council may not work as an inde-  
15 pendent contractor for or be employed by a federal, state, or munici-  
16 pal agency directly or indirectly involved in the oversight or regu-  
17 lation of industries engaged in the production, transport, or storage  
18 of oil or other hazardous substances; be an elected official of the  
19 state or of a political subdivision; or work as an independent con-  
20 tractor for or be employed by a person engaged in the production,  
21 transport, or storage of oil or other hazardous substances. The  
22 Alaska Legislative Council shall appoint as members of the oversight  
23 council persons who have an interest in and commitment to preventing  
24 oil and hazardous substance releases in the state.

25 (e) The oversight council shall make a formal request to the  
26 Alaska Legislative Council for money it considers necessary for staff,  
27 per diem, travel, and contractual expenses. Money distributed to the  
28 oversight council is to be disbursed and accounted for under proce-  
29 dures required by the Legislative Affairs Agency. The chair of the

1 oversight council shall approve all expenditure documents.

2 Sec. 24.20.610. POWERS AND DUTIES OF THE OVERSIGHT COUNCIL. (a)

3 The oversight council shall

4 (1) determine whether state and federal agencies responsi-  
5 ble for the prevention of the release of oil and other hazardous  
6 substances, and for responding to releases, are carrying out their  
7 duties in these areas;

8 (2) recommend to the legislature, the governor, agencies of  
9 the federal government, and private entities appropriate policies and  
10 actions to prevent releases of oil and other hazardous substances;

11 (3) assist the legislature and the governor in the develop-  
12 ment of interstate compacts and policy recommendations to the federal  
13 government regarding the prevention of releases of oil and other  
14 hazardous substances;

15 (4) file an annual report with the legislature and the  
16 governor assessing the status of major areas of risk, the performance  
17 of state and federal regulatory agencies, and changes in the long-term  
18 options for improving environmental safety;

19 (5) request the attorney general to bring or request the  
20 attorney general to move to intervene in legal actions in order to  
21 ensure compliance with state laws and regulations regarding the re-  
22 lease of oil and other hazardous substances;

23 (6) make recommendations to the legislature, the governor,  
24 and the federal government on the creation, funding, and composition  
25 of regional or local advisory committees and on the relationship  
26 between the oversight council, local advisory committees, and other  
27 citizens' oversight groups on oil and other hazardous substances; and

28 (7) schedule regular meetings with local and regional  
29 advisory committees as they are created to make sure that they

1 complement each other and avoid overlap in oversight and advisory  
2 functions.

3 (b) The oversight council may

4 (1) hire an administrator and additional administrative  
5 staff, and enter into contracts for personal services that the over-  
6 sight council finds necessary to carry out its responsibilities under  
7 this section; all employees of the oversight council are in the exempt  
8 service under AS 39.25.110;

9 (2) subpoena witnesses, administer oaths, take testimony,  
10 and require the production for examination and copying of books or  
11 papers relating to matters within the responsibility of the oversight  
12 council; and

13 (3) conduct investigations, studies, and analyses necessary  
14 to enable the oversight council to carry out its duties under (a) of  
15 this section; and

16 (4) appoint advisory panels in specialized areas to include  
17 representatives of appropriate groups such as state and municipal  
18 regulatory agencies, oil spill prevention and response authorities,  
19 fishing and environmental groups, residents of areas of risk, scien-  
20 tists, and shippers and owners of oil and other hazardous substances  
21 produced or transported in the state.

22 Sec. 24.20.620. COOPERATION BY STATE AGENCIES. Each agency of  
23 the executive branch of state government shall, to the extent permit-  
24 ted by state or federal law, cooperate fully with the oversight coun-  
25 cil by providing information and assistance, including disclosure of  
26 records relating to the agency's enforcement of laws and regulations  
27 for the prevention of and response to releases of oil and other haz-  
28 ardous substances.

29 Sec. 24.20.630. DEFINITIONS. In AS 24.20.600 - 24.20.630,

1 (1) "hazardous substance" has the meaning given in AS 46.-  
2 08.900;

3 (2) "oil" has the meaning given in AS 46.08.900; and

4 (3) "oversight council" means the Citizens' Oversight  
5 Council on Oil and Other Hazardous Substances.

6 \* Sec. 3. AS 46.08.040 is amended by adding a new subsection to read:

7 (b) Upon a request from the Alaska Legislative Council, the  
8 commissioner shall use money from the fund to reimburse the Alaska  
9 Legislative Council for expenditures that it makes for the operation  
10 of the Citizens' Oversight Council on Oil and Other Hazardous Sub-  
11 stances, established under AS 24.20.600.

12 \* Sec. 4. INITIAL APPOINTMENTS. Notwithstanding AS 24.20.600(c), as  
13 enacted by sec. 2 of this Act, one initial member of the Citizens' Over-  
14 sight Council on Oil and Other Hazardous Substances shall be appointed to a  
15 term of one year, one initial member shall be appointed to a term of two  
16 years, one initial member shall be appointed to a term of three years, and  
17 two initial members shall be appointed to terms of four years. The members  
18 appointed to terms of one and two years are eligible to serve two full  
19 terms following the completion of their initial shortened terms.  
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5/8/90

HB 578 - "An Act creating a citizen's oversight council on oil and other hazardous substances; and authorizing funding of the council through the oil and hazardous substance release response fund."

HB 578 AS PASSED BY THE HOUSE

Members of the Citizens' Oversight Council on Oil and Other Hazardous Substances cannot be:

- Employed by the state.
- Engaged in production, transport, or storage of oil and hazardous substances.
- An elected official for the state or a political subdivision.
- An independent contractor for someone engaged in production, transport, or storage of oil and hazardous substances.
- An independent contractor for a state agency that regulates production, transport, or storage of oil and hazardous substances.

Appointments made by the Alaska Legislative Council from people who have an interest in and commitment to preventing oil and hazardous substance releases.

SENATE RESOURCES CS FOR HB 578

No restrictions on membership on the Oversight Council.

Appointments made by the Alaska Legislative Council from people who have an interest in and commitment to preventing oil and hazardous substance releases.

NEW PROPOSED CS FOR HB 578

Members of the Citizens' Oversight Council on Oil and Other Hazardous Substances cannot be:

- Independent contractors for or employed by federal, state or municipal agencies directly or indirectly involved in oversight or regulation of industries engaged in production, transport, or storage of oil or other hazardous substances.
- An elected official of the state or a political subdivision.
- Work as an independent contractor or be employed in the production, transport, or storage of oil and hazardous substances.

Appointments made by the Alaska Legislative Council from people who have an interest in and commitment to preventing oil and hazardous substance releases.

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*No action taken  
by House Finance  
Committee.*

BY THE FINANCE COMMITTEE

1 IN THE HOUSE

2

HOUSE BILL NO. 579

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act establishing the defined contribution plan  
7 for retirement for public employees; requiring the  
8 preparation of certain actuarial valuations and  
9 actuarial and financial experience analyses of the  
10 teachers' retirement system; requiring the teachers'  
11 retirement system and the public employees' retire-  
12 ment system to be fully funded before granting a post  
13 retirement pension adjustment; and providing for an  
14 effective date."

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

16 \* Section 1. AS 39 is amended by adding new sections to read:

17 CHAPTER 38. RETIREMENT DEFINED CONTRIBUTION PLAN.

18 ARTICLE 1. ADMINISTRATION.

19 Sec. 39.38.010. PURPOSE AND EFFECTIVE DATE. (a) The purpose of  
20 this chapter is to encourage qualified personnel to enter and remain  
21 in the service of the state or a political subdivision or public  
22 organization of the state by establishing a plan for the payment of  
23 retirement and death benefits to or on behalf of the employees.

24 (b) The program created becomes effective on July 1, 1990, at  
25 which time contributions by the state and its employees begin.

26 Sec. 39.38.020. RETIREMENT BOARD. (a) The Retirement Board  
27 composed of five members is established.

28 (b) Three board members shall be members of the personnel board  
29 of the Department of Administration. Two board members shall be

*100 copies of  
by House Finance  
Committee*

1 members of the plan, elected by a majority of votes cast by members of  
2 the plan. Elections shall be conducted by the board. The term of  
3 office of an elected member is six years. A vacancy in an unexpired  
4 elective term shall be filled by election for a new six-year term.

5 (c) Members of the board serve without compensation, but are  
6 entitled to per diem and transportation expenses authorized for boards  
7 under AS 39.20.180 to carry out the duties set out in this chapter.

8 Sec. 39.38.030. DEFINED CONTRIBUTION PLAN. The board shall  
9 establish a defined contribution plan for employees in which retire-  
10 ment and death benefits are provided through the purchase of annuity  
11 contracts, either fixed, variable, or a combination of fixed and  
12 variable, shares of a mutual fund, guaranteed investment contracts, or  
13 other investment vehicles that are determined by the board to be  
14 suitable pension savings investments. Participation in the plan is in  
15 place of participation in a state retirement system.

16 Sec. 39.38.040. POWERS AND DUTIES OF THE BOARD. (a) The board  
17 shall

18 (1) appoint an administrator of the plan and provide for  
19 the administration of the plan, including procedures for resolving  
20 complaints from participating employees;

21 (2) act as an appeals board, hold hearings at the request  
22 of an employer, employee, surviving spouse or a beneficiary on deci-  
23 sions made by the administrator, and submit its findings to the admin-  
24 istrator;

25 (3) prescribe the policies for the proper operation of the  
26 plan and carry on other activities that are considered necessary to  
27 carry out the intent and purpose of the plan under this chapter;

28 (4) designate the company or other entity to which payment  
29 of the contributions required under AS 39.38.210 may be made, after

1       considering the

2                       (A) nature and extent of the rights and benefits that  
3       the contracts will provide to employees who participate and to  
4       their beneficiaries;

5                       (B) relation of the contractual rights and benefits to  
6       the contributions to be made under this chapter;

7                       (C) suitability of the contractual rights and benefits  
8       to the needs and interests of participating employees and to the  
9       interest of the employer in the employment and retention of  
10      employees;

11                      (D) ability of the designated company or other entity  
12      to provide rights and benefits under the contracts; and

13                      (E) efficacy of the contracts in the recruitment and  
14      retention of employees;

15                      (5) take other actions required to ensure that the plan  
16      qualifies as a qualified trust under 26 U.S.C. 401(a) (Internal Reve-  
17      nue Code).

18                      (b) The board may

19                           (1) hold regular meetings and special meetings considered  
20      necessary; all meetings are open to the public and the board shall  
21      keep a full record of all its proceedings;

22                           (2) adopt, with modifications it considers proper, regula-  
23      tions recommended by the administrator for carrying out this chapter;

24                           (3) consider and adopt resolutions on matters referred to  
25      it by the administrator in connection with changes in policy and  
26      revisions of this chapter.

27                      Sec. 39.38.050. DUTY OF EMPLOYERS TO FURNISH RECORDS. Each  
28      employer shall furnish the administrator with records concerning the  
29      periods of service, dates of birth, compensation, new entrants into

1 service, death, withdrawals, and other employee data necessary for the  
2 proper and effective operation of the plan.

3 Sec. 39.38.060. ATTORNEY GENERAL. The attorney general of the  
4 state is the attorney for the plan and shall represent it in a legal  
5 proceeding.

6 ARTICLE 2. PARTICIPATION.

7 Sec. 39.38.110. PARTICIPATION. (a) An employee of the state  
8 first hired on or after July 1, 1990, shall be included in the plan  
9 upon commencement of employment with the state. Unless the employee  
10 has elected to participate in the optional university retirement  
11 program under AS 14.40.661 - 14.40.799 or was first hired before  
12 July 1, 1990, an employee of a political subdivision, including a  
13 school district, regional educational attendance area, and the Univer-  
14 sity of Alaska, or a public organization that becomes an employer  
15 shall be included in the plan on the effective date of the employer's  
16 participation or the date of the employee's commencement of employment  
17 with the employer, whichever is later.

18 (b) Inclusion in the plan is a condition of employment for an  
19 employee first hired on or after July 1, 1990, except as otherwise  
20 provided for an elected official and for an employee of the university  
21 who has elected to participate in the optional university retirement  
22 program under AS 14.40.661 - 14.40.799.

23 Sec. 39.38.120. PARTICIPATION BY MEMBERS OF A STATE RETIREMENT  
24 SYSTEM. (a) A person who is a member of a state retirement system  
25 may elect to participate in the defined contribution plan. An elec-  
26 tion to participate in the plan is irrevocable. The election shall be  
27 made in writing on a form provided by the board and approved for the  
28 state by the commissioner of administration. The form must be filed  
29 with the board and a copy of the form shall be delivered to the

1 appropriate state retirement system. The election becomes irrevocable  
2 on the date it is received by the board. The election to participate  
3 in the plan constitutes a waiver of all rights and benefits under the  
4 state retirement systems earned on or after the effective date of the  
5 election.

6 (b) Except as provided in (c) of this section, if a nonvested  
7 member of a state retirement system elects to participate in the plan,  
8 the member may choose to transfer the amount in the employee's contri-  
9 bution account to the plan. If the member chooses to transfer the  
10 account, the appropriate state retirement system shall pay to the plan  
11 on behalf of the employee an amount equal to the balance in the ac-  
12 count. The payment must be made within 45 days after the election is  
13 received by the state retirement system. The administrator of the  
14 plan shall immediately pay the amount received to the company or other  
15 entity designated by the board for the benefit of the employee.

16 (c) An employee whose right to transfer assets out of a state  
17 retirement system is subject to a qualified domestic relations order  
18 is entitled to transfer assets from the state retirement system to the  
19 plan only if the requirements for receiving a refund under AS 14.-  
20 25.150(b) or AS 39.35.200(c), as appropriate, are met.

21 (d) If a vested member of a state retirement system elects to  
22 participate in the plan, the employee ceases to be an active member of  
23 the retirement system on the effective date of the participation in  
24 the plan. The employee retains all benefits accrued in the state  
25 retirement system.

26 (e) An employee first hired before July 1, 1990, who does not  
27 elect to participate in the plan under this section remains a member  
28 of the appropriate state retirement system.

29 Sec. 39.38.130. PARTICIPATION OF ELECTED OFFICIALS. (a)

1 Service as an elected official with an employer constitutes employment  
2 as a member in the plan as long as a written waiver of coverage has  
3 not been filed with the administrator. A waiver under this subsection  
4 waives coverage of future employment as an elected official, regard-  
5 less of any change of employer. An elected official may file a waiver  
6 under this subsection at any time after election to office, including  
7 the period before taking the oath of office. An elected official may  
8 revoke a waiver under this subsection by filing a written revocation  
9 with the administrator. A revocation under this subsection operates  
10 prospectively only, and the elected official may not receive coverage  
11 in the plan for service as an elected official while the waiver was in  
12 effect. There is no limit on the number of times an elected official  
13 may file a waiver or revocation under this subsection.

14 (b) An elected official included in the plan and that person's  
15 employer are liable for contributions whenever that person is an  
16 elected official unless a waiver of coverage under (a) of this section  
17 is in effect.

18 Sec. 39.38.140. PARTICIPATION BY OTHER EMPLOYEES. (a) A regu-  
19 lar full-time civilian employee of the Alaska Army National Guard and  
20 Air National Guard, whose entire salary is paid from allotted federal  
21 funds, is included in the plan if the federal or state government pays  
22 the employer's contributions. If the amount that the federal govern-  
23 ment may legally contribute to the plan is less than the required  
24 employer's contribution, the state government may contribute the  
25 difference. If the state chooses not to pay the difference, the  
26 employee's participation shall be based on the amount paid by the  
27 federal government.

28 (b) An employee of the North Pacific Fishery Management Council  
29 appointed under 16 U.S.C. 1852(f)(1) (Sec. 302(f)(1) of P. L. 94-265),

1 whose compensation is paid from allotted federal funds, is included in  
2 the plan if the council pays the employer's contributions.

3 (c) An administrative director of the Alaska court system who  
4 withdraws from the judicial retirement system under AS 22.25.012 is  
5 eligible for membership in the plan.

6 (d) An employee of the National Education Association of Alaska  
7 may participate in the plan if the employee possesses or is eligible  
8 to possess a teacher certificate under AS 14.20.020.

9 (e) An employee of the Special Education Service Agency may  
10 participate in the plan if the employee possesses or is eligible to  
11 possess a teacher certificate under AS 14.20.020.

12 (f) If an employer of an employee required or permitted to  
13 participate in the plan under this section does not pay the employer's  
14 contributions when due, coverage in the plan for the period of the  
15 delinquency may not be granted until the contributions are paid.

16 ARTICLE 3. CONTRIBUTIONS, RIGHTS, AND BENEFITS.

17 Sec. 39.38.200. EMPLOYMENT CONTRIBUTIONS MANDATORY. Contribu-  
18 tions of employees shall be made by payroll deductions. Every includ-  
19 ed employee shall be considered to consent to payroll deductions. It  
20 is of no consequence that a payroll deduction may cause the compen-  
21 sation paid in cash to an employee to be reduced below the minimum  
22 required by law. Payment of an employee's compensation, less payroll  
23 deductions, is a full and complete discharge and satisfaction of all  
24 claims and demands by the employee relating to remuneration of ser-  
25 vices during the period covered by the payment.

26 Sec. 39.38.210. CONTRIBUTIONS. (a) Except as provided in  
27 AS 39.38.140(a), the employer shall contribute to the plan on behalf  
28 of each employee participating in the plan an amount equal to 9.65  
29 percent of the employee's compensation.

1 (b) An employee participating in the plan shall contribute to  
2 the plan an amount set by the administrator. The amount may not be  
3 less than one-half the amount of the employer contribution.

4 (c) The administrator may increase or decrease the contributions  
5 required of employees under this section during the course of a per-  
6 son's employment. The administrator may specify that contributions  
7 required by this section are made by a reduction in salary under 26  
8 U.S.C. 414(h)(2) (Internal Revenue Code).

9 (d) The administrator shall pay the contributions required by  
10 this section to the designated investment entities, company, or com-  
11 panies for the benefit of each participant.

12 Sec. 39.38.220. INVESTMENT BY PERMANENT FUND BOARD OF TRUSTEES.  
13 If investment entities have not been designated to receive the contri-  
14 butions, the board may request the Board of Trustees of the Alaska  
15 Permanent Fund Corporation, under AS 37.13.125 to manage and invest  
16 the contributions for a limited period of time.

17 Sec. 39.38.230. BENEFITS. (a) Payment of benefits to partici-  
18 pants of the plan is the responsibility of the company or other entity  
19 designated by the board and is not the responsibility of the board,  
20 the employer, or the state. The benefits are payable to participants  
21 or their beneficiaries in accordance with the terms of the annuity  
22 contract or contracts or other investments.

23 (b) The board may purchase and offer participation in a group  
24 health plan to members who have retired.

25 Sec. 39.38.240. RIGHTS UNDER QUALIFIED DOMESTIC RELATIONS ORDER.  
26 A former spouse shall be treated as a spouse or surviving spouse to  
27 the extent required by a qualified domestic relations order. Rights  
28 under the order do not take effect until the order is filed with the  
29 administrator.

1           Sec. 39.38.250. SAFEGUARD OF EMPLOYEE FUNDS HELD BY THE PLAN.  
2       Employee contributions and other amounts held in the plan are exempt  
3       from Alaska state and local taxes. Amounts held on behalf of, or  
4       payable to, any employee or other person who is or may become eligible  
5       for benefits under the plan are not subject to anticipation, aliena-  
6       tion, sale, transfer, assignment, pledge, encumbrance, or charge of  
7       any kind, either voluntary or involuntary, before being received by  
8       the person entitled to the amount under the terms of the plan. An  
9       attempt to anticipate, alienate, sell, transfer, assign, pledge,  
10      encumber, charge, or otherwise dispose of a right to amounts held  
11      under the plan is void. However, an employee's right to receive  
12      benefits may be assigned under a qualified domestic relations order.

13           Sec. 39.38.260. EXEMPTION OF EMPLOYEE FUNDS AND BENEFITS.  
14      Employee contributions and other amounts held in the plan and retire-  
15      ment benefits payable under the plan are exempt from levy to enforce  
16      the collection of a debt as provided in AS 09.38 (exemptions).

17           ARTICLE 4. POLITICAL SUBDIVISIONS AND PUBLIC ORGANIZATIONS.

18           Sec. 39.38.300. REQUEST TO PARTICIPATE. (a) A municipality or  
19      other political subdivision of the state may request to become an  
20      employer in the plan. The request shall be made after adoption of a  
21      resolution by the legislative body of the political subdivision and  
22      after approval of the resolution by the person required by law to  
23      approve it. A certified copy of the resolution shall be filed with  
24      the administrator. If the administrator approves the request for  
25      participation, the political subdivision is an employer of the plan.

26           (b) A public organization may request to become an employer in  
27      the plan. The request shall be made after adoption of a resolution by  
28      the governing body of the public organization. A certified copy of  
29      the resolution shall be filed with the administrator. If the

1 administrator approves the request for participation, the public  
2 organization is an employer of the plan.

3 Sec. 39.38.310. SURVEY TO DETERMINE ESTIMATED COST. A political  
4 subdivision or public organization contemplating participation in the  
5 plan may request a preliminary survey to determine the estimated cost  
6 of participation, the benefits derived, and other information that is  
7 appropriate. The political subdivision or public organization re-  
8 questing the survey shall pay the cost of it.

9 Sec. 39.38.320. PARTICIPATION. (a) The effective date of  
10 participation in the plan by a political subdivision or public orga-  
11 nization is the first day of any month acceptable to the governing  
12 body of the political subdivision or public organization and to the  
13 Retirement Board.

14 (b) The political subdivision or public organization shall  
15 designate the departments, groups, or other classifications of employ-  
16 ees eligible to participate in the plan, and shall agree to make the  
17 contributions each year that are required by the administrator.

18 (c) The eligible employees of a participating political subdivi-  
19 sion or public organization are bound by the provisions of this plan  
20 and are entitled to the benefits provided under it.

21 Sec. 39.38.330. TRANSMITTAL OF CONTRIBUTIONS TO ADMINISTRATOR.  
22 The contributions of an employer and the contributions of its employ-  
23 ees shall be transmitted to the administrator as soon as practicable  
24 after the close of the payroll period for which the contributions are  
25 made. If an employer is delinquent in transferring the contributions  
26 for more than 15 days, interest and other penalties shall be assessed  
27 on the outstanding contributions at the rate and in the amount estab-  
28 lished by the board.

29 Sec. 39.38.340. TERMINATION OF PARTICIPATION. (a) If the

1 contributions are not transmitted to the administrator within the pre-  
2 scribed time limit, the administrator may grant an extension. If the  
3 political subdivision or public organization is in default at the end  
4 of the extension, participation in the plan is terminated, and the  
5 employer shall be sent notice of termination.

6 (b) Termination of an employer's participation in the plan does  
7 not bar future participation in the plan by that employer.

8 Sec. 39.38.350. EFFECT OF TERMINATION BY AMENDMENT OF AGREEMENT.

9 (a) A political subdivision or public organization may request that  
10 its participation agreement be amended. The request may be made only  
11 after adoption of a resolution by the legislative body of the politi-  
12 cal subdivision and approval of the resolution by the person required  
13 by law to approve the resolution, or, in the case of a public organi-  
14 zation, after adoption of a resolution by the governing body of that  
15 public organization. A certified copy of the resolution shall be  
16 filed with the administrator.

17 (b) Termination of coverage of a department, group, or other  
18 classification of employees does not bar future coverage of that  
19 department, group, or classification.

20 ARTICLE 5. GENERAL PROVISIONS.

21 Sec. 39.38.450. NONGUARANTEE OF EMPLOYMENT. This chapter is not  
22 a contract of employment between an employer and an employee, nor does  
23 it confer a right of an employee to be continued in the employment of  
24 an employer, nor is it a limitation of the right of an employer to  
25 discharge an employee with or without cause.

26 Sec. 39.38.460. FRAUD. A person who knowingly makes a false  
27 statement, or falsifies or permits to be falsified a record of this  
28 plan, in an attempt to defraud the plan, is guilty of a misdemeanor,  
29 and upon conviction is punishable by a fine of not more than \$500, or

1 by imprisonment for not more than 12 months, or by both.

2 Sec. 39.38.900. DEFINITIONS. In this chapter,

3 (1) "administrator" means the administrator of the retire-  
4 ment defined contribution plan;

5 (2) "appropriate state retirement system" means the state  
6 retirement system that includes the employee's position;

7 (3) "board" means the Retirement Board established under  
8 AS 39.38.020;

9 (4) "compensation" means the total remuneration earned by  
10 an employee for personal services rendered to an employer, including  
11 employee contributions under AS 39.38.210, cost-of-living differen-  
12 tials, payments for leave that is actually used by the employee, the  
13 amount by which the employee's wages are reduced under AS 39.30.-  
14 150(c), and any amount deferred under an employer-sponsored deferred  
15 compensation plan, but does not include retirement benefits, severance  
16 pay or other separation bonuses, welfare benefits, per diem, expense  
17 allowances, workers' compensation payments, incentive cash awards  
18 under AS 39.51.120, or payments for leave not used by the employee  
19 whether those leave payments are scheduled payments, lump-sum pay-  
20 ments, donations, or cash-ins;

21 (5) "contribution account" means the member contribution  
22 account under AS 14.25, the employee contribution account under  
23 AS 39.35, or, for an administrative director of the Alaska Court  
24 System electing to participate in the plan, the total maintained by  
25 the judicial retirement system of the administrative director's manda-  
26 tory contributions, indebtedness principal, contributions of interest  
27 on indebtedness, interest credited to each of those accounts, and  
28 adjustments to the accounts, whichever is appropriate;

29 (6) "elected official" means a person whose compensation

1 results from personal services rendered to an employer as an elected  
2 representative;

3 (7) "employer" means the State of Alaska, a political  
4 subdivision or public organization of the state that participates in  
5 the plan, or an employer under AS 39.38.130 or 39.38.140 that partici-  
6 pates in the plan;

7 (8) "member" or "employee"

8 (A) means a person who is eligible to participate in  
9 the plan and who is covered by the plan;

10 (B) includes an elected public officer under AS 39.-  
11 38.130 and other employees participating under AS 39.38.140;

12 (C) does not include

13 (i) former members;

14 (ii) persons compensated on a contractual or fee  
15 basis;

16 (iii) casual or emergency workers or nonpermanent  
17 employees as defined in AS 39.25.200;

18 (iv) members of the Alaska teachers' retirement  
19 system, the judicial retirement system, the public employ-  
20 ees' retirement system, the elected public officers' retire-  
21 ment system (former AS 39.37), or the optional university  
22 retirement program;

23 (v) employees of the division of marine transpor-  
24 tation engaged in operating the state ferry system who are  
25 covered by a union or group retirement system to which the  
26 state makes contributions; and

27 (vi) the administrative director of courts ap-  
28 pointed under art. IV, sec. 16 of the state constitution  
29 unless the director becomes a member under AS 39.38.120;

1 (D) may include employees of the division of marine  
2 transportation excluded under (C)(v) of this paragraph provided  
3 that

4 (i) the State of Alaska formally agrees to their  
5 inclusion through the process of collective bargaining; and

6 (ii) no collective bargaining agreement has the  
7 effect of obligating contributions made by the state under  
8 AS 39.30.150 in the event the state resumes participation in  
9 the federal social security system;

10 (9) "plan" means the defined contribution plan;

11 (10) "public organization" means an organization or entity

12 (A) created by the constitution or laws of the state  
13 for the purpose of administering state programs;

14 (B) whose officers and employees are paid by a method  
15 other than by the state payroll prepared by the Department of  
16 Administration; and

17 (C) whose employees are not required by law to partic-  
18 ipate in the plan;

19 (11) "qualified domestic relations order" has the meaning  
20 given in AS 39.35.680;

21 (12) "state retirement system" means the teachers' retire-  
22 ment system under AS 14.25, the public employees' retirement system  
23 under AS 39.35, or, for an administrative director of the Alaska Court  
24 System who elects to participate in the plan under AS 22.25.012, the  
25 judicial retirement system.

26 \* Sec. 2. AS 14.25.035(c) is amended to read:

27 (c) The board shall

28 (1) confer with the commissioner of administration regard-  
29 ing the administration of the system and may make recommendations that

1 it considers necessary;

2 (2) have prepared, at least biennially, an actuarial val-  
3 uation of the total obligations under the system of each employer and,  
4 on the basis of the valuation, shall certify to the appropriate bud-  
5 getary authorities of each employer:

6 (A) an appropriate contribution rate for all employ-  
7 ers; and

8 (B) an amount appropriate for each employer to liqui-  
9 date the employee's past service liability; the board shall have  
10 an actuarial and financial experience analysis of the system  
11 conducted at appropriate intervals, but no less frequently than  
12 once every six years; the actuarial valuations and the actuarial  
13 and financial experience analysis shall be prepared and certified  
14 by a member of the American Academy of Actuaries.

15 \* Sec. 3. AS 14.25.040(a) is amended to read:

16 (a) Unless a teacher or member has elected to participate in the  
17 optional university retirement program under AS 14.40.661 - 14.40.799  
18 or the defined contribution plan under AS 39.38, a teacher or member  
19 contracting for service with a participating employer who became a  
20 member of this system before July 1, 1990, is subject to this chapter.

21 \* Sec. 4. AS 14.25.045(a) is amended to read:

22 (a) An employee or former employee of the National Education  
23 Association of Alaska first hired before July 1, 1990, may participate  
24 in the system under this chapter if

25 (1) the employee or former employee possesses or is eligi-  
26 ble to possess a teacher certificate under AS 14.20.020; and

27 (2) the employee or former employee of the National Educa-  
28 tion Association of Alaska pays all retroactive contributions required  
29 to be made under this chapter.

1 \* Sec. 5. AS 14.25.047 is amended to read:

2           Sec. 14.25.047.     PARTICIPATION BY SPECIAL EDUCATION SERVICE  
3 AGENCY EMPLOYEES. An employee of the Special Education Service Agency  
4 first hired before July 1, 1990, may participate in the retirement  
5 fund under this chapter if

6                   (1) the employee possesses or is eligible to possess a  
7 teacher certificate under AS 14.20.020; and

8                   (2) the employee pays all retroactive contributions re-  
9 quired to be made under this chapter.

10 \* Sec. 6. AS 14.25.115(a) is amended to read:

11           (a) A teacher in membership service on or after July 1, 1977,  
12 and before July 1, 1990, who is appointed to retirement on or after  
13 July 1, 1978, may elect to apply unused sick leave credit in computing  
14 the total number of years of credited service under AS 14.25.110(d)  
15 except for sick leave earned while participating in the optional  
16 university retirement program under AS 14.40.661 - 14.40.799 or in the  
17 defined contribution plan under AS 39.38. To obtain service credit  
18 for unused sick leave, a teacher must apply to the administrator no  
19 later than one year after appointment to retirement. Unused sick  
20 leave shall be credited on a day-for-day basis in accordance with the  
21 table for service after July 1, 1969, contained in AS 14.25.220(43).  
22 Teacher contributions may not be required for credited unused sick  
23 leave.

24 \* Sec. 7. AS 14.25.143(a) is amended to read:

25           (a) If the system is determined to be fully funded for the year  
26 and if [WHEN] the administrator determines that the cost of living has  
27 increased and that the financial condition of the system permits, the  
28 administrator shall increase benefit payments to persons receiving  
29 benefits under this system.

1 \* Sec. 8. AS 14.25.220(40) is amended to read:

2 (40) "teacher" or "member" means a person first hired before  
3 July 1, 1990, who is eligible to participate in the system and who is  
4 covered by the system, other than a person who is participating in the  
5 defined contribution plan, limited to

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

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

12 (C) a full-time or part-time teacher of the University  
13 of Alaska or a person occupying a full-time administrative posi-  
14 tion at the University of Alaska which requires academic stand-  
15 ing; the approval of the administrator must be obtained before an  
16 administrative position qualifies for membership in the system;  
17 however, a teacher or administrative person at the university who  
18 is participating in the optional university retirement program  
19 under AS 14.40.661 - 14.40.799 is not a member under this system;

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

22 \* Sec. 9. AS 22.25.012(c) is amended to read:

23 (c) An administrative director first hired before July 1, 1990,  
24 who withdraws from the judicial retirement system under (b) of this  
25 section is eligible for membership in the public employees' retirement  
26 system (AS 39.35) and shall receive credited service in that system  
27 for service rendered as administrative director. An administrative  
28 director hired on or after July 1, 1990, who withdraws from the judi-  
29 cial retirement system is eligible for membership in the defined

1        contribution plan (AS 39.38) from the date of withdrawal. To be  
2        eligible for membership in the public employees' retirement system  
3        under this subsection, the administrative director must contribute to  
4        the public employees' retirement system

5                (1) the amount that would have been contributed if the  
6        administrative director had been a member during the period of the  
7        membership in the judicial retirement system; and

8                (2) any contributions for service as administrative director  
9        refunded from the public employees' retirement system at the time  
10       the administrative director became a member of the judicial retirement  
11       system.

12    \* Sec. 10. AS 22.25.012 is amended by adding a new subsection to read:

13                (d) An administrative director who chooses to withdraw from the  
14       judicial retirement system and participate in the defined contribution  
15       plan must contribute to the plan the amount required under (c) of this  
16       section for participation in the public employees' retirement system.  
17       The judicial retirement system shall transfer to the defined contribu-  
18       tion plan the amount in the employee contribution account, the amount  
19       of the employer contributions, and interest earned on both employee  
20       and employer contributions as required of the public employees' re-  
21       tirement system for members of that system.

22    \* Sec. 11. AS 37.13 is amended by adding a new section to read:

23                Sec. 37.13.125. ASSETS OF THE DEFINED CONTRIBUTION PLAN. If  
24       requested by the Retirement Board under AS 39.38.220, the board of  
25       trustees may manage and invest the assets of the defined contribution  
26       plan for a limited period of time. The board of trustees may impose  
27       conditions to its acceptance of the responsibility. The board of  
28       trustees shall comply with AS 37.13.120 in the investment of the  
29       assets and shall separately account for the earnings of the assets.

1 \* Sec. 12. AS 37.13.125 is repealed and reenacted to read:

2       Sec. 37.13.125. ASSETS OF THE DEFINED CONTRIBUTION PLAN. If  
3 requested by the State Investment Board under AS 39.38.220, the board  
4 of trustees may manage and invest the assets of the defined contribu-  
5 tion plan for a limited period of time. The board of trustees may  
6 impose conditions to its acceptance of the responsibility. The board  
7 of trustees shall comply with AS 37.13.120 in the investment of the  
8 assets and shall separately account for the earnings of the assets.

9 \* Sec. 13. AS 39.35.120 is amended to read:

10       Sec. 39.35.120. COMMENCEMENT OF PARTICIPATION. (a) Unless the  
11 employee has elected to participate in the defined contribution plan  
12 under AS 39.38, an [AN] employee of the state who was first hired  
13 before July 1, 1990, shall be included in this system upon commence-  
14 ment of employment with the state, or on January 1, 1961, whichever is  
15 later. Unless an employee has elected to participate in the optional  
16 university retirement program under AS 14.40.661 - 14.40.799 or the  
17 defined contribution plan under AS 39.38, an employee of a political  
18 subdivision or public organization that becomes an employer who was  
19 first hired before July 1, 1990, shall be included in the system on  
20 the effective date of the employer's participation or the date of the  
21 employee's commencement of employment with the employer, whichever is  
22 later.

23       (b) Inclusion in the system is a condition of employment for an  
24 employee who was first hired before July 1, 1990, except as otherwise  
25 provided for an elected official, an employee who has elected to  
26 participate in the defined contribution plan under AS 39.38, and for  
27 an employee of the university who has elected to participate in the  
28 optional university retirement program under AS 14.40.661 - 14.40.799.

29 \* Sec. 14. AS 39.35.158 is amended to read:

1           Sec. 39.35.158. ADMINISTRATIVE DIRECTOR OF COURTS. An adminis-  
2           trative director of the Alaska Court System first hired before July 1,  
3           1990, [COURT SYSTEM] who withdraws from the judicial retirement system  
4           under AS 22.25.012 and who has not elected to participate in the  
5           defined contribution plan is eligible for membership in the system  
6           and shall receive credited service in the system for service rendered  
7           as administrative director. To be eligible for membership in the  
8           system under this subsection, the administrative director must con-  
9           tribute to the system .

10           (1) the amount the director would have contributed if the  
11           director had been a member during the director's period of membership  
12           in the judicial retirement system; and

13           (2) any contributions for services as administrative direc-  
14           tor refunded by the system at the time the director became a member of  
15           the judicial retirement system.

16 \* Sec. 15. AS 39.35.475(a) is amended to read:

17           (a) If the administrator determines that the system is fully  
18           funded for the year, [ONCE EACH YEAR] the administrator shall increase  
19           benefit payments to eligible disabled members, to persons age 60 or  
20           older receiving benefits under this system in the preceding calendar  
21           year, and to persons who have received benefits under this system for  
22           at least five years who are not otherwise eligible for an increase  
23           under this section.

24 \* Sec. 16. AS 39.35.680(21) is amended to read:

25           (21) "member" or "employee"

26           (A) means a person eligible to participate in the  
27           system who was first hired before July 1, 1990, and who is cov-  
28           ered by the system;

29           (B) includes

- 1 (i) active member;
- 2 (ii) inactive member;
- 3 (iii) vested member;
- 4 (iv) deferred vested member;
- 5 (v) non-vested member;
- 6 (vi) disabled member;
- 7 (vii) retired member;
- 8 (C) does not include
- 9 (i) former members;
- 10 (ii) persons compensated on a contractual or fee
- 11 basis;
- 12 (iii) casual or emergency workers or nonpermanent
- 13 employees as defined in AS 39.25.200;
- 14 (iv) persons covered by the Alaska Teachers'
- 15 Retirement System, the defined contribution plan, or the
- 16 optional university retirement program;
- 17 (v) employees of the division of marine transpor-
- 18 tation engaged in operating the state ferry system who are
- 19 covered by a union or group retirement system to which the
- 20 state makes contributions;
- 21 (vi) justices of the supreme court or judges of
- 22 the court of appeals or of the superior or district courts
- 23 of Alaska;
- 24 (vii) the administrative director of courts ap-
- 25 pointed under art. IV, sec. 16 of the state constitution
- 26 unless the director becomes a member under AS 39.35.158; and
- 27 (viii) members of the elected public officers'
- 28 retirement system (former AS 39.37);
- 29 (D) may include employees of the division of marine

1 transportation excluded under (C)(v) of this paragraph provided  
2 that

3 (i) the State of Alaska formally agrees to their  
4 inclusion through the process of collective bargaining; and

5 (ii) no collective bargaining agreement has the  
6 effect of obligating contributions made by the state under  
7 AS 39.30.150 in the event the state resumes participation in  
8 the federal social security system;

9 \* Sec. 17. AS 39.38.900(3) is repealed and reenacted to read:

10 (3) "board" means the State Investment Board;

11 \* Sec. 18. AS 39.50.200(b) is amended by adding a new paragraph to  
12 read:

13 (50) Defined Contribution Retirement Board (AS 39.38.020).

14 \* Sec. 19. Section 7, ch. 26, SLA 1986, as amended by sec. 7, ch. 104,  
15 SLA 1989, is further amended to read:

16 Sec. 7. INDEBTEDNESS ON REEMPLOYMENT. If a participant in the  
17 retirement incentive program is reemployed as a member of the Public  
18 Employees' Retirement System under AS 39.35, the optional university  
19 retirement program under AS 14.40.661 - 14.40.799, the defined contri-  
20 bution plan under AS 39.38, or the Teachers' Retirement System under  
21 AS 14.25 after appointment to retirement under the program, the par-  
22 ticipant loses the incentive credit received under sec. 5 (c) of this  
23 Act and is indebted to the system. The amount of the indebtedness is  
24 equal to 110 percent of the amount the participant received as a  
25 result of participation in the program for which the participant was  
26 not otherwise entitled, including the cost of health insurance. The  
27 participant is entitled to a credit to be applied against the re-  
28 employment indebtedness in the amount the participant has paid under  
29 sec. 5(d) of this Act. Interest accrues on the indebtedness at the

1 rate established by regulation from the date of reemployment until the  
2 member is appointed to retirement and accepts an actuarial adjustment  
3 to the member's future benefits or until the amount is paid in full.

4 \* Sec. 20. Section 9(a), ch. 89, SLA 1989, is amended to read:

5 (a) If a participant in the retirement incentive program is  
6 reemployed as a member of the public employees' retirement system  
7 under AS 39.35, [OR] the teachers' retirement system under AS 14.25,  
8 or the defined contribution plan under AS 39.38, after appointment to  
9 retirement under the retirement incentive program, the participant  
10 loses the incentive credit received under sec. 2(g) of this Act and is  
11 indebted to the system. The amount of the indebtedness is equal to  
12 110 percent of the amount the participant received as a result of par-  
13 ticipation in the program to which the participant was not otherwise  
14 entitled, including the cost of health insurance. The participant is  
15 entitled to a credit to be applied against the reemployment indebted-  
16 ness in the amount the participant has paid under sec. 2(e) or (f) of  
17 this Act. Interest accrues on the indebtedness at the rate estab-  
18 lished by regulation from the date of reemployment until the member is  
19 appointed to retirement and accepts an actuarial adjustment to the  
20 member's future benefits or until the amount is paid in full.

21 \* Sec. 21. AS 39.38.020 is repealed.

22 \* Sec. 22. Notwithstanding AS 39.38.210, enacted by sec. 1 of this Act,  
23 the employee contribution rate in effect for a position on June 30, 1990,  
24 shall be the employee contribution rate for that position until the rate is  
25 amended by the Retirement Board.

26 \* Sec. 23. Except for secs. 12, 17, and 21 of this Act, this Act takes  
27 effect July 1, 1990.

28 \* Sec. 24. Sections 12, 17, and 21 of this Act take effect only if an  
29 Act is enacted by the Sixteenth Alaska State Legislature that creates a

1 State Investment Board to manage and invest state retirement funds. If  
2 those sections take effect, they take effect on the later of July 1, 1990,  
3 and the date on which the State Investment Board assumes its duties to  
4 manage and invest the assets of the public employees' retirement system.

Attachment 2

HB 579

4/9/90

STATE OF ALASKA

ANALYSIS OF RETIREMENT PLANNING ALTERNATIVES

OCTOBER, 1989

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**SECTION 1  
INTRODUCTION**

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The purpose of this analysis is to review alternative retirement programs available to the State of Alaska and discuss the advantages of each type of program. Section 2 discusses the traditional defined benefit and defined contribution plans. Section 3 describes some hybrid plans, combining features from both defined benefit and defined contribution plans. Section 4 contains some basic questions on retirement needs which should be addressed before a change in retirement program is made. Section 5 contains other issues which will affect employees' retirement benefits depending on the type of plan used. Section 6 contains a description of the types of retirement vehicles available to the State of Alaska.

## SECTION 2

### DEFINED BENEFIT VS. DEFINED CONTRIBUTION

---

The Employee Retirement Income Security Act of 1974 coined the terms defined benefit and defined contribution and then classified all retirement plans as one or the other. Since ERISA, innovations in retirement planning have breached the wall between defined benefit and defined contribution plans by dressing up plans on one side with attractive features from the other side. Today, many kinds of hybrid plans have been developed, combining features of both approaches. The basic categories, however, are still valid.

#### Defined Benefit

Defined benefit plans promise to pay participants a specified benefit, usually a percentage of final pay, at retirement for the participant's lifetime. Therefore, defined benefit plans provide security of retirement income. Employees do not share the risk of poor investment performance, so there are no problems with participants making the wrong investment decisions and suffering as a result. Generally, money buys more retirement income for retirees in a defined benefit plan because benefits build up more slowly and employees who leave the system take away smaller entitlements as separation benefits. Employers are spared the expense and trouble of complicated recordkeeping and allocations and have a certain degree of flexibility in their plan contributions. For example, when an employer enters PERS, the employer may choose the amount of past service, if any, to grant employees, which will affect the employer's contribution rate.

### Defined Contribution

Defined contribution plans specify an annual contribution to a participant's account, with no guarantee as to the ultimate retirement benefit. These plans may be easier for employees to understand because they resemble bank accounts with individual balances. Periodic account statements keep the plans visible to employees. Such plans can easily accept employee contributions, encouraging people to save for their own retirement and take some of the burden off the employer's shoulders. Defined contribution plans can offer investment options, so that employees can attempt to choose the risk/reward profile best suited to their own financial circumstances. Benefits usually build up faster and vesting tends to be more rapid, which is attractive to employees who intend to change jobs. They can usually take lump-sum settlements with them to another employer plan or roll them over into an IRA. The SBS System is an example of a defined contribution plan.

While it is more common for defined contribution plans to accept employee contributions, in the public sector defined benefit plans also commonly require employee contributions. This is because of Section 414(h) of the Internal Revenue Code, which allows public entities to "pick up" employee contributions, converting them to pre-tax contributions, in any qualified retirement program. The State of Alaska is taking advantage of this in PERS, TRS and SBS.

A number of hybrid plans have been developed since ERISA, which combine the advantages of defined benefit and defined contribution plans.

Target Defined Contribution Plan

A target plan is a defined contribution plan which sets the employer contribution rate such that contributions are expected to accumulate to a target replacement income at retirement. The contribution for each individual is changed every year as the individual's salary changes. Younger employees, since they have a longer time in which to build up account balances, will be allocated smaller contributions. Older employees may receive higher contributions due to the shorter time frame in which to build up the account balance to the target level. This type of plan combines the advantages of targeting a replacement percentage of income with the advantages of an account-based plan.

Floor/Offset Plan

This is actually two plans, a defined benefit and a defined contribution plan working together. The defined benefit plan provides a minimum retirement benefit. If contributions and investment performance are acceptable, the defined contribution plan will provide an adequate retirement income and the defined benefit "floor" plan will not activate. However, if the defined contribution plan does not provide sufficient income at retirement, the floor plan makes up the difference to the minimum level. This is basically a defined contribution plan with a guaranteed minimum benefit if the defined contribution balance is not adequate.

Account-based Plan

An account-based plan is a defined benefit plan which is communicated to employees as a defined contribution plan, with individual account balances. Employee accounts are credited with a specified contribution annually and a specified investment return, both of which may be different than the actual contribution to and investment performance of the fund. Any differences between credited investment performance and actual investment performance, as well as other assumptions as to salary increases and turnover, are made up through changes in the required employer contribution level. This type of plan was first publicized a few years ago when the Bank of America adopted it for its retirement program.

SECTION 4  
THE BASICS

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The economic, political and social environment in which retirement plans are conceived and executed has changed greatly in the 1980's and no doubt will continue to change. The global economy seems volatile and unpredictable. Congress makes significant changes in employee benefit law with practically every year's tax bill. The federal income tax structure is radically changed by tax reform, but few observers believe that the new low rates will stay low. The demographics of the work force, already in flux, will have even more dramatic changes in the years ahead as the Baby Bust generation follows the Baby Boom into the work place.

How can employers make reasonable decisions about long-term commitments, such as retirement plans, when so many factors affecting these plans are in flux? This is a far more critical question than the old, simplistic choice between defined benefit and defined contribution plans.

When seas are stormy, it becomes even more important to have a good compass and an accurate understanding of where you want to go. Similarly, employers trying to make difficult decisions about retirement plans in an environment of change and confusion need to start at a more fundamental level: exactly what do they want to accomplish with their retirement program?

This question requires analysis from two, sometimes different, perspectives. Analysis of employer needs and assessment of employee needs must both be weighed before a unified course can be charted.

Employer priorities can be determined by answering several questions:

- What composition of work force am I looking for? (experience, age, etc.)
- Can I attract targeted specialists to employ with my organization through drafting specialized benefits?
- Are the current retirement plans satisfying my organization's needs?
- What can the organization afford vs. benefit gained?
- Can I expect future revenues to satisfy future funding needs?

Retirement planning for employee needs involves several questions:

- How much retirement income is needed?
- At what age should full benefits be paid?
- How quickly in an employee's career should benefits build up?
- How should the cost of providing retirement income be divided between employer and employee?

Only after these questions have been answered is it time to move on the last question:

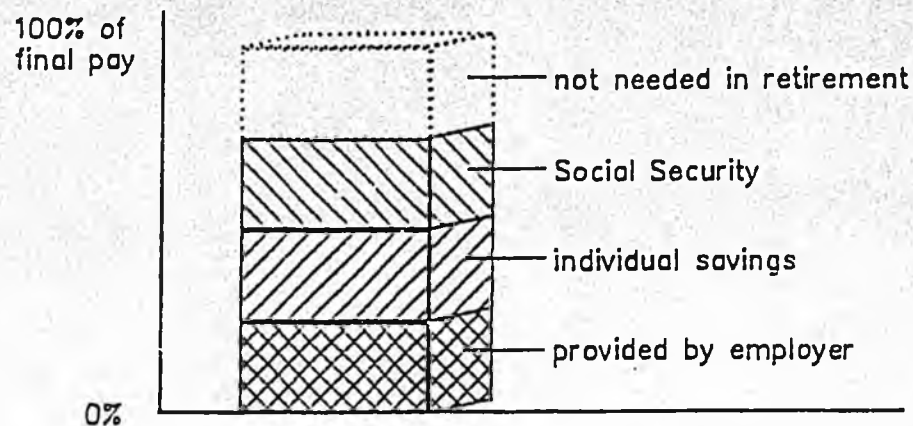
- What kind of plan, or combination of plans, will accomplish these goals?

One way to answer this question is to use a financial model to calculate retirement income in terms of replacing the employee's final pay at retirement age. We start with the assumption that for an individual employee, "total adequacy" in retirement income means 100% replacement of final earnings after taxes. (Some employers may decide that it is alright for employees to have a slightly lower standard of living after retirement.)

In this model, 100% replacement includes four components, as shown in Chart 1. The first is a reduction element, since after retirement people do not generally need as much money to maintain the same standard of living. The

next three components are the three sources of retirement income: Social Security, personal savings and employer-provided pensions. (For the State of Alaska, Social Security may be replaced by the SBS System.)

Chart 1  
Four components of replacing income in retirement



Of the four components, reduction in need and personal savings are the most difficult to quantify - and for employers to plan for. Retirement age is another important variable.

The answer to the question as it concerns employers is more appropriately financial in nature. A determination must be made whether the employer can use the retirement plan, in conjunction with other employer sponsored benefits to attract and retain quality employees.

Is the strength of the operation or funding source strong enough to guarantee funds into the future?

Can a defined contribution plan attract the specialists that the organization needs? If not, should there be a combination with a defined benefit plan or sole use of a defined benefit plan?

With this basic model, employers can determine need and answer the above questions based on their individual circumstances.

SECTION 5  
OTHER ISSUES

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There are many issues and circumstances which may arise that will affect the retirement benefits differently for the employee. The success of securing quality employees for the employer depends upon these circumstances and the type of plan implemented.

Issues which the State must keep in mind in determining the best type of plan to serve it's future needs are as follows:

Geographic Variances

Throughout a state as large and diverse as Alaska, there are vast differences in the cost of living from one area to another. There are also major socioeconomic differences between the few major urban areas and the numerous rural (bush) communities. Not only are all consumer goods and housing costlier in a rural setting, social adjustment for those reared in an urban setting tend to deter many qualified employees from locating in the "bush".

The defined benefit plan can be crafted including provisions which would provide incentives, recognizing employment in rural communities. A defined contribution plan would be more difficult to craft for providing incentives to rural employees, especially if the plan covered employees in both urban and rural communities.

Investment Performance

Who should suffer if investment performance is poor, or receive the windfall if returns are higher than anticipated? In traditional defined contribution plans, the employee bears the entire investment risk. In

defined benefit plans, the employer bears this risk through changes in future contribution rates. In the defined benefit portion of a floor/offset arrangement, the employer bears the investment risk. The defined contribution portion of this arrangement shifts the risk to the employees. Account-based plans can place the risk on the employer or the employee, depending on plan design. Employees bear the entire risk in target plans.

### Costs

A primary consideration in retirement planning is the cost to the employer to provide a certain level of benefits. Obviously, the first determinant of cost is the level of income replacement the company wants to provide. Secondly, where should the line be drawn between employer and employee responsibilities? Then there is the build-up pattern. It costs considerably more to build up benefits early than late. A final determinant of cost is how the risk for unforeseen events is assigned.

As discussed earlier, defined benefit plans generally cost less than defined contribution plans to provide the same target benefit at retirement. This is because of the early build-up pattern of a defined contribution plan versus the late build-up pattern of a defined benefit plan.

### Plan Complexity

Whether a plan can be easily communicated is an issue that should be considered in the early stages of planning. It is possible to design a plan that perfectly fits the income replacement objectives and allows plenty of flexibility for fine tuning, but is almost impossible for employees to understand. Overly-complicated plans also tend to be difficult to

administer, another issue that should be considered in the planning stages.

Defined contribution plans tend to be more easily understood by employees because of the account-based nature of the plan. Many of the hybrid defined benefit plans attempt to express benefits in an account-based manner to help overcome this issue. Good communication can often overcome the complexities of any retirement program.

#### Local Area Growth or Decline

Employers may be impacted by a growth or decline in population or radical shifts in the economic stability of the area. This is especially true in Alaska where the "Boom or Bust" economy seems traditional in the "bush" communities. This action can result in a continuous swing of the number of employees working for a public employer as the community service needs vacillate by population changes.

A traditional defined contribution plan will be affected less by dramatic shifts in employee numbers. The contribution rate is set by plan document and the cost to the employer will always be in direct proportion to the number of employees working. There are advantages for employees under these circumstances because of the portability of the contributions from one employer to another or to a private tax qualified plan.

Issues which the State must keep in mind in determining the best type of plan to serve the future needs of it's employees are as follows:

### Unexpected Salary Increases

Fast-track employees do not have the standard salary progression that retirement planners anticipate. Under certain kinds of plan design, particularly the traditional defined contribution plan, they will be penalized compared to other employees who have achieved the same final salary in a more predictable fashion. Under the defined benefit design, the plan compensates to make up the difference. All of the hybrid types of plans mentioned help compensate for unexpected salary changes.

### Special Benefit Increases

This would include paying additional benefits for early retirement or disability, providing post-retirement increases in benefits, or changing overall objectives for adequate retirement income. Defined benefit plans have traditionally been a better vehicle for providing immediate changes in benefit levels. This is primarily because the employer can pay for these "unfunded liabilities" after the fact through increased contributions. It would be practically impossible to provide post-retirement pension adjustments in a defined contribution type of plan.

### Portability

The State has over 40,000 employees in a variety of jobs. Currently there are numerous retirement programs covering these employees, including PERS, TRS, JRS, National Guard, EPORS, UVPARP and SBS. Many employees also moved to Alaska to take jobs, bringing with them service and retirement benefits from other State and private retirement plans. Employees move among the retirement systems, creating a need for effective portability.

Traditional defined contribution plans generally provide portability easier than defined benefit plans. Account balances may simply be withdrawn

from one system and rolled into another system without loss of earnings or years of service. This also keeps all of an employee's money in the system in which he or she is currently employed.

Defined benefit plans are more difficult to make portable. Particularly final average pay plans, such as PERS and TRS, raise issues of equity. If an employee works under TRS for ten years and then PERS for ten years, should the ultimate benefit be split 50/50 between the two systems or should PERS pay a larger portion of the benefit if the employee's final average earnings are larger than earnings under TRS? This and other issues may be resolved in a defined benefit plans, however, the defined contribution plan provides a more effective vehicle for portability.

#### Plan Complexity

The same issues raised above under Plan Complexity are appropriate for the employee as well as the employer. As discussed, defined contribution plans tend to be more easily understood by employees because of the account-based nature of the plan. Many hybrid defined benefit plans, however, are overcoming this issue by expressing benefits in an account-based manner. Good communication is a key to helping employees understand the plans.

#### Other Pre- and Post-Retirement Medical Benefits

PERS and TRS currently provide both death and disability benefits to participants. These benefits are equal to a percentage of salary regardless of age and service, and are generally paid as annuities. Defined contribution plans have no mechanism for providing similar types of benefits which are not related to benefits accrued under the plan. The benefits could be purchased outside the plans from an insurance carrier or be self-insured.

Currently, post-retirement medical benefits are provided under PERS and TRS. The cost of these benefits are borne by the employers and have been a major influence on the volatility of employer contribution rates year to year. A defined contribution plan has no mechanism for protecting employees from the volatile cost of medical benefits. On the other hand, part of the contribution to a defined contribution plan could be earmarked to pay for post-retirement medical benefits. This would shift the risk of volatility to the employee unless a mechanism for special one-time contributions to retired participant accounts could be made to help make up deficiencies.

SECTION 6  
RETIREMENT VEHICLES

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The State of Alaska is a public entity with the following types of retirement plans available to it:

401(a) Qualified

The State of Alaska can have any type of defined benefit or defined contribution money purchase plan which is qualified under Internal Revenue Code Section 401(a). The State may not implement a 401(k) (cash or deferred arrangement) profit-sharing plan. PERS, TRS and SBS are all retirement programs qualified under Internal Revenue Code Section 401(a).

Section 457

The State may have a nonqualified deferred compensation arrangement under Internal Revenue Code Section 457. The Deferred Compensation Plan (DCP) qualifies under this section of the code. Any nonqualified retirement plan established by the State must meet the qualifications of Code Section 457.

Tax Sheltered Annuities

The State may implement a tax sheltered annuity (TSA) program which allows employees to contribute money to a qualified plan on a tax deferred basis.

# MERCER MEIDINGER HANSEN

Attachment 2  
HB 579  
4/9/90

March 19, 1990

Mr. Robert F. Stalnaker  
Deputy Director  
State of Alaska  
Department of Administration  
Division of Retirement & Benefits  
P.O. Box CR  
Juneau, AK 99811

Re: House Bill 579

Dear Bob:

House Bill 579 would effectively establish a two-tiered retirement structure in the State of Alaska. All new employees would be covered by a defined contribution plan, while current employees could elect to remain in the defined benefit plan or transfer to the new defined contribution plan. The purpose of this letter is to comment on the bill and its affect on the State retirement programs.

The ultimate cost of the new defined contribution plan will simply equal the contribution rate established for the plan, 9.65% of payroll. The initial cost to the State will be a blending of the current defined benefit and new defined contribution rates, as participation in the defined benefit plan declines and participation in the defined contribution plan rises.

Since current employees in the defined benefit plan will be able to opt into the defined contribution plan, we would expect some anti-selection to occur: employees who would benefit most will elect to transfer. Offsetting this is the lower contribution rate required under the defined contribution plan. Therefore, we would expect the overall contributions to State retirement programs would be approximately the same as they are now. Over time, the rates will decrease to 9.65%.

I have taken an informal survey of Mercer consultants and have found no other state or local retirement system which has established a two-tiered structure with a defined contribution and defined benefit plan. There are, however, numerous city retirement systems, both in the States of Washington and Colorado, which have two-tiered defined benefit plans for police and firefighters. These systems sometimes occur when a change is made in the agency responsible for funding the plan. Both the plan for "old hires" and the plan for "new hires" are defined benefit plans in these cases.

Mr. Robert F. Stalnaker  
March 19, 1990  
Page 2

In addition, we found in Maryland that a two-tiered defined benefit structure exists as the result of cost containment measures. This is similar to the situation in the Alaska Public Employees' Retirement System from the changes implemented in '86. Some other public sponsors have hybrid plans, combining features of defined benefit and defined contribution plans.

The following are some thoughts on the structure of the bill and how it might affect retirement benefits in the State:

- (1) Will health benefits continue to be provided for employees participating in the defined contribution plan? Health benefits are currently funded in the defined benefit plan. This approach would not be possible in a defined contribution plan. A portion of the employee's account may be set aside to provide for health benefits, but the full amount needed won't be known and may not be available at retirement.
- (2) The bill amends AS 14.25.143(a) and AS 39.35.475(a), allowing for increased retirement benefits if the System is determined to be fully funded. What does "fully funded" mean?

Is this section of the statutes going to apply to the defined contribution plan? If so, how would the additional benefit payments be funded? In a defined contribution plan, all gains and losses from investment return are allocated to individual accounts, so there are no excess assets or unfunded liabilities at any time. The same is true for COLA's. There would be no excess assets which could be used to fund the additional 10% for State residency.

- (3) Both PERS and TRS currently provide for minimum benefits in the defined benefit plan. A defined contribution plan could not provide for minimum retirement benefits, since there are no actuarially funded benefits. In addition, a defined contribution plan cannot grant past service benefits.

*good point*

Mr. Robert F. Stalnaker

March 19, 1990

Page 3

- (4) The bill does not set an employee contribution rate, and limits whatever rate is chosen to at least one-half of the employer contribution rate. Why is this rate not spelled out in the statute? In a defined contribution plan, the benefit at retirement simply equals the amount of money accumulated in an employee's account. The risk associated with gains and losses from year to year is shifted from the employer to the employee. Contribution rates are not actuarially determined, and therefore do not fluctuate from year to year.
- (5) The employer contribution rate is fixed at 9.65% of pay in the statute. Where does this rate come from? Is it tied to the amount of benefit expected to be provided at retirement?
- (6) AS 39.38.230 should be expanded to provide how and when benefits can be paid. The investment contracts for a defined contribution plan typically will not dictate the payment options. Instead, they can be set by the statutes. Payment of benefits in a defined contribution plan is usually a detailed section of the plan provisions. For example, lump sum benefits are a common payment option under a defined contribution plan.
- (7) AS 14.25.035(c) is amended to include actuarial valuations of the System and a determination of contribution rates and unfunded liabilities. Is this section applicable to the defined contribution plan? Actuarial valuations are not required for defined contribution plans, since there are no unfunded liabilities and the contribution rates do not vary from year to year.
- (8) There is no mention of vesting in the new defined contribution plan. If vesting is not immediate, forfeitures from non-vested terminated employees should be addressed. This money could be used to offset employer contributions or it could be reallocated to remaining participant accounts.
- (9) There appears to be a conflict with the new University of Alaska optional University retirement program. Employees will be able to choose between two defined contribution plans. If the State plan provides a larger contribution, no employees will elect the University plan, effectively eliminating it.

Mr. Robert F. Stalnaker

March 19, 1990

Page 4

The bill as drafted, Bob, would be difficult to administer without some of these questions clarified. In addition, significantly different levels of benefits would be payable under the new plan compared to the current plans for most employees. A task force could be established to study the ramifications of a defined contribution plan for the State before proceeding with legislation. As you recall, the TRS Board requested some information to study this issue at their 1989 Fall Board Meeting. Much of that material is germane to the issue, including the possibility of certain hybrid arrangements, like floor/offset, target benefit or cash balance plans. A task force should be able to identify the problems with the current system and propose appropriate ways to solve them.

Bob, these are my initial thoughts on this Bill. I'll keep you informed as additional information is available. If you have any further questions, please let me know.

Sincerely,



Brian R. McGee, FSA  
Principal

BRM/HPG/js

0085

BBH

# HOUSE COMMITTEE REPORT File

(11)

Date Referred: March 30, 1990

FURTHER REFERRALS:

Date of Committee Action: 4/17/90

The FINANCE Committee considered:

HB 580

HOUSE BILL NO. 580

INVESTMENT OF STATE FUNDS

"An Act relating to management and investment of certain state funds; and providing for an effective date."

**RECOMMENDATIONS:**

- be replaced with CS HB 580 (FIN)  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact REVENUE
- zero fiscal note \_\_\_\_\_
- zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) D/Administrative 3/31/90
- zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

**SIGNING:**

(Check approp. column)

Do Not  
Pass      No Rec      Amend

\_\_\_\_\_  
Hoffman

\_\_\_\_\_  
Larson

\_\_\_\_\_  
Swackhammer

\_\_\_\_\_  
Brown

\_\_\_\_\_  
Koponen

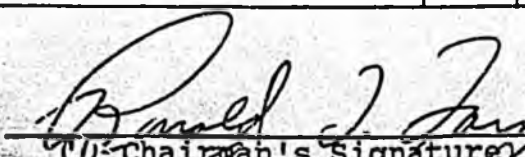
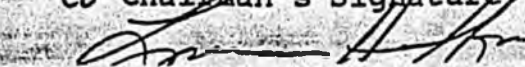
\_\_\_\_\_  
Ulmer

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Barnes

\_\_\_\_\_  
Rieger

\_\_\_\_\_  
Wallis

Reel E. Phillips	✓		

 Larson  
 Co-Chairman's Signature  
 Hoffman

FISCAL NOTE

RECURST:

Revision Date: \_\_\_\_\_  
Title: Management and investment of  
certain state funds  
Sponsor: House Finance  
Requestor: House Finance

Agency Affected: Alaska State Investment Corp.  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
<b>OPERATING</b>						
PERSONAL SERVICES	494.6	989.3	989.3	989.3	989.3	989.3
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	7200.9	14474.4	14662.8	14394.2	15189.3	15445.8
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>7695.5</b>	<b>15463.7</b>	<b>15652.1</b>	<b>15883.5</b>	<b>16178.6</b>	<b>16435.1</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	7695.5	15463.7	15652.1	15883.5	16178.6	16435.1
<b>TOTAL</b>	<b>7695.5</b>	<b>15463.7</b>	<b>15652.1</b>	<b>15883.5</b>	<b>16178.6</b>	<b>16435.1</b>

POSITIONS:

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

**ANALYSIS:** attach a separate page for analysis. Fiscal year 1990 effect is zero. Fiscal years 1991-1996 are the sum of the amounts deleted from the Treasury budget on the attached fiscal note plus estimated common stock management fees for SBS shown on the attached schedule.

Prepared By: Milt Barker *MB*  
Division: Treasury

Phone: 465-2350  
Date: April 18, 1990

Approved by Commissioner: \_\_\_\_\_  
Agency: Department of Revenue

Date: 4/18/90

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

FISCAL NOTE

REOURST:

Revision Date: \_\_\_\_\_  
Title: Management and investment of  
certain state funds  
Sponsor: House Finance  
Requestor: House Finance

Agency Affected: Department of Revenue  
BRU: Treasury  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
<b>OPERATING</b>						
PERSONAL SERVICES	(494.6)	(989.3)	(989.3)	(989.3)	(989.3)	(989.3)
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	(7080.2)	(14160.5)	(14160.5)	(14160.5)	(14160.5)	(14160.5)
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>(7574.8)</b>	<b>(15149.8)</b>	<b>(15149.8)</b>	<b>(15149.8)</b>	<b>(15149.8)</b>	<b>(15149.8)</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	(7574.8)	(15149.8)	(15149.8)	(15149.8)	(15149.8)	(15149.8)
<b>TOTAL</b>	<b>(7574.8)</b>	<b>(15149.8)</b>	<b>(15149.8)</b>	<b>(15149.8)</b>	<b>(15149.8)</b>	<b>(15149.8)</b>

POSITIONS:

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

ANALYSIS: attach a separate page for analysis. Fiscal year 1990 effect is zero. Fiscal years 1992 through 1996 based on the State Investment Corporation assuming responsibility for trust fund investments January 1, 1991. The amounts are the retirement and endowment funding contained in Treasury's fiscal year 1991 budget. Fiscal year 1991 effect is half of the Treasury fiscal year 1991 budget.

Prepared By: Milt Barker *MB*  
Division: Treasury

Phone: 465-2350  
Date: April 18, 1990

Approved by Commissioner: \_\_\_\_\_  
Agency: Department of Revenue

Date: 4/18/90

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

CSHB 580 (Pin)  
SBS Investment Management Costs

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	(\$ Millions)						(\$000)				
Fiscal Year	Beginning Liquid Balance	GIC Maturities	Net Contributions	Average Balance	Investment Earnings	Ending Liquid Balance	Stock Management Fees	Custodian Fees	Audit Fees	Performance Measurement Fees	Total Fees
FY91	0	151.1	50.0	100.5	9.0	210.1	53.5	5.2	10.0	12.0	120.7
FY92	210.1	118.9	55.0	297.1	26.7	410.7	276.3	15.6	10.0	12.0	313.9
FY93	410.7	96.3	60.0	488.8	44.0	610.9	454.6	25.7	10.0	12.0	502.3
FY94	610.9	202.9	65.0	744.8	67.0	945.8	692.6	39.1	10.0	12.0	733.7
FY95	945.6	128.7	70.0	1045.1	94.1	1238.6	971.9	54.9	10.0	12.0	1028.8
FY96	1238.6	60.0	75.0	1306.1	117.5	1491.1	1214.7	68.6	10.0	12.0	1285.3

Notes:

1. Column 6, prior year
2. From Division of Retirement & Benefits
3. Treasury Division estimate based on FY 89 contributions
4. Column 1 + (Column 2 + Column 3)/2
5. 9% x Column 4
6. Column 1 + Column 2 + Column 3 + Column 5
7. Column 4 x .31% per contract x 30% asset allocation to common stocks
8. Column 4 x 5.25%/\$1000 per contract
9. Per contract
10. Treasury Division estimate
11. Columns 7 + 8 + 9 + 10.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Administration  
 Title: An Act relating to management and BRU: Centralized Administrative Services  
Investment of certain State funds  
 Sponsor: Finance Committee Components: Finance  
 Requestor: State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

HB 580 does not appear to have any impact on the Division of Finance in its present form. The primary changes appear to be wherever in the Statutes it formerly had "Commissioner of Revenue" it will now have "State Investment Board" and a new section of the statutes has been added to establish a State Investment Board in the Department of Revenue. The board is to manage and invest State funds with the assistance of the Department of Revenue. From discussions with the Department of Revenue, they will be preparing a fiscal note for the impact to them.

Prepared by: Keith Busch, Director *John Thomas State Act.* Phone: 465-2240  
 Division: Finance Date: \_\_\_\_\_  
 Approved by Commissioner: Frank S. Baxter Date: 3/15/90  
 Agency: Department of Administration

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

Original sponsor(s): Finance Committee

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 580 (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 management and investment of  
7 certain state funds; and providing for an effective  
8 date."

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

10 \* Section 1. AS 37.10 is amended by adding new sections to read:

11 ARTICLE 5. ALASKA STATE INVESTMENT CORPORATION.

12 - Sec. 37.10.210. ALASKA STATE INVESTMENT CORPORATION. (a) There  
13 is established the Alaska State Investment Corporation. The corpo-  
14 ration is a public corporation and government instrumentality in the  
15 Department of Revenue managed by a board of directors. The purpose of  
16 the corporation is to provide professional management and investment  
17 of state trust funds and other state funds upon agreement with the  
18 managers of those funds.

19 (b) The board consists of seven voting members:

20 (1) one member, nominated by the Teachers' Retirement Board  
21 and appointed by the governor, who is a member of the teachers' re-  
22 tirement system;

23 (2) one member, nominated by the Public Employees' Retire-  
24 ment Board and appointed by the governor, who is a member of the  
25 public employees' retirement system;

26 (3) one member, nominated by the Teachers' Retirement Board  
27 and by the Public Employees' Retirement Board and appointed by the  
28 governor;

29 (4) two public members, appointed by the governor;

1 (5) two professional institutional investors, selected by  
2 the other board members.

3 (c) The commissioner of administration and the commissioner of  
4 revenue serve on the board as nonvoting members.

5 (d) The members must have recognized competence and wide exper-  
6 ience in finance, investments, or other business management-related  
7 fields. The professional institutional investors must have recognized  
8 competence and wide experience in managing institutional investment  
9 portfolios.

10 (e) The members appointed under (b) of this section shall be  
11 appointed for staggered terms of three years and may be reappointed to  
12 the board.

13 (f) Members of the board serve at the pleasure of the governor.  
14 A board member's removal by the governor must be in writing. After a  
15 member receives written notice of removal from the governor, the  
16 member may not participate in board business and may not be counted  
17 for purposes of establishing a quorum.

18 (g) Members serving as professional institutional investors may  
19 not hold another compensated state office, position, or employment,  
20 either elective or appointive, except as a member of the armed forces  
21 of the state.

22 (h) A vacancy on the board shall be promptly filled in the same  
23 manner as the seat was originally filled. An appointee to a vacancy  
24 holds office for the balance of the unexpired term of the appointee's  
25 predecessor. A vacancy on the board does not impair the authority of  
26 a quorum of the board to exercise all the powers and perform all the  
27 duties of the board.

28 (i) The board shall annually elect a chair from among its mem-  
29 bers.

1 (j) Four voting members of the board constitute a quorum for the  
2 transaction of business and the exercise of the powers and duties of  
3 the board.

4 (k) A board member may not designate another person to serve on  
5 the board in the absence of the member.

6 Sec. 37.10.220. POWERS AND DUTIES OF THE BOARD. (a) The board  
7 shall

8 (1) hold regular and special meetings at the call of the  
9 chair or of at least four of the voting members;

10 (2) establish investment policies for the funds for which  
11 it is responsible;

12 (3) submit long-range and quarterly investment reports to  
13 the Legislative Budget and Audit Committee;

14 (4) report to the governor and the legislature by Septem-  
15 ber 30 of each year concerning the investment of state funds including  
16 financial and investment policies established by the board;

17 (5) contract with external performance evaluators to review  
18 the performance of each fund managed or invested by the corporation  
19 and report each year to the board and to the other boards directly  
20 responsible for the activities supported by the fund on the fund's  
21 condition;

22 (6) engage independent certified public accountants to  
23 prepare an annual audit of each of the funds for which the corporation  
24 is responsible and to report to the board with the results of the  
25 audit.

26 (b) The board may

27 (1) employ outside investment advisors to review investment  
28 policies and make recommendations to the board;

29 (2) employ legal counsel;

1 (3) enter into an agreement with the manager of another  
2 state fund to assume fiduciary, administrative, or management respon-  
3 sibilities for investing the other state fund; an agreement under this  
4 paragraph may not be for a term longer than three years but may be  
5 renewed;

6 (4) do all acts necessary, convenient, or desirable to  
7 carry out the powers expressly granted or necessarily implied in this  
8 chapter.

9 Sec. 37.10.230. CONFLICTS OF INTEREST. (a) Members of the  
10 board and the executive director are subject to the provisions of  
11 AS 39.50.

12 (b) If a member of the board or an employee of the corporation  
13 acquires, owns, or controls an interest, direct or indirect, in an  
14 entity or project in which assets under the control of the corporation  
15 are invested, the member shall immediately disclose the interest to  
16 the board. The disclosure is a matter of public record and shall be  
17 included in the minutes of the board meeting next following the dis-  
18 closure.

19 Sec. 37.10.240. REGULATIONS. The board may adopt rules and  
20 by-laws after giving reasonable public notice. The board is exempt  
21 from the Administrative Procedure Act (AS 44.62).

22 Sec. 37.10.250. COMPENSATION OF BOARD MEMBERS. Members of the  
23 board other than members who are state employees receive an honorarium  
24 of \$400 for each day spent at a meeting of the board or at a meeting  
25 of a subcommittee of the board or at a public meeting as a represen-  
26 tative of the board. Members of the board are entitled to per diem  
27 and travel allowances as provided for members of state boards and  
28 commissions under AS 39.20.180. The board may provide a monthly fee  
29 to the professional investor members not to exceed \$1,000. This fee,

1 if any, is in addition to the daily honorarium.

2 Sec. 37.10.260. STAFF. (a) The board shall employ an executive  
3 director. The executive director must be qualified by training and  
4 experience to manage, administer, and direct the investment of funds.  
5 The board shall fix the compensation of the executive director. The  
6 executive and administrative functions of the board are vested in the  
7 executive director who serves under the supervision of the board. The  
8 executive director shall appoint employees of the corporation as  
9 necessary.

10 (b) The board shall appoint an investment director to serve  
11 under the executive director and to act as assistant director. How-  
12 ever, if the office of investment director is vacant, the executive  
13 director may temporarily designate the assistant director. The assis-  
14 tant director shall act in place of the executive director in the  
15 absence or disability of the executive director.

16 (c) The board shall adopt regulations that restrict the execu-  
17 tive director, investment directors, other officers, and employees  
18 from having financial interest, directly or indirectly, in firms or  
19 corporations that provide services to the corporation. Officers and  
20 employees of the corporation are subject to AS 39.52.

21 (d) The executive director and each investment director shall  
22 file a bond for the faithful performance of duties in the amount and  
23 with the sureties as required by the board.

24 (e) Officers and employees of the corporation are members of the  
25 exempt service under AS 39.25.110.

26 (f) A deed, contract, or other document that must be executed by  
27 or on behalf of the corporation shall be signed by the executive  
28 director.

29 Sec. 37.10.270. INSURANCE. The corporation shall protect

1       trusted assets and its own assets, services, and employees by pur-  
2       chasing insurance or providing for self-insurance retentions in  
3       amounts recommended by the executive director and approved by the  
4       board to cover the acts, including fiduciary acts, errors, and omis-  
5       sions of its board members, officers, employees, and agents. Insur-  
6       ance shall protect the corporation and the state from liability to  
7       others and from loss of trusted assets and assets of the corporation.

8       Sec. 37.10.280. EXEMPTION FROM TAXATION. The corporation and  
9       all properties at any time owned by it, managed by it, or held by it  
10      in trust, and the income from those activities, are exempt from all  
11      taxes and assessments in the state. All security instruments issued  
12      by the corporation and income from them are exempt from all taxes and  
13      assessments in the state, including transfer taxes.

14      Sec. 37.10.290. SURETY FOR DEPOSITS WITH BANKS. Banks, trust  
15      companies, savings banks, and other persons carrying on a banking  
16      business are authorized to give sureties to the corporation. The  
17      sureties shall be approved by the corporation to the effect that the  
18      banks or banking institutions shall faithfully keep and pay over to  
19      the order of or upon the warrant of the corporation or its authorized  
20      agent all money deposited with them by the corporation and agreed  
21      interest, at the times or upon the demands agreed on with the banks or  
22      banking institutions. In lieu of these sureties, a depository bank or  
23      other banking institution shall deposit with the corporation or its  
24      authorized agent or a trustee as collateral, securities approved by  
25      the corporation. The deposits of the corporation may be evidenced by  
26      agreements in the form and upon the terms and conditions that are  
27      agreed upon by the corporation and the depository banks or banking  
28      institutions.

29      Sec. 37.10.300. LIMITATIONS. The corporation may not engage in

1 commercial banking activity or private trust activity. The corpora-  
2 tion may not act as a depository or trustee for a private person,  
3 association, or corporation. The corporation may not act as a lender  
4 to a private person, association, or corporation of money from any  
5 source except state funds under management by the corporation.

6 Sec. 37.10.310. LIABILITY. (a) Except with respect to a writ-  
7 ten agreement authorized under (b) of this section, a liability in-  
8 curred by the corporation shall be satisfied exclusively from the  
9 assets or revenue of the corporation and a creditor or other person  
10 may not have a right of action against the state because of a debt,  
11 obligation, or liability of the corporation. A liability of the  
12 corporation may not be satisfied from trust assets unless expressly  
13 authorized by law.

14 (b) Notwithstanding any other law to the contrary, the corpora-  
15 tion may enter into a written agreement with a Federal Reserve Bank or  
16 the board of governors of the Federal Reserve System providing that,  
17 to the extent permitted by the contracts, trust agreements, or other  
18 fiduciary instruments between the corporation and the Federal Reserve  
19 System, the corporation's obligations to the Federal Reserve System  
20 shall be guaranteed by the state, and the state expressly waives all  
21 defenses of governmental immunity by and on behalf of the corporation  
22 and the state with respect to obligations to and from the Federal  
23 Reserve System and the state expressly consents to sue and be sued in  
24 federal court or in any court of competent jurisdiction. However,  
25 this provision does not alter or affect the immunity accorded to state  
26 officials and employees under state law.

27 Sec. 37.10.399. DEFINITIONS. In AS 37.10.210 - 37.10.399,  
28 unless the context otherwise requires,

29 (1) "board" means the board of directors of the

1 corporation;

2 (2) "corporation" means the Alaska State Investment Corpo-  
3 ration.

4 \* Sec. 2. AS 14.25.035(d) is amended to read:

5 (d) The commissioner of administration shall report to the board  
6 concerning the condition and administration of the system. The re-  
7 ports shall be distributed to the members of the system. The Alaska  
8 State Investment Corporation [COMMISSIONER OF REVENUE] shall provide  
9 reports to the board on the condition and investment performance of  
10 the teachers' retirement trust fund and an annual external performance  
11 review.

12 \* Sec. 3. AS 14.25.180 is amended to read:

13 Sec. 14.25.180. MANAGEMENT AND INVESTMENT OF FUND. (a) The  
14 Alaska State Investment Corporation [COMMISSIONER OF REVENUE] is the  
15 [TREASURER OF THE SYSTEM AND THE] fiduciary of the fund. In managing  
16 the fund, the Alaska State Investment Corporation [COMMISSIONER OF  
17 REVENUE] shall

18 (1) consider the status of the fund's investments and the  
19 system's liabilities on both a current and a probable future basis;

20 (2) determine the appropriate investment objectives for the  
21 fund;

22 (3) establish investment policies aimed at achieving the  
23 objectives; and

24 (4) act only in regard to the best financial interests of  
25 the system's beneficiaries.

26 (b) The Alaska State Investment Corporation [COMMISSIONER OF  
27 REVENUE] may invest the fund on the basis of probable total rate of  
28 return without regard to the distinction between principal and income  
29 or to the generation of income.

1 (c) In carrying out investment duties under this chapter, the  
2 Alaska State Investment Corporation [COMMISSIONER OF REVENUE] has the  
3 same powers and duties in regard to the teacher's retirement trust  
4 fund as are provided in AS 37.10.071, except that the standard of  
5 prudence that the corporation [COMMISSIONER] must obey under AS 37.-  
6 10.071(c) shall be in regard to the management of large trust invest-  
7 ments rather than large investments.

8 \* Sec. 4. AS 14.40.400(b) is amended to read:

9 (b) The Alaska State Investment Corporation [COMMISSIONER OF  
10 REVENUE] is the fiduciary of the trust fund and shall account for and  
11 invest the fund as set out in AS 37.14.110(c), 37.14.160, and 37.14.-  
12 170, except that the corporation [COMMISSIONER] shall report the  
13 condition and investment performance of the fund to the Board of  
14 Regents.

15 \* Sec. 5. AS 22.25.048(c) is amended to read:

16 (c) The Alaska State Investment Corporation [COMMISSIONER OF  
17 REVENUE] is the [TREASURER OF THE SYSTEM AND THE] fiduciary of the  
18 fund and has the same powers and duties under this section in regard  
19 to the judicial retirement trust fund as are provided in AS 14.25.180.

20 \* Sec. 6. AS 26.05.228(c) is amended to read:

21 (c) The Alaska State Investment Corporation [COMMISSIONER OF  
22 REVENUE] is the [TREASURER OF THE SYSTEM AND THE] fiduciary of the  
23 fund and has the same powers and duties under this section in regard  
24 to the fund as are provided under AS 14.25.180.

25 \* Sec. 7. AS 36.30.015 is amended by adding a new subsection to read:

26 (f) The board of directors of the Alaska State Investment Corpo-  
27 ration shall adopt procedures to govern the procurement of supplies,  
28 services, professional services, and construction. The procedures  
29 must

1 (1) reflect competitive principles and provide vendors  
2 reasonable and equitable opportunities to participate in the procure-  
3 ment process; and

4 (2) include procurement methods to meet emergency and  
5 extraordinary circumstances.

6 \* Sec. 8. AS 36.30.990(1) is amended to read:

7 (1) "agency"

8 (A) means a department, institution, board, commis-  
9 sion, division, authority, public corporation, the Alaska Pio-  
10 neers' Home, or other administrative unit of the executive branch  
11 of state government;

12 (B) does not include

13 (i) [, EXCEPT FOR] the University of Alaska;

14 (ii) [,] the Alaska State Housing Authority;

15 (iii) the [AND] Alaska Railroad Corporation;

16 (iv) the Alaska State Investment Corporation;

17 (v) [IT DOES NOT INCLUDE] a regional Native  
18 housing authority created under AS 18.55.996, or a regional  
19 electrical authority created under AS 18.57.020;

20 \* Sec. 9. AS 37.10.071 is amended to read:

21 Sec. 37.10.071. INVESTMENT POWERS AND DUTIES. (a) In making  
22 investments under this section, the fiduciary of a state fund [COMMIS-  
23 SIONER OF REVENUE] shall

24 (1) act as official custodian of cash and investments by  
25 securing adequate and safe custodial facilities for them;

26 (2) receive all items of cash and investments;

27 (3) collect and deposit the principal of and income from  
28 owned or acquired investments;

29 (4) invest and reinvest the assets in accordance with this

1 section;

2 (5) receive and spend appropriations to cover the cost of  
3 the exercise of duties under this section;

4 (6) exercise the powers of an owner with respect to the  
5 assets;

6 (7) perform all acts, not prohibited by this section,  
7 whether or not expressly authorized, that the fiduciary [COMMISSIONER]  
8 considers necessary or proper in administering the assets;

9 (8) maintain accounting records in accordance with gener-  
10 ally accepted [INVESTMENT] accounting principles;

11 (9) engage an independent certified public accountant to  
12 conduct an annual audit of the financial condition and investment  
13 transactions;

14 (10) enter into and enforce contracts or agreements con-  
15 sidered necessary, convenient, or desirable for the investment pur-  
16 poses of this section; and

17 (11) when choosing to acquire or dispose of investments,  
18 secure competitive national or international market rates or prices,  
19 or the equivalence of those rates or prices in the judgment of the  
20 fiduciary [COMMISSIONER].

21 (b) Under this section, the fiduciary of a state fund or the  
22 fiduciary's [COMMISSIONER OR THE COMMISSIONER'S] designee may

23 (1) delegate investment, custodial, or depository authority  
24 on a discretionary or nondiscretionary basis to officers or employees  
25 of the state or to independent firms, banks, or trust companies, by  
26 designation through appointments, contracts, or letters or authority;

27 (2) acquire or dispose of investments either directly,  
28 indirectly, or through investment pools or trusts, by competitive or  
29 negotiated agreements, contracts, or auctions, in public or private

1 markets;

2 (3) concentrate or diversify investments as the fiduciary  
3 [COMMISSIONER] considers appropriate to increase the probable total  
4 rate of return or to decrease the overall exposure to potentially  
5 adverse market value risks;

6 (4) protect the market value or the rate of return of the  
7 investments by entering into forward agreements to buy or sell assets  
8 at a future date as a hedge against existing held assets or as a  
9 precommitment of future cash flows;

10 (5) lend assets, under an agreement and for a fee, against  
11 deposited collateral of equivalent market value;

12 (6) borrow assets on a short-term basis, under an agreement  
13 and for a fee, against the deposit of collateral consisting of other  
14 assets in order to accommodate temporary cash or investment needs;

15 (7) hold investments in bearer or registered form in the  
16 name of the state, a fund, or nominees authorized by the fiduciary  
17 [COMMISSIONER];

18 (8) utilize consultants, advisors, custodians, investment  
19 services, and legal counsel for assistance in investment matters on  
20 either a continuing or a limited-term basis and with or without com-  
21 pensation;

22 (9) declare records to be confidential and exempt from  
23 AS 09.25.110 and 09.25.120 if the records contain information that  
24 discloses the particulars of the business or the affairs of a private  
25 enterprise, investor, borrower, advisor, consultant, counsel, or  
26 manager.

27 (c) In exercising investment, custodial, or depository powers or  
28 duties under this section, the fiduciary of a state fund [COMMIS-  
29 SIONER] shall exercise the judgment and care under the circumstances

1 then prevailing that an institutional investor of ordinary profession-  
2 al prudence, discretion, and intelligence exercises in managing large  
3 investments with consideration for the purpose of the fund, the in-  
4 vestment objectives, the continuing disposition of the fund's invest-  
5 ments, and the probable safety of the capital as well as the probable  
6 investment returns.

7 (d) In exercising investment, custodial, or depository powers or  
8 duties under this section, the fiduciary or the fiduciary's [COMMIS-  
9 SIONER OR A] designee [OF THE COMMISSIONER] is liable for a breach of  
10 a duty that is assigned or delegated under this section, or under  
11 AS 14.25.180, AS 14.40.400(b), AS 37.10.070, AS 37.14.110(c), 37.14.-  
12 160, 37.14.170, or AS 39.35.080. However, the fiduciary or the [COM-  
13 MISSIONER OR THE COMMISSIONER'S] designee is not liable for a breach  
14 of a duty that has been delegated to another person if the delegation  
15 is prudent under the applicable standard of prudence set out in stat-  
16 ute or if the duty is assigned by law to another person, except to the  
17 extent that the fiduciary [COMMISSIONER] or designee

18 (1) knowingly participates [PARTICIPATE] in, or knowingly  
19 undertakes to conceal, an act or omission of another person, knowing  
20 that the act or omission is a breach of that person's duties under  
21 this chapter;

22 (2) by failure to comply with this section in the adminis-  
23 tration of specific responsibilities, enables another person to commit  
24 a breach of duty; or

25 (3) has knowledge of a breach of duty by another person,  
26 unless the fiduciary [COMMISSIONER] or designee makes reasonable  
27 efforts under the circumstances to remedy the breach.

28 (e) The state shall defend and indemnify the fiduciary [COMMIS-  
29 SIONER] or an officer or employee of the state against liability under

1 (d) of this section to the extent that the alleged act or omission was  
2 performed in good faith and was prudent under the applicable standard  
3 of prudence.

4 (f) In this section, "fiduciary of a state fund" or "fiduciary"  
5 ["COMMISSIONER OF REVENUE" OR "COMMISSIONER"] means

6 (1) the commissioner of revenue for investments under  
7 [AS 14.25.180 OR] AS 37.10.070; [OR]

8 (2) the Alaska State Investment Corporation for investments  
9 under AS 14.25.080; or

10 (3) the person or body provided by law to manage the in-  
11 vestments, for investments not subject to AS 14.25.180 or AS 37.10.-  
12 070.

13 \* Sec. 10. AS 37.14.110(c) is amended to read:

14 (c) The Alaska State Investment Corporation [COMMISSIONER OF  
15 REVENUE] shall account for the fund in accordance with generally  
16 accepted accounting principles and shall determine the net income of  
17 the fund [IN ACCORDANCE WITH INVESTMENT ACCOUNTING PRINCIPLES AND] in  
18 a manner that preserves the distinction between principal and income  
19 and that excludes capital gains or losses realized on principal. The  
20 principal of the fund and the capital gains or losses realized on  
21 principal shall be perpetually retained in the fund for investment  
22 purposes.

23 \* Sec. 11. AS 37.14.140 is amended to read:

24 Sec. 37.14.140. UTILIZATION OF INCOME. The net income of the  
25 fund may not be appropriated for a purpose other than the support of  
26 the state public school program. The Alaska State Investment Corpo-  
27 ration [COMMISSIONER OF REVENUE] shall invest realized net income that  
28 has not been appropriated or that has been appropriated but not ex-  
29 pended until the income is appropriated and expended.

1 \* Sec. 12. AS 37.14.160 is amended to read:

2 Sec. 37.14.160. DUTIES OF THE ALASKA STATE INVESTMENT CORPO-  
3 RATION [COMMISSIONER OF REVENUE]. The Alaska State Investment Corpo-  
4 ration [COMMISSIONER OF REVENUE] is the treasurer of the trust fund  
5 created in AS 37.14.110 and shall

6 (1) exercise the powers and duties established in AS 14.-  
7 25.180(c);

8 (2) deposit the principal and income from investments in  
9 separate principal and income accounts for the fund;

10 (3) invest and maintain accounting records that distinguish  
11 between the principal and income of the fund;

12 (4) provide reports to the board established under AS 37.-  
13 14.120 on the condition and investment performance of the fund.

14 \* Sec. 13. AS 37.14.170 is amended to read:

15 Sec. 37.14.170. INVESTMENTS. The Alaska State Investment  
16 Corporation [COMMISSIONER OF REVENUE] is the fiduciary of the trust  
17 fund and shall invest the fund to provide increasing net income over  
18 long-term periods to the fund's income beneficiaries. The corporation  
19 [COMMISSIONER] may invest the money in the fund on the basis of proba-  
20 ble total rate of return to promote the long-term generation of in-  
21 come. In managing the trust fund, the corporation [COMMISSIONER]  
22 shall

23 (1) consider the status of the fund's capital and the  
24 income generated on both a current and a probable future basis;

25 (2) determine the appropriate investment objectives;

26 (3) establish investment policies to achieve the objec-  
27 tives; and

28 (4) act only in regard to the financial interests of the  
29 fund's beneficiaries.

1 \* Sec. 14. AS 37.14.200(c) is amended to read:

2 (c) The net income of the fund shall be determined by the Alaska  
3 State Investment Corporation [COMMISSIONER OF REVENUE] in accordance  
4 with generally accepted [INVESTMENT] accounting principles. However,  
5 the corporation shall preserve [AND IN A MANNER THAT PRESERVES] the  
6 distinction between principal and income.

7 \* Sec. 15. AS 37.14.210 is amended to read:

8 Sec. 37.14.210. POWERS AND DUTIES OF THE ALASKA STATE INVESTMENT  
9 CORPORATION [COMMISSIONER OF REVENUE]. The Alaska State Investment  
10 Corporation [COMMISSIONER OF REVENUE] is the fiduciary [TREASURER] of  
11 the fund and has the power and duty to:

12 (1) act as official custodian of the cash and investments  
13 belonging to the fund by securing adequate and safe custodial facil-  
14 ities;

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

17 (3) collect the principal and income from investments owned  
18 or acquired by the fund and deposit the amounts in separate principal  
19 and income accounts for the fund;

20 (4) invest and reinvest the assets of the fund as provided  
21 in this section and as provided for the investment of funds under  
22 AS 14.25.180(c) and AS 37.14.170;

23 (5) exercise the powers of an owner with respect to the  
24 assets of the fund;

25 (6) maintain accounting records of the fund in accordance  
26 with generally accepted [INVESTMENT] accounting principles; however,  
27 the corporation shall preserve the [AND WITH] distinction between the  
28 principal and income accounts of the fund;

29 (7) engage an independent firm of certified public

1 accountants to annually audit the financial condition of the fund's  
2 investments and investment transactions;

3 (8) enter into and enforce contracts or agreements con-  
4 sidered necessary for the investment purposes of the fund;

5 (9) report to the board the condition and investment per-  
6 formance of the fund;

7 (10) do all acts, whether or not expressly authorized, that  
8 the Alaska State Investment Corporation [COMMISSIONER OF REVENUE]  
9 considers necessary or proper in administering the assets of the fund.

10 \* Sec. 16. AS 39.30.095(d) is amended to read:

11 (d) If the commissioner of administration determines that there  
12 is more money in the fund than the amount needed to pay premiums or  
13 benefits for the current fiscal year, the surplus, or so much of it as  
14 the commissioner of administration considers advisable, may be in-  
15 vested by the Alaska State Investment Corporation [COMMISSIONER OF  
16 REVENUE] in the same manner as retirement funds are invested under  
17 AS 14.25.180.

18 \* Sec. 17. AS 39.25.110(11) is amended by adding a new subparagraph to  
19 read:

20 (G) Alaska State Investment Corporation;

21 \* Sec. 18. AS 39.30 is amended by adding a new section to read:

22 Sec. 39.30.175. INVESTMENT OF BENEFIT PROGRAM RECEIPTS. The  
23 Alaska State Investment Corporation is the fiduciary of the receipts  
24 of the employee benefits program established under AS 39.30.150 -  
25 39.30.180 and has the same powers and duties concerning the management  
26 and investment in regard to those receipts as are provided under  
27 AS 14.25.180.

28 \* Sec. 19. AS 39.35.020 is amended to read:

29 Sec. 39.35.020. ADMINISTRATION. The commissioner of

1 administration is responsible for the administration of the system and  
2 for carrying out this chapter. In addition the commissioner shall

3 (1) maintain the accounts of the system;

4 (2) make payments for the various purposes specified;

5 (3) submit periodic reports or statements of account that  
6 are needed;

7 (4) issue a statement of account to an employee requesting  
8 it showing the amount of the employee's contributions to the system;

9 (5) as soon as possible after the close of each fiscal  
10 year, and not later than six months after the close of each fiscal  
11 year, send to the governor, the legislature, and the board an annual  
12 statement on the operations of the system containing

13 (A) a balance sheet;

14 (B) a statement of income and expenditures for the  
15 year;

16 (C) a report on an actuarial valuation of its assets  
17 and liabilities;

18 (D) a summary of assets held in the pension fund  
19 listed by the categories of investment, as provided by the Alaska  
20 State Investment Corporation [COMMISSIONER OF REVENUE];

21 (E) other statistical financial data that are neces-  
22 sary for a proper understanding of the financial condition of the  
23 system and the result of its operations;

24 (6) establish a public employees retirement trust fund in  
25 which the assets of the system shall be deposited and held;

26 (7) engage an independent certified public accountant to  
27 conduct an annual audit of the system's accounts and the annual report  
28 of the system's financial condition and activity;

29 (8) report to the board concerning the condition and